

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.702/90 and
O.A.704/90

New Delhi, this the 28th October, 1994

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

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

In O.A. 702/90

Shri Shashi Bhushan Sharma,
Food Inspector,
Department of Prevention of Food Adulteration,
Delhi Administration,
I.S.B.T. Building,
5th Floor, Delhi.

... Applicant

By Advocate: Shri G.D. Gupta

Vs.

1. Lt. Governor of Delhi,
Raj Niwas, Delhi.

2. Chief Secretary,
Delhi Administration,
5, Sham Nath Marg,
Delhi.

3. Director,
Department of Prevention of
Food Adulteration,
Delhi Administration,
5th Floor, ISBT Building,
Delhi.

... Respondents

By Advocate: Smt Avinish Ahlawat

In O.A. 704/90

Shri Gopal Singh,
Local(Health) Authority,
P.F.A. Delhi Administration,
Delhi.

... Applicant

By Advocate: Shri G.D. Gupta

Vs.

1. Lt. Governor, Delhi
Raj Niwas, Delhi.

2. Chief Secretary,
Delhi Administration,
5, Sham Nath Marg, Delhi.

3. Director,
Department of Prevention of
Food Adulteration,
Delhi Administration,
5th Floor, ISBT, Delhi.

... Respondent

By Advocate: Mrs. Avinish Ahlawat

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O R D E R

Hon'ble Shri J.P. Sharma, Member(3)

Both the above applications are disposed of by a common judgement as almost similar question of fact and law are to be adjudicated in both the cases. The facts of both the cases are also identical inasmuch as applicant Shri Gopal Singh of O.A.704/90 at the relevant point of time was Local(Health) Authority, Delhi Administration while Shri Shashi Bhushan Sharma, applicant in O.A.702 was Food Inspector in Delhi Administration.

2. The brief facts of the case are that applicant Shri Gopal Singh was appointed Local Health Authority vide order dated 14.5.84 (Annexure 4) of O.A. 704/90. Similarly Shri Shashi Bhushan Sharma applicant in O.A.702/90 was appointed Food Inspector by the order dated 27.1.81 (Annexure 4). Both the applicants on 24.2.86 raided the business premises of M/s. Lechman Das Behari Lal in Shahdra and took samples of Zarda(chewing tobacco) which was duly sealed, marked ready for marketing. 12 tins of 50 gms. each from the said premises were lifted on payment of Rs.40.80 paise. Thereafter, the raid party took further steps and one part of the samples was sent to the Public Analyst, Food Laboratory, Delhi for analysis under PFA Act who gave his report that the samples of tobacco is mis-branded. LHA Shri Gopal Singh recommended prosecution against the said firm on 2.5.86. Thereafter, certain correspondence took place and Director,

PFA by the order dated 1.11.86 came to the conclusion after perusing the representations placed by the firm and the comments/clarification furnished by the Superintendent, Central Excise and taking into account the comments and clarification submitted by Shri Gopal Singh, LHA and Shri Shashi Bhushan Sharma, Food Inspector came to the conclusion that the said sample of tobacco was taken from under processed material and not from the finished product of Zarda edible. This order served as a show cause notice on both the applicants to submit their explanation for unauthorised conduct within 3 days of the receipt of the memo.

and if the said was not found satisfactory, the departmental proceedings may be initiated against them. Thereafter, a memo. dated 30.12.87/4.1.88 was

served on both the applicants under the signatures of Chief Secretary, Delhi Administration for holding an enquiry under Rule 14 of the CCS (CCA) Rules, 1965.

The articles of charges were detailed in Annexure 1. The imputation of misconduct in Annexure 2, the list

of witnesses in Annexure 3 and list of documents in

Annexure 4. By the letter dated 6.1.89, the Chief

Secretary appointed Miss Vijay Lakshmi Sharma,

Commissioner for Departmental Enquiry, C.V.C., New Delhi

as the Inquiring Authority to inquire into the charges framed against the said applicants. By an order of

even date Dr. (Mrs.) P. Sengupta, Deputy Director (Tech.)

