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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1582/2004

New Delhi, this the 3rd day of February, 2006

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

H.K. Pal
S/o Late B.M. Pal
GI-1053, Sarojani Nagar
New Delhi-110 023.

.... Applicant.

(By Advocate Shri Yogesh Sharma for Shri A.K. Trivedi)

VERSUS

1. Union of India
Through it's Secretary,
Ministry of Finance,
North Block, New Delhi.
2. The Joint Secretary,
Govt. of India, Ministry of Finance,
Department of Economic Affairs,
North Block, New Delhi.
3. The Jt. National Savings Commissioner
12, Seminar Hills, Nagpur-440 006.

... Respondents.

(By Advocate Shri N.K. Aggarwal)

O R D E R

In this OA challenge is made to disciplinary and appellate orders dated 13.1.1999 and 21.05.2004 respectively inflicting impugned penalty of withholding of two increments without cumulative effect, as upheld by the appellate authority.

2. The basic contention raised in support of the OA are three-fold namely that the charges contained vide memorandum dated 03.2.1993 were vague as no specific incident, particulars regarding date, time of incident were mentioned therein. Secondly, additional witness namely Sh. D.P.S. Negi, who had not been listed as a witness under Annexure-IV appended to the aforesaid charge memorandum, was examined by the enquiry officer and thirdly that the

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disciplinary authority failed to record reasons as required under Rule 15(1) of CCS (CCA) Rules, 1965 before directing to hold further enquiry into the matter.

3. Earlier the enquiry officer vide report dated 19.4.1999 returned the finding of Guilt being proved. The disciplinary authority vide order dated 06.12.1995, after going through the statement of witnesses recorded by the enquiry officer and after perusing the proceedings of the enquiry, was of the view that further enquiry is necessary and, therefore, under Rule 15(1) of the aforesaid rules, such further enquiry was directed.

4. To appreciate the controversy in question, it is necessary to notice certain background facts, which are as under:-

Vide memorandum dated 03.2.1993, under Rule 14 of CCS (CCA) Rules, 1965, the applicant was charged for two allegations namely that while functioning as District Saving Officer, South Zone, New Delhi, he did not comply with the directions issued to him from time to time by his Regional Director and misbehaved with other staff members of the Jamnagar House and secondly, that he applied for permission to file a defamation suit against the Deputy Regional Director and when he was informed about the denial of such permission, he refused to accept instruction of the Competent Authority.

5. Six documents were listed under Annexure-III and five witnesses were cited for proving the first article of charge and three for second article of charge, out of which two were common. Since the applicant contested the said allegations, an oral enquiry was held and the enquiry officer vide his finding dated 19.4.1995 recorded the findings of proving the said allegations beyond doubt. The enquiry officer amongst others also observed that the: "witness like Sh. Daya Chand while deposing before the enquiry has confirmed the charge no.2, that Sh. H.K. Pal, charged officer refused to take delivery of the latter of the

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Deputy Regional Director, National Savings." In the said report, it was also observed that Shri V.K. Talwar, Smt. Usha Rani, a witness, confirmed that the applicant used un-parliamentary language with his officers and subordinates and that the applicant did not comply with the instructions given to him from time to time by his Deputy Regional Director and misbehaved with other staff members and also refused to accept the instructions / letter of his immediate superior officer. Copy of the said findings was made available to the applicant vide communication dated 08.6.1995 and he was required to submit a representation to the disciplinary authority within the time limit prescribed.

6. It is contended by the applicant that the disciplinary authority did not agree with the findings of the enquiry officer and in terms of Rule 15(1) of the CCS (CCA) Rules, 1965 without recording any reason for disagreement, directed to hold further enquiry vide order dated 06.12.1995. Applicant submitted a representation dated 04.3.1996 for said illegal, arbitrary exercise of the power by the authority concerned. It is contended that a fresh enquiry was conducted in gross violation of principle of natural justice and the enquiry officer submitted his report dated 28.11.1997 and reiterated his earlier findings. Enquiry officer also recorded that while deposing during the course of enquiry, all the witnesses stood what they had said in the previous enquiry and had nothing to add. Applicant did not cooperate though he was present and was given ample opportunities and, therefore, principle of natural justice was complied with. In such circumstances, deposition made by the witnesses on earlier occasion was treated as final. Copy of said enquiry report was also made available to him. Vide representation dated January, 1998 the applicant requested the disciplinary authority to exonerate him from the charges levelled against him. Without considering the said aspects, the disciplinary authority vide order dated 13.1.1999 observed that the applicant tried to get the enquiry delayed, instead of

defending himself, and, therefore, awarded the punishment of withholding two increments without cumulative effect. The said penalty was affirmed by the Joint Secretary to the Government of India, being the appellate authority vide order dated 21.5.2004.

