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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 1646/1993 Date of Decision: 28-9-1998

Shri Gulab Singh .. APPLICANT

(By Advocate Shri S.C. Luthra

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri Mrs. Meera Chhibber

CORAM:

THE HON BLE SHRI T.N. Bhat, Member (J)

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES ✓

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

(S.P. Biswas)
Member(A)

Cases referred:

1. R.D. Sheth V. International Airport Authority (1979) 3 SCC 489
2. Govind Prasad V. R.G. Prasad (1994) 1 SCC 437
3. K.R. Deb V. Collector of Central Excise (1971) 1 SLR 29
4. Somnath Sharma V. UOI (1994) 27 ATC 771
5. Hari Ram V. Delhi Admn. & Ors.
6. Chandigarh Admn. & Anr. V. Jagjit Singh & Anr. JT 1995(1) 445
7. State Bank of Bikaner & Jaipur V. A.K. Gulati (CA No.9226/96)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1646/1993

New Delhi, this 28th day of September, 1998

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Gulab Singh
CG-1, Qr.No.15-C, Vikaspuri
New Delhi .. Applicant

(Through Shri S.C. Luthra, Advocate)

versus

Unionof India, through

1. Secretary
   Ministry of Defence
   South Block, New Delhi

2. Director General
   Ordnance Services
   Army Hqrs., DHQ, New Delhi

3. Officer-in-charge
   Army Ordnance Corps Record
   Post Box No.3
   Secunderabad-500015 .. Respondents

(Through Mrs. Meera Chhibber, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Applicant, an UDC under Central Ordinance Depot under Respondent No.3, is aggrieved by A-1 order dated 5.5.92 imposing on him the penalty of removal from service. He is also aggrieved by responents' inaction in not disposing of his A-2 appeal dated 15.7.92 against A-1 order. Consequently, he seeks issuance of directions to respondents to quash disciplinary proceedings leading to A-1 order.

2. Background facts, necessary for appreciation of the legal issues, are as hereunder:

The applicant was served with a major penalty charge-sheet on 17.9.90 alleging that he was absent from duty with effect from 3.6.87 to 29.1.88. An enquiry was conducted under Rule 14 of CCS(CCA) Rules, 1965. The inquiry officer (IO for short) in his report submitted on 30.6.91 found the applicant responsible for both the charges. Besides being absent from duty, the IO held him guilty of disobeying respondents' order for not obtaining medical certificate in violation of Rule 3 of CCS (Conduct) Rules, 1965. The applicant alleges that respondents have turned Nelson's eye on his appeal dated 15.7.92 by keeping the same undisposed of for more than one year forcing him to file this OA on 5.8.93. When the matter came on 20.5.97 for regular hearing, the Tribunal felt that the respondents, while passing the impugned order dated 5.5.92, did not take into consideration the details in para 56 of the IO's report. In other words, the disciplinary authorities failed to consider the fact that the entire period of absence which is the subject matter of both the articles of charges has been regularised in May, 88 well before 17.9.90 when the charge memo was served upon the applicant. The petitioner had sent a representation dated 27.9.91 against the IO's report dated 13.6.91. On being satisfied, based on records, that the representation was actually made and since this was not considered despite leave having been sanctioned apriori, the Tribunal concluded that the impugned order was vitiated by non-application of mind. Vide its order dated 20.5.97, this Tribunal quashed

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the order dated 5.5.92 and the respondents were directed to reinstate the petitioner. This order was challenged by the petitioner (respondents in the original application) in a writ petition (No.5296/97) before the Hon'ble Delhi High Court on the ground that her submissions should have been noted in order dated 20.5.97 and not brushed aside. With the consent of both the parties the Hon'ble High Court remitted this matter to this Tribunal for a fresh hearing. While remanding the case, the Hon'ble High Court also annexed a copy of the order dated 29.3.96, apparently produced by the petitioner therein, to which the respondents therein had raised objections. However, the Hon'ble High Court directed that the OA could be decided by this Tribunal on merits in terms of law.

