

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1229/91

Date of decision 28.5.92

S.C. Sharma

Applicant

Shri B.B. Raval,

Counsel for the applicant

vs.

Union of India

Respondents

Shri P.P. Khurana with

Shri J.C. Madan

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. P.S. Habeeb Mohamed Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant was appointed as Deputy Field Officer (Tech.) (DFO (T)) in the Research and Analysis Wing, Cabinet Secretariat, Government of India, and was promoted in due course as Field Officer (T) in May, 1977. He was posted in Special Bureau, Leh, from April 1982 to 6.6.1984. While posted at Leh, he was transferred from Leh to Delhi. According to the O.A., the applicant entrusted the transportation of his luggage from Leh to Delhi to his colleague, Shri R.K. Sharma, who was working as D.F.O. (T) at Leh. Shri R.K. Sharma contacted Transport Corporation of India Ltd, Leh, for transporting the personal effects of the applicant. The applicant then produced a receipt for getting the transportation charges from the respondents. In the view of the respondents, the receipt was not genuine. Hence, a chargesheet was served upon the applicant

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on 6.4.88 to the effect that the applicant preferred a Transfer T.A. claim from Leh to New Delhi, including transportation of his personal effects, alleging that the receipt issued by the Transport Corporation of India Ltd. was found not to be a genuine document. Hence, the applicant has committed misconduct under Rule 3(1)(i) and (iii) of the CCS (Conduct) Rules of 1964. The disciplinary authority appointed one Shri Sharad Kumar, the then Under Secretary, as Inquiry Officer /who submitted his report on 8.6.89 to the disciplinary authority. The Inquiry Officer submitted his report favourable to the applicant. The disciplinary authority by his order dated 30.6.89 arrived at the conclusion that the "Inquiry Officer, Shri Sharad Kumar, had not conducted the inquiry as per the procedure laid down in the CCS (CCA) Rules. It was also felt that the enquiry had been conducted with a prejudiced mind." Therefore, the disciplinary authority by his order dated 30.6.89 quashed the inquiry report. The disciplinary authority by its order dated 25.8.89 appointed a new Inquiry Officer, one Shri M.M. Pathak, in place of Shri Sharad Kumar, who submitted though his report to the disciplinary authority that /the charges are proved against the applicant, yet a lenient view should be taken in imposing penalty/punishment upon the applicant as there is a possibility that the applicant himself may have been duped. Agreeing with the recommendations of the Inquiry Officer, the disciplinary authority awarded the punishment of withholding of increments of pay for a period of two years, without any cumulative effect, from the date of issue of the order. This order of the disciplinary authority is at Annex A-2 dated 26.4.90.

2. The applicant preferred an appeal and at the appellate stage, the appellate authority, without applying its mind to the order passed by the disciplinary authority, arrived at a compromise formula and got the amount paid by the applicant with regard to the transportation refunded. In consequence of this departmental inquiry, the promotion of the applicant was also withheld. Hence, he filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 containing the prayer for quashing Annexure A! by which the

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applicant has been denied promotion because of the departmental inquiry. The applicant has also prayed for that he should be given the consequential relief of the benefit of promotion to the rank of Assistant Technical Officer from 1.4.88.

3. On notice the respondents appeared and filed their return in which they opposed the contents of the O.A. and maintained that the disciplinary authority has acted in accordance with law, that the appellate authority has shown leniency to the applicant by arriving at a compromise formula, etc. etc.

4. Learned counsel for the applicant, Shri B.B. Raval, has made only two submissions. He has contended that the disciplinary authority has exceeded the jurisdiction vested in him under the Rules and that in consequence of a penalty imposed by the disciplinary authority, the applicant has been deprived of his promotion. Hence, Annex. A-2 also cannot be maintained. We have also heard Shri J.C. Madan, learned counsel for the respondents.

5. After the completion of the inquiry under Rule 15 of the CCS (CCA) Rules (hereinafter referred as 'Rules'), the report is submitted to the disciplinary authority for taking action against the delinquent. The powers of the disciplinary authority are contained in Rule 15 of the Rules and provides for action on inquiry report. For convenience, we reproduce sub-rules (1) and (2) of Rule 15 of the Rules:

"(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

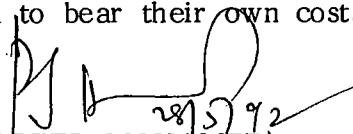
(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence record is sufficient for the purpose."

This makes it abundantly clear that if the disciplinary authority does not agree with the opinion of the inquiring authority, then he has to record his reasons and may remit the case to the inquiring authority for further inquiry. After the order is passed by the disciplinary authority, the inquiring authority shall proceed in accordance

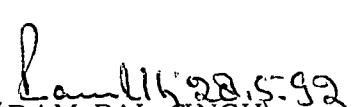
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with Rule 14 itself. A plain reading of sub-rule (2) of Rule 15 indicates that in case the disciplinary authority does not agree with the findings of the inquiring authority, then he is required to record his reasons for such disagreement and then record his own findings of such charge if the evidence on record is sufficient for the purpose. Thus, in any case, the disciplinary authority is required to record its reasons if he is in disagreement with the findings of the inquiring authority. After recording the reasons, the disciplinary authority may himself proceed to impose the penalty if he is of the view that the charges are proved against the delinquent officer, but nowhere it is provided in Rule 15 that he can quash the inquiry report submitted to him and then appoint another inquiry officer for a fresh inquiry. This action of the disciplinary authority was clearly in violation of the provisions of Rule 15 of the Rules and hence it cannot be maintained. We are also fortified ^{in our view} by two Bench decisions of this Tribunal in the case of Moti Ram Tejumal Gurbaxani vs. Chief Commissioner of Income Tax, Bombay City & Ors. (1989 (11) A.T.C. 110) and the case of Romeo Charley vs. D.G. CSIR & Ors. (1989 (9) A.T.C. 141). As we have agreed with these two Bench decisions of this Tribunal, we have no option but to quash the entire disciplinary proceedings. As the disciplinary authority has acted and exercised these powers, far beyond the limits of Rule 15 of the Rules, we allow this O.A. and quash Annex. A-2, the inquiry report dated 12.3.90. In consequence, we also quash Annexure 'A', Memorandum dated 12.12.90 by which the respondents have denied him the promotion. The respondents are directed to consider the applicant for promotion to the next higher post if he is eligible according to rules.

6. The O.A. is accordingly allowed, but the parties are directed to bear their own costs.


(P.S. HABEEB MOHAMED)

MEMBER (A)


(RAM PAL SINGH)

VICE-CHAIRMAN (J)