

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 2057/92

06.11.1992

(7)

Shri (Dr.) Inderjit Kumar ...Applicant

Vs.

Union of India & Ors. ...Respondents

CORAM :

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

For the Applicant ...Shri G.K. Aggarwal

For Respondent No.1 ...Shri P.H. Ramchandani
For Respondent No.2 ... None

1. Whether Reporters of local papers may *yes* be allowed to see the Judgement?

2. To be referred to the Reporter or not? *yes*

Jain
(J.P. SHARMA)
MEMBER (J)

Jain
(P.C. JAIN)
MEMBER (A)

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For the Applicant ...Shri G.K. Aggarwal

For Respondent No.1 ...Shri P.H. Ramchandani
For Respondent No.2 ...None

JUDGEMENT

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

The applicant is working in the grade of Scientist-G (Group A) in Defence Research and Development Organisation (DRDO) at New Delhi and is aggrieved by the order dt.14.10.1991 (Annexure A1). This Memo is to hold an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The applicant has claimed the relief that the aforesaid Memo is unconstitutional, illegal, mala fide, not maintainable, null and void, ab initio and be quashed and set aside by allowing the application with cost.

2. The facts of the case are that the applicant was transferred from the post of Director, SAG to the Officer on Special Duty vide letter dt.5.7.1990 vice Dr.C.R. Chakravorty, appointed as Director, SAG by the order of even date. The applicant did not hand over the charge immediately

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expressing his inability to hand over the charge in absence of special security clearance. By a subsequent order dt.10.7.1990, the applicant was asked to hand over the keys etc. of the almirahs and cupboards. He was again asked for the same by the letter dt. 30.8.1990, failing which the Headquarter will be constrained to take necessary action in accordance with the Rules. By the order dt.22.3.1991, the applicant was asked to attend a fact finding inquiry conducted by Shri M.K. Abdul Hamid into alleged security lapses in respect of maintenance of classified documents etc., in the Office of Directorate, SAG, which has taken place prior to 6.7.1990. The applicant attended the inquiry and submitted the brief dated 8.4.1991 in the aforesaid inquiry. According to the applicant, the Hon'ble Minister of State for Defence examined the entire material and ordered in writing that there was no question of any major penalty proceedings and the applicant be directed to join duty as OSD at DRDO Headquarters within a period of 15 days and that, failing which, minor penalty proceedings could be considered. The applicant ever since 6.7.1990 remained, as alleged, on leave till he joined his duty on 6.6.1991. According to the applicant, there was change in the Government at the Centre in July, 1991. Respondent No.2, according to the applicant, obtained reversal of the earlier decision taken at the Minister level from successor in office on the same matter sometimes in May, 1992, or later on, and the Memo dt.October, 1991 (Annexure A1) was got issued to the applicant. The applicant again remained on

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leave from 15.10.1991 to 4.8.1992 and according to the applicant, the said Memo was delivered to him on 6.8.1992. The simple question involved in this matter, therefore, is when as per the allegations of the applicant, competent authority had duly taken the decision, that minor penalty proceedings could be considered only if the applicant failed to join duty by 15.6.1991, whether the successor in office could reopen the question on the same facts? If not, the impugned order (Annexure A1) is void, ab initio.

3. The respondents contested the application and stated that the applicant has approached the Tribunal without exhausting the departmental remedies. The application, therefore, is hit by Section 20(1) of the Administrative Tribunals Act, 1985. On facts, it is stated that the applicant was transferred on 6.7.1990 as OSD, but he left office without handing over the keys of the office, rooms and almirahs and cupboards inside the room. He was directed to explain on 10.7.1990 in writing the circumstances under which he had left the office in the forenoon of 6.7.1990 without handing over the keys of the office of the Director, SAG and Annexe Room. He was again directed to hand over the same on 30.8.1990. The applicant, in the meantime, has approached the Tribunal and obtained an order. So in compliance with the judgement of the Tribunal in the earlier OA, a Board was constituted and the Board took possession of the articles inside the almirahs and cupboards after preparing inventory of

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such articles after opening the locked almirahs and cupboards as the applicant in spite of information did not present himself at that time. The Board has made various observations relating to the security lapses in the maintenance of classified documents by the applicant. The applicant was directed to explain by the letter dt. 6.12.1990. However, the applicant moved an application before the Central Administrative Tribunal, but that application was dismissed subsequently. The fact finding report which has gone into the matter involving the applicant leaving some of the classified papers in open condition in his office, not maintaining proper registers for receipt and movement of classified documents and lastly not handing over keys of the cupboards and almirahs inside the room on his transfer while he left office in the forenoon of 6.7.1990. The report was submitted to the Defence Ministry through SA to RM and RRM for consideration whether disciplinary proceedings be instituted against the applicant for the security lapses etc. under the provisions of CCS (CCA) Rules, 1965 and if so whether the proceedings be instituted for imposition of minor or major penalty. On this the Hon'ble RRM (Raksha Rajya Mantri) made the observation that major penalty proceedings are not called for and he shall be asked to join his post within 15 days, failing which minor penalty proceedings may be drawn against him. The file did not pass on to the Prime Minister, who was the proper/competent authority to pass orders in the case. It is in this light that on 31.5.1991, Joint Director, Shri M.L.

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Arora informed the applicant that half pay leave, applied for, was granted till 31.5.1991 and he was required to join duty after expiry of above leave or latest by 15.6.1991. The applicant, therefore, joined as OSD on 6.6.1991. The respondents opposed the grant of the relief, prayed for, by the applicant and prayed that the application be dismissed as devoid of any merit.

4. We have heard the learned counsel for the parties at length and have gone through the record of the case. According to Rule 3 of the Transaction of Business Rules, 1961, all business allotted to a department under the above Rules shall be disposed of by or under the directions of the Minister in charge. A copy of the said rules has been annexed at Annexure R3 to the counter. Rule 3 of the same is quoted below :-

"Disposal of Business by Ministries-Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.

Office Order No.5 dated 24.1.1990 (Annexure-R 4) was issued by the Ministry of Defence, Government of India on the direction of the Raksha Mantri (Prime Minister). The Prime Minister has maintained overall charge of the Ministry of Defence and also outlined a number of cases which shall be

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submitted to him and at Serial No.(vi) and (vii), there is a mention of certain disciplinary matters for award of punishment and appeal cases of Defence Services officers. At item (xxii) activities of DRDO have also been retained. The allocation of work to RRM is outlined in part-2 of the said order of Defence Ministry. The learned counsel for the applicant argued that all residuary matters which are not mentioned in the allocation of work to the Prime Minister should be deemed to have been within the scope of the powers of RRM. This fact is hotly contested by the learned counsel for the respondents on the ground that overall charge of the Ministry is that of the Raksha Mantri. The learned counsel for the defence has also placed reliance on item (vi) and (vii) of part-1 of the above Office Order No.5, which is reproduced below :-

- "(vi) Imposition of punishment of dismissal/removal/ compulsory retirement in respect of civilian officers holding the post of Deputy Secretaries and above and in respect of Armed Forces Officers holding the rank of Brigadier and above in the Army and equivalent ranks in the Navy and Air Force;
- (vii) Appeal cases of Defence Services officers in the rank of Lt.General and above (or equivalent in the Armed Forces).

5. Though the aforesaid cases mentioned may not directly include that of the personnel of DRDO in the pay scale of Rs.5900-7300 in which the applicant is working, but it finds a mention that civilian officers holding the post of Deputy

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Secretary and above shall be dealt with for imposition of punishment, dismissal, removal etc. by the Prime Minister. This at least gives an indication that the disciplinary matters have been retained by the Prime Minister for his own perusal and decision and that has not been allocated to the Raksha Rajya Mantri.

6. The learned counsel for the applicant has referred to the decision of the Privi Council reported in AIR 1937 p-29 (R.T. Rangachari Vs. Secretary of State). It is with regard to the fact that if a decision has already been taken by the competent authority and the decision has been acted upon and is in effective operation, then the Government cannot perport to enter into reconsideration of the matter and to arrive at another and totally a different decision. The facts in the present case are totally different because the case of thke respondents is that Raksha Rajya Mantri was not competent to pass any final order and actually the file was endorsed to Raksha Mantri and was moved through SA to RRM as averred in the counter.

7. The learned counsel for the applicant has also referred to the authorities of Andhra Kesari Education Society Vs. Director of Education, 1989 (1) SCC 392 and in the same journal at p-399, Ashok Chand Singhvi Vs. University of Jodhpur. On a perusal of law referrd to by the learned counsel for the applicant, it is needless to discuss the same

as the facts of those cases are totally different, so also the ratio decided by the Hon'ble Supreme Court. The only issue in the present case is whether the applicant can be chargesheeted under CCS (CCA) Rules, 1965 for certain misconduct for which no chargesheet has been submitted and no decision has been taken by the competent authority to draw the charge memo on the alleged misconduct against the applicant. The inquiry conducted by Shri M.K. Abdul Hameed was only of the preliminary nature and though the applicant was also examined, but the fact finding report which ultimately came before respondent No.2 was submitted to the then Prime Minister through SA, RRM for necessary permission. As held above, the Raksha Rajya Mantri was not competent to dispose of that matter at his own level and he has to forward the same or direct the SA to place the same before the Prime Minister.

8. The learned counsel for the applicant has also referred to the doctrine of promissory estoppel, but that doctrine is not applicable to the present case. The applicant was never made to alter his position on any assurance given to him. The applicant has only been granted the leave due to him till 31.5.1991 and was directed to join immediately thereafter, which the applicant was bound to do and the respondents were under obligation to consider the leave application on its merit and sanction the same to the extent

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the leave was due to the applicant. Thus it cannot be said that the decision, if at all taken by Raksha Rajya Mantri, has been carried out. The applicant was never informed regarding any such decision and all that remained confidential. The case of the applicant that the doctrine of promisory and estoppel applies, cannot be accepted at all.

9. The learned counsel for the applicant also stressed regarding the merit of the charges of which the applicant has been accused. However, in the present case the merit of the charge cannot be considered and what can be seen is whether the memo for serving a chargesheet has been rightly issued against the applicant.

10. Taking all these facts into account, the impugned order dt. 14.10.1991 needs no interference and the application is devoid of merit and is dismissed at the admission stage after hearing both the parties at length. In the circumstances, the parties shall bear their own costs.

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

Cecil Gupta
(P.C. JAIN)
MEMBER (J)