

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2877/2004

New Delhi: this the 27th day of March, 2006

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

Sushil Kumar Sharma,
S/o Shri Shanti Nandan Sharma,
Ex.UDC Dy. Commissioner,
Central Distt. Central NCT of Delhi,
Resident of DA/116-C,
Hari Nagar, New Delhi

.....Applicant

(By Advocate: Shri S.N. Anand proxy for Sh. S.K. Arya)
Versus

1. Govt. of NCT of Delhi
through the Chief Secretary,
Delhi Sachivalaya,
Player's Building,
I.P. Estate, Delhi
2. The Divisional Commissioner,
Govt. of NCT Delhi,
5, Sham Nath Marg,
Delhi-54.
3. The Dy. Commissioner,
Central Distt.
Govt. of NCT, Delhi, 14 Daryaganj,
Old Employment Exchange Building,
New Delhi-2

...Respondents

(By Advocate: Shri Rishi Prakash)

ORDER(ORAL)

Hon'ble Mrs. Chitra Chopra, Member(A)

In the present OA, the applicant Shri Sushil Kumar Sharma seeks quashing of impugned orders dated 22.9.2003, 28.10.2003 and 2.8.2004 (Annexure A-1, A-2 and A-3 respectively) in terms of which he has been imposed penalty of dismissal from service.



2. The main contention of the applicant is that the dismissal order was issued by an authority which was not competent to issue the same.

3. The brief facts of the case are as under:

The applicant was appointed as Lower Division Clerk (LDC) on 22.12.1969 by the Chief Secretary, Delhi Administration (now Govt. of NCT, Delhi) (Annexure A-4) and was promoted as Upper Division Clerk (UDC) in the year 1980 in due course. While working as UDC in Land Acquisition Collector's Office in the year 1992, he was implicated in a false case of demanding and accepting bribe of Rs.500/- and was placed under suspension. On 4.2.1992, a Criminal case No.164/94 was registered against him. He was convicted and sentenced to undergo R. I. for a period of one year and to pay a fine of Rs.4500/- by Special Judge, Delhi. He filed criminal appeal against the said order of conviction and sentence before the Hon'ble High Court of Delhi. The Hon'ble High Court vide order dated 30.5.2003 (Annexure A-6) suspended the sentence of imprisonment. Later on, the stay order was confirmed by the Hon'ble High Court.

4. The department proceeded against the applicant under Rule 19(1) of CCS(CCA) Rules, 1965 and issued show cause notice dated 22.9.2003 (Annexure A-1) and passed the impugned order dated 28.10.2003 (Annexure A-2) dismissing him from service. The said order was served upon him on 3.11.2003.

5. The learned counsel for the applicant has raised the following main contentions:

That pending trial keeping in view his efficiency, dedication, honesty and integrity, he was assigned the work in Vigilance Department which he discharged with utmost satisfaction of his authorities. In the meantime, number of his juniors got promotion as Grade II but he was superseded due

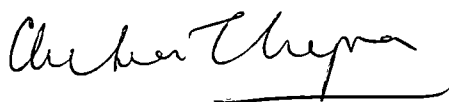


to above mentioned criminal case and was ultimately dismissed without proper enquiry.

6. The penalty of dismissal from service was imposed by an incompetent authority i.e. not his appointing authority. The learned counsel for the applicant has relied upon the ruling of the Hon'ble Supreme Court in **R.K.Prajapati Vs. State of UP (2000) 10 SCC 43** (Annexure A-9).

7. In the counter affidavit, the learned counsel for the respondents contended that the applicant was convicted by the Court of Special Judge, Delhi as a criminal case was registered against him. It cannot be said that he was falsely implicated nor that the judgment of the Special Judge, Delhi was erroneous. It has been denied that the applicant was posted in Vigilance Department due to his efficiency etc. He was, in fact, posted in Vigilance Section due to administrative reasons as he was on bail during the pendency of the case and obviously he could not be promoted due to pendency of criminal case against him. The order of the Court convicting the applicant is based on unrebutted evidence on record.