7. Shri Yogesh Sharma, learned counsel appearing on behalf of applicant vehemently contended that the disciplinary authority while passing an order of "further enquiry" under Rule 15(1) of CCS (CCA) Rules, 1965 had not complied the mandate of recording reasons in writing, which vitiates the entire disciplinary proceedings. For this purpose, reliance was placed on **1998 (2) SCSLJ 117 [Punjab National Bank vs. Kunj Behari Mishra]**. Learned counsel further urged that the first article of charge contained vague allegations as no particulars, details regarding date & time of incident or specific incident had been mentioned therein. It was further contended that even the charge article 2 was sought to be expanded under statement of imputation which alleged that the applicant shouted, threatened and made some observations, which were not noticed under the article of charge.

8. The respondents contested the claim laid in the OA and stated that the applicant's written statement of defence was considered by the concerned authorities with due diligence, care and application of mind an oral enquiry was conducted with all fairness, by adhering to the principle of natural justice and provided reasonable opportunity of being heard. The applicant participated in the said proceedings and put up his defence and the charge was proved based upon the material produced on record, the statement made by the witnesses. After due application of mind, and considering all aspects of the matter, the disciplinary authority took a lenient view and imposed a minor penalty, though the proceedings were initiated for a major penalty, under Rule 14. The enquiry officer



established that the applicant mis-behaved with other staff members and the letter dated 08.12.1992 regarding the refusal of permission of defamation suit against Shri V.K. Talwar was delivered to him but he refused to accept the same, which was testified by the departmental witnesses. Moreover, the applicant who was placed under suspension, vide order dated 24.10.2005 had been granted the benefits of not only the revocation of the said suspension order but also the full pay and allowances during the period of suspension from 30.9.1999 to 12.9.2005 as the entire period of suspension had been treated as on duty for all purposes. The allegations of vagueness in charges were disputed. It was stated that the additional witness namely Shri D.P.S. Negi was examined by the applicant and the disciplinary authority recorded the reasons for directing further enquiry vide order dated 06.12.1995.

9. I have heard learned counsel for the parties and perused the pleadings carefully.

10. During the course of oral hearing, Shri Yogesh Sharma, learned counsel for applicant maintained the contentions noticed hereinabove and pleaded that the matter needs to be remanded to the concerned authorities to have a fresh consideration of the entire matter, particularly of the penalty imposed, as the first article of charge suffered from vagueness, which contention had been seriously disputed by Shri N.K. Aggarwal, learned counsel appearing for respondents.

11. As noticed hereinabove, there were basic three contentions raised by the applicant, which I will deal in seriatim. Shri Yogesh Shrama, learned counsel forcefully contended that the first article of charge suffers from vagueness as no specific incident, particulars regarding date and time of incident, were mentioned therein. At this stage it would be relevant to notice the said article of charge, which reads as under:-

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"Shri H.K. Pal while functioning as District Savings Officer (South Zone) New Delhi, could not comply with the instructions given to him from time to time by his Deputy Regional Director, and often mis-behaved with other staff members of Jamnagar House, which is a serious case of insubordination and misbehaviour and unbecoming of a Government Servant contravening the provisions of Rule 3(ii) & 3.1 (iii) of CCS (Conduct) Rules, 1964." (emphasis supplied).

12. My attention was also drawn to the statement of imputation of insubordination and misbehaviour vis-à-vis the said charge, which reads thus:-

"Shri V.K. Talwar, Dy. Regional Director, (South Zone), New Delhi informed vide his letter No.655/SZ/Confidential dated 12.11.92 to the undersigned regarding indisciplined attitude of Shri H.K. Pal, DSO, and non-compliance of office instructions given to Shri H.K. Pal, and that he often threatens the LDC and his Dy. Regional Director for dire consequences and often takes credit of boosting that he has slapped the ex-NSC, Shri Khedoker and did not let the Regional Director, National Savings, Haryana to enter his room."

