

2 Copies

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

10

O.A. NO.573/91

DATE OF DECISION : 08.01.1993

Shri Hari Singh

...Applicant.

Vs.

Union of India & Anr.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

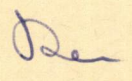
...Shri K.N.R. Pillai,
counsel


For the Respondents

...Shri J.C. Madan, proxy
counsel for
Shri P.H. Ramchandani,
counsel

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

2. To be referred to the Reporter or not? y


(J.P. SHARMA)
MEMBER (J)


(P.C. JAIN)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

O.A. NO.573/91

DATE OF DECISION : 08.01.1993

Shri Hari Singh

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri K.N.R. Pillai, Counsel

For the Respondents

...Shri J.C. Madan, proxy counsel
for Shri P.H. Ramchandani,
Counsel

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER(J))

The applicant is working as UDC in the Office of Assistant Controller, Central Excise Division and has assailed the order of punishment dt.2.6.1989 ^{upon him} imposing the penalty of withholding one increment for two years. In the appeal preferred by the applicant against the above order, the Appellate Authority by the order dt.4.1.1990 maintained the punishment, but reduced the penalty to withholding of increment for one year. The applicant filed a revision also before the competent authority in which the order of the Appellate Authority was upheld by the order dt.21.12.1990. The applicant has also the grievance against the order of Deputy Collector (P&V) Central Excise dt.10.10.1990 delaying the promotion of the applicant to the post of UDC for 3 years 1 month from the due date.

↓

...2...

12

2. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the grant of the following reliefs :-

- (a) For quashing the orders of punishment aforesaid,
- (b) Direction for grant of increments from the due date,
- (c) Direction to promote the applicant as UDC w.e.f. 10.9.1987 with reference to the date of promotion of his immediate juniors, and
- (d) Direction to consider the applicant for promotion to the next higher grade of Tax Assistant with reference to the date of promotion of his junior after qualifying the test for Tax Assistant.

3. The facts of the case are that the applicant joined as LDC w.e.f. 1.10.1982 in Central Excise and Customs Collectorate, New Delhi. On 31.7.1987, disciplinary proceedings were drawn under Rule 14 of the CCS (CCA) Rules, 1965 and a memo of chargesheet was served on him also putting him under suspension. This suspension was, however, revoked subsequently on 25.8.1988. The headquarter of the applicant was also shifted to Ambala after suspension, but he was retransferred to Delhi on the same post. As said above, the departmental disciplinary proceedings were held jointly against the applicant along with Deputy Office Superintendent, Smt. Mukta Dhawan. She was also working in the Gold cell in the Collectorate office. The work of the cell included issue of the goldsmith certificates. In this the staff was UDC as well as the applicant assisting the same. There was no UDC from 1.8.1986 to 9.9.1986, and the applicant was asked in addition to his duties as Typist to assist in this work. The

12

articles of charge against the applicant are as follows :-

ARTICLE- I

Smt. Mukta Dhawan, and Shri Hari Singh while functioning as Dy. Office Superintendent Gold Cell and Lower Division Clerk, Gold Cell respectively in the Central Excise Collectorate, Delhi during the months of August and September, 1986 handed over the Goldsmith Certificate issued by the Superintendent, Gold Cell for personal delivery at the premises of the applicants through Shri Pal Singh, a daily wager employed in the Central Excise Collectorate, Delhi but not attached with Gold Branch, at the material time of closed holidays instead of sending the same through registered post. They had, thus knowingly handed over the Goldsmith Certificate to an unauthorised person during the above mentioned period.

ARTICLE- II

Under instructions of Smt. Mukta Dhawan and Shri Hari Singh above said, Shri Pal Singh, daily wager took a bunch of Goldsmith Certificates from office and on 15.8.86- Independence Holiday - approached one of the applicants at his house, showed him the Goldsmith Certificate issue in his favour and demanded Rs. 200/- on their behalf as illegal gratification for delivering the same.