8. It has been further averred that Respondent No. 2, the Divisional Commissioner, Govt. of NCT, Delhi is the appointing authority as well as the Disciplinary Authority of the applicant in view of Gazette Notification dated 3.8.1976 published on 12.8.1976 (Annexure A-11) as the applicant was holding Class III post i.e. UDC at the time of his dismissal. The punishment order dated 28.10.2003 is strictly in accordance with Rule 19(1) of CCS (CCA) Rules, 1965 and there is no infirmity in the same. It is submitted that the ruling of the Apex Court in Ram Krishan Prajapati's case (Supra) cited by the learned counsel for the applicant has no relevance to the facts and circumstances of the present case.



9. Against the aforesaid dismissal order, the applicant filed an appeal (Annexure A-10) before the appellate authority i.e. Chief Secretary, Govt. of NCT, Delhi. The appellate authority after going through the facts and circumstances of the case did not find any reason to interfere with the orders passed by the Disciplinary Authority and accordingly rejected the appeal being devoid of merit vide order dated 2.8.2004 (Annexure A-3)

10. We have heard the arguments put forth by the learned counsel for the applicant as well as the respondents and have carefully perused the material placed on record.

11. The position as it emerges is that there is no apparent infirmity either in issue of dismissal order of the applicant nor in the order of appeal. A perusal of show cause notice dated 22.9.2003 (Annexure A-1) and dismissal order dated 28.10.2003 (Annexure A-2) shows that they are fully in accordance with Rule 19 of CCS (CCA) Rules considering the conduct and gravity of the criminal charges. In the show cause notice, it has been clearly mentioned that the judgment passed by the Special Judge has been carefully considered by the Competent Authority i.e. Divisional Commissioner and the gravity of charge warrants the imposition of major penalty and proposed the penalty of dismissal. The show cause notice further mentioned that the applicant was given an opportunity of making a representation on the aforesaid proposed penalty. Thereafter, the dismissal order dated 28.10.2003 (Annexure A-2) was subsequently passed by the Disciplinary authority. The appeal filed by applicant was also rejected by the appellate authority vide order 2.8.2004 .

12. The main contention of the applicant is that the dismissal order was issued by an authority, who was not competent to pass the same. We have perused Govt. Notification dated 3.8.1976 (Annexure A-11) of the Services

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Department published in Delhi Gazette, Delhi Administration dated 12.8.1976. Serial No.3(i) of the Schedule clearly specifies the posts of the appointing authority, authority competent to impose penalties, the penalties which it may impose and the appellate authority and is reproduced below:


Sl. No.	Description of posts	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to items Nos. in Rule 11)		Appellate Authority
1	2	3	4	5	6
	3(i) All Class III posts included in the Delhi Administration Subordinate Ministerial/Executive Service other than the Secretariat and the Districts under the Directorate of Education.	Head of the Department concerned	(1) Head of Office	(i) to (iv)	Head of the Department. Where the order is that of the Head of the Department, the Administrative Secretary concerned in the Secretariat provided the latter is senior to the former. In case the Administrative Secretary is junior to the Head of the Department or if there is no such Secretary or if the Head of Department and Administrative Secretary is one and the same person the Chief Secretary.


13. It is clear from the above that as the applicant was UDC in the Office of Collector (Land Acquisition), he belonged to Delhi Administration (Subordinate Ministerial Services) in respect of which the appointing authority was the Head of the Department concerned and the appellate authority was the Chief Secretary. It is only in respect of employees who were in the Secretariat that the Secretary or the Chief Secretary is the appointing authority. In view of this, the contention of the applicant is not tenable. It is not the case of the applicant that he was at any time in the Secretariat. Further, at the time of his dismissal he was not even posted in the Secretariat or under the charge of Additional Commissioner. Therefore,

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the impugned orders have been passed in accordance with the prescribed rules and regulations and they do not suffer from any illegality.

14. In view of above discussion, there is no merit in the case and the OA is liable to be dismissed. Accordingly the OA is dismissed. No costs.


(Chitra Chopra)
Member (A)


(M.A.Khan)
Vice Chairman (J)

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