

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(12)

New Delhi

O.A.No 1183 of 1991

T.A. No.

Date of Decision 28-7-95

Shri D. Kumar Applicant

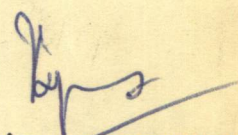
Shri M.K. Gupta Advocate for the Applicant

Versus

Union of India & Others Respondent

Shri V.K. Rao, proxy counsel Advocate for the Respondent(s)
for Shri A.K. Sikri, Counsel

1. ☒ Whether Reporters of local papers may be allowed to see the judgement? no
2. ☒ To be referred to the Reporter or not? yes
3. ☒ Whether their Lordships wish to see the fair copy of the Judgement? yes
4. ☒ Whether it needs to be circulated to other Bench of the Tribunal? no


(K. MUTHUKUMAR
MEMBER (A

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1183 of 1991

New Delhi this the 28th day of July, 1995

Mr. A.V. Haridasan, Vice-Chairman
Mr. K. Muthukumar, Member(A)

Shri D. Kumar
R/o 36-L, Sector-IV, DIZ Area,
Gole Market,
New Delhi.

..Applicant

By Advocate Shri M.K. Gupta

Versus

1. Council of Scientific & Industrial Research,
through its President,
Anusandhan Bhawan,
Rafi Marg,
New Delhi.
2. The Director General,
Council of Scientific & Industrial Research,
Anusandhan Bhawan,
Rafi Marg,
New Delhi-1.
3. Indian Institute of Petroleum
through its Director,
P.O. Mohkampur,
Dehradun -248005.

..Respondents

By Advocate Shri V.K. Rao, proxy counsel for
Shri A.K. Sikri, Counsel

ORDER

Mr. K. Muthukumar, Member(A)

The applicant, a Library Officer 'A' under the third respondent in this application filed under Section 19 of the Administrative Tribunals Act, 1985 has contested the following:-

- (i) The departmental proceedings initiated against him.
 - (ii) The penalty of compulsory retirement was imposed on the applicant, which on appeal was modified to a penalty of reduction to a lower post. On further appeal for revision of the order, the revisional authority
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modified the penalty to that of reduction by two stages for a period of 2 years in his time scale of pay. It was further ordered that the period from the date of compulsory retirement to the date of reinstatement in appeal will be treated as dies non. It was further ordered that the applicant could earn increment during the period of penalty and it would not have the effect of postponing his future increments.

(iii) The orders of the appellate authority regarding payment of pay and allowances for the suspension period to be restricted to that of subsistence allowance already drawn by him which was also confirmed in the revisional order. Aggrieved by these orders, the applicant has filed this application praying for quashing the order dated 6.5.1986 placing him under suspension and also for quashing the Enquiry Officer's report dated 13.4.1987 and also for quashing the order of the disciplinary authority dated 4.5.1987 and the order of the appellate authority dated 13.11.1987 and that of the revisional authority's order dated 15.11.1990 to the extent that this order treated the period of compulsory retirement till the date of reinstatement in appeal as dies non and the confirmatory order regarding payment of subsistence allowance during the period of suspension.

2. The facts in this case are briefly as follows:-

Disciplinary action was initiated against the applicant while working as a Library Officer under the third respondent. The Article of Charge and Statement

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of Imputation read as follows:-

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Article-I

That the said Shri D. Kumar, while functioning as Library Officer 'A' in IIP, Dehradun on 30.04.1986 is reported to have abused and assaulted Shri P.B. Pant, Library Assistant in his room within office hours.

Thus Shri Kumar has acted in a manner unbecoming of a Council employee and has thereby contravened provisions of Rules 3(1)(iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of CSIR.

"Statement of imputations of misconduct or misbehaviour in respect of the article of charge framed against Shri D. Kumar, Library Officer 'A', IIP, Dehradun.

Article-I

Shri D. Kumar, Library Officer 'A', IIP, Dehradun is a Council employee. On 30.04.1986, Shri Kumar is reported to have objected to Shri P.B. Pant, Library Assistant from taking water from the water tap installed in his room. Mr. Pant told him that when a water tap is already installed in his room he has to fetch water from there itself. Thereafter, Shri Kumar abused Shri Pant and also beat him up causing bleeding on his temple. Shri Kumar is also reported to have punched Shri Pant on his face.

