

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

O.A.No.593 of 1991

21/5/93

P.N.MalhotraApplicant.

Versus

Director General of Ordnance Services
New Delhi & othersRespondents.CORAM:

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

Hon'ble Mr.S.R.Adige, Member (A)

For the applicant: Shri S.M.Ashri, Counsel.

For the respondents: Shri M.L.Verma, Counsel.

JUDGMENT

(By Hon'ble Mr. S.R.Adige, Member(A).)

This is an application under section 19 of the Administrative Tribunals Act filed by Shri P.N.Malhotra a Dismissed Store Superintendent, Chillipara, Shahganj Agra against the order dated 22.3.90 (Annexure-6) dismissing him, which was upheld in appeal vide order dated 11.1.91 (Annexure -8).

2. The applicant was appointed in 1963 as a Stores Keeper in COD Agra and was promoted as Senior Stores Keeper in 1978. In 1985, he received a further promotion to the post of Stores Superintendent. Disciplinary proceedings were started against him vide order dated 2.11.88 for alleged short receipt of item part No.W8-5660-00076 Pickets supplied by M/s Perfect Drop Pins, Delhi, and he was also put under suspension with effect from that date. He was served with a charge-sheet vide order dated 24.1.89 (Annexure-1) to which he submitted a reply (Annexure-3). The departmental enquiry which commenced on 12.5.89, was concluded on 5.12.89 vide Enquiry Officer's report (Annexure-4), in which the charges against the applicant were found fully proved. The applicant submitted a representation on 17.1.90 (Annexure-5)

which was rejected, and vide order dated 22.3.90 (Annexure-6), the applicant was dismissed from service. The applicant further filed an appeal on 19.4.90 (Annexure-7), which was rejected vide order dated 11.1.91 (Annexure-8), against which the applicant has come up before this Tribunal.

3. The grounds taken in this application are:-

- i) that the charge sheet was issued by an authority not competent to issue the same.
- ii) that the enquiry is vitiated because the authenticity of the letter dated 3.12.88 alleged to have been written by the proprietor of the Firm on which the charges are based, has not been proved. Further more, copies of communication dated 17.10.88 and 18.10.88 do not bear the signatures of the applicant in token of having received 687 bundles of Pickets. The signatures were given by the applicant on the reverse side of each DRS.
- iii). that there was no loss to Government in any way and the firm did supply the deficient stores.
- iv) that the appellate authority ^{failed} ~~did not~~ to apply the mind ^{and on} to the facts and circumstances of the case, ^{and on} mechanically dismissed the appeal without appreciating the evidence or discussing questions of law.

4. The respondents, in their counter affidavit, have contested the application and have pointed out that a proper enquiry was held in the matter; charges were proved; the representation made by the applicant before the competent authority was rejected after due consideration; and the principles of natural justice,

as well as the procedure governing departmental proceedings, were fully abided by in this case. This Tribunal cannot act as an appellate authority over the decision taken by the competent authority after proper application of mind. References have been made in this connection to the followings cases:-

- i) State of Maharashtra Vs. Madhikar Narayan 1991(1)SLJ(SC) 164.
- ii) Onkar Singh Vs. Union of India 1990(14)ATC(All) 1.
- iii) Bhagat Ram Vs. State of H.P. AIR 1983 SC 454.

5. It has been urged that this Tribunal can only exercise the power which the Civil Court could have exercised, vide decision in the case 'Union of India Vs. Permanand' AIR 1989 SC 1185.

