CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(12)

O.A./~~T.A.~~ No. 2189 of 1992 Decided on: 18/2/97
with

O.A. No. 1642 of 1993

S/Shri S.P. Saxena & R.S. Sahdev ....Applicant(s)

(By ~~S~~/Shri G.D. Gupta & G.K. Aggarwal Advocate)

Versus

U.O.I. ....Respondent(s)

(By Shri P.H. Ramchandani Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ DR. JOSE P. VERGHESE, VICE CHAIRMAN(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? yes

2. Whether to be circulated to the other Benches of the Tribunal? No

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2189 of 1992

and

O.A. 1642 of 1993

New Delhi this the 18th day of December, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

O.A. 2189 of 1992

Shri S.P. Saxena
R/o 134, Ashirwad Apartments,
Delhi-110 092. ..Applicant

By Advocate Shri G.D. Gupta.

O.A. No. 1642 of 1993

Shri R.S. Sahdev
Flat 106, Block-9,
Pharma Apartments,
(near Patpadganj Bus Depot)
Delhi-92. ...Applicant

By Advocate Shri G.K. Aggarwal.

VERSUS

Union of India in Defence Ministry
Through: Secretary,
Department of Defence Research & Development
and Scientific Adviser to Defence Minister
and Director General Defence Research and
Development, South Block,
DHQ PO New Delhi-110 011. ..Respondents

By Advocate Shri P.H. Ramchandani.

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Separate departmental proceedings were initiated against S/Shri S.P. Saxena, Scientist 'C' and R.S. Sahdev, Scientist 'B' in the Defence Electronics Application Laboratory (hereinafter referred to as DEAL). The charges against S.P. Saxena were that while working as Scientist in the DEAL during

the years 1983-86, he engaged himself in trade and business without previous sanction of the Government and carried the business in the name of firms of M/s Blue Bir Electronics and M/s Doon Processors in which his father-in-law and his mother were partners and which dealt with DEAL in various supplies and, therefore, failed to maintain absolute integrity contravening the provisions of Rule 3(1)(i) and Rule 15 of the CCS (CCA) Rules, 1965 (hereinafter referred to as Rules), and that he committed misconduct and failed to maintain absolute integrity inasmuch as he was found in possession of secret document belonging to IRDE, Dehradun which was recovered from his house on 10.9.86 and which contained secret information belonging to the Defence Establishment and thereby, he contravened the provisions of Rule 3(1)(i) of the Rules.

2. In the case of other applicant, namely, Shri R.S. Sahdev - O.A. No. 1642 of 1993, he was also charged with failure to maintain absolute integrity and he was engaging himself in trade of business without previous sanction of the Government and carried out business in the name of M/s Blue Bird Electronics and M/s Doon Processors in which the mother of the applicant was a partner and which firm dealt with DEAL in various supplies. He was also charged that he contravened Rule 3(1)(i) and Rule 15 of the Rules. The same Enquiry Officer conducted different proceedings and submitted reports separately.

3. Both the OAs were heard together and are dealt with in this order.

O.A. 2189 of 1992

4. The disciplinary proceedings ended in the penalty of removal from service imposed on the applicant with effect from 18.8.92. Since the disciplinary authority was the President of India, applicant submitted a Mermorial which was treated as a Revision Petition under Rule 29 of the Rules and the President rejected his petition vide orders dated 5.3.1993. The applicant has challenged these orders in this petition and has prayed that these orders be quashed.

5. The facts stated breifly are that the applicant, a Group 'A' Civilian Gazetted Officer was working as Scientist 'C' under the respondents and while working in the aforesaid post, was proceeded against in departmental proceedings dated 20.4.1988 on the charges mentioned earlier. The departmental enquiry resulted in the Enquiry Officer returning the findings that the Article-I, namely, involvement in trade and business was partly proved and the Article-II, namely, that he had failed to maintain absolute integrity inasmuch as certain secret confidential documents relating to Instruments Research and Development Establishment were recovered from the possession of the applicant in the shape of photostate copies which were part of secret file and the applicant had no business to keep these secret documents in his possession, was not proved. However, after considering the report of the Enquiry Officer and disagreeing with the assessment of the Enquiry Officer, the disciplinary authority, namely, the President in regard to Article I and his finding in regard to Artilce-II, came to the conclusion that both the Articles of charge framed against the applicant stood proved against him and, therefore, imposed the penalty of removal from service. His revision petition was also rejected.

6. The applicant assails these orders of the disciplinary authority on the following grounds:-

(i) According to him, Rule 14 of the Rules is applicable to him only in respect of penalties in Rule 11 of the aforesaid Rules other than the penalty of dismissal, removal or reduction in rank and, therefore, the imposition of the penalty of removal was bad in law.

(ii) The impugned order was not passed by the competent authority, namely, the President acting through the Secretary, Department of Defence Research and Development as the Minister-in-charge did not take or act on the advice of the Secretary, DRDO.

(iii) The charges were materially different from those on which the impugned order of penalty was passed. The applicant also alleges that he was not heard on findings and the penalty order was passed without hearing him.

(iv) He also alleges that the disciplinary authority has relied on testimony outside the enquiry on the contrary to the evidence adduced in the enquiry. He has also taken the ground that the penalty is too severe and disproportionate to the misconduct alleged to have been proved and the procedure which is applicable to the applicant was not followed while issuing the impugned order and the Union Public Service Commission was not consulted.

7. The respondents in their counter-reply have contested the averments of the applicant. They maintain that the rules applied in this case were squarely applicable to the Government

servants in toto and there is no exception to Rule 14, as claimed by the applicant. The enquiry was conducted in accordance with the detailed procedure in Rule 14 after giving a resonable opportunity to the applicant to defend his case and there is nothing in Rule 14 of the Rules which goes against the applicant's fundamental rights. As far as the disciplinary authority is concerned, the President is the disciplinary authority in this case and the Minister-in-Charge in this case has exercised the power under the Allocation of Business Rules, 1961 and not the Secretary, Defence Research & Development Organisation, DRDO or any other Secretary in the Ministry of Defence for that matter. Therefore, the respondents maintain that the impugned order has been issued by the competent authority. They also maintain that while disagreeing with the findings of the Enquiry Officer, the disciplinary authority had given detailed reasons for his disagreement as required under Rule 15(2) of the Rules and he was fully competent to record his own findings. They have also pointed out that the applicant had himself admitted his guilt in the charge, that he occasionally helped his father-in-law and his mother, who were partners in the firms. Reasons on disagareement with the findings of the Enquiry Officer in respect of Article-II has also been given by the disciplinary authority. They have averred that even if the documents recovered ceased to have security value and this does not dilute the charge of applicant being found in possession of secret document belonging to the IRDE. The respondents maintain that the quantum of punishment is a subjective assessment of competent disciplinary authority under the rules and the competent authority had taken all the relevant factors and totality of the circumstances while imposing the penalty of

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removal from service. The applicant was given due opportunity and he submitted a detailed representation, which was also considerd before the impugned order was passed.

8. We have considered the contention of the applicant that no proceedings under Rule 14 of the Rules can be taken in respect of three major punishments under Rule 11 which are subject matter of Article 311 of the Constitution. The learned counsel for the applicant argued that the proceedings initiated against the applicant were under Rule 14 and that itself excluded the punishments and penalties prescribed in clauses (v) to (ix) of Rule 11 which included removal from service. This, in our view, is totally misconceived. Rule 14, as extracted, provides under Rule 14(1) that no order imposing any of the penalites specified in clauses (v) to (ix) of Rules 11 shall be made except after an enquiry in the manner provided in this Rule and Rule 15 of the aforesaid Rules. The procedure prescribed under Rule 14 and Rule 15 are quite in consonance with Article 311 of the Constitution and in this case, the applicant admits that he is governed by CCS (CCA) Rules but submits that under Rule 14, he cannot be proceeded and imposed punishment of removal of service which is a major penalty. This, in our view, is not a correct appreciation of the Rules. The learned counsel for the applicant then argued that the concerned Secretary of the Department of Defeence Research & Developmemnt Organisation was not consulted and the order was passed without taking his advice. Under the Rules of Allocation of Business, as stated by the respondents, the disciplinary authority, namely, the President acts on the basis of the advice tendered by the Minister-in-Charge. So long as the Minister-in-Charge had advised in this case, the competency of the order passed by the disciplinary authority in this case cannot be faulted. The learned counsel for the applicant then

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argued that the reasoning given by the disciplinary authority in disagreeing with the Enquiry Officer is vague and there is no direct prooving of the charges against the applicant. The fact that the applicant occasionally helped his father-in-law and his mother who were partners in two firms by writing in certain documents, did not necessarily prove that he had engaged himself in the trade or business, as charged. He also argued that even in regard to the Article-II of the charge, it was held to be not proved by the Enquiry Officer. The reasoning given for disagreement by the disciplinary authority cannot be said to be logical and to have conclusively established guilt and the finding as shown in the Article of Charge.

9. We have considered the averments and the arguments of the learned counsel for the parties.

10. In disciplinary matters, the Courts and Tribunals cannsot sit in appeal over the decisions of the disciplinary and appellate authorities. The Courts also cannot go into the correctness of the decision. The judicial review is limited only to see whether the decision making process was vitiated in any manner and whether the delinquent official was provided adequate opportunity of defence. The law is well settled on this subject. We only have to refer to Union of India Vs. P. Upendra Singh, JT 1993 (1) page 658, H.B. Gandhi, Excise and Taxation Officer Vs. Gopinath and Others, 1992 Supplementary 1 (2) SCC 312, B.C. Chaturvedi Vs. U.O.I., J.T. 1995 (8) Supreme Court 865 and Government of Tamil Nadu and Others VS. A. Rajapandian, AIR 1995 (3) SC page 561.

11. From the facts on record, we have no material to conclude that the decision making process has been vitiated in any manner. Enquiry was started under the relevant provisions of law and was conducted according to the procedure prescribed under the rules. The disciplinary authority has given a detailed reasoning for disagreement with the findings of the Enquiry Officer and came to the conclusion that both the charges have been proved. The applicant was also given due opportunity to represent his case which was done by him vide his representation dated 11.6.1991, which is stated to have been duly considered before the impugned order was issued. We do not find any infirmity in the procedure or in the conduct of the proceedings. The correctness of the decision arrived by the competent authority cannot also be examined by us sitting as a Court of appeal.

12. In the circumstances, this applicant has no merit and has to be dismissed.

O.A. No. 1642 of 1993

13. The grounds taken by this applicant are also the same as in the earlier case of Shri S.P. Saxena - O.A. No. 2189 of 1992 and, therefore, our observations in the above case in regard to the Article of Charge against this applicant will equally apply in this case also. Further, the disciplinary authority while dealing with the disagreement with the Enquiry Officer and the assessment 'C' had recorded that the applicant had himself admitted during the course of oral enquiry proceedings that he used to maintain rough book of accounts and, therefore, it was proved that he used to maintain record of two firms and, therefore, had come to the conclusion that the facts and

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circumstances were sufficient to indicate that the applicant was involved in carrying benami business and thus involved himself in the business of two firms. In view of this, the disciplinary authority concluded that the charge framed against him was held to be proved.

14. In the light of our obsevations in O.A. No. 2189 of 1992, we do not find sufficient material to interfere in this O.A. also. In the result, this application is also devoid of merit and has to be rejected.

15. In the result, these two Original Applications are dismissed as devoid of merit but without any order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

(DR. JOSE P. VERGHESE)
VICE CHAIRMAN(J)

Rakesh
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