Shri D. Kumar has thus acted in a manner unbecoming of a Council employee and has thereby contravened the provisions of Rule 3(1)(iii) of CCS (conduct) Rules, 1964 as made applicable to the employees of CSIR."

A departmental enquiry was held and after detailed enquiry and examination of witnesses, the enquiry officer held that the charge on the applicant of abusing, was not proved by the evidence produced but the occurrence of physical fight in which the applicant assaulted Shri Pant was proved beyond reasonable doubt. After careful consideration of the report of the Enquiry Officer and other record of the case, the disciplinary authority agreed with the findings of the Enquiry Officer in respect of the charge that the applicant assaulted Shri Pant, Library Assistant in his room within office hours and accordingly imposed the penalty of compulsory

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retirement. On his appeal, the appellate authority, namely, the respondent No.2, modified the penalty to that of reduction to the lower post. The appellate authority recorded that a penalty of reduction in the rank has been imposed upon Shri Pant by the disciplinary authority in the same incident and, therefore, the ends of justice would demand the same penalty to the imposed for the same misconduct on both the charges and accordingly, the same penalty was imposed on the applicant as well. A review petition was filed by the applicant to the first respondent, who passed the following order in its operative part:-

"However, keeping in view his age, service rendered and family consisting of 4 school going daughters, I consider that the ends of justice will be met if the penalty ordered in the appeal of reduction to lower post, is modified to that of reduction by two stages for a period of two years in his time scale of pay. The period from the date of compulsory retirement to the date of reinstatement in appeal will be treated as dies non.

Accordingly, the penalty of reduction by two stages in his time scale of pay for a period of two years is imposed upon Shri D. Kumar. It is further ordered that Shri Kumar will earn increment during the currency of the penalty and it will not have the effect of postponing his future increments. The orders of the appellate authority regarding payment of subsistence allowances during the suspension period are also confirmed".

The learned counsel for the applicant strenuously argued that the departmental enquiry held against the applicant was vitiated on several grounds, as follows:-

- (i) The Enquiry Officer exceeded his power under Rule 16 of the CCS (CCA) Rules.
- (ii) The Enquiry Officer did not allow further evidence of PW-4.
- (iii) The complaints were not allowed to be cross-examined.

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(iv) The charged officer was denied copies of the documents before the start of the enquiry.

The Enquiry Officer had not properly appraised the evidence. His preliminary objections were overruled by the Enquiry Officer. The learned counsel has pointed out that despite the appellate order, the charged officer was not allowed to join duty on 14.09.1987 at Dehradun and instead, he was posted to New Delhi.

The learned counsel for the applicant argued that the enquiry was vitiated because the applicant was not provided with the copies of the documents on which the charge was based and he was informed that the documents would be made available to him during final hearing. This according to the learned counsel was incorrect in the light of the findings of the Supreme Court in **Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey & Others, 1995(1) SCC 404.** The learned counsel argued further that it is for the Tribunal to satisfy itself whether there was any prima facie evidence in the enquiry to support the charge and unless there was positive evidence, the charges could not be held to be proved. He contended that the material witnesses in this case were not allowed to be cross-examined by the applicant. The learned counsel also argued that the Enquiry Officer had not disclosed the evidence in support of the charge but still held the charge to be proved and, therefore, the enquiry held was de hors the rules and was bad in law. The learned counsel also strongly argued that the defects in the enquiry cannot be cured by the appellate order, as has been done in this case. He argued that the respondents should have given the show cause notice for treating the period from the date of compulsory retirement to the date of reinstatement in appeal as

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dies non. In support of these contentions, the learned counsel cited several decisions with which we shall deal in due course.

Rebutting the arguments of the learned counsel of the applicant, the learned counsel for the respondents submitted that the Enquiry Officer had conducted the enquiry in a balanced and objective manner and no grounds of mala fide had been raised as such in the enquiry. Secondly, he argued, that the decision-making process was not at all vitiated and the appellate order and the revisional order were issued after due consideration and application of mind and were also very reasoned orders. He also submitted that the appellate order modifying the order of the disciplinary authority was quite justified in the circumstances stated in the appellate order. The learned counsel further argued that there had been no serious breach of procedure and opportunity for inspection of documents was provided to the applicant and no prejudice had been caused. We shall also deal with the cases cited by the learned counsel for the respondents in support of the submissions.

