

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1620 of 1991 Dated the 22nd August, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri V.P. Ahlawat,
S/o Major (Retd.) Balwant Singh,
R/o 105/1 Ravinder Nath Tagore Marg,
Vijay Colony, Dehradun.
(By Advocate: Shri M.K. Gupta)

APPLICANT

VERSUS

1. The Union of India through the
Secretary to the Govt. of India,
Ministry of Science & Technology,
Technology Bhawan, New Mehrauli
Road, New Delhi.

2. The Surveyor General of India,
Surveyor of India, Hathibarkala,
Post Box No. 37, Dehradun.

3. The Director, Northern Circle,
Survey of India,
17-E.C. Road, Dehradun.
(By Advocate: Shri S.K. Sinha
proxy counsel for Shri Jog Singh)

RESPONDENTS

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri V.P. Ahlawat, plane
Tablet Gr. II, Survey of India, Dehradun has prayed for
quashing and setting aside of

- (i) the charge sheet memorandum dated 9.1.87
(Annexure A-7) together with annexures;
- (ii) the enquiry proceedings conducted by Major
PVR Nair;
- (iii) the enquiry report of Major PVR Nair
dated 29.2.88 (Annexure A.12);
- (iv) the order dated 31.1.89 appointing Lt. Col.
KK Naithani as enquiry officer for conducting
supplementary enquiry;
- (v) the supplementary enquiry report 1.5.89
of Lt. Col. K.K. Naithani
- (vi) the punishment order dated 11.5.89 imposing

1

(2)

the punishment of censure and withholding the applicant's increments for a period of three years without prejudice to his future increments (Annexure A.2);

(vii) the appellate order dated 11.12.89 (Annexure A.1);
(viii) the order dated 30.1.91 holding the applicant unfit to cross the Efficiency Bar w.e.f. 1.1.86 (Annexure A.3); and
(ix) the order dated 16.5.91 rejecting the applicant's representation against the order dated 30.1.91.

2. Shortly stated the applicant was proceeded against departmentally on two charges namely

(i) while functioning in various capacity in Survey of India under Govt. of India during the period from 13.9.1965 to 1.4.1985 he was found in possession of assets which were disproportionate to his known sources of income to the extent of Rs.57,337/- suggesting that the applicant had acquired the said disproportionate income by questionable means and from dubious sources; and
(ii) He sold 0.075 acres of land at 105/1, Rabindra-nath Tagore Vijay Colony, Dehradun for Rs.17,250/- on 31.7.84 to one Shri Kirti Singh and also sold another piece of land for Rs.6,000/- to one Shri K.C. Ramola on 9.11.84 measuring 0.095 acres at the same place, but failed to obtain prior sanction from the prescribed authority.

3. The Enquiry Officer vide his report dated 29.2.88 (Annexure A.12) held that the first charge was proved, and as the charged officer has already accepted the Charge II, the same stood. Meanwhile the applicant was placed under suspension but subsequently that suspension was revoked and the

h

period of suspension was treated as on duty. The disciplinary authority however found certain irregularities in the enquiry report and ordered for a supplementary enquiry vide order dated 31.1.89, on the conclusion of which the supplementary report dated 1.5.89 (Ann. A.18) was submitted. By that supplementary report Charge I was found to be not proved (Ann. 7 of the Resp. reply) while Charge II namely failure to obtain prior permission from the prescribed authority for selling of two plots of land was stated to be proved beyond doubt. Thereupon the disciplinary authority issued impugned order dated 11.5.89 imposing (i) the minor penalty of censure together with (ii) withholding applicant's next increment of pay for a period of three years without prejudice to his future increments, against which he submitted a representation which was rejected vide impugned order dated 11.12.89. Subsequently by impugned order dated 30.1.91 he was held unfit to cross the E.B. w.e.f. 1.1.86 and his representation against that order was also rejected by impugned order dated 16.5.91.

4. We have heard Shri M.K. Gupta for the applicant and Shri S.K. Sinha for the Respondents.

5. Shri M.K. Gupta has pressed three grounds: firstly, it has been urged that the manner of conducting the supplementary enquiry was impermissible in law; secondly that the applicant had been visited with two punishments namely censure as well as withholding of increment, which was also impermissible in law; and thirdly that while no penalty was imposed on other officials similarly situated who had also

sold lands in their possession without obtaining prior sanction, it is only the applicant who was singled out for punishment, which amounted to his being subjected to hostile discrimination.

