

15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 54/1990

New Delhi this the 9th Day of October, 1995.

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Bag Raj Singh,
Son of Shri Nathu Singh,
Ex-Fitter 'b' TN 412,
C/o Or. No. 701/30S,
Ordnance Factory,
Muradnagar.

... Applicant

(By Advocate: Shri V.P. Sharma)

Vs

1. Union of India, through
The Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
2. The Director General,
Ordnance Factory,
10-A Auckland Road,
Calcutta-700 001.
3. The General Manager,
Ordnance Factory,
Muradnagar (Ghaziabad) U.P. Respondents

(By Advocate: Shri VSR Krishna)

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant Shri Bag Raj Singh who was working as Fitter "B" in the Ordnance Factory, Muradnagar was dismissed from service by order dated 9.1.1988 of the third respondents, General Manager, Ordnance Factory, Muradnagar as a result of a disciplinary proceedings held under Rule 14 of the CCS (CCA) Rules initiated by the issuance of a Memo of Charge dated 2.4.1987. The substance of the imputation which formed the basis of the charge was that at 6.10

2

AM on 9.2.1987 the applicant while leaving after night shift was found attempting to commit theft of gun metal piece weighting 2.5 KG. Though the applicant in the explanation submitted to the Memo of Charge stated that he had only picked up the gun metal piece found lying on the path with the intention of handing it over to the security staff at the gate of the factory, the same was not found acceptable and an enquiry under Rule 14 of the CCS (CCA) Rules was held. The Enquiry Officer held the applicant guilty. The finding was accepted by the disciplinary authority, the second respondent and as a consequence disciplinary authority namely the second respondent by the impugned order dated 9.1.1988 (Annexure A-1) imposed on the applicant a penalty of dismissal from service. The appeal filed by the applicant was rejected by the second respondent by the order dated 4.4.1989. Though the applicant filed a review application, the same remained not respondent to. Under this circumstance aggrieved by the penalty of dismissed from service imposed on him, the applicant has filed this application under Section 19 of the Administrative Tribunal Act with a prayer to quash the Memo of Charge (Annexure A-8) dated 2.4.1987 the order of the third respondent dismissing him from service dated 9.1.1988 (Annexure A-1) and the appellate authority dated 4.4.1989 (Annexure A-4) as illegal, void, without jurisdiction and unsustainable with all consequential benefits. It has been alleged in the application that the General Manager was not competent to dismiss the application from service as the D.G of Ordnance Factory is the highest authority in respect of the staff

AM on 9.2.1987 the applicant while leaving after the night shift was found attempting to commit theft of a gun metal piece weighting 2.5 KG. Though the applicant in the explanation submitted to the Memo of Charge stated that he had only picked up the gun metal piece found lying on the path with the intention of handing it over to the security staff at the gate of the factory, the same was not found acceptable and an enquiry under Rule 14 of the CCS (CCA) Rules was held. The Enquiry Officer held the applicant guilty. The finding was accepted by the disciplinary authority, the second respondent and as a consequence disciplinary authority namely the second respondent by the impugned order dated 9.1.1988 (Annexure A-1) imposed on the applicant a penalty of dismissal from service. The appeal filed by the applicant was rejected by the second respondent by the order dated 4.4.1989. Though the applicant filed a review application, the same remained not respondent to. Under this circumstance aggrieved by the penalty of dismissed from service imposed on him, the applicant has filed this application under Section 19 of the Administrative Tribunal Act with a prayer to quash the Memo of Charge (Annexure A-8) dated 2.4.1987 the order of the third respondent dismissing him from service dated 9.1.1988 (Annexure A-1) and the appellate authority dated 4.4.1989 (Annexure A-4) as illegal, void, without jurisdiction and unsustainable with all consequential benefits. It has been alleged in the application that the General Manager was not competent to dismiss the application from service as the D.G of Ordnance Factory is the highest authority in respect of the staff

including the applicant, that the enquiry was held in violation of the provisions contained in Rule 14 of the CCS (CCA) Rules in as much as copies of the relevant documents were not supplied to him, as he was not given the assistance of a assisting Government servant and that the enquiry officer had compelled the applicant to be examined himself before the evidence in support of the charge was taken, that the principles of natural justice have been violated since a copy of the enquiry report was not supplied to the applicant before the disciplinary authority took a decision in the matter against him, and that the order of the disciplinary authority and that of the appellate authority are non speaking. It has also been alleged that since the Hon'ble Supreme Court has laid down in Union of India and Ors. Vs. K.S. Subramaniam AIR 1989 SC 662 that the civilian employees in the defence service do not enjoy the protection of Article 311 of the Constitution of India and as the Calcutta Bench of the Tribunal in Inderjit Dutta Vs. Union of India 1992 (i) ATJ 44 and the Principal Bench in Ajit Singh Vs. Union of India in O.A. No. 1530/1990 held that the CCS (CCA) rules 1965 do not apply to the Civilian employees in Defence Service drawing their pay from the Defence Estimate, the chargesheet as also the Departmental Proceedings vitiated and the penalty are without any legal consequences.