P.F.A. was appointed as Presenting Officer. By the

order dated 30.12.87/4.1.88 (Annexure 3 of O.A. 704/90)

the Chief Secretary, Delhi Administration passed an

order under Rule 18 of the CCS (CCA) Rules, 1965 that

the disciplinary action shall be taken against the

applicants in a common proceedings and the Chief

Secretary, Delhi Administration shall function as the

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Disciplinary Authority for the purpose of common proceeding. By another order dated 4.10.89 (Annexure 5 of O.A.704/90) the Chief Secretary, Delhi Administration ordered that in supercession of the order dated 30.12.87 that the departmental disciplinary proceedings against the applicants will be held separately but simultaneously.

3. The Inquiry Officer in the case of Gopal Singh drawn the report dated 29.12.89 holding that 3 articles of charges are established against him and submitted the same to the disciplinary authority. On the basis of this report, a copy of the report was sent to Applicant Shri Gopal Singh by the memo. dated 12.3.90 to make any submissions, if he so desires on the findings of the Inquiry Officer within a week of the receipt of the memo. failing which it would be presumed that he has nothing to say on the findings of the Inquiry Officer and the decision on the report would be taken accordingly. Similarly the Inquiry Officer has drawn his report dated 30.12.89 in the case of Shri S.B. Sharma, applicant in O.A.702/90 holding that all the 3 articles of charges are proved against the applicant and submitted the same to the disciplinary authority who issued memo. dated 12.3.90 enclosing a copy of the findings of the Inquiry Officer and to show cause against the findings of the Inquiry Officer within a week from the receipt of the same and if no such submissions were made, it would be presumed that he has nothing to say and necessary order would be passed.

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4. Both the applicants are aggrieved by the Inquiry Officer's reports referred to above and filed the aforesaid applications in the Principal Bench in April, 1990. Both the applicants have made the applications against the report of the Inquiry Officer in the case of applicant Shashi Bhushan Sharma dated 30.12.89 and in the case of Shri Gopal Singh the report dated 29.12.89. On 20.4.90 when the matter came before the Bench notices were issued to the respondents and an interim relief was granted in favour of the applicants that the applicant may give his reply to the show cause notice to the respondents without prejudice to his rights and contentions in the application filed in the Tribunal and the respondents shall not pass final orders on the enquiry as prayed for in the application.

5. The relief prayed for in both the applications in para 8 is the same except that in the case of S.B. Sharma of D.A.702/90 the relief claimed is for the quashing of the order dated 30.12.89 while in the case of Gopal Singh of D.A.704/90 ^{the relief claimed} is for quashing the order dated 29.12.89.

6. The respondents in both the applications have filed their reply and opposed the grant of the reliefs and also taken preliminary objection that the application is pre-mature as no final order has been passed by the respondents. The applicants have only been asked to show cause against the findings of the Inquiry Officer to the Directorate of Vigilance and instead of filing their submission against the aforesaid



Inquiry Officer report, the applicants have filed these applications. The respondents have also replied to the various averments made in the application and also opposed the grounds on which relief is claimed. The applicants in both the O.As. have also filed the rejoinder reiterating the same facts as alleged in the O.A.

7. We heard the learned counsel Shri G.D. Gupta at length.

8. The learned counsel for the applicant has argued the case only with respect to the orders passed by Chief Secretary, Delhi Administration dated 30.12.87/4.1.88 whereby it was directed that departmental disciplinary action shall be taken in a common proceedings as envisaged under Rule 18 of the CCS (CCA) Rules, 1965. He has further assailed the order dated 4.10.89 whereby the common proceedings were again separated and it was ordered that the proceedings be held simultaneously but separately against both the applicants. The learned counsel for the applicants has given a clear statement that he is not pressing any other argument with respect to the impugned report of the Inquiry Officer dated 29.12.89 and 30.12.89 in O.A. 702/90 and O.A. 704/90 respectively.