6. Taking up the first ground, we note that what is common in the earlier enquiry report as well as in the supplementary enquiry report, is the applicant's admission in respect of Charge II namely i.e. he had not obtained the prior sanction of the prescribed authority before selling two p lots of land. The applicant's plea in respect of this charge was that he was not aware of the provisions of Rule 18(2) of CCS (CCA) Rules which require every Govt. servant to obtain prior sanction for sale of immovable properties and he requested for relaxation of that rule by granting him ex-post-facto sanction, after the charge sheet had been served upon him. Otherwise the earlier enquiry report is more unfavourable to the applicant, inasmuch as in the earlier inquiry report the applicant was held guilty of Charge I also while in the supplementary report Charge I was held to be not proved. Shri M.K. Gupta has contended that in the guise of a supplementary inquiry what was actually conducted was a *de novo* inquiry which is barred under Rule 15(1) of CCS (CCA) Rules which permits only a further inquiry. Reliance in this connection has been placed on the CAT, Chandigarh Bench ruling in Som Nath Sharma vs. UOI & Ors. 1994 (27) ATC 771. However, even without going into the question whether the supplementary inquiry ordered in this case was in fact a *de novo* inquiry as alleged by Shri M.K. Gupta or only a further inquiry, there is little doubt that the applicant has admitted to Charge II in both the inquiries. It is also clear that the Respondents have confined

themselves only to Charge II while imposing the punishment. In view of the applicants own admission in respect of Charge II this ground alone would not warrant our interference in the impugned punishment order. In this connection, Shri Gupta has also invited our attention to the Hon'ble Supreme Court's ruling in T.C. Magatram Obhan Vs. K.P. Shukla & Ors. 1994 (28) ATC 750 wherein it has been held that

" Where one of the members conducted an enquiry has a strong hatred or bias against the person whose conduct is enquired into of which the other members have no knowledge, and the said member is in a position to influence the decision making the entire report of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. The bias must be strong and hostile and not merely a bias of the superior having rebuked him in the past or the like".

This ruling does not help the applicant on this particular point because the applicant has not succeeded in establishing that there was any such bias on the part of either Major Nair or Lt. Col. Naithani and the allegation of bias has not even been specifically pleaded as one of the grounds in the O.A.

7. Coming to the second ground, our attention has been invited to the Rule 11 CCS (CCA) Rules which prescribes the penalties which may, for good and sufficient reasons be imposed on a Govt. servant. Shri Gupta has contended that the penalty of (i) censure and (ii) withholding of increment(s) contained in Rules 11(1) and 11(4) CCS (CCA) Rules respectively amounts to two distinct penalties which is not permissible in law. In this connection

65

Shri Gupta seeks support from the CAT ruling in
M.L. Sahansar Vs. UOI & Ors. 1991 (18) ATC 586
wherein it has been held that

" According to Rule 15(3) of the CCS (CCA) Rules, 1965, the disciplinary authority can impose only 'any of the penalties' specified in Rule 11. The order of punishment can be to impose 'such penalty' and not 'such penalties'. The use of plural in 'any of the penalties' and use of singular for 'imposing such penalty' gives clear indication that by a single order a single penalty can be imposed. If the intention was that more than one penalty could be imposed simultaneously the aforesaid sub-rule would have been worded as "making an order imposing such penalties" instead of "making an order imposing such penalty".

8. Thirdly, Shri M.K. Gupta has urged that persons similarly placed like the applicant who also had not obtained prior sanction of the competent authority before disposing of their immovable property have not been penalised, but in their case ex-post-facto sanction to the transfer has been accorded, while it is only the applicant, who has been subjected to hostile discrimination by being penalised. In this connection the names of S/Shri Ram Prasad, Supdt. Surveyor; Virendra Prasad; Plane Tabler Gr. II; Rameshwar Prasad Topo Auxiliary; T.P. Bhatnagar, Store Keeper Gr. II and Rajendra Singh, Surveyor Gr. I who were granted such ex-post-facto sanction has been mentioned in the rejoinder. To this respondents' counsel Shri S.K. Sinha has urged that the difference between the applicant's case and the cases cited by him above is that he asked for ex-post-facto sanction only after the charge sheet was served upon him, which was not the position in the other cases as those persons were not the subject matter of departmental proceedings.

A

✓

9. Technically, no doubt Shri Sinha's argument has merit. The applicant's case is distinguishable from the other cases in as much as he was being proceeded against departmentally and sought for ex-post-facto sanction only after the charge sheet had been served upon him. However, during the course of arguments, Shri Sinha very fairly and justly stated at the bar that the respondents were prepared to reconsider the punishment order imposed on the applicant for not obtaining prior sanction of the competent authority before transferring two plots of land, in the light of the ex-post-facto sanction granted to persons similarly situated who had also transferred immovable property without obtaining prior sanction of the competent authority. In the light of this statement, we do not consider it necessary to examine the applicability of the ruling in Sahansar's case (Supra) to the facts of the present case, nor indeed the Hon'ble Supreme Court's Ruling in K.L.L. Reddy Vs. State of J&K 1980 (4) SCC 1 requiring Govt. to act reasonably, rationally and fairly in public dealings.

10. In the light of Shri S.K. Sinha's submission at the bar referred to above, we direct that in the event the applicant makes a self-contained representation to the respondents praying for reconsideration of the punishment order within two months of the receipt of a copy of this judgment, the respondents will consider the same and pass a detailed, speaking and reasoned order. thereon - within three

months of its being filed. Thereafter the respondents will also consider the case of the applicant for crossing of the E.B. w.e.f. 1.1.86 if not already done.

11. This O.A. is disposed of in terms of the directions given in paragraph 10 above. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)

S. R. Adige

(S.R. ADIGE)
Member (A)

GK/