

17

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 220 of 1993 decided on 21.12.1998.

Name of Applicant : Shri C.S.Chohan

By Advocate : Shri J.C.Madan

Versus

Name of respondent/s Union of India through D.G.
C.S.I.R. & anr.

By Advocate : Ms.Sheel Sethi

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A.Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal - Yes/No


(N. Sahu)
Member (Admnv)
21.12.98

18

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A.No.220/93

New Delhi, this the 21st day of December, 1998

HON'BLE MR.N.SAHU, MEMBER(A)
HON'BLE DR.A.VEDAVALLI, MEMBER(J)

Shri C.S.Chohan,
Administrative Officer Gr.I,
Central Building Research