The contention of the learned counsel is that in the case of Shri Gopal Singh who is Local Health Authority and has been conferred the power by the Central Government only the Lt. Governor is the appointing authority referring to Article 239 of the Constitution of India and Section 9 of the

Prevention of Food Adulteration Act. It is argued that it is only Lt. Governor/Administrator who can pass any order for holding common proceedings against the applicant as well as Shri S.B. Sharma, petitioner in O.A. 702/90. The learned counsel for the applicant has also referred to section 3(8)(b)(3) of the General Clauses Act to re-inforce the arguments on the interpretation of provision of Article 239 of the Constitution of India and section 9 of the Prevention of Food Adulteration Act. It is further argued by the learned counsel for the applicants that since Local Health Authority is a Class I Group 'A' post, under Rule 8 of CCS(CCA) Rules, 1975 the President is the Appointing Authority to Central Civil Service Class I and Central Civil Service Post Class I. The order for holding common proceedings was issued by the Chief Secretary who according to applicant counsel was not the appointing authority as such the Inquiry Officer's report has no value. We have considered the various averments made in the O.A. and the grounds of attack on the Inquiry Officer report. The applicant has not taken any such ground in the O.A. in order to give an opportunity to the respondents to meet these grounds in their reply. The applicant cannot take the respondents by surprise. The points raised by the learned counsel for the applicants are factual in nature and when it is said that the appointing authority for



Shri Gopal Singh, LHA was the President a specific ground under the heading Grounds should have been taken in the O.A. which has not been taken. The applicants' counsel therefore cannot go beyond his pleadings. When the learned counsel for the applicant was taken to the pleadings he could only refer to para 4.2 of the facts of the case where it is said that as far as the applicant Shri Gopal Singh is concerned, the appointing authority is Lt. Governor. When we go through the appointment letter, Annexure 4, copy of the appointment letter has been filed by the applicant himself this bears the signatures of Joint Secretary Shri P.N. Gupta and it starts with the words "with reference to his/her application dated 25.11.83 to the Union Public Service Commission, New Delhi, the Administrator, Delhi/Chief Secretary, Delhi Administration, Delhi is pleased to offer Shri/Smt./Kumari Gopal Singh on the recommendations of the Commission, a permanent/temporary post of Local Health Authority on initial pay of Rs.1100/- or the the pay as may be fixed according to the rules on the subject in the scale of Rs.1100-1600."

Though the learned counsel pressed that the word **Chief Secretary** has been struck by a straightline but it is not so in the photostat copy. The applicants counsel did not get the original summon^{ed} from the respondents. The respondent's counsel was rightly argued that when it is not taken as a ground under the heading 'Grounds' and the appointment letter itself can be read either way, the Tribunal cannot

interfere at this stage when no final order has been passed. The disciplinary authority or as the case may be the appellate authority shall be equally competent to look into the matter as it primarily relates to the records. The learned counsel for the respondents has read out the grounds taken by the petitioner in both these cases in para 5 which runs from para 5.1 to 5.9 and even the law has been referred to in the grounds. But no specific ground has been taken with respect to the new arguments advanced by the learned counsel for the applicant that the order of December, 1979/ January, 1988 and the order of October, 1989 referred to above has been passed by an authority which was not competent to issue the same. In view of this, we left the question open and may be considered even by the disciplinary authority while passing the final order in the case.

9. The learned counsel for the respondents has also referred to Rule 13(2) of the CCS(CCA) Rules, 1965 where the disciplinary action can be initiated even by an authority who can only impose minor punishments as specified in Clause I to IV of Rule 11 of the said Rules. The learned counsel for the respondents has also referred to Schedule to the CCS(CCA) Rules where in part II Central Civil Service Group 'B' for Delhi Administration for all posts Chief Secretary is the appointing authority and he can impose all the punishments. In fact Rule 8 of the CCS(CCA) Rules only refers to Central Civil Service Class I and Central Civil Service Post Class I. We also find the Govt. of India, Ministry of Home Affairs order of

13.7.57 as amended by the order dated 5.8.63 that the Chief Commissioner, Delhi has been delegated the power by the President for appointment to Central Civil Service Post Group 'A' under the Delhi Administration. Since we are not expressing an opinion on this fact for the reasons hereinafter detailed, we left the point open.