6. It has also been ^{averred} ~~pointed out~~ that the applicant participated in the enquiry without raising any objection at ^{that} ~~that~~ stage ^{and cannot do so now, as} vide decision given in 'V. Gopalan Vs. Union of India' 1989(2)ATR 608. On the facts of the case, it is alleged that the applicant while working in Group VICOD Agra as Incharge of Defence Bricks Stores, received a consignment of 687 bundles of pickets despatched by M/s Perfect Drop Pins, Delhi in October, 1988. Each bundle contained only 12 pickets instead of 16 as mentioned in the inspection note. On receiving the stores, the applicant cleared the same without proper checking and failed to detect that 24 bundles had been left behind. Thereafter, the applicant opened 69 bundles of those pickets and added four pickets to each bundle to come up to 16 pickets each, to cover up the deficiency of the stores, in connivance with the Manager of the Firm, to gain pecuniary benefits, without taking permission of the Group Officer or any Superior authority. On checking of the stores, 2748 numbers of Ms Pickets were found

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short, valued Rs. 1,33,278/. Hence departmental proceedings were started against the applicant which were conducted under Rule 14 of CCS(CCA) Rules, 1965 and the punishment of dismissal of service was inflicted on the applicant which was confirmed in an appeal. It has been urged that all relevant documents were furnished to the applicant and he was given permission to inspect any document which he wanted to. The statements of all the witnesses were also provided to him. The disciplinary authority i.e. the Officer-in-Charge AOC Records awarded the punishment to the applicant after consideration of all the relevant facts which was upheld by the Director General under Rule 14 CCS(CCA) Rules, 1968 because imputation of charges were fully established. Both the disciplinary, as well as the appellate authority were satisfied that the applicant had failed to maintain integrity and gross misconduct was proved against the applicant during the course of enquiry. Attention was also drawn by the respondents to the fact that the Proprietor of the Firm had given in writing, stating that the short receipt of stores was ~~due~~ ^{effected,} due to malafide intention of the Firm Manager as well as the Stores Superintendent Shri P.N. Malhotra. The proprietor has stated that he has terminated ^{the} services of the Manager. In fact, both the applicant and the Firm Manager had planned to make short receipt of Stores to gain financial benefits. Accordingly, the respondents stated that the applicant was wholly devoid of merit and was, therefore, fit to be rejected.

7. We have heard Shri S.M. Ashri -learned counsel for the applicant and Shri M.L. Verma -learned counsel for the respondents.

8. Emphasizing the points taken in the pleadings, Shri Ashri has also urged that certain relevant documents were not supplied to him. He has laid stress on the fact that the letter purported to have been written by the Proprietor, was not written on the letter-pad of the Firm; it was not proved; and no opportunity was given for cross-examination. More importantly he has urged that whatever shortage were detected in the supply of the pickets, were made good soonafter, and, therefore, there was no pecuniary loss incurred by the State.

9. Shri Ashri has also drawn attention to certain rulings, wherein it has been held that Civilian employees serving in Defence Establishment and paid out of defence estimates, are not covered by the C.E.S.(CCA) Rules, 1965, and these rules have no application in their case. In O.A.No.93 of 1987 'Indrajit Dutta Vs. Union of India & others' 1992(1) ATJ 44, decided by the Calcutta Bench of Central Administrative Tribunal on 5.4.91, it was held as follows:-

"The Supreme court has consistently held that Articles 309 and 311 are subject to Article 310 and cannot impair or affect the pleasure of the President or the Governor as also that in case of civilian employee serving in connection with defence and drawing their salary from Defence Estimates cannot claim protection under Article 311 of the Constitution. 1965 Rules cannot independently play any part since the rule making power under Article 309 itself is subject to Article 311 which again is subject to Article 310 of the Constitution. The slight deviation made by the Supreme Court in K.S. Subramanian's case reported in AIR 1976 SC 243 that if disciplinary proceeding under CCS(CCA) Rules, 1965 has been reported to, that will apply and where order has been made under Art-

-icle 310, 1965 Rules will have no application been set at rest and overruled in view of this judgment which has been reported in AIR 1989 S.C.662. We are bound by this decision."

It is, therefore, clear that the applicant being a civilian employee serving in Defence, cannot claim any protection under Article 311 of the Constitution and CCS(CCA) Rules, 1965, which has been framed under Article 309 of the Constitution and subject to Art.311 thereof, have no application in his case. The entire disciplinary proceeding started by the suspension order and thereafter is misconceived and does not have any legal consequence. The order of punishment dated 8.7.86 is equally misconceived without having any legal effect. In that view of the matter, the applicant is deemed to be continuing in his service. We are not inclined to allow back wages to the applicant for the intervening period. The respondents are, however, directed not to recover from the applicant the amount which has already been paid to the applicant by way of subsistence allowance. This order, however, will not prevent the respondents to take appropriate legal recourse or pass any order sustainable in law in view of the aforesaid decision of the Supreme Court."