3. The main emphasis of Shri S.C. Luthra, learned counsel for the applicant is on the order of the disciplinary authority dated 6.5.88 by which the period of petitioner's absence has been treated as leave without pay and this has had the effect of knocking away the basis for the order removing the applicant from service on account of unauthorised absence. The foundation for removal of the applicant is the finding recorded to the effect that the petitioner was unauthorisedly absent for the specific period from 3.6.87 to 29.1.88. By order dated 6.5.88, leave without pay was granted thus regularising the unauthorised absence. It is in this background it was urged that what was once unauthorised became authorised even well before the

charge-sheet could be issued after two years in 1990. Responsible respondents like the Ministry of Defence is required to hold to its standard and promise in terms of the principles laid down in the case of **R.D.Sheth V. International Airport Authority (1979) 3 SCC 489,** decided by the Apex Court. Learned counselwould further add that withdrawal of the sanction after 8 years on 29.3.96 and that too by an administrative order with retrospective application is impermissible in law as laid down by Hon'ble Supreme Court in the case of **Govind Prasad V. R.G. Prasad (1994) 1 SCC 437.**

4. Yet another plank of applicant's attack is that CCS (CCA) Rules, 1965 do not contemplate de-novo enquiry. The counsel would contend that a de-novo enquiry is not permissible under the rules and the law has been well settled by a Constitution Bench of the Hon'ble Supreme Court in the case of **K.R. Deb V. Collector of Central Excise (1971) 1 SLR 29.** Rule 15 of CCS(CCA) Rules, 1965 provides for one enquiry only. It may in some cases happen that there has been no proper enquiry because of some serious defect in the enquiry or some important witnesses or documentary evidence were not available or examined for some valid reasons, the disciplinary authority in those cases may ask the IO to record further evidence by way of further enquiry, but there is no provision in this rule for completely setting aside the previous enquiry and then ordering a de novo one. This has been

followed by various High Courts and in a judgement rendered by the Tribunal in the case of **Somnath Sharma V. UOI (1994) 27 ATC 771.**

5. In support of his contention, the counsel also cited the decision of the Ahmedabad Bench in the case of Agassi V. UOI 1997 (2) ATJ 659 wherein it was held that only gaps in the enquiry can be filled up but there cannot be any fresh enquiry.

6. Though the learned counsel has taken a few other pleas such as non-receipt of appellate order dated 11.3.94 thus the same having become non-est in the eyes of law and that the disciplinary authorities have not considered all the points in applicant's appeal dated 27.9.91, yet he relied heavily on the procedural infirmities indulged in by the respondents. Adding stress on this point he drew our attention to the details in para 5.4 of the OA and submitted that provisions under 14.18 and 14.19 of the CCS (CCA) Rules stand conspicuously violated. Learned counsel for the applicant would further contend that mere absence from duty, even though not authorised by grant of leave, cannot be treated as misconduct as per decision of the Hyderabad Bench of the Tribunal in OA 541/92 in the case of A. Prasada Rao V. GM/SC Railway and Ors. decided on 26.7.94 (available in 1/95 Swamy News 63).

7. Equally strong and strenuous efforts were made by Mrs. Meera Chhibber, learned counsel for the respondents in opposing the claims. Drawing support from the decision of this Tribunal inthe case of **Hari Ram V. Delhi Admn. & Ors {Full Bench judgements (CAT) Vol.III p.240}**, the learned counsel argued that mere stipulation in an order that the period of absence shall count as leave without pay will not amount to condonation and regularisation of absence. The real intention in such orders has to be seen. She drew our attention to the specific part of para 3 of the aforesaid Full Bench order. That portion is reproduced below:

> "As the intention of the disciplinary authority was clearly to terminate the services of the petitioner, the direction to treat the period of absence as leave without pay has to be hormoniously construed. Rule 25 of the CCS (Leave Rules, 1972, which admittedly governs this case, deals with unauthorised absence after expiry of leave reads -
>
> "(1) Unless the authority competent to grant leave extends the leave, a government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half-pay leave,m to the extent such leave is due, the period in excess of such leave due being treated as exoraordinary leave.
>
> (2) Wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action"
>
> The latter part of the direction on which the learned counsel for the petitioner heavily relies, has obviously been issued bearing in mind the provision of Rule 25, Clause (1) of Rule 25 makes it clear that in th absence of a specific order by the competent authority extending the leave, absence after the end of leave would

> result in no leave salary for the period of such absence. this is a statutory consequence that flows when a Government servant remains absent after the expiry of the leave granted to him. He would not be entitled to salary for the said period. That is precisely what is sought to be conveyed by the latter part of the directions in the impugned order, which says the period of his absence will be treated as leave without pay".

8. The above order of the Full Bench was based on judgement of the Apex Court in State of MP V. Harihar Gopal, 1969 SLR 274, wherein the Apex court, after considering all the issues held that "the order granting leave was made only for the purpose of maintaining the correct record of service and cannot have the effect of invalidating the first order of termination".

9. She would further contend that A-7 order conveying sanction of leave is non-est, being issued by a Group Officer who is not competent to do so. To add strength to this contention of her's, she also drew our attention to the provisions under Standing Orders 1978, AOC Office instructions of November, 1967 on "**absence without leave**" as well as orders under DO Part I dated 7.11.85 which lays down the manner such cases are to be dealt with. In short, it stipulates that:

> "In future, all OsIC/Gp. Officers will also ensure, that individuals who rejoin their duty after absenting themselves from duty for more than one month will not be allowed to resume their duties without taking prior permission of the Adm Officer"

10. In the light of the above, the order of sanction could not have been issued by an incompetent authority. Hence this is an invalid order. She would even contend that the said order was got issued by the applicant, in connivance with the staff, by keeping the new Group Officer in dark.

11. Again, the learned counsel for the respondents further submitted that it is not only a case of unauthorised absence but also an act of disobedience to orders of superiors. On 14th September, 1987, the applicant was duly ordered to go in for a second medical opinion and come with necessary certificates for the purpose of dealing with the matter. The applicant, however, decided to disobey the orders and remained absent again, without prior permission, from 14.9.87 to 28.1.88. Thus, guilt of misconduct on the part of applicant gets well established, she contended.

12. That apart, learned counsel for respondents submitted that the applicant has come to this Tribunal with uncleaned hands and that alone would be sufficient enought to dismiss the OA with costs in terms of law laid down by the Apex Court reported in **JT 1997 (10) SC 328.** Besides the item in para 10, the fact that the applicant was served with a major penalty charge-sheet earlier in 1988 and an inquiry was also held in 1988 has been concealed and yet the applicant has made allegations that the present charge-sheet has been

served after a lapse of about two years from the date leave was sanctioned. This is impermissible in law. The applicant has not even challenged the de-novo enquiry.

13. We have heard the learned counsel for both the parties and have gone through the materials on record. Two questions arise for consideration. These are: (i) whether leave granted by a Group Officer, in the background of instructions under the Standing Orders, could be considered as valid in the eyes of law? and (ii) whether it is open for the disciplinary authority to order De-novo enquiry in case it is found that there has been some lacuna in the enquiry or some material evidence was omitted at the initial stage?

14. With respect to issue No.(1), we find that the said order dated 6.5.88 regularising the period of absence was issued by a Group Officer in the field. Prior to that, the authorities had issued elaborate orders in November, 1985 as to how the period of absence without leave could be regularised. In the light of the orders of the Administrative Officer on 7.11.85 under para 2301/ADM, a Group Officer shouldhave taken the prior permission of the AO before issuing sanction regularising the period. The said sanction having been issued by the incompetent authority has to be treated as invalid in the eyes of law. The applicant cannot acquiesce in a wrong and claim the benefit out of that wrong. Trying to achieve an illegal benefit arising out of

illegality is not permissible in terms of the law laid down by the apex court in **Chandigarh Admn. & Anr.V. Jagjit Singh & Anr. JT 1995(1) 445.** Submission of respondents' counsel in this respect commands acceptance.