10. We also considered that the Bench which heard the matter on 20.4.90 granted an ex parte interim relief directed the respondents not to pass final orders on the enquiry but the applicants had been directed to file reply to the show cause notice. When the matter was again taken up on 4.5.90 while admitting the case the interim order was continued until further orders and passed by the same Bench. However, no reasons thereof were mentioned and there is no observation regarding the impugned order which is Inquiry Officer's report in both the cases. Thus we also to see whether such an interim order can be continued further. In the facts and circumstances of this case, the proceedings are almost complete before the Inquiry Officer and in such an event no interim relief can be granted against an interim order which is only a show cause notice given to the applicants in both the cases to file the reply or submissions against the findings of the Inquiry Officer.

It may be reiterated that the applicants in both the O.As. have not challenged the memo. of charge-sheet nor they have projected a case that no misconduct is made out against them on account of allegations levelled in the said memo. of charge-sheet as shown in the articles of charge. The Hon'ble Supreme Court considered the matter in the case of UOI Vs. Upendra Singh reported in (1994)27 ATC 200. The Hon'ble Supreme Court held that if a court cannot interfere with the truth or correctness of the charges even in a proceedings against the final order, it is understandable how can that be done by the Tribunal at the stage of framing of the charges? The Hon'ble Supreme Court has also referred to decision in the case of UOI Vs. K.K. Dhawan reported in (1993)2 SCC 56 and in the case of UOI Vs. A.N. Saxena reported in (1992)2 SCC 124. In the case of A.N. Saxena at page 127 of the report in para 6 the Hon'ble Supreme Court observed as follows:

"In the first place, we cannot, but confess out astonishment at the impugned order passed by the tribunal. In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of

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disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrongdoer to book. We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondents in terms of the charge-sheet dated 13.3.1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal."

11. The counsel for the respondents has also placed reliance in the case of State of U.P. Vs. Shri Brahm Dutt Sharma and another reported in JT(1987) Vol.I and II page 571 where it has been held when a show cause notice under a statutory provision is given, the court should be reluctant to interfere unless the notice is shown to have been issued palpably without any authority of law. Now in this case the show cause notice has been issued under the statute and it cannot be said that the show cause notice is wrong or has been issued without any authority. In fact the applicants have not even challenged the show cause notice but have directly come against the findings of the Inquiry Officer. The only argument addressed by the learned counsel for the applicants pertains to the issue of orders of earlier holding common proceedings of both the applicants and subsequently separating these proceedings but holding the disciplinary proceedings simultaneously. Both these orders were taken together do not give any cause of action to challenge the findings of the Inquiry Officer because the proceedings have already

been held separately which could affect the case.

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of the applicants. There were no basis for filing this application by the applicants against the findings of the Inquiry Officer when they had already joined the proceedings co-operated in the same produced their defence after cross examination of the examining witnesses examined by the Administration. It can only be a grievance if the final order is passed by an authority lower in rank to the appointing authority. Here a reference can be made to the case of P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others reported in (1993)23 ATC 645. The Hon'ble Supreme Court has considered the provisions of Article 311(1) and observed that order to initiate disciplinary proceedings can even made by an authority lower than appointing authority but superior to the delinquent. However, it is also observed that a rule can be framed requiring initiation of departmental enquiry by appointing authority alone. In the present case under CCS(CCA) Rules 13(2) the proceedings can also be initiated by an authority who can impose minor penalties as laid down in Rule 11 of CCS(CCA) Rules, 1965. In order to go in details regarding appointing authority as well as initiation of departmental proceedings the issue cannot be decided unless the applicant has assailed the same before the departmental authorities either at the time of issuing of the chargesheet or at any stage thereafter. The applicants have come directly violating the provisions of section 20 of the AT Act 1985 before exhausting departmental remedy. The contention of the learned counsel

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order adverse to the applicants cannot be taken as a ground to cut short the process of exhausting departmental remedies.

12. In view of the above facts and circumstances we held that the present applications are totally pre-mature and therefore do not require any interference by the Tribunal at this stage. The applicants at however, shall be liberty to assail any final order according to law if so advised and if necessity arises taking all the grounds available to them. The applications are therefore dismissed. The interim order passed on 20.4.90 and continued till further orders by the order dated 4.5.90 is vacated. Parties are left to bear their own cost.

(B.K. SINGH)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)

Attested

KLSharma
28/10/94
C/C-IV

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