13. Learned counsel vehemently contended that except of disclosing the letter dated 12.11.1992, the aforesaid article of charge is verbatim with the disclosure made in the statement of imputation of insubordination and misbehaviour. Details regarding office instructions issued as well as alleged threat to certain officials have not been particularized and, therefore, the charge suffers from vagueness and material particulars were lacking.

14. On consideration of the entire aspects particularly with the article of charge read with statement of imputation of insubordination and misbehaviour it is clear that the said charge is generalized and not a specific. Similarly it did not disclose complete particulars of the specific incident, which was not complied as well as the nature of threat issued to the officials. It is well-settled law that the charge levelled must be specific and should not carry any ambiguity. Said law in my respectful view has been grossly violated in the facts and circumstances of the present case. But that would not enure any benefit to the applicant particularly when charge article no.1 and charge article no.2 are read together to

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find out as to whether there remains any scope for judicial interference and necessitate the remand to the concerned authorities, on account of such vagueness of the charge. The disciplinary proceedings were initiated for imposition of major penalty under Rule 14 of the CCS (CCA) Rules 1965, which ultimately culminated into imposition of a minor penalty vide order dated 13.1.1999 withholding two increments and that too without cumulative effect. At this stage it would be relevant to notice the second article of charge which reads as under:-

"Shri H.K. Pal, D.S.O., while functioning as District Savings Officer under Shri V.K. Talwar, Dy. Regional Director (South Zone) New Delhi, applied for permission to file a Defamation Suit against Shri V.K. Talwar, Dy. Regional Director. When he was informed that permission is not granted by the Competent Authority, he refused to accept the instructions of the Competent Authority, contravening the provisions of Rule 3.1 (iii) CCS (Conduct) Rules, 1964." (emphasis supplied).

15. Shri N.K. Aggarwal, learned counsel appearing on behalf of respondents is justified in contending that if article-1 is read with article-2 as noticed hereinabove, it would be seen that the same are virtually overlapping and have to be read together to appreciate that the applicant has not made out the case for remanding the said proceedings before the disciplinary authority. A close and cumulative reading of article-1 with article-2 noticed hereinabove, in my respectful view, would indeed lead to inescapable conclusion that the second article of charge in specific deals with the incident where the applicant refuses to accept the instructions of the Competent Authority namely the communicated dated 08.12.1992 as narrated in the statement of imputation of insubordination and misbehaviour to the said article of charge. I may note at this stage that the minor penalty of withholding of two increments was imposed upon the applicant vide order dated 13.1.1999 and the penalty period has expired as on date. No useful purpose would be served in keeping sword of damocles hanging over the

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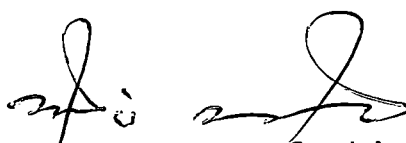
head of the applicant. Therefore, I find no substance and merit in the said contention and accordingly, the same is rejected.

16. Coming to the second contention raised that the additional witness namely Shri D.P.S. Negi, who had not been listed as witness under Annexure-IV, was examined. It is not disputed by the learned counsel for applicant that he indeed was provided an opportunity to cross-examine the said witness, which opportunity had been duly availed of. In these circumstances, I do not find violation of any principle of natural justice particularly when the applicant himself cross-examined the said additional witness and no prejudice was caused to him.

17. Third and last contention raised with regard to failure of the disciplinary authority to record reasons as required under Rule 15(1) of the aforesaid rules, while directing further enquiry into the matter vide order dated 06.12.1995, I may note that the applicant had not challenged the validity of the said order before any court of law in any other proceeding including the present proceedings, and, therefore, at this belated stage I do not find any merit and justification in the said contention.

18. On consideration of the entire matter, I do not find that the applicant has made out any case for interference by this Tribunal in the disciplinary proceedings initiated for major penalty, which culminated into imposition of minor penalty.

19. Accordingly, OA fails and is dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)

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