We have carefully perused the pleadings and heard the learned counsel for the parties.

On the question of inspection of documents alleged to have been denied, the learned counsel relies on the decision of the Supreme Court in Committee of Management, Kisan Degree College (Supra). In this case it was held that when the delinquent at the earliest start, had requested for the inspection of the documents mentioned in the charge-sheet, the opportunity of inspection should have been afforded prior to the conduct of the enquiry and the

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postponement of this opportunity was held improper and vitiated the consequent order of dismissal. From a perusal of the documents placed before us, we find from the daily order sheet in the inquiry that the applicant even during the preliminary hearing on 13.10.1986 was ordered to inspect the documents listed in their charge-sheet in the room of the undersigned within the next 5 working days and he was advised to take extracts, if considered necessary and he was also asked to indicate the requirement of any of the said documents. In view of this, we do not find that there had been any denial of opportunity for inspection of the documents prior to the conduct of the enquiry. The learned counsel for the applicant contends that it was for the Tribunal to satisfy itself whether there was prima facie evidence in this case and for which he has relied on the decision of the Apex Court in **Nand Kishore Prasad Vs. State of Bihar & Others, 1978 (3) SCC 366**. We find that by this decision it was held that the High Court may examine record to satisfy itself that the authority acted on some evidence. In the case before us, this Tribunal, no doubt, has to arrive at a conclusion only after satisfying itself whether the disciplinary authority had acted on some evidence or not. The learned counsel for the applicant has not shown how the disciplinary authority had acted on no evidence at all. In fact from a perusal of the disciplinary proceedings, we find that the Enquiry Officer as well as the disciplinary authority had sufficient evidence which have been duly adverted to in the disciplinary proceedings as well as in the enquiry and we are satisfied that the authority had sufficient evidence regarding the charge and the Enquiry Officer had not arrived at any finding without any evidence.

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Therefore, his reliance on the decision in **Bankim Choudhury & Others Vs. Union of India & Others, 1991(1) SLJ CAT 365** is not of much avail. In the aforesaid case it was held that no reasons had been assigned either by the disciplinary authority or by the appellate authority in coming to their conclusions regarding the guilt of the petitioners and that the orders had been passed in a mechanical way by merely adopting the format. In the present case, however, we find that there is nothing to suggest that the disciplinary authority and the appellate authority have passed the orders in a mechanical way without application of mind. The learned counsel's contention that the Enquiry Officer did not discuss the evidence in support of the charge and still held them proved, is not very convincing from the facts on record. The Enquiry Officer had dealt with deposition of each witnesses elaborately and had properly appraised the evidence and given his findings and in fact discussed this evidence fairly elaborately and, therefore, it cannot be said that he did not discuss the evidence in support of the charge but still held them to be proved.

The learned counsel then argued that the applicant was not allowed to lead evidence and was not allowed to examine the main complainant and cited the decision of the Apex Court in **Managing Director, U.P. Ware Housing Corporation Vs. V.N. Vaypayee, (1980) 3 SCC page 462** and also on **Dr. D.P.S. Luthra Vs. Union of India & Others, (1988) Vol.8 page 815**. We find from the record of the proceedings that the complainant Mr. Pant was not examined either as a prosecution witness or was he cited as a prosecution witness. There is no evidence on record to show whether the applicant

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had insisted in writing on his cross-examining Mr. Pant. In any case, we find that an opportunity was given to the applicant during the preliminary hearing to inspect the written complaint dated 13.4.86 of Mr. Pant. In view of this, we do not consider that serious prejudice has been caused on account of non-examination of the complainant. Besides, we were informed that the complainant was also proceeded against departmentally and appropriate punishment was imposed on him as is evident from the order of the appellate authority.

