

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 2116/91

Date of decision: 2.9.92

Arvind Nath Gupta

Applicant

Shri S.K. Bisaria

Counsel for the applicant

vs.

Union of India & Ors.

Respondents

Shri M.L. Verma

Counsel for the respondents

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

The Hon'ble Mr. I.P. Gupta, Member (A).

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

2. To be referred to the Reporter or not? *Yes.*

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 initially appointed an L.D.C. on 28.11.73 in the National Gallery of Art. He was subsequently promoted as Accountant on ad hoc basis with effect from 31.12.83. He was then appointed as U.D.C. with effect from 1.3.87 and was regularised as U.D.C. with effect from 30.4.88 by the Departmental Promotion Committee vide order dated 1.5.88. On 10.5.90, he was reverted to the post of L.D.C. The applicant is facing a departmental inquiry for his alleged misconduct. For this inquiry, Respondent No. 2, appointed one Shri R.S. Rangarajan as Inquiry Officer by order dated 6.11.90. Thereafter, this Inquiry Officer was changed and Shri D.S. Nehra was appointed as the Inquiry Officer by order dated 20.12.90. However, the second Inquiry Officer was also

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chanded and one Shri S.K. Tuli, Respondent No. 3, who holds the post of Asstt. Educational Adviser, Ministry of Human Resources Development, Department of Culture, was appointed the Inquiry Officer. According to the applicant, he was supplied with the charge memo. only on 12.2.91. His stand in this O.A. is that under Rule 14 of the C.C.S. (C.C.A.) Rules of 1965, unless written statement of the delinquent is received by the disciplinary authority, the Inquiry Officer should not have been appointed by the disciplinary authority. The premature appointment of the Inquiry Officer denotes not only mala fide on the part of the disciplinary authority, but also that he had already made up his mind before the written statement was filed by the applicant. His other contention is that he was not served with the chargehseet before the appointment of the Inquiry Officer. By this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for quashing the order dated 29.7.91 passed by Respondent No. 3, by which the supply of copies of the documents was refused to the applicant (Annex. I).

Respondents on notice appear and filed their return. According to the respondents, the O.A. is premature because no representation was filed by the applicant and no final order has been passed in this case. Hence, the O.A. is not maintainable in the present form. They also contend that the order challenged in this O.A. is interlocutory in nature and only final order can be challenged in an O.A. The respondents also contended that the applicant purposely avoided accepting copy of the memorandum of chargesheet and they have produced clinching evidence in their favour by filing copies of the documents. They also contend that the allegations against the applicant are theft of the Government property, indiscipline, and maligning of his superior officers. Thus, major penalty is proposed against the applicant. They have given the dates on which copy of the chargesheet was sent to the applicant because he was on leave. According to the respondents, the residential address of the applicant is "204, West Guru Angad Nagar, Laxmi Nagar, New Delhi-92". The chargesheet was sent by registered post at this address on 23.6.90. The postal authorities returned

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the envelop on 30.6.90 with the remarks "Refused to receive and returned". With this endorsement, the envelop was received back on 3.7.90. They further contend that the applicant visited the office on 9.7.90 for filing an application for further leave and the chargesheet was sent to him through one Sant Ram, Office Peon, and the applicant refused to receive it. Then the Office Superintendent tried to serve the chargesheet on the same day, but the applicant again refused to receive it. Then, again on 11.9.90, the chargesheet was sent to the applicant through Sunil Kumar L.D.C., but he refused to accept it. The Head of Office, Shri Sudhakar Sharma, and Shri K.C. Vasudeva, persuaded the applicant to accept the chargesheet, but again he refused. They have filed the report of S/Shri K.C. Vasudeva and Sudhakar Sharma to this effect. As the C.C.S. (C.C.A.) Rules of 1965 provide for sending the chargesheet by registered post, it was done so by the respondents. They further pointed out that so far as the question of the appointment of the Inquiry Officer is concerned, the fact/that Shri R.S. Rangarajan, Shri D.S. Nehra were appointed as Inquiry Officer, but they declined to act so due to their prior engagement in the foreign country. So far as the contention of the applicant is concerned that he is/not permitted to engage legal help to defend his case, the respondents contended that the applicant wants to engage Shri D.K. Hira who practices in service matters and was a counsel, but as the Presenting Officer was not a legal practitioner, hence the disciplinary authority correctly turned down the request of the applicant for the engagement of Shri D.K. Hira, as his counsel in the inquiry. They further maintain that alongwith the chargesheet, relevant documents were/not supplied to the applicant, but the request for relevant documents was turned down by the disciplinary authority. According to the respondents, Shri S.K. Tuli, Respondent No 3, was appointed as the last Inquiry officer who is conducting the departmental inquiry and the applicant was sent by registered post a copy of the chargesheet, <sup>which he refused to accept.</sup> Hence, the applicant is not at all prejudiced in the inquiry. The applicant supplied accepted the copy of the chargesheet by Shri S.K. Tuli, the

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Inquiry Officer, on 12.2.91. Hence it would be deemed that this acceptance of the chargesheet amounts to service upon the applicant on 30.6.90 and not on the date he accepted the chargesheet from Shri Tuli on 12.2.91.

