

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 1187/1991

DATE OF DECISION 13.11.91

SHRI N.K. BITHAR

...APPLICANT

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SH. K.L. BHANDULA

FOR THE RESPONDENTS

...SH. P.P. KHURANA

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, UDC in the Cabinet Secretariat was removed by the order dt. 3.6.1987 passed by the disciplinary authority and the appeal against the same was rejected by the order dt. 6.10.1987 on the basis of departmental enquiry proceedings under Section 14 of the CCS (CCA) Rules, 1965. The applicant has preferred a review petition to the President dt. 2.5.1990 and till the date of filing this application on 13.5.1991, the said review petition has not

(a)

been disposed of. However, it appears to have been disposed of on 26.7.1991 under Rule 29 of the CCS (CCA) Rules, 1965 and that too ^{it} _^ has been rejected. The applicant is aggrieved against these orders and filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the impugned orders dt. 3.6.1987 and 6.10.1987 with the further declaration that the applicant be exonerated of the charges levelled against him vide memo dt. 11.2.1986 and reinstated in the service with retrospective effect from the date he was removed, with all consequential benefits of pay and allowances, seniority and promotion etc.

2. The facts of the case are that the applicant joined as LDC on 15.10.1971 in the Cabinet Secretariat and was promoted as UDC in the year 1978. During the year 1985-86, the applicant, due to certain family problems, went on leave, from August, 1985. He sent the application for grant of leave. The applicant was not granted the leave for absence, but disciplinary proceedings were initiated against him under Section 14 of the CCS (CCA) Rules, 1965 and a memo was served on him on 11.0.1986. The applicant was served with a memo of chargesheet dt. 11.2.1986 which has only one article of charge that the applicant during the period February, Aug., 1985 to 1986 remained unauthorisedly and willfully absent from duty w.e.f. 12.8.1985 till date and did not report for duty in spite of directions issued in September, October, December, 1985 and January, 1986. As such, his above conduct exhibited lack of devotion to duty and also

16

shows conduct unbecoming of a Government Servant and contravened Rule 3(1) (i) and (iii) of the CCS (Conduct) Rules, 1964. However, the respondents in their reply have stated that the second departmental enquiry was also ordered against the applicant for his unauthorised and willfull absence from duty w.e.f. 8.4.1986, and in spite of memos dt. April, May, June and September, 1986, the applicant failed to produce medical certificate in support of claim of absence from duty on medical grounds. This chargesheet for second enquiry was issued on 3.10.1986 with the charge that the applicant while functioning as UDC in the R & I-II of the Central Secretariat, New Delhi during the year 1986 unauthorisedly and willfully absented himself from duty w.e.f. 8.4.1986 till date and did not report for duty nor submitted a medical certificate and so by his conduct, he has shown lack of devotion to duty and also shown conduct unbecoming of a Government Servant and thereby contravened Rule 3(1) (i) and (iii) of CCS (CONDUCT) Rules, 1964. The applicant was suspended w.e.f. 12.9.1986 and Shri S.P. Chibbar was appointed Enquiry Officer by the order dt. 3.12.1986. It was the second enquiry in which the applicant, after service of the chargesheet dt. 8.10.1986, pleaded guilty to the charge in the following manner :-

"I have read the charge and plead unequivocally and unconditionally guilty to the charge on 14.4.1987."

On the basis of this admission of guilt by the applicant, the Enquiry Officer recorded the proceedings of the guilt of the

applicant (Annexure-VIII). On the basis of finding of this
guilt by the Enquiry Officer, the disciplinary authority
passed the order of removal from service dt. 3.6.1987
(Annexure-II). The disciplinary authority observed that,
"Shri N.K.Bithar pleaded guilty in the charge unconditionally
and unequivocally, the under-signed is of the opinion that
the charge levelled against him has been fully established."
The disciplinary authority imposed the punishment of
removal from service from the date of issue of the
order, i.e., 3.6.1987. The appellate authority by the
order dt. 6.10.1987 observed, "He is habitual of absenting
without prior intimation and has been warned and punished
many a time for those defaults, so there is no reason to
interfere with the order passed by the disciplinary authority
and in exercise of power of Rule 27 (2)(i) of CCS(CCA) Rules,
the appeal was dismissed."

3. The applicant has assailed these orders on a number
of grounds. Firstly, it is said that the report of the
Enquiry Officer was not supplied to him; no legal evidence
on record against the applicant explained admission of his
guilt which was made at the instance of the Enquiry Officer;
that the penalty of removal from service is a severe and the
order passed by both disciplinary authority as well as appellate
authority are non-speaking orders which go to show that
none of them have applied their minds judicially on the report of
the Enquiry Officer.

(2)

4. The respondents contested the application and it is stated that the petitioner was rightly held guilty on his own admission of guilt by the Enquiry Officer and there is sufficient evidence on record to justify the conclusion of guilt of the applicant. However, it is admitted in para-9 of the counter that as per procedure prevalent then, copy of the enquiry report ~~was sent~~ to the petitioner alongwith the final orders of the authority. Thus, report of the Enquiry Officer was not given to the applicant before passing the punishment order. The disciplinary authority and the appellate authority have passed the reasoned order basing their decision on the admission of the guilt by the applicant.