The learned counsel has contended that the enquiry was vitiated also on the ground that 'misconduct' as stated in the Articles of Charge was stated in the Statement of Imputations in as much as there was no imputation that the applicant had assaulted the complainant, whereas in the Articles of Charge, it was stated that he has abused and assaulted Shri Pant. This according to the learned counsel for the applicant's also vitiates the enquiry and for this, he relies on the case of **State of A.P. Vs. Sri Ram Rao, 1963 AIR SC 1723**. We have seen the statement of imputation. The statement of imputation of misconduct states that the applicant abused Shri Pant and also pushed him causing bleeding on his temple and the applicant was reported to have punched on his legs. In the Article of Charge, it has been summarised to say that the applicant had abused and assaulted Shri Pant in his room within office hours. We do not find any material difference between the statement of imputations and the articles of charge and, therefore, we do not consider that the enquiry has been vitiated on any ground.

It is necessary to deal with the contention of the learned counsel of the applicant in regard to

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the treatment of the period from the date of compulsory retirement to the date of reinstatement as dies non by the revisional authority and also on the question of pay and allowances for the suspension period. He contends that the appellate order is deficient to the extent that the payment of suspension period was restricted to subsistence allowance without following the procedure under FR 54 as the applicant was not given notice of the proposed quantum of pay and allowances for this period.

Secondly, he contends that the revisional order has also confirmed the aforesaid appellate order. In regard to the treatment of the period from the date of compulsory retirement to the date of reinstatement as dies non by the revisional authority, the learned counsel for the applicant argued that this order was defective inasmuch as the order of compulsory retirement was modified and, therefore, this period should have been treated as duty for all purposes. We have considered the contentions in the light of the provisions of the rules. Fundamental Rules 54 deals with the question of regularisation of pay and allowances for the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be. The rule is reproduced below:-

"FR 54(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and

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- (b) whether or not the said period shall be treated as a period spent on duty."

Sub-rule (2) of the aforesaid rules deals with cases where the authority competent to order reinstatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated^{and}, therefore, the present provision is not relevant in the present case. Sub-rule (4) of FR 54 deals with cases other than cases covered by sub-rule(2) above. Under this, it is required that the Government servant shall be paid such amount subject to the provisions of sub-rule⁶(5) and (7) (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which /the notice has been served) as may be specified in the notice". It is provided in sub-rule (5) that in cases covered in sub-rule (4) above, the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose. Under sub-rule (7) it is provided that the amount determined under sub-rule (4) above shall not be less than the subsistence allowance admissible under Rule 53. The case of the applicant falls under the provisions of sub-rule (4) of FR 54. The appellate

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order has simply stated that the pay and allowances for the suspension period may be restricted to the subsistence allowance already drawn by him. Such an order has to be passed in accordance with the provisions of sub-rule (4) above. Apparently, no notice for the quantum proposed for the period had been given to the applicant in terms of the aforesaid rule and to this extent, the procedure prescribed in the aforesaid rule has not been followed. As regards the other contention that the applicant had unauthorisedly treated the period from the date of compulsory retirement to the date of reinstatement as dies non, i.e., from 4.5.87 to 13.09.1987 by the modified order of the reviewing authority is concerned, we find that the contention is not tenable. Just because the order is modified by the reviewing authority to that of reduction of pay by two ~~stages~~ stages for the period of 2 years in the time scale of the applicant, it cannot be said that the applicant has been completely exonerated so as to bring him within the purview of sub-rule (2) of FR 54 and, therefore, this contention is rejected. As far as appellate order and review order are concerned relating to regularisation of subsistence allowance and payment thereof, the only contention that is tenable is that the applicant is entitled to the procedure under sub-rule (4) of FR 54.

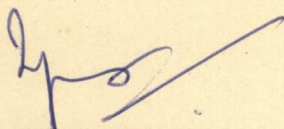
In the conspectus of the above discussion, the application is partly allowed and that part of the order restricting the payment of pay and allowances for the suspension period to subsistence allowance drawn by him is quashed. The appellate authority/competent authority is directed to follow the procedure prescribed under sub-rule (4) of FR 54



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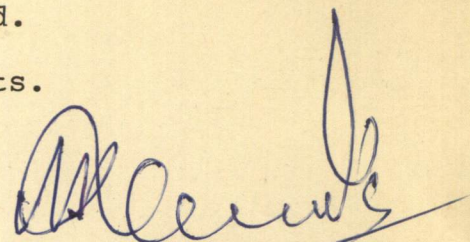
and pass appropriate orders in this regard.

The parties shall bear their own costs.



(K. MUTHUKUMAR)

MEMBER (A)



(A.V. HARIDASAN)

VICE CHAIRMAN

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