

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.516/90

New Delhi this the 23rd Day of Sept., 1994.

**Hon'ble Shri J.P. Sharma, Member(J)**

**Hon'ble Shri B.K. Singh, Member(A)**

Shri Sri Pal

S/o Shri Ram Rutar

Employed as Durwan in the Office of  
Director, Defence Materials and Stores,  
Research and Development Establishment,  
Kanpur-2080013.

C/o Shri Sant Lal Advocate,  
C-21(B), New Multan Nagar,  
Delhi-110056.

....Applicant

(By Advocate :Shri Sant Lal)

VERSUS

1. The Union of India, through  
The Secretary,  
Ministry of Defence,  
D.R.D & D.O. Defence Materials & Stores,  
R&D Establishment New Delhi-110011.
2. The Scientific Advisory to G.I.  
M.O.D. D.R.D. DO. DMSRDE,  
New Delhi-110011.
3. The Director (DMSRDE)  
Defence Material & Stores Research and  
Development Establishment,  
G.T. Road, Kanpur-2080013. ...Respondents

(By Advocate :Shri VSR Krishna)

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was Durwan in the Office of the Director, Defence Materials & Stores Research and Development Establishment, Kanpur. He was posted on duty at the relevant time on the night duty on 9th September, 1987. He was suspended from the duty w.e.f. 9.10.87 but was reinstated on 14.01.1988. A disciplinary enquiry was initiated against him on 14.01.88 to which the applicant submitted his reply on 22.01.88. The Disciplinary Authority vide its order dated 15.02.1988 appointed Shri T.D. Verma, Scientist <sup>as E.O.</sup> and Shri A.C. Saxena

as presenting Officers. After concluding his inquiry E.O. held the applicant guilty of the charge of dereliction of duty by the report dated 21.02.89. The disciplinary authority passed the impugned order of punishment imposing penalty of reduction in pay by five stages with cumulative effect by the order dated 29.03.1989 and further the period under suspension not to be treated as spent on duty. The appeal against the same was filed on 11.05.1989 and the applicant represented for the disposal of the appeal but since he was not informed about the result of his appeal, he filed the present application in March, 1990. It appears that the order on the appeal was passed on 20th March, 1990 by which the punishment imposed by the disciplinary authority was modified and the reduction in pay by five stages with cumulative effect was reduced for a period of only 2 years.

2. The relief claimed by the applicant is for quashing the impugned order of punishment and to grant all consequential benefits of arrears of pay and allowances and to direct the respondents to treat the period of suspension as period spent on duty for all purposes.

3. The respondents contested this application. In the reply, the respondents supported the order passed by the Disciplinary Authority as well as the Appellate Authority and that the applicant was given adequate opportunity to put his case before the Inquiry Officer who has submitted a detailed report.

le

9/11

4. The applicant has also filed the rejoinder reiterating almost the same facts averred in the application.

5. We heard the learned counsel for the applicant yesterday and the case was resumed for arguments today. The counsel for the respondents has been heard at length.

6. The perusal of the record goes to show that the crime No.705/87 under Section 380 of the I.P.C. was also registered at P.S. Chakeri (Distt. Kanpur) with respect to the alleged theft committed on 30.10.87 in the premises of the stores when the applicant was posted on duty at that relevant time. The police investigated the case and finally submitted a final report of F.I.R.659 dated 30.10.87. The Police final report was obviously U/S 167 of C.R.P.C. The C.M.M Kanpur accepted the final report. The observation in the final report are adverse to department where the previous conduct of the department of lodging similar F.I.R. of theft have also been mentioned. But that is besides the point.

7. The perusal of the record shows that said Inquiry Officer was not conversent with the relevant provisions of procedure of inquiry under Section 14 of the CCS (CCA) Rules 1965 or he ignored the provisions with impunity. It appears that the Presenting Officer was himself examined as a witness and the delinquent applicant was also cited a prosecution witness and was examined and cross-examined ; and under Article 20 of the Constitution of India nobody can be a witness against himself. It is also not only irregularity but illegality

le

in as much as if a delinquent is examined and cross-examined before the conclusion of the evidence of administration, the points elicited by such an examination, will go a long way to have the administration/prosecution to improve upon the case through <sup>other subsequent</sup> oral testimony. It is because of this when the inquiry is about to conclude and the prosecution has closed its evidence the inquiry Officer, as a matter of course put certain questions to the delinquent regarding the facts which has come in the inquiry against him. And even in that case the delinquent is not a witness but only as a matter clarification certain questions are asked from him. This provision is similar to Section 311 of the Cr.P.C. where the accused after the conclusion of prosecution case is put certain questions regarding the evidence which is against him in the criminal case. Thus, the procedure adopted by the Inquiry Officer is totally illegal and has prejudiced the Inquiry Proceedings from its initiations.

