

Central Administrative Tribunal  
Principal Bench: New Delhi

(5)

OA No. 2477/91

New Delhi, this the 28th day of April, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)  
Hon'ble S.P. Biswas, Member (A)

K.C. Sachdeva,  
s/o Late Sh. H.R. Sachdeva,  
r/o 136-D, LIG, DDA Flats,  
Motia Khan,  
New Delhi. ....Applicant

(By advocate Shri S.K.Jain)

Versus

1. Union of India through  
Secretary,  
Ministry of Home Affairs,  
New Delhi.
2. Delhi Administration,  
(Through Chief Secretary)  
5, Alipur Road, Delhi.
3. Commissioner of Sales Tax,  
L-Block Vikas Bhawan,  
I.P.Estate, New Delhi.
4. Secretary,  
(Finance), Delhi Administration,  
5, Alipur Road,  
Delhi.

....Respondents

(By Advocate Sh. Amresh Mathur)

O R D E R  
(Hon'ble Dr. Jose P. Verghese, Vice-Chairman)

The petitioner was employed as a Stenographer in the Delhi Administration and had been working in the Sales Tax Department from 5.3.1980 to 19.6.1984. At present he is posted in the Committee to examine the cases relating to riots during October/November, 1984. The petitioner was placed under suspension by an order dated 19.6.1984 and thereafter he was served with the charge sheet dated



4.8.1984. Inquiry Officer was appointed and the proceedings were concluded by the Inquiry Officer on 7.8.1987. The charges against the petitioner were:

"Article - I"

That Shri K.C. Sachdeva, while functioning as Stenographer in the Internal Audit Cell, Sales Tax, New Delhi remained absent from his seat unauthorisedly on 24.5.84 from 11.05 am to 12.20 pm and on 26.5.84 from 11.45 am to 12.20 pm without prior permission or intimation.

And the said Shri KC Sachdeva, Stenographer during the aforesaid period had not cared for the official communication issued to him vide office Memo No. 245 dated 24.5.84 from STO Internal Audit Cell and Memo No. 254 dated 26.5.84 from Salex Tax Officer, Internal Audit Cell whereby he was directed to submit his explanation for remaining absent from his seat.

Thus, Shri K.C. Sachdeva, Stenographer had failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct ) Rules, 1964.

Article - II

That the said Shri K.C. Sachdeva, Stenographer came to office at 11.15 on 4.6.84. On noticing cross marking in the attendance register he lost his temper and used objectionable language and misbehaved with Shri R.P. Kalra, ASTO(I.A.C.)

Thus the said Shri K.C. Sachdeva, Stenographer has acted in a manner which is unbecoming of a Government servant and thereby he has contravened the provisions of Rule 3 of the Central Civil Services (Conduct ) Rules, 1964."

2. The Inquiry Officer on the basis of the evidence made available during the inquiry recorded a finding that both the charges were proved. The Inquiry Officer stated that the evidence of Sh.Prem Chand as well as the statement of the defence witness Mrs. Reema Bai is sufficient to hold charge no.1 as

VV

14

proved and similarly the statements of Sh. P.P.Kalra and Shri H.R. Sapra were material to conclude that the allegations made in charge 2 were prima-facie convincing.

3. The disciplinary authority after considering the inquiry report and on the basis of the report agreeing with the finding of the inquiry officer passed an order of punishment withholding two annual increments with cumulative effect only. The petitioner thereafter filed an appeal with the following prayer:

"PRAYER

In view of having placed the said appeal containing full facts and circumstances in your sacred hands your humble appellant enjoys a sense of security, sanguine hope that his appeal would receive fullest and sympathetic consideration and justice would be endowed on him.

In view of the above it is humbly prayed that your Honour may please decide the said appeal on merit and justice be done to him by showering the following benefits:

- (a) That he may kindly be ordered to be exonerated of the punishment meted out to him by the Worthy Disciplinary Authority.
- (b) That he may be allowed any other benefit which your Honour may consider necessary and incidental for the grant of justice on him.

And for this act of justice and benevolence your humble appellant shall ever pray the Almighty for your prosperity and longevity.

JUSTICE JUSTICE JUSTICE"

4. The appellate authority on 30.1.1989 rejected the appeal with the following orders:-

"AND WHEREAS, the undersigned has carefully gone through the entire record of the case and also the appeal preferred by the appellant and is of the considered view that in circumstances of the case, the penalty of stoppage of the two annual increments with cumulative effect upon Shri K.C. Sachdeva is justified. The undersigned, therefore, does not see any justification to interfere with the decision of the disciplinary authority".

5. The petitioner seems to have made another appeal on 5.10.1990 and the said letter was also replied on 25.10.1990 stating that his appeal has already been rejected on 30.1.1989.

6. Learned counsel for the petitioner submitted before this court several grounds against the impugned order of punishment dated 16.9.1987 and the appellate order dated 30.1.1989. It was stated that the petitioner was not supplied with the copies of certain documents. After going through the pleadings of this case, it is evident that the documents relied upon has already been supplied to the petitioner.

7. It was also stated that the copies of the finding were not given to the petitioner. We are satisfied from the record that the copies of the finding were infact given to the petitioner and the petitioner had filed an appeal in time after perusing the findings of the inquiry officer only. Appeal running in 34 pages on the face of it shows that the inquiry report was available to the petitioner at the time of submitting the appeal against the impugned order.

(19)

8. Learned counsel for the petitioner also alleged that the inquiry officer has not considered the evidence on record especially that of Sapra, notes of Commissioner Mr. Dua and Mr. Kashyap. The perusal of the inquiry report as well as the conclusion of this case that evidence of these persons were duly considered and since this court cannot sit in an appeal since the order of the disciplinary was passed after relying on the findings of the inquiry officer nor can we support the evidence, we are unable to appreciate these grounds raised by the petitioner as to the deficiency of the evidence effectively to the inquiry officer on the basis of which the charge has been written as proved.

9. Learned counsel for the petitioner continued to allege that rule 14 (18) of CCS (CCA) Rules was not considered nor the defence statement of the petitioner was taken into consideration. The records namely inquiry report as well as the order of disciplinary authority shows no violation of the said rule nor any indicate that the defence statement has not been considered.

10. Finally the learned counsel for the petitioner alleged that the appellate order being so cryptic the said order is not in compliance with rule 27(2) of the CCS(CCA) Rules. The contention of the petitioner was that the requirement of the rule 27(2) wherein the term 'consider' has been incorporated, respondents were duty bound to give reasons. The

order now passed by the appellate authority in this case is so cryptic and the same cannot said to contain reason required to be given by the respondents while considering the appeal of the petitioner. The order passed by the appellate authority has been extracted above, Rule 27(2) states:

"27(2). In the case of an appeal against an order imposing any of the penalties in Rule 11 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider:

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate and pass orders --
  - (i) confirming, enhancing, reducing, or setting aside the penalty; or
  - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case."

11. We have considered the various grounds raised by the petitioner challenging the impugned order of punishment as well as of appellate order and we are of the considered view that none of the grounds raised by the petitioner is good enough to set aside these impugned orders except that final one, namely that the respondents have not complied with rule 27(2) while passing the appellate order.

21

Appellate order is so cryptic that gives no reason. Rule 27(2) of CCS(CCA) Rules especially by the word 'consider' requires the respondents to give due application of mind and by giving due application of mind the respondents are duty bound to consider whether the procedure laid down in the rules has been complied with.

12. We are of the opinion that the respondents have not followed the rule 27(2) and the requirement of the rule contained in (a), (b) and (c) clauses of the said rule has been considered by the Hon'ble Supreme Court in R.P. Bhati vs. Union of India and Ors. reported in 1986 (1) SLJ P.383 therein Supreme Court was considering a similar appellate order passed in the said case. The following order was passed in appeal against the impugned order in the said case:

"After thorough examination of the facts brought out in the appeal the DGBR, is of the opinion that the punishment impolised by the CE (P) DANTAK Vide his Order No. 10527/762/EIB dated 24 Jun 78 was just and in accordance to the Rules applicable. He has accordingly rejected the appeal."

The Hon'ble Supreme Court recorded a finding that the said appellate order was not in conformity with the above said rule 27(2).

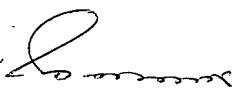
"4. The word 'consider' in rule 27(2) implies 'due application of mind'. It is clear upon the terms of r. 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary

22

authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate. and or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in cl. (a), (b) and (c) thereof."

13. In the premises, we have no hesitation to set aside the appellate order dated 13.1.1989 by which the order of the disciplinary authority imposing a penalty of stoppage of two annual increments with cumulative effect has been justified and agreed to. Ordered accordingly. It is made clear that the petitioner will also be entitled to all consequential benefits arising out of setting aside the said appellate order. It is further made clear that the original order of the disciplinary authority merges into this appellate order and once the appellate order is set aside the original order also is deemed to have been set aside. The respondents are given liberty to revive and proceed with the case de. novo from the appellate stage onwards and reconsider the appeal of the petitioner afresh and pass an order in accordance with law.

In these terms this OA is partly allowed with no orders as to costs.

  
(S.P. Biswas)

Member (A)

  
(Dr. Jose P. Verghese)

Vice-Chairman (J)