5. We have heard the learned counsel of the parties at length and have gone through the record of the case. In fact, the charges against the applicant are divided into two separate heads. In the first departmental enquiry, it was the period of absence from August, 1985 till February, 1986, and in the second departmental enquiry, it was the absence from duty from April, 1986 onwards. In fact the applicant last attended the office in August, 1985 and thereafter sent applications for grant of leave for certain periods. It was on 11.2.1986 that he was served with the chargesheet and the second chargesheet was served on him on 8.10.1986. In fact both the chargesheets covered different periods. However, what happened to the first chargesheet is not known as the applicant had only been suspended from duty on 12.9.1986. It is not known as to when this suspension was

13

revoked. In any case, we do not think it proper to go into the merits of the procedure adopted in the enquiry proceedings. It is sufficient to say that the applicant has pleaded guilty to the charge, but at the same time, the Enquiry Officer in the enquiry report dt. 30.4.1987 (Annexure-IX) observed that the applicant was sending applications for leave, but unaccompanied by medical certificates. This report of the Enquiry Officer was necessary to be furnished to the applicant to make effective representation against the same. The Hon'ble Supreme Court in the case of UOI Vs. Mohammed Ramjan Khan, reported in 1991 (1) SLJ 196 agreeing with the Full Bench Judgement in Prem Nath K. Sharma's case, 1988 (3) SLJ 449 CAT that whenever an enquiry has been conducted by Enquiry Officer who has submitted the report to the disciplinary authority holding delinquent guilty of the charges, the delinquent official is entitled to a copy of such a report and make a representation against it even after the amendment of Article 311(ii). Non furnishing of the copy is violation of rules of natural justice. Thus, non-supply of the copy of the Enquiry Officer's report before passing the punishment order is fatal because the applicant could not make effective representation on the findings arrived at before the disciplinary authority. In the present case, it is all the more necessary because the applicant in this application has stated an important

27

matter that he made the admission of the guilt at the instance of the Enquiry Officer. The proceedings of 24.12.1986 (Annexure-VIII) also to some extent refer to this fact where the Enquiry Officer has directed to prepare a statement of defence pointing out also towards the mercy appeal.

6. Thus in the present case, non furnishing of the copy of the Enquiry Officer's report (Annexure-IX) goes to the very root of the case and the procedure adopted by the disciplinary authority in passing the punishment order becomes irregular and illegal.

7. The learned counsel for the respondents argued mainly on the point of limitation. It is stated that in fact the orders challenged in the case are the orders of June and October, 1987 passed by the disciplinary and the appellate authority while the present application has been filed in May, 1991. We have considered this matter. The applicant has preferred a revision petition under Rule 29 of the CCS (CCA) Rules, 1965. This revision was preferred by the applicant on 2.5.1990. However, this revision was preferred much after limitation, but this has been admitted and also has been rejected by the order dt. 26.7.1991, copy of which has been annexed by the respondents to their counter as Annexure R-2. In view of Dr.S.S.Rathore Vs. State of M.P., reported in AIR 1990 SC p-10, the limitation will start running only from the date

(25)

of this order dt. 26.7.1991. So it cannot be said that the present application is not within time.

8. Since we are remanding this case, so we deem it proper to remand it for fresh enquiry because the applicant has taken a specific plea that the admission of the guilt made by him was under pressure from the Enquiry Officer. Normally, the position as it was before the supply of the Enquiry Officer report would have been restored, but taking extra precaution and giving fullest opportunity to the applicant to defend himself, we feel that in order to give fullest benefit of the principles of natural justice, the applicant should be given fullest opportunity to defend himself and after filing a statement of reply to the charges levelled against him, the department shall proceed in the departmental proceedings according to the extant rules. The applicant should be furnished a copy of the Enquiry Officer's report necessarily before passing any final order, if occasion arises by the disciplinary authority.

9. In view of the above discussion, we are of the opinion that the punishment orders dt. 3.6.1987, 6.10.1987 and the order passed in revision, though not specifically assailed, as it has been passed after filing of the OA

dt. 26.7.1991 are quashed. The applicant shall be reinstated in service at the same stage as he was on 12.9.1986 and the enquiry proceedings shall be started afresh against him. The respondents shall be free to start the fresh enquiry proceedings against the applicant on the same article of charges within three months from the date of receipt of this order and conclude the same as early as possible. The period of suspension as well as the period from the date of removal of service from the date of impugned order dt. 3.6.1987 shall also be considered by the disciplinary authority while passing the final order in the above enquiry proceedings. In the circumstances, the parties shall bear their own costs.

Donee.

(J.P. SHARMA)
MEMBER (J) 13.11.91

Chakraborty
(D.K. CHAKRAVORTY) 13/11/91
MEMBER (A)