15. We find that the second question has been decided in the case of S.N. Sharma (supra). We reproduce the relevant paragraphs: "For decising this question, before going into any authority on the point, we will first see what the statute provides for. Rule 15 of CCS(CCA) Rules lays down the procedure and the action to be taken by the disciplinary authority on the enquiry report. It reads thus:-

> 15(1) "The disciplinary authority, if it is not itself the IO may, for reasons to be recorded by it in writing remit the case to the enquiry authority for further enquiry and report and the enquiry authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 14, as far as may be.
>
> 15(2) The disciplinary authority shall, if it disagrees with the findings of the enquiry authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

A careful reading of the above quoted provisions would clearly show that under sub-rule (1) of Rule 15, the disciplinary authority can remit the case to the enquiry authority for further enquiry and report for reasons to be recorded in writing. Further enquiry does not mean a de novo enquiry afresh. What is a further enquiry as contempated under Rule 15(1) of the CCS (CCA) Rules came up for consideration before the Hon'ble Supreme Court in **K.R.Deb V. Collector of Central Excise, Shillong.** Their Lordships of the Supreme Court in para 13 of the judgement observed as follows:

> "It seems to us that Rule 15 on the face of it, really provides for one enquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the disciplinary authority may ask the IO to record further evidence. But there is no provision in Rule 15 for completely setting aside previous enquiries on the ground that the report of the IO or officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9."

In Para 14 their Lordships further observed that:

> "In our view the rules do not contemplate an action such as was taken by the Collector on 13.2.1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the applicant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant".

4. The disciplinary authority if it is of opinion that the enquiry is incomplete or irregular in any respect can, while acting under sub-rule 1 of Rule 15, only remit the case for further enquiry and cannot order a de novo enquiry. There is a world of difference betrween de novo enquiry and further enquiry. In the further enquiry whatever omission was there in the enquiry which can be supplied as per rules, can be supplied by adducing further evidence. But if it is a de novo enquiry, whatever was recorded at the earlier enquiry would not form part of the enquiry file which is likely to prejudice the government servant facing the charge. If that is allowed, the disciplinary authority, if he finds that the evidence at the enquiry is in favour of the charged officer, can wipe them off by ordering a de novo enquiry to be commenced with a clean slate. That is not the legislation intent in framing the rules. The position is very clear from the rule itself. The observations of the Hon'ble Supreme Court quoted above make it further clear. This is not in dispute that a de novo enquiry has been ordered in this case.

16. We find that a similar view has been taken by the Apex court in the case of State Bank of Bikaner & Jaipur Vs. Ajay Kumar Gulati (Civil Appeal No.9226/96) decided on 16.6.96. It was held therein that in the case of de novo enquiry, the stage to start fresh enquiry is after the evidence already recorded. In the present case, we find that the main lacuna relates to an initial and elementary item as regards the period of absence. The Apex Court has held that a fresh enquiry should not be held from the very beginning. The disciplinary authority has, Therefore, faultered in this respect in the present case. Respondents have also acted illegally by issuing on 29.3.96 an executive order having retrospective effect.

17. In the light of the detailed discusions aforementioned, the OA succeeds on merits and is accordingly allowed with the following directions:

(a) A-1 order dated 5.5.92 shall stand quashed;

(b) Applicant should be reinstated forthwith alongwith consequential benefits. The intervening period i.e. date of removal from service to the date of reinstatement shall be treated as extraordinary leave without pay.

(c) Our orders, however, shall not stand in the way of respondents to proceed, if they so desire, but only in against the applicant in terms of the Rules; and

(d) There shall be no order as to costs.

(S.P. Biswas)
~~Member~~(A)

(T.N. Bhat) 28.9.98.
Member(J)

/gtv/