2. The respondents in their reply have refuted the allegations that the enquiry was held in violation of the provisions contained in the CCS(CCA) Rules and Principles of natural justice. They have further

R

18

contended that the CCS(CCA) do apply to the case of the applicant and that the penalty of dismissal from service was awarded to the applicant being the proper and adequate penalty as the guilt of the applicant of accepted theft of government property was established by cogent evidence in an enquiry held in conformity with the CCS(CCA) Rules as also the principles of natural justice. The order of the disciplinary authority as also that of the appellate authority according to the respondents are perfectly valid with jurisdiction and are reasoned order. The respondents have prayed that the application which is devoid of merit can be dismissed.

3. The applicant has filed the rejoinder in which he has reiterated his contention that the impugned orders are without jurisdiction as the CCS(CCA) is applicable to him.

4. We have perused the pleadings and documents as also the file relating to the disciplinary proceedings made available for our perusal by the learned counsel of the respondents. It is interesting to note that the applicant is blowing hot and cold about the manner in which the enquiry was held. In the first place the applicant assailed the enquiry on the ground that it was held in violation of the provisions contained in Rule 14 of the CCS(CCA) rules and then at the same time he claims that the CCS(CCA) Rules do not apply to him and therefore the enquiry held under the provisions of CCS(CCA) Rules is without any legal consequences. It has been held by the Hon'ble Supreme

Court in Union of India Vs. K.S. Subramaniam AIR 1989 SC 622 that the civilian employee drawing pay from the Defence Estimate do not enjoy the protection under Article 311 of the Constitution and therefore the provisions of CCS (CCA) Rules do not apply to them. The same view has been taken in the ruling of the Supreme Court in DG Ordnance Factory Vs. Malhotra reported in 1995 Vol. II SLJ 183 but the Supreme Court has not held that if an enquiry has been held against an employee following the procedure laid down in CCS(CCA) rules and in full conformity with the Principles of natural justice, the order passed therein will be inconsequential or void in the case of a defence civilian employee for the fact that the protection under Article 311 (2) of the Constitution or the service rules framed under Article 309 of the Constitution are not applicable to them. Either in Inderjit Singh Dutta's case, the Calcutta Bench of the Tribunal ^{and} the Principal Bench in Ajit Singh Vs. Union of India OA No. 1530/1990 seems to have examined whether the enquiry in those cases though initiated under the provisions of Rule 14 of the CCS(CCA) were held in conformity with the principles of natural justice and whether the order passed could be sustained through the provisions of CCS (CCA) Rules were not applicable to Defence Civilian employees. Therefore, neither the Calcutta Bench of the Tribunal in Inderjit Singh Dutta's case nor the Principal Bench in Ajit Singh's case can be considered as an authority on the point as to whether such an order would be valid or not. If the CCS(CCA) Rules are not applicable then what rules would apply in the case of the Applicant?

~

It seems that there is no answer to this question. At any rate the learned counsel of the applicant was not in a position to say which rule would apply. If the CCS(CCA) Rules do not apply and if there is no specific rule which would apply then can it be said that ~~in~~ the ~~case~~ of Defence Civilian employee drawing their pay from the Defence Estimate cannot be subjected to any disciplinary action? Can be it said that they can claim total immunity from penalty of dismissal, removal or reduction or any other penalty for that matter? We do not think so. In the absence of any specific rule in regard to the disciplinary proceedings then we are of the considered view that the principles of natural justice equity and fair play would be the guiding principles in holding such proceedings. Therefore, even though the provisions of the CCS (CCA) rules are ~~in~~ applicable to the applicant, if before the imposition of the penalty on the applicant he has been informed of the charges against him and has been given a reasonable opportunity to defend himself then the fact that the proceedings were held in accordance with the provisions contained in the CCS (CCA) Rules alone will not vitiate the proceedings and render the order in consequential.

5. In Director General of Ordnance Services & Ors. Vs. P.N. Malhotra reported in 1995(2) All India Services Law Journal P. 183, the respondent a civilian employee in defence service was dismissed from service after enquiry held in accordance with Rule 14 of the CCS (CCA) Rules. He challenged the decision on the ground that the disciplinary proceedings held under Rule 14 of the CCS (CCA) Rules were inconsequential as

92

it was held in the case of Union of India and Anr. Vs. K. S. Subramaniam, wherein it was held that the protection under Article 311 of the Constitution are not available to the Defence Civilian employees drawing their salary from the Defence Estimate. The Tribunal following a decision of the Calcutta Bench of the Central Administrative Tribunal / allowed the application. The matter was taken up before the Hon'ble Supreme Court by the Respondent in the Original Application. The Hon'ble Supreme Court while allowing the appeal and setting aside the order of the Tribunal observed in paragraph 6 of the judgement as follows:

"We are also unable to see how the decision in K.S. Subramanian (1989 Supp.(1) SCC 331) could have been understood by the Tribunal as enabling it to declare that the dismissal of the respondent is void and to further declare that he should be deemed to have been continuing in Service. The said decision in fact militates against the respondents, since according to it, the respondent does not enjoy the protection of Article 311(2) of the 1965 Rules. It is relevant to notice that in the last part of the judgement, this Court states: "In the result, the appellant (Union of India) succeed on the question of law, but the respondent retains the decree in

m

his favour purely on compassionate grounds". The compassionate grounds are stated in the preceding paragraph".