It is thus imputed that Smt. Mukta Dhawan, Dy. Office Superintendent and Shri Hari Singh, Lower Division Clerk in their aforesaid capacity exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened provisions of Rule 3(1)(i), (ii) and (iii) of the G.C.S. (Conduct) Rules, 1964.

4. Shri A. Vasudeva was appointed as Inquiry Officer on 3.9.1987. The Inquiry Officer held the inquiry according to the CCS(CCA) Rules and concluding the same by submitting his report dt. 23.2.1989 to the disciplinary authority giving a finding that charge No. 1 framed against the applicant is established and charge No. 2 has not been proved. On the basis of the finding of the Inquiry Officer, the Disciplinary Authority passed the punishment order dt. 2.6.1989 and the Appellate Authority maintained the punishment, but modified the penalty as said above by the order dt. 4.1.1990. The Revisional Authority by the order dt. 21.12.1990 upheld the punishment and penalty imposed upon the applicant by the Disciplinary Authority.

de

...4...

(14)

5. The respondents contested this application and in their reply stated that the applicant has been guilty of misconduct as defined under CCS (Conduct) Rules, 1964 having contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the said rules. It is further stated that the applicant was in collusion with Smt. Mukta Dhawan, Dy. Office Superintendent and the goldsmith certificates prepared in the gold cell were handed over to one daily wager for personal delivery at the residential address of the certificate holders on closed holidays. There was a complaint that the daily wager has demanded Rs. 200 as illegal gratification from one of the certificate holders. The applicant, though denied the charges in the whole inquiry, but the Inquiry Officer on the basis of the material on record gave the finding on charge No. 1 against the applicant regarding handing over the goldsmith certificate to the daily wager Shri Pal Singh for personal delivery at the residential premises of the certificate holder. The applicant was due for promotion during 1987, but because of the departmental proceedings and having not been exonerated in the said proceedings, the recommendations of the DPC could not be given effect ^{to} in terms of DOP&T OM dt. 12.1.1988. The applicant has been given adequate opportunity to defend himself in the departmental inquiry and there has been no violation of the principles of natural justice. The application is devoid of merit and the applicant is not entitled to any relief.

le

YLA

6. We have heard the learned counsel for the parties at length and have gone through the record of the case. The simple facts of the case are that Shri Ramesh Kumar complained on 8.9.1986 that the persons who had with them goldsmith certificates given to him on 15.8.1986- Independence Day at about 3.00 O'Clock had showed goldsmith certificates issued in their name from the bunch of certificates and took his signature and said that 'Madam' had asked for Rs.200. Shri Ramesh Kumar on the basis of his complaint identified Shri Pal Singh, a daily wager employed in the Central Excise Collectorate as the person who had visited him on 15.8.1986 at his residence ^{le} with his goldsmith certificate and had demanded Rs.200. As a result of this a disciplinary inquiry was initiated against Deputy Office Superintendent and the applicant and by the order dt.3.9.1987, Shri A.Vasudevan was appointed as Inquiry Officer. The applicant in this application has challenged the findings of the Inquiry Officer on a number of grounds. Firstly, it is contended by the learned counsel that this is a case of no evidence and the finding of the Inquiry Officer, Shri A.Vasudevan is perverse and is only based on surmise and conjectures. The contention of the learned counsel is that the name of the applicant was simply attached to the Deputy Office Superintendent, Smt. Mukta Dhawan. A perusal of the finding of the Inquiry Officer goes to show that the Inquiry Officer has considered the statement of the witnesses recorded in the course of the inquiry. He recorded the statement of

le

...6...

