

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

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NEW DELHI, THIS 6th DAY OF JUNE 1997.

DA NO. 485/92

SHRI B.L. KOLI
52/25 A.F. Palam
Mouldeline
Delhi Cantt.-10

...APPLICANTS

(By Advocate - Ms. Ruksana Chaudhary
proxy for Ms. Janani)

VERSUS

1. Union of India through
Its Secretary
Ministry of Defence
NEW DELHI

2. Air Vice Marshal
Sr. Officer Administration
HQ Western Air Command
Subroto Park
NEW DELHI

3. Air Commodore
Air Officer Commanding
No.3 Wing
Air Force Palam
NEW DELHI

..RESPONDENTS

(By Advocate - Shri K.R. Sachdeva)

ORDER

R.K. AHOOJA, MEMBER (A)

The facts of the case in brief are that ^{while} the applicant was employed as a Mess Waiter in the Senior NCOs Mess No.3 Wing, Air Force Station Palam, an enquiry was initiated to enquire into the circumstances leading to an altercation between Mess staff and the dining members on 4.5.90. The inquiry commenced on 22.5.90. It was alleged that during the course of the inquiry, the applicant slapped one Sergeant Ganguli. On that basis a charge sheet in the following terms was served upon the applicant:-

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"On 22nd May 1990 at 1220 hours during the course of enquiry at 3 Wing AF conference hall, to inquire into circumstances leading to an altercation between Mess staff and dining in members of SNC's mess on 4th May 1990, Shri B.L. Koli (P.No. 315/1293) Mess Waiter slapped service No.657638 SGT Ganguli, A AF/FIT of No.3 Wing AF and thus contravened Rule 3(i)(iii) of CCS Conduct Rules 1964."

2. The inquiry officer held the charge proved. The disciplinary authority vide impugned order imposed upon the applicant the penalty of compulsory retirement. The applicant preferred an appeal which was also rejected. It is against this order (Annexure 9) that the applicant has approached this Tribunal.

3. The case of the applicant is that there is total non-application of mind by the Inquiry Officer, disciplinary authority and the appellate authority. According to him, the entire inquiry proceedings and penalty imposed are vitiated on account of violation of principles of natural justice and statutory rules. It is alleged that he was not permitted to have a defence assistant and copy of the inquiry report was not given to him before imposing the penalty. The applicant also says that the inquiry officer was biased against him. The penalty imposed upon him of compulsory retirement, it is submitted, is also severe and disproportionate to the alleged misconduct. The respondents controvert the above allegations.

4. We have heard the counsel on both sides and have gone through the pleadings on record also. Ms. Choudhary, ld. counsel for the applicant, submitted that the appellate authority should have taken into account the fact that the applicant had been denied the help of defence assistant, that the disciplinary authority imposed the penalty without providing a copy of the inquiry report to the applicant and a note to the effect that the penalty imposed is totally disproportionate to the alleged misconduct. As regards the first point, she submitted that the applicant had made a request for the assistance of one Shri N.C. Chaturvedi and had asked the inquiry

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officer to write to the controlling officer of Shri Chaturvedi to spare his services. However the inquiry officer took the stand that he was not required to write such a letter and it was for the charged officer to bring his defence assistant. The ld. counsel pointed out that Shri Chaturvedi could not have joined the disciplinary proceedings without the permission of his controlling officer and that would have been available only if the inquiry officer had addressed a communication to the controlling officer. The ld. counsel for the respondents, Shri Sachdeva, however, pointed out that not only full opportunity of defence assistant was provided to the applicant but the disciplinary authority had in fact, on a representation made by the applicant, remanded the case back to the inquiry officer to undertake the inquiry de novo. On consideration of the report of the inquiry officer (Annexure VII) ^{annexed} by the applicant himself, ~~we~~ find that the contention of the applicant's counsel is not valid. On the very first page of his report, the inquiry officer has stated that Shri Chaturvedi could not be made available by his officer at Air Headquarters due to service exigencies. Therefore, the second choice of the applicant, one Shri S.S. Mishra, a retired Central Govt. officer, was allowed as a defence assistant. It was after some considerable time when the inquiry had proceeded that the applicant once again made a request for the services of Shri Chaturvedi and also produced a willingness certificate from the latter. A decision about Shri Chaturvedi, as mentioned earlier, had been taken at the very beginning when his services could not be spared by his controlling officer. ~~Whether~~ Shri Mishra had then been appointed defence assistant and had participated in the inquiry proceedings for some considerable time. In ~~our~~ opinion, the inquiry officer was fully justified in exercising his discretion in not taking up the case for the services of Shri Chaturvedi with his controlling officer again.

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5. The second ground taken by the ld. counsel for the applicant relates to the non-supply of inquiry report before the penalty was imposed. The penalty of compulsory retirement was imposed on the applicant vide order dated 10.7.91. The decision in UOI VS. MOHD. RAMZAN KHAN JT 1990 (4) SC 456 was delivered on 29.11.90. In that case, it was held that non-furnishing of the report would amount to violation of principles of natural justice and render the final order ^{open} to challenge hereafter. Shri Sachdeva submits that the report of the inquiry officer was furnished to the applicant along with the order of the disciplinary authority. The applicant, he points out, is not impugning the order of the disciplinary authority but that of the appellate authority and it is an admitted fact ~~that~~ even if the report of the inquiry officer was not given to the applicant prior to the order of the disciplinary authority, it was certainly with him before he filed his appeal. Thus, no prejudice was caused to the applicant by the non-supply of the inquiry officer's report in respect of the order under challenge, viz., the order of the appellate authority. It is submitted that in the case of MANAGING DIRECTOR ECIL VS. B. KARUNAKAR JT 1993 (6) SC 1, it was held that a copy of the inquiry report should be furnished to the charged officer and not furnishing the report amounts to denial of natural justice. But at the same time, it was held that just ~~because~~ a copy of the inquiry officers' report is not furnished, punishment ought not to be set aside as a matter of course. It is directed that in such cases a copy of the report should be furnished to the charged officer and comments obtained on that behalf and that the court should interfere with the punishment order only if it is satisfied that there has been a violation of justice. In the present case, the applicant not only had a copy of the inquiry officer's report but had it even before the appeal was filed and the impugned appellate order was passed. The ld. counsel submits that the applicant has failed to show as to how non-supply of the report has caused prejudice to him.

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6. We have given careful thought to the rival arguments on this issue. In the ECIL case, the Constitution Bench of the Supreme Court observed as follows:-

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not on account of denial to him of the report, has to be considered on the facts and circumstances of each case.

The Supreme Court in a Division Bench judgement in STATE BANK OF PATIALA VS. S.K. SHARMA JT 1996 (3) SC 723, after reviewing the case law on the subject, has pointed out that the principles of natural justice cannot be reduced to any hard and fast formula and their applicability depends upon the context and the facts and circumstances of each case, the objective being to ensure a fair hearing, a fair deal to the person whose rights are affected. The Court also observed that "whichever the case, it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined." If we now apply the dictum of the Supreme Court in ECIL and State Bank of Patiala (Supra) to the present case, it would be apparent that no prejudice has been caused to the applicant by non-supply of the inquiry report prior to passing of the order by the disciplinary authority. This is because the order which is impugned is the appellate order and admittedly at that stage the inquiry report was with the applicant. Indeed one of his grievances is that the appellate authority has not taken into consideration the fact that the disciplinary authority passed the order without first affording him an opportunity to offer his defence against the conclusions of the inquiry officer. But he does not state as to in what manner this prejudice is caused. As has been held by the Constitution Bench of the Supreme Court in ECIL (Supra) and reiterated in State Bank of Patiala (Supra), the prejudice caused to a person has to

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be seen in the facts and circumstances of the particular case.

✓ If the applicant himself cannot explain the prejudice caused to him, then a mere citation of the allegation cannot suffice. The allegation of the applicant before the appellate authority was regarding the bias and prejudice of the inquiry officer, denial of engaging another defence assistant, the disproportionate nature of the punishment etc. In fact, in his appeal (A-8), there is not even a mention about the non-supply of the inquiry report to him.

7. In the facts and circumstances of the case, therefore, we conclude that no prejudice was caused to the applicant, and in the ratio of the State Bank of Patiala case (Supra) there is no ground for interference by the Tribunal.

8. The ld. counsel for the applicant also argues that even if it were assumed that the applicant was guilty of slapping the NCO, this was not an offence for which he should have been compulsorily retired and deprived of his livelihood. It was pointed out that initially an inquiry was ordered on the basis of a complaint filed by the applicant that there was an altercation between him and one Sergeant Ganguli when the Sergeant had slapped the applicant. During the course of the inquiry, the applicant was asked as to how Sergeant Ganguli being a right-handed person could slap him on the right cheek. On this, the applicant finding an opportune moment during the course of the inquiry, slapped the Sergeant on the left cheek with his left hand in order ostensibly to demonstrate how he could similarly have been hit in the first place. The ld. counsel has stated that even if for the sake of argument, this allegation was accepted to be correct, then a removal from service, throwing the applicant and his family out on the street, could only be regarded as perverse. We are unable to agree with this contention. A charge of slapping a uniformed official, whatever be the pretext, cannot be taken lightly and the punishment imposed cannot be regarded as perverse.

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There are a catena of judgements of the Supreme Court (UOI VS. PARMA NANDA AIR 1989 SC 1185) which lay down the principle that if the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own decision for that of the authority about the adequacy of penalty unless it is mala fide and is certainly not a matter for the Tribunal to be concerned with.

9. In the light of the above discussion, we find no ground for interference. The O.A. is accordingly dismissed.
No costs.

~~Plethora -~~
(R.K. AHOOJA)
MEMBER (A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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