10. On the question whether this Tribunal has jurisdiction to entertain the application filed by a civilian connected with defence as envisaged under section 14(1)(a) of the Administrative Tribunals Act, Shri Ashri has invited attention to the Central Administrative Tribunal, Principal Bench's decision dated 30.4.86 in the case of 'Kunju Krishna Pillai Vs. Union of India & others' reported in 1986 ATC 453 wherein it was held that;

" Section 14(1)(a) undoubtedly vests jurisdiction in the Central Administrative Tribunal in regard to all service matters among others concerning a 'civilian' appointed to a post 'post connected with Defence or in the Defence Services'".

11. It has not been denied by the respondents that the applicant is a Civilian employee who is

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connected with the defence and paid his salary out of defence estimates. Shri M.L.Verma very fairly conceded that in the light of judgment in Kunju Krishna Pillai (Supra), this Tribunal was fully vested with the necessary jurisdiction to adjudicate this matter, and having regard to the judgment in Inderjeet Dutta's case (Supra), the CCS(CCA) Rules, 1965 under which the applicant had been suspended, proceeded against, and thereafter dismissed would have no application in this case.

12. Under the circumstances, without advert^{and as}ing to the other grounds taken by the applicant, following the ratio in Indrajeet Dutta's case (Supra), we hold that the applicant, being a Civilian employee who was serving in Defence and paid out of defence estimates, cannot claim any protection under Article 311 of the Constitution, and the CCS(CCA) Rules, 1965 which have been framed under Article 309 of the Constitution and are subject to Article 311 thereof, have no application in his case. The entire disciplinary proceeding connecting with his suspension the charge sheet served upon him, the departmental enquiry and the order of suspension have, therefore, no legal consequence, and hence have to be struck down. We are fortified in our view by the authority of the Hon'ble Supreme Court in the case of 'Union of India & others Vs. K.S.Subramaniam' reported in AIR 1989 S.C. 662. It was held that

"By virtue of Art.311(2), no civil servant can be dismissed; removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. Art.311(2) thus imposes a fetter on the power of the President or the Governor, to determine the tenure of a civil servant by the exercise of pleasure. Tulsi Ram case (AIR 1985 SC 1416 concerned with the exclusion of Art.311(2) by reason of second proviso thereunder. We are also concerned with the

exclusion of Art.311(2), if not by second proviso but by the nature of post held by the respondent. We have earlier said that the respondent is not entitled to protection of Art.311(2), since he occupied the post drawing his salary from the Defence/Estimates: That being the position, the exclusionary effect of Art.311(2) deprives him the protection which he is otherwise entitled to. In other words, there is no fetter in the exercise of the pleasure of the President or the Governor.

It was, however, argued for the respondent that 1965 Rules are applicable to the respondent, first, on the ground that R.3(1) thereof itself provides that it would be applicable, and second, that the Rules were framed by the President to control his own pleasure doctrine and, therefore, cannot be excluded. This contention, in our opinion, is basically faulty. The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Art.311(2). When Art.311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule-making power under Art.309 is subject to Art.311. This would be the legal and logical conclusion."

13. The ^{impugned} ~~impugned~~ orders are accordingly quashed. The applicant will be deemed to be continuing in service. We are, however, not inclined to allow the back wages to the applicant for the intervening period. The respondents, however, will not recover from the applicant the amount which has already been paid to him by way of subsistence allowance. We make it clear that this order will not prevent the respondents from taking appropriate action in regard to the alleged acts of omission and commission on the part of the applicant, in accordance with law, if so advised.

14. There will be no order as to costs.

S.R. Adige
(S.R.ADIGE) 21.5.93
MEMBER(A)

J.P. Sharma
(J.P.SHARMA) 21.5.93
MEMBER(J)

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