15

Shri Y.R. Kilania, Office Superintendent. The goldsmith certificates used to be put up before him through the dealing Assistant and DOS, Gold for further issue of the certificates. These certificates were prepared by the dealing Assistant. Other witness examined by the Inquiry Officer is Shri B.K. Juneja, Assistant Collector (Gold), who proved the complaint filed by goldsmith certificate holder, Shri Ramesh Kumar. Shri Har Kishan Singh, who was employed as UDC was also examined as a witness and he categorically stated that during his absence, Shri Hari Singh, LDC, i.e., the present applicant used to do the despatch work. This witness has also been cross-examined by the applicant. The applicant in his defence statement stated that there is no evidence that the goldsmith certificate was handed over to Shri Pal Singh, daily wager by him. Further in the defence statement, he has also stated that the certificate Nos. 146 to 183 were prepared by him and certificate No. 155/86 is the certificate which is in question. Thus he stated that there is no evidence that this certificate was handed over by the applicant to daily wager, Shri Pal Singh. Thus there is ^{link} ~~is~~ evidence that the applicant has handed over the goldsmith certificate to the daily wager, Shri Pal Singh, who approached Shri Ramesh Kumar on the Independence Day and demanded Rs. 200. We have perused the finding of the Inquiry Officer. Certificate No. 155/86 which was prepared by the applicant himself had a slip pasted on it to certify the delivery to the certificate holder.

le

(16)

Certificate No.54/86 has also been prepared by the applicant and appears to have been delivered on holidays without any justification. The defence of the applicant has only been that he was not entrusted with this job. But it is on record that during the absence of Shri Har Bhajan Singh, LDC on leave, the applicant was also looking after the work of preparation of goldsmith certificates. The Inquiry Officer has also dealt with other aspects of the matter in quite detail and analysed the evidence of the witnesses examined in the case. It cannot, therefore, be said that this is a case of no evidence or that the finding of the Inquiry Officer is perverse or could not be arrived at by a reasonable man on the basis of the evidence on record. The Inquiry Officer held that the certificates had been knowingly delivered on closed holiday to the certificate holders and the charge in that regard is established against the applicant as well as Smt. Mukta Dhawan, DOS, Incharge of the gold cell. The Inquiry Officer further, observed that since the applicant has been dealing with this work only this month and lenient ^{view is} ~~rule~~ warranted in his case. The Inquiry Officer has exonerated both the delinquent, i.e., the applicant and Smt. Mukta Dhawan of the second charge. The argument of the learned counsel for the applicant that the case of no evidence against the applicant is made out has, therefore, no basis.

7. The next contention of the learned counsel is that the copy of the Inquiry Officer's report was not made available to the

applicant. The learned counsel for the applicant has referred to the decision of Union of India Vs. Ramzan Khan decided by the Hon'ble Supreme Court on November 29, 1990, reported in ATR 1991 (1) SC 1201. However, in the case of S.P. Vishwanathan Vs. Union of India & Ors., reported in 1992 SCC (L&S) p-155, the Hon'ble Supreme Court held that non furnishing of the copy of the Inquiry Officer's report in proceedings decided before November 29, 1990 will not be fatal to such departmental proceedings. This contention, therefore, also has no force. The learned counsel for the applicant also argued that the applicant has not been given adequate opportunity to place his case before the Inquiry Officer and there is a breach of Rule 14 (18) of the CCS (CCA) Rules, 1965. The aforesaid rule provides that if the Government servant has not examined himself, the inquiring authority shall generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. It is a fact that the applicant did not examine himself in the inquiry proceedings and also the inquiring authority did not put any questions to him for calling his reply on the facts established against him from the evidence in the inquiry. The inquiring authority has not followed the procedure, but at the same time it has to be

be



established that the applicant has been grossly prejudiced in not coming to know the actual evidence against him or the circumstances which have been established against him during the course of the inquiry. The applicant by filing the final defence statement has almost covered every point which has come in the evidence against him. The respondents in their counter have clearly stated that the Inquiry Officer has annexed the defence statement of the applicant. The final defence submissions of the applicant are also on record at p-46 of the paper book. The applicant in the defence submissions has covered whole of the evidence which has been adduced against him. In the defence submissions, the applicant has stated that there was no instruction to send the goldsmith certificates through registered post and it was practice as confirmed in the above statement to deliver the certificates of goldsmith to the applicant in person during their visit to the office. It is not disputed that the applicant has worked in place of Shri Har Bhajan Singh, LDC. Shri Har Bhajan Singh has been examined on 11.3.1988 and he has been cross-examined at length. In the daily order sheet of 19.7.1988, Smt. Mukta Dhawan has stated that the actual delivery used to be done by the dealing Assistant. The pendency statement of applications was