8. The learned counsel for the respondents, however, argued that the applicant has not been prejudiced at all and under the Provisions of Rule 14 (18) the Inquiry Officer is empowered to put questions to the delinquent. The contention of the learned counsel for the ~~applicant~~ <sup>respondent</sup> is right to this extent but at the same time the delinquent cannot be examined as a witness and cross-examined at length by the Presenting Officer who was earlier examined as prosecution witness in this case. The learned counsel for the respondent

le  
Correct  
29.11.94.

le

however, argued that there is no bar in the rules for adopting this procedure. However, we have come across in the commentry of CCS (CCA) Rules at Page-60 Serial No.28 , Muthuswami Commentry - XIX Edition where Director General P&T letter No. 6/42/63-Disc. dated 28.8.1963 , it is mentioned that the SPE Officer acting as departmental witness should not be appointed to present the case on behalf of the prosecution. And the fact that preliminary inquiry he conducted need not stand in the way of his being examined as prosecution witness.

9. The other contention of the learned counsel for the applicant is that certain documents asked for from the respondents have not been supplied to the applicant. Not only this the list of witnesses examined in this case has not been given to the applicant along with the Memo of Chargesheet. The contention of the Counsel for the Respondents is that these witnesses were to support the documents on record. However, if the witnesses are examined in the case then the list of witnesses is mandatory so that the delinquent may know beforehand the witnesses were to be examined in the case. It is a fact that the prosecution has right to tender the supplementary list of witnesses and at that time the delinquent may have no notice of the same. However, the fact remains that the annexure to the Memo chargesheet remains incomplete and the applicant is taken unaware by examination of the witnesses, not cited in the Annexure to the Memo of Chargesheet.

be

10. There is also certain observation that due to irregular functioning of the Inquiry Officer the defence assistant has also to stage a walk-out from the inquiry proceedings as certain documents were not supplied.

11. In view of the fact that it is not necessary to go in for further details as there are not one but a number of irregularities in the proceedings of the inquiry.

12. Ordinarily, when the procedure adopted in the inquiry is irregular as well as illegal, the respondents may be given an opportunity for de novo inquiry against the delinquent. However, in this case C.M.M. Kanpur has accepted the final report doubting that the theft was committed. The Investigating Officer came to the conclusion after investigating the acts of the FIR alleged by the department itself that it is false and fabricated and such practices were also undertaken by the same department earlier. There is a provision to go in the revision against the aforesaid order of the C.M.M. Kanpur but the respondents i.e. the department has not gone and accepted the findings of the C.M.M. Kanpur. In such a case it shall be futile exercise to order for de novo enquiry against the applicant at this point of time. The total theft reported is estimated to be of the value of Rs.450-500.

le

13. The perusal of the inquiry officer report shows that <sup>on the basis</sup> the drawn conclusion <sup>of</sup> evidence of those witnesses the list of which was not supplied before hand to the delinquent. If that evidence is ignored from consideration and statement of the Presenting Officer is excluded as well as of the delinquent than the conclusions by the inquiry officer would be based on no evidence and in such a case it shall not be proper to order a de novo inquiry or to uphold the finding of the Inquiry Officer.

14. Though the disciplinary authority and appellate authority have considered the matter but both of them did not consider the particular legal aspect and lacunae. The applicant has also <sup>not</sup> been given a personal hearing by the appellate authority. *do  
considered  
9.11.94.  
B*

15. In view of the facts and circumstances, we find that the impugned order of punishment of the disciplinary authority dated 29th March, 89 and that of the Appellate Authority dated 28th March, 1990 cannot stand.

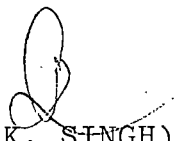
16. The application is allowed. The impugned order of punishment are quashed. The applicant shall be fixed in the pay scale at the same stage as if no punishment has been imposed upon him. And if any deduction has been made from his pay or paid less, shall be reimbursed to him.

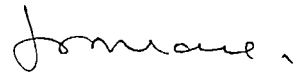
17. The period of suspension of the applicant shall also be treated as period spent on duty for all purposes and shall be paid full pay &

*le*

allowances for the suspension period.

18. The respondents to comply with the order as expeditiously as possible viz within a period of four months from the date of receipt of this order. Cost on parties.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER(J)

SSS