

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 542/2004

New Delhi, this the 12th day of January, 2007

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)

Shri Jitender Kumar Bhatia
S/o Shri SC Bhatia
R/o F-24/55, Sector-III
Rohini, Delhi – 110 085.

...Applicant

(By Advocate Shri RM Bagai)

V E R S U S

1. Government of NCT of Delhi
through its Chief Secretary
Delhi Secretariat, Indraprastha Estate
New Delhi - 110 002.

...Respondents

(By Advocate Shri Vijay Pandita)

ORDER

Shri ND Dayal,

The applicant who was UDC in the office of Sub-Registrar, Pitam Pura, Delhi was doing the work of collecting fees for inspection, issue of certified copies and duplicating as well as paging of documents such as Sale Deeds. He had no role in processing of General Power of Attorneys.

2. He is aggrieved that a charge-sheet for major penalty under Rule 14 of CCS (CCA) Rules, 1965 was issued to him on 16.7.1999 and after he denied the charges, an enquiry was conducted. Report of the enquiry dated 31.7.2000 was furnished to him and he made the representation on 12.12.2000. The disciplinary authority imposed, vide its order dated 20.7.2001, penalty of reduction to three lower stages in his time scale of pay for three years with further directions that he will not earn increment of pay during the period of such reduction and the reduction will not have the effect of postponing his future increments of pay. The applicant preferred an appeal to the Lt. Governor of Delhi against the order passed by the disciplinary authority i.e. the Chief Secretary to the Government of NCT of Delhi. It is stated that the Lt. Governor dismissed the appeal by order dated 28.1.2003 and issued show cause notice dated 31.3.2003 proposing enhancement of penalty. The representation of the

applicant was considered by the Lt. Governor who enhanced the penalty by order dated 4.11.2003 to reduction in rank to a lower post of Gr. IV DASS for a period of five years which shall debar his promotion till the order of penalty shall be in operation with the further direction that on restoration to Gr. III his pay shall be fixed in the restored grade as admissible under the Rules and he shall be assigned seniority as per the length of service in that grade.

3. The applicant is, therefore, aggrieved by the order of disciplinary authority dated 20.7.2001 and the order enhancing the penalty dated 4.11.2003, which have been impugned by him with the prayer that these orders be set aside with consequential benefits.

4. It would be useful to reproduce the charge against the applicant which is as under: -

"That the said Shri J.K. Bhatia, while functioning as UDC in the Office of the Sub-Registrar, Pitampura during the period September 1997 committed gross misconduct inasmuch as he aided and abated the demand of bribe by Shri N.K. Gulati, the then Sub-Registrar, Pitampura and Sh. P.K. Sharma, UDC of the same office from Shri Sanjay Mittal, Document writer for clearing 18 General Powers of Attorney submitted by him so much so that on 29.9.97 Shri J.K. Bhatia reminded Shri Sanjay Mittal to handover the bribe amount and agreed to send Arone Verma, a tout, who was illegally employed in the office of Sub-Registrar, Pitampura for collecting the bribe and in pursuance of the same Shri Arone Verma accepted Rs.3000/- from Shri Sanjay Mittal on the same day i.e. 29.9.97.

Thus, the said Shri J.K. Bhatia, UDC failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3 (I) (i) (ii) & (iii) of the CCS (Conduct) Rules, 1964."

5. The applicant submits that a complaint was made by one Sanjay Mittal on 29.9.97 to the CBI alleging that Mr. N.K. Gulati, Sub-Registrar and his Reader Shri P.K. Sharma are demanding a bribe in registering 18 General Power of Attorneys and the money should be collected by one Shri Arone Verma working on their behalf. In pursuance thereof, the CBI allegedly laid a trap on 30.9.97 and registered FIR under Section 120 IPC. A copy of the FIR has been annexed to the OA and it is stated that the applicant's name has figured neither in the original complaint nor in the FIR. The CBI recommended closure of the case by filing a report under Section 173 of CRPC. The learned Sub-Judge by order dated 24.7.2002 passed the following order: -

"The trap money was not handed over to any public servant. The tape recording turned out to be of very poor quality so much so that voices could not be matched even by CFSL. Shadow witness did not have occasion to see or hear that transpired between complainant and Sub-Registrar who is alleged to have made the demand. The alleged tout is shown by the evidence to have been called by the complainant to his own office to hand over the money.

Arone Verma, private person, who received the money has his own explanation on the plea that he is engaged in the business of working for advocates at the office of Sub-Registrar to facilitate process of registration.

In these circumstances I would agree with the conclusion reached by the Investigating agency. Closure report is accepted. File be consigned to record room."

6. However, a departmental enquiry was initiated against the applicant. He denied the charges but the Enquiry Officer held the charges as partly proved even though none of the 6 PWs named the applicant and none of the 17 documents incriminated him in the alleged demand of bribe. It is contended that the enquiry report does not clarify in what manner the charge was partially proved. The applicant had no role in registering the General Power of Attorney and his seat was different. The testimony of PW-4 indicates that it was he who was dealing with the registration of General Power of Attorneys. Even the CFSL after examining the tape recording found it to be unreliable and the CBI held that the offence could not be established and thereby moved closure report before the learned Sub-Judge. Similarly, the transcription was distorted. Besides Mr. Arone Verma was not produced as a witness who was alleged to have received the money to give evidence and prove the document S-5 ascribed to him. The applicant has denied that he had voluntarily signed exhibit S-6, which is stated to be his dis-closure memo recorded by CBI after Mr. Arone Verma was caught red handed. As mentioned in the analysis of evidence by the Enquiry Officer this memo shows that Shri P.K. Sharma directed the applicant that he must ask Mr. Sanjay Mittal to pay for the 18 General Power of Attorneys. It is noticed that the shadow/independent witness whose testimony forms a major plank of the prosecution case and initially stated that he was with the complainant and identified the applicant as the person who told the complainant

to send a man to collect the money, was found to be contradictory and unreliable. It has been stated that exhibit S-6 bears the signature of a witness Shri Suraj Prakash who does not appear to have been examined and the exhibit S-6 does not form part of the material available on record.

7. It is argued that contrary to the judgement of the Hon'ble Supreme Court in AIR 1964 SC 364, mere suspicion, surmises and conjectures have been made the basis without considering the grounds taken by the applicant in his representation which are not dealt with in the non-speaking order of the disciplinary authority putting the blame on the applicant for not challenging the transcription exhibits and not producing Shri Arone Verma as his own defence witness. Besides departmental enquiry and criminal proceedings on the same set of facts and evidence cannot be initiated in terms of the Apex Court's judgement in the case of **Captain M. Paul Anthony** 1999 (2) SCR 338. Further, it is urged that a show cause notice issued by Lt. Governor for enhancement of punishment gave no details or reasoning as to why the punishment has been sought to be enhanced thereby prejudicing the applicant with regard to making adequate representation in that behalf.

8. The respondents who are opposing the applicant's prayer have submitted that the criminal and departmental proceedings require different standards of proof and preponderance of probability is sufficient to establish charges in the latter. The EO has come to the conclusion on the basis of the evidence on record. Mr. Arone Verma was not made a PW and his statement was admissible as it was made in the presence of other witnesses and formed part of the memorandum of charges, but the applicant did not avail the opportunity to bring him as defence witness if he considered it necessary. It is stated that the applicant was an accomplice and charged in respect of complicity in the offence of demand of bribe. The grounds taken by the applicant have been denied in general but there is no sufficient explanation to counter the grounds put forward by him with regard to the absence of any evidence against him. It is contended that the applicant was present in the office of the Sub-Registrar and cannot successfully deny the charges.

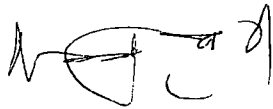
9. In his rejoinder, the applicant has by and large reiterated the stand taken by him.

10. We have heard the learned counsel for both the parties and perused the pleadings. It is noticed that on 9.11.2006, this very Bench of the Tribunal has decided the case of Shri P.K. Sharma, UDC, who was Reader to the Sub-Registrar and was named in the complaint of Mr. Sanjay Mittal as well as in the FIR for having demanded the bribe from him for clearing 18 General Power of Attorneys and payment of the amount to one Shri Prem working on their behalf. The Tribunal took into account the submissions made before it as well as the relevant case law. This included the contention that no reasons have been assigned in the show cause notice for enhancement of punishment nor in the order passed later on affirming the enhanced penalty, the inadequacy of the transcription and mail track cassette as well as denial of opportunity under Rule 14 & 18 of CCS (CCA) Rules, 1965 in this regard. It was opined that by relying upon the confessional statement of Mr. Arone Verma, who was neither listed nor produced as a witness, reasonable opportunity had been denied to defend. It was also noted that the appellate authority had proposed enhancement of the penalty because it was found inadequate but this was the only reason and none other recorded. It was also noted that personal hearing, though asked for before enhancement of penalty, was not accorded. Keeping these aspects in view as well as the settled law on judicial review in such matters, particularly violation of Rules 14 & 18 mentioned above in terms of Apex Court's judgment in the case of **Ministry of Finance & Ors. v. S.B. Ramesh** JT 1998 (1) SC 219, the Tribunal set aside the impugned orders with consequential benefits.

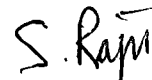
11. We find that the present is a case in which allegation of misconduct is based upon aiding and abetting the demand of bribe from Shri Sanjay Mittal by Shri N.K. Gulati, Sub-Registrar and Shri P.K. Sharma, UDC. If the penalty awarded for the alleged misconduct of demand of bribe itself has been found to be unsustainable against Shri P.K. Sharma, there is a need to keep the same in view while considering the validity of the punishment awarded to the applicant for aiding and abetting the said offence which could not be established.

The contentions raised by the applicant in the present case are essentially similar in nature to those raised by Shri P.K. Sharma in OA 8/2004 and opposed by the respondents therein which have been considered by the Tribunal before coming to the conclusion whereby the punishment orders in that OA were set aside. The appellate order dated 18.11.2003 proposing enhancement of penalty restricts itself to justifying such proposal upon the view that the penalty imposed by the disciplinary authority is inadequate in view of the gravity of the misconduct. It could not be successfully argued that such brief communication in this regard would suffice as a reasonable opportunity afforded to the applicant to represent against the proposal for enhancement of penalty.

12. In view of the forgoing discussion, without going into other grounds, we are unable to uphold the impugned orders, which are set aside with consequential benefits to the applicant. No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

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