3. Before we proceed further, we take up the preliminary objection raised by the learned counsel for the respondents, Shri M.L. Verma, that this O.A. was filed by the applicant against an interlocutory order and not against the final order and has been passed by the disciplinary authority. We need not be detained much on this point because the Coordinate Bench of this Tribunal in the case of **V.P. Sidhan vs. U.O.I. (1988 (7) A.T.C. p. 402)**, the Madras Bench has held the following:

"5. The registry has taken the view that the remit order cannot be taken to be a final order terminating the disciplinary proceedings and as such an application cannot be maintained under Section 19 of the Act, as that Section contemplates an application being filed only against the final order. This objection raised by the registry has been met by the counsel for the applicant on the ground that Section 19 of the Act does not use the expression "final order" and it merely referred to "any order", which means any order whether it is final order or interlocutory can be challenged. When similar matters came before the Tribunal, the Tribunal has taken the view in O.A. 103 of 1987 and others, that it cannot interfere with the orders passed at the interlocutory stage and such an interference at the interlocutory stage of the inquiry proceedings will delay the completion of the inquiry and therefore order referred to under Section 19 of the Act can only be construed as final order passed in the disciplinary proceedings. Admittedly, in this case the order impugned is a remit order and it does conclusively decide the right of the applicant. We are, therefore, of the view that though the Section 19 of the Act does not use the words "final order", in so far as disciplinary proceedings are concerned, an order which can be challenged under Section 19 of the Act can only be a final order in respect of an applicant who is said to be an aggrieved person. Therefore, the application cannot be maintained before this Tribunal at this stage."

This view stands further fortified by the decision of the Patna Bench of the Tribunal in the case of **L.H. Khan vs. U.O.I. (1991 (1) SLJ 104)** in which it has been held that the issuance of a mere chargesheet raises no cause of action before the Tribunal. Thus, we place our reliance on these court cases and come to the conclusion that in this O.A. no final order has been challenged as envisaged under Section 19 of the A.T. Act.

4. The question of the appointment of the Inquiry Officer before service of the chargesheet upon the applicant also does not

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hold any water because the documents filed by the respondents conclusively prove that the applicant refused to accept the registered document containing the chargesheet sent by the respondents by post. Subsequent documents also show that thrice the departmental persons of the respondents tried to serve the chargesheet upon the applicant, but the applicant appears to have refused to accept the chargesheet. All these facts indicate that the applicant purposely avoided acceptance of the registered post containing the chargesheet and thereby remained stalling the stage of filing his written statement. When the respondents sent the chargesheet by registered post and it was returned by the postal authorities with the remarks that the applicant has refused to accept it, the disciplinary authority had no option but to appoint the Inquiry Officer. It appears that the disciplinary authority presumed sufficient service of the chargesheet upon the applicant because it was sent by registered post, according to rules. Thus, the respondents had no option left except to appoint the Inquiry Officer. That is why Respondent No 3 was appointed the Inquiry Officer by the disciplinary authority. After the appointment of the Inquiry Officer, it is at this stage that the applicant appeared before him and accepted the chargesheet. Even then, the applicant filed his written statement not within 10 days, but after two months of the receipt of the chargesheet. This also indicates the reluctance on the part of the applicant to participate effectively in the departmental inquiry.

5. So far as the question of supply of documents <sup>is concerned,</sup> it cannot be adjudicated at this stage because this point can also be raised by the applicant in the appeal if he is aggrieved by orders of the disciplinary authority. This point can also be raised by him after the conclusion of the inquiry and before the disciplinary authority passes an appropriate order. The applicant shall get an opportunity of being heard before the disciplinary authority passes the final order. This Tribunal is not going to usurp the powers of the disciplinary authority and the powers of the appellate authority.

6. Before we part, we would like to observe that in the case

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of R.D. Gupta vs. U.O.I. and Anr., the Central Administrative Tribunal, Principal Bench, in the Full Bench judgment observed that even if the Inquiry Officer is appointed simultaneous to the issuance of the chargesheet, unless it is shown by the applicant that prejudice has been caused to him, Rule 14(5)(a) being not mandatory, cannot be said to be illegal. On this ground, the inquiry cannot be said to have been vitiated unless a prima facie case of prejudice is shown by the applicant.

7. We are, therefore of the view that this O.A. has been filed not against the final order, but against an interim order. Hence, it is not maintainable because it is premature. The points raised in this O.A. can be raised before the disciplinary authority and also before the appellate authority. This O.A. is dismissed as not maintainable, but it shall not preclude the applicant from challenging the final order if he is aggrieved after the conclusion of the departmental inquiry and the order passed by the appellate authority. The O.A. is thus dismissed with no order as to costs.

*I.P. Gupta*  
(I.P. GUPTA) 29/9/92

MEMBER (A)

*Ram Pal Singh*  
(RAM PAL SINGH)

VICE-CHAIRMAN (J)