In paragraph 8 of the judgment, the Court further observed that .

"The learned counsel for the appellants submits that the respondents cannot be said to have suffered any prejudice by following the procedure prescribed by 1965 Rules. He submits that the said Rules are nothing but a codification of the principles of natural justice. Indeed, it is submitted, they are more specific, more elaborate and more beneficial to the employee than the broad principles of natural justice. If we assume for the sake of argument that the respondent was entitled to insist upon an enquiry before he could be dismissed, we must agree with the submission of the learned counsel for the appellants".

Referring ~~earlier~~ to the decision of the Hon'ble Supreme Court in Union of India Vs. Inderjit Dutta especially to what is quoted in para 5 (Supra) their Lordships observed:

"We must also say that this Court cannot be said to have approved the view taken by the Tribunal in that case (which is

~

the same as in this case). In view of the peculiar circumstances of that case, this Court held, "we are not inclined to interfere with the impugned judgement of the Tribunal". The earlier sentence in the judgement to the effect that "we see no ground to interfere with the reasoning and the conclusion reached by the Tribunal" must be read alongwith the subsequent opinion afforded and in the light of all the observations made".

6. In view of the legal position as discussed above, we find that the contention that the order by the disciplinary authority against the applicant is null, void and inconsequential in view of the provisions of the CCS (CCA) Rules are inapplicable to the Defence civilian employees drawing their pay from the Defence Estimate is without merit. 5. Now coming to the case of the applicant that the enquiry has been held in violation of the principles of natural justice and in total disregard of the provisions contained in CCS(CCA) Rules. On a careful examination of the proceedings of the enquiry which has been made available for our perusal by the learned counsel of the respondents we are convinced that there is no merit in this contention. The case of the applicant that he was not given the privilege of being assisted by an Assisting Government servant during the disciplinary proceedings, that he was compelled to be examined before the evidence in support of the charge was taken and that he was not allowed to examine the documents

relied upon in support of the charge are found to be baseless and false. The applicant was examined as a witness after the witness in support of the charge were examined and on his offering himself as a witness. Throughout the enquiry the applicant was assisted by Shri Rajinder Singh, a defence helper of his choice. The applicant and his defence helper were allowed to examine the original of the documents relied upon and they said that it was not necessary for them to examine the originals. Therefore, a scrutiny of the proceedings shows that the enquiry officer has held the enquiry affording the applicant fair and reasonable opportunity to defend himself and that the case of the applicant to the contrary is a traversity truth.

7. The learned counsel for the applicant argued that the finding of guilt arrived at cannot be upheld because no independent witness was examined in support of the charge. Once it is established that the enquiry has been held in conformity with the principles of natural justice, it is not open for the Court or the Tribunal to dwell upon the sufficiency of evidence in reaching the conclusion if it is seen that there is some evidence on the basis of which the disciplinary authority has reached a conclusion. In this case the charge against the applicant was that at 6.10 A.M. on 4.2.1987 when he was leaving the factory the factory he was found attempting to commit theft of a piece of gun metal weighing 2.5 KG. That the applicant was found in possession of 2.5 kg of gun metal and this metal piece kept in a bag was seized from him by the security staff is an admitted case of the applicant. His case is that

Q2

25

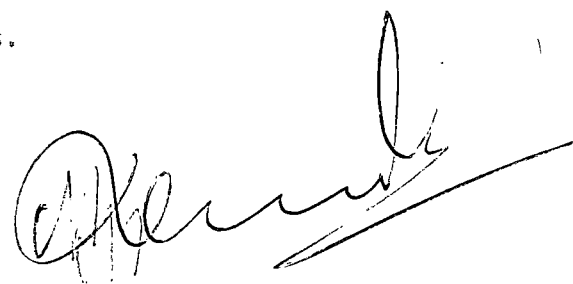
-11-

he found the metal piece lying on the way and he had only taken it to be handed over at the gate to the security staff. Finding that the case of the applicant put forth in the explanation submitted to the chargesheet and in his testimony while examined at the regular enquiry was in consistent and that two witnesses examined in support of the charge had given convincing evidence to the fact that on searching the applicant the metal piece was seized from him, the disciplinary authority came to the conclusion that the applicant was guilty of the charge. We do not find any reason to interfere in this finding of fact by the enquiry authority. The argument that no independence witness was examined and therefore the finding is not sustainable has no force at all.

8. In the conspectus of the facts and circumstances, we do not find any merit in this application, and therefore we dismiss the O.A leaving the parties to bear their own costs.


(R.K. Ahuja)

Member (A)


(A.V. Haridasan)

Vice Chairman (J)

Mittal