

(31)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 3025 of 1991

New Delhi, dated this the 30th APRIL 1997

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

Shri A.K.Sharma,
S/o Shri R.N. Sharma,
R/o K-1160, Mangolpuri,
Delhi.

.... APPLICANT

By Advocate: Shri B.K.Aggarwal

VERSUS

1. Addl. Director General,
Ordnance Factor,
ESIC Bhawan,
Sarvodya Nagar,
Kanpur-208005.

2. The General Manager,
Ordnance Clothing Factor,
Ministry of Defence,
Shahjahanpur, U.P.

.... RESPONDENTS

By Advocate: Shri V.S.R.Krishna

J U D G M E N T

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

Applicant seeks quashing of the
impugned orders dated 22.7.89 (Ann. A-1)
removing him from service and the appellate
order dated 31.12.90 (Ann. A-2) rejecting his
appeal. He prays for reinstatement with full
back wages and consequential benefits.

A

32

2. Applicant who was a permanent LDC in Ordnance Clothing Factory, Shahjahanpur was chargesheeted on 22.6.89 (Ann. A-3) on five counts, including unauthorisedly associating himself with Rashtriya Mazdoor Congress and other bodies without prior permission/intimation; levelling baseless allegations of corruption and moral turpitude against his superiors/officiars; arranging publication of such allegations in daily news papers and thus maligning the character of those officers, including G.M.; bringing pressure to bear on factory management in respect of entering his qualification of Vaidya Visharad in his service book although the same was not relevant to his assigned job; and unauthorisedly reporting the matter to the i/c P.S. Sadar Bazar, Shahjahanpur by distorting facts with a view to blackmail and intimidate the G.M. and the factory administration; and violating rules by referring service matters of other factory employees to MOS Sports with copy to other higher dignitaries.

3. The G.M. Ordnance Clothing Factory by his impugned order dated 22.7.89 held that it was not reasonably practicable to hold an enquiry under CCA (CCA) Rules and removed applicant from service. Against that order, applicant filed appeal on 14.5.90 (Ann. A-4) which was rejected by impugned appellate order dated 31.12.90, against which the present O.A. has been filed.

4. This O.A. came up for hearing on 9.11.95, on that date applicant's counsel was

present but none appeared for respondents.

33

present, but none appeared for respondents. After hearing applicant's counsel, the Tribunal by its ex-parte oral order of 9.11.95 allowed the O.A., set aside the impugned removal order and appellate order, and directed applicant's reinstatement with liberty given to respondents to proceed with the departmental inquiry in accordance with law from the stage where they left it namely after framing of charges. Thereupon respondents (UOI) filed MA-2993/95 for setting aside the ex-parte order dated 9.11.95, and prayed that the O.A. be restored and reheard before the matter was finally adjudicated. By order dated 24.4.96, MA-2993/95 was allowed, the ex-parte order dated 9.11.95 was recalled, and the matter was ordered to be posted for rehearing in presence of both parties.

5. Accordingly the matter came up for re-hearing. We have heard applicant's counsel Shri B.K. Aggarwal and respondents' counsel Shri V.S.R. Krishna. We have also perused the materials on record and have given the matter our careful consideration.

6. We note that during completion of pleadings, respondents had taken the stand that as the cause of action lay in Shajahanpur (U.P.) this Bench had no jurisdiction in the matter, while applicant contended that as he ordinarily resided in Delhi at the time of filing the O.A. (which was denied by respondents) this Bench did

A

3A

have jurisdiction under Rule 6(2) CAT (Procedure) Rules. Accepting applicant's averments we reject respondents' contention on this particular point of jurisdiction.

7. One of the grounds taken by applicant in the O.A. was that[^] he was appointed by Director General, Ordnance Factories, Calcutta, but was removed from service by the G.M. who was subordinate to the appointing authority and the removal order was therefore fatally flawed. However, respondents in their reply have contended that applicant was appointed initially as a checker on 10.1.78 by the G.M. and was also promoted as L.D.C. by the G.M. on 1.9.80, and the Addl. D.G., O.F., Kanpur only gave his approval to the appointment. Under the circumstances respondents contend that there has been no infirmity on this score in the impugned removal order. Support is sought from the D.G., O.F., Calcutta's order dated 2.3.72 delegating powers to G.M.s to appoint Class III/IV employees borne on both non-industrial and industrial units; and to impose penalties under the CCS (CCA) Rules, as well as from the Supreme Court's judgment dated 10.4.90 in Civil Appeal Nos. 1210-1217/1980 Scientific Adviser to the Ministry of Defence & Ors. Vs. S. Daniel & Ors. and connected cases.

A

35

These averments of respondents have not been challenged by applicant in his rejoinder/ additional affidavit, and hence this ground fails.

8. The main ground taken is that a major penalty was imposed without holding inquiry, and without giving applicant any opportunity of defending himself, and without even assigning any reason why no enquiry could be held, and applicant's removal from service is therefore bad in law and is abinitio contrary to rules and violative of Art. 311(2) of the Constitution and the principles of natural justice.

9. It is not in dispute that the applicant though working in an office attached to the Defence Ministry was serving in a Civil post therein and was governed by the Civil Service Rules. We note that when the charge sheet was issued on 22.6.89 the intention clearly appears to have been to hold a full fledged enquiry under Rule 14 CCS (CCA) Rules. In *Tulsi Ram Patel's* case AIR 1985 SC 1416 the Supreme Court has held that circumstances may arise even after the memo of charges are framed for the disciplinary authority to conclude that an inquiry ^{was} contemplated under Art. 311(2) of the Constitution is not reasonably practicable. Although a perusal of the impugned removal order dated 22.7.89 does not

Ar

36

disclose the reasons which led the disciplinary authority to come to the conclusion, a perusal of the disciplinary case file which was shown to us contains the following notings of the General Manager:

".....In view of situation created by the unending spate of complaints made against G.M. in person by Shri A.K.Sharma himself or through his accomplices and in view of prevailing environment of intimidation and fear psychosis amongst factory management where no self respecting officer will be able to conduct inquiry against the said Shri A.K.Sharma alias Nandi Babu in a free and fair manner in accordance with Rule 14 of CCS (CCA) Rules, 1965. It is also pertinent to record here that documents and news statements listed in Ann. III are all either from the individual himself or from his accomplices almost all of whom are non-factory personnel whose presence during a Departmental Court of Enquiry cannot be ensured. Even if for the sake of argument they are made to attend proceedings as Prosecution Witnesses their presence inside the factory or estate will pose a grave threat to tranquility and industrial peace. Who may also create a unruly scenes during the proceedings leading to law and order problems in a Defence Production Unit which will be a counter productive measure. Further their cooperating with inquiry officer is also in doubt knowing full well on whose behalf they have sent all their communications without even knowing the person or facts of the case. The undersigned is thus of considered opinion and is fully satisfied based on facts and circumstances narrated in detail above it is not reasonably practicable to hold a regular enquiry against shri A.K.Sharma alias Nandi Babu for alleged misconducts enumerated in charge Memo No. VIG/162-C/NIE/12/1989 (14) dated 22.6.89 as contemplated by the CCS (CCA) Rules, 1965."

1

37

At the bottom of the note there is the signature of Shri S. Ramaswamy, General Manager, below which are two dates, namely what appears to be 27.9.89 and 21.7.89. Shri Ramaswamy appears to have endorsed his note to other officers also, who seem to have signed it on 21.7.89 and notings on next page of the file bear signatures dated 22.7.89 (although there is one signature dated 21.7.89) and the next set of notings on that page are dated 25.7.89 and 27.7.89. This assumes some relevance in context of the following extracts from the Supreme Court's judgment in Tulsi Ram Patil's case

" It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances."

A

38

10. A perusal of the impugned appellate order dated 7.1.91 contains no decision on whether the circumstances were indeed such that it was not reasonable practicable to hold an inquiry, when the Disciplinary Authority passed the impugned removal order on 22.7.89, although this was a specific ground taken by applicant in his appeal. Furthermore the impugned appellate order dated 7.1.91 also does not contain any decision whether the circumstances had since changed to make the holding of an enquiry reasonable practicable at the time the appellate order was passed. In this connection our attention has been invited to the following extracts of the CAT judgment in Shri Ram Pravesh Singh Vs. U.O.I. & Ors. 1991 (2) SLJ CAT 20, quoted in the CAT, Principal Bench judgment dated in 19.9.91 in O.A. No.2175/90 R.T.Katyar & Ors. Vs. Chairman, Railwya Board & Ors.

" It is settled that in a departmental appeal of this nature, it is open to the appellant to claim that an enquiry be held with respect of the charges on which the penalty of removal from service has been imposed upon him. Though the enquiry was dispensed with by the disciplinary authority, as a result of the situation has changed when the appeal is heard, the govt. servant is

A

entitled to have an enquiry held so that he can establish that the imputations are not true and that the charge on the basis of which he has been removed from service cannot be sustained. As such, it is the bounden duty of the appellate authority to examine the reasons that prompted the disciplinary authority to dispense with the enquiry, and to find out whether the circumstances on the basis of which the disciplinary authority arrived at the said conclusion continued to exist. A mechanical statement in the order that 'the circumstances that prevailed at the time of passing the order of removal by the disciplinary authority are still continuing' will not do duty especially in a case where about 9 (nine) years have elapsed from the date of passing of the order by the disciplinary authority."

It was further held:

" There may be various circumstances which led the disciplinary authority to arrive at the conclusion that the holding of an enquiry is not reasonably practicable. The govt. servant either by himself or with his associates may terrorise, threaten or intimidate the witnesses who are proposed to be examined to establish the truth of the imputation. It may be that the disciplinary authority himself has been threatened so as to make him reasonably believe that holding of the enquiry will be at the risk of his life. There may be cases where on account of peculiar circumstances the local atmosphere is vitiated by indiscipline or insubordination, and violence prevails. These are factors which are not continuing for all time...."

1

10

11. In this connection the following paragraph in the CAT, Full Bench (Patna Bench) judgment dated 14.12.87 in D.N.Singh and others Vs. U.O.I. & Ors. (reproduced in Full Bench Judgments of CAT 1989-91 Vol.II by Bahri Brothers, Delhi) is very relevant and in our view is fully applicable to the facts of the present case.

" The conclusion is, therefore, inescapable that the Appellate Authority is bound to consider whether it was reasonably practicable to hold an inquiry at the time of hearing the appeal and if reasonably practicable, it should set aside the order of the Disciplinary Authority and hold an inquiry or direct an inquiry by the Disciplinary Authority. If at that time also it was not still reasonably practicable to hold an enquiry, it should postpone the final disposal of the appeal for a reasonable period of time and then once again consider the question whether at that later point of time it was reasonably practicable to hold an enquiry. In dismissing the appeals preferred by the applicants herein, the Appellate Authority has totally ignored these aspects of the matter. The orders of the Appellate Authority are, therefore, wholly unsustainable and must be quashed. The matter must be remitted to the Appellate Authority to reconsider the appeals in the light of this judgment."

12. No materials have been shown to us ^{suggest that} to ~~whether~~ the said Full Bench's judgment has not become final.

12



13. In the result the Appellate Authority's order dated 31.12.90 is quashed and set aside, and the case is remanded back to the Appellate Authority to reconsider applicant's appeal, after giving him a reasonable opportunity of being heard in person, and thereafter to dispose of that appeal by ^{as} detailed, speaking and reasoned order in accordance with law as expeditiously as possible, and preferably within four months from the date of receipt of a copy of this judgment. No costs.

(DR. A. VEDAVALLI)
Member (J)
/GK/

(S.R. ADIGE)
Member (A)