le

(19)

dealt with by the dealing Assistant and, therefore, a check of the pendency of the non issue certificate would be kept.

It is not disputed that Shri Hari Singh was the dealing Assistant at the relevant time and it was his duty to deal with goldsmith certificate and issue them to the parties. Now these circumstances have appeared in the evidence and a perusal of the final defence submissions made by the applicant goes to show that he has covered all these points thoroughly in a three full scap typed statement. The only defence taken by the applicant appears to be that none of the witnesses stated that Shri Pal Singh, daily wagar was sent by him to deliver the certificates on the holiday at the residence of Shri Ramesh Kumar and other goldsmith certificate holders. In the defence statement also, the applicant has admitted that certificates Nos. 146 to 183 were prepared by him. When all these points are fully covered in his defence submissions, logically there remains nothing to be put to the applicant again regarding the issue of the certificates on holidays and their ultimate delivery to the certificate holder by Shri Pal. That is the fact which has been held to be established by the Inquiry Officer. Thus though the procedure adopted by the inquiring authority is a bit irregular, but it cannot be said to be illegal in view of the fact that the applicant has not been prejudiced at all in making his submissions or taking a cogent line of defence to the charges levelled against him.

le

...11...

(20)

8. The learned counsel for the applicant also argued that the Disciplinary Authority has not accepted part of the finding of the Inquiry Officer where he has held that the applicant was only dealing with this work during a month of the alleged lapse and a lenient view would be warranted in his case. The Disciplinary Authority should have given notice to the applicant if he had not agreed with that finding. However, the facts are totally different. The Disciplinary Authority has totally agreed with the finding of the Inquiry Officer and the Inquiring Authority has no right to suggest any punishment either to take a lenient view or harsher view of the matter. The Disciplinary Authority after agreeing with the Inquiry Officer's report passed the punishment order according to the rules. There is no force in this contention of the learned counsel that the Disciplinary Authority partly agreed with the finding of the Inquiry Officer.
9. The learned counsel for the applicant also argued that the appellate order is a non speaking order showing non application of mind. We have gone through the appellate order dt.4.1.1990 (Annexure A6). The earlier punishment imposed by the Disciplinary Authority was stoppage of two increments without

↓

...12...

(21)

commulative effect falling due after the order, but the Appellate Authority has reduced the penalty of stoppage of two increments to stoppage of one increment without commulative effect. The Appellate Authority has discussed the relevant part of the Inquiry Officer's report and the decision taken by the Disciplinary Authority over it. He agreed with the finding of the Disciplinary Authority. It is a fact that the Appellate Authority did not discuss individually the grounds taken by the applicant in the appeal, but in the revision preferred to Member (Personnel) of Central Board of Excise, the Revisional Authority vide order dt. 21.12.1990 has fully discussed the matter in greater detail as is evident by Annexure A8 at p-83 of the paper book. The learned counsel for the applicant has also pressed the argument that no personal hearing was given to the applicant, but in the circumstances of the case and seeing to the nature of the charge against the applicant, the applicant has been given sufficient opportunities of representation by way of appeal and revision and he has been heard thoroughly, though not personally, but through his representations aforesaid and, therefore, he is not at all prejudiced in any manner whatsoever.

10. In view of the above facts and circumstances, we find

↓

...13...

22

that there is no merit in this application and dismiss the application leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J) 8.1.93

P.C. Jain
(P.C. JAIN) 8/1/93
MEMBER (A)

AKS