

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(12)

Regn.No. OA-530/92

Date of decision: 27.11.1992

Shri R.R. Sharma

.... Applicant

Versus

the Administrator,
Union Territory of
Delhi & Others

.... Respondents

For the Applicant

.... Shri Inderjit Sharma, Advocate

For the Respondents

.... Smt. Geetha Luthra, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

We have gone through the records of the case and
have heard the learned counsel for both the parties. The
applicant, who is Grade I Stenographer, Secretariat Administra-
tion Department, Delhi Administration, filed this application
seeking the following reliefs:-

(i) to quash the order dated 13th December, 1988

passed by respondent No.3 imposing penalty of

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withholding of three increments without
cumulative effect; and

(ii) to quash the order dated 21.2.1992 passed by
respondent No.1 reverting the applicant from
his present appointment in the OANI Civil
Service.

2. The applicant was served with a Memo. dated 2.5.1988
asking him to explain as to why suitable disciplinary action
should not be taken against him for the following lapses:-

(a) Disobedience of written official direction
contained in memo. dated 17.2.1988.

(b) His failure to appear before the Civil
Surgeon on 23.2.1988 along with his previous
medical record.

(c) Wilful absence from office from 14.3.1988.

He was ordered to submit his explanation within seven days
from the date of receipt of the memo. failing which, he
would render himself liable for disciplinary action under
CCS(CCA) Rules, 1965.

3. The applicant submitted his explanation on 11.5.1988
to the aforesaid memo. dated 2.5.1988. As per memo. dated
15.6.1988, the applicant was informed that his explanations
were not found to be satisfactory and thus he was warned to
be more careful in future.

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4. Thereafter, the applicant was served with a charge sheet under Rule 16 of the CCS(CCA) Rules, 1965 vide memo, dated 14.9.1988 on the following counts:-

- i) Guilty of wilful absence w.e.f. 17.8.1987 and failure to produce medical certificate as required to produce.
- ii) Guilty of disobedience of the instructions/ directions of the superior officers as he did not present himself before the Staff Surgeon for medical check-up.
- iii) Guilty of lack of devotion to duty as he is wilfully absenting from duty without any valid reasons.

5. The applicant submitted his explanation. The Secretary (Administration), Delhi Administration, vide his order dated 13.12.1988 imposed on the applicant the penalty of withholding of three increments without cumulative effect with immediate effect.

6. The applicant filed an appeal dated 8.3.1989 which was disposed of by order dated 16.4.1992. The operative part of the appellate order is as under:-

"NOW, THEREFORE, the undersigned hereby decides that the impugned order dated 13.12.88 be quashed with retrospective effect and accordingly quash the impugned order dated 13.12.88 with retrospective effect. The undersigned further order that fresh charge sheet on the grounds enumerated in the penalty order dated 13.12.88 may be issued."

7. In the meanwhile, the Administrator of Delhi appointed the applicant along with 59 other officers to the DANI Civil

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Service on ad hoc basis for a period of six months or till further orders, whichever was earlier, vide order No.F.30/18/89-S.1 dated 22.1.1990. However, the respondents passed an order on 21.2.1992 reverting the applicant from his ad hoc appointment to the DANI Civil Service. This is under challenge before us.

8. The applicant has contended on his promotion, the alleged lapse/misconduct was deemed to have been condoned.

He has also argued that the order of reversion is illegal and violative of Articles 14 and 16 of the Constitution.

9. According to the respondents, in the order of promotion dated 21.1.1990, the name of the applicant was inadvertently included as the Services Department was unaware of the pendency of departmental penalty and appeal thereto. On 21.2.1992, the Administrator, Delhi, passed orders quashing the earlier order dated 22.1.1990 whereby the applicant was appointed as ad hoc DANIC Officer. This was by way of correcting a mistake and the applicant cannot claim advantage of any mistake committed by the Department.

10. The learned counsel for the respondents have stated at the Bar that a fresh charge-sheet has been issued to the applicant on 19.9.1992. According to the learned counsel for the applicant, the fresh charge was issued mala fide and that it should not be taken into account. He laid

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emphasis on the appellate order dated 16.4.1992 by which the impugned order dated 13.12.1988 has been quashed with retrospective effect.

11. In Union of India Vs. K.V. Janakiraman, AIR 1981 SC 2010, the Supreme Court has dealt with a somewhat similar case in Civil Appeals Nos.51-55 of 1990 in para.14 of the judgement. In that case, criminal prosecutions launched against some employees were dropped by order dated 14.1.1985 without prejudice to the departmental proceedings which were subsequently initiated and formal charge-sheet was issued to them on 24.12.1987. The D.P.C. met in July, 1986 to consider the cases of the employees for promotion but resorted to sealed cover procedure in view of the pendency of the disciplinary proceedings against them. Formal charge-sheet was issued either in August or December, 1987. The Supreme Court held that when the D.P.C. met in July, 1986, it had before the record of the withdrawal of the prosecution without prejudice to the authorities' right to institute departmental proceedings. In view of the peculiar facts of the case, the D.P.C. was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987.

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12. In our opinion, the applicant is not entitled to the relief sought by him. The quashing of the impugned order dated 13.12.1988 was without prejudice to the issue of fresh charge-sheet on the same grounds and a fresh charge-sheet was issued on 19.9.1992. In the facts and circumstances, the impugned order of reversion of the applicant as well as the other actions taken by the respondents, cannot be faulted. The application is, accordingly, dismissed, leaving the parties to bear their respective costs.

B.N. Dholiyal
(B.N. Dholiyal)
Administrative Member

27/11/92
27/11/92
(P.K. Kartha)
Vice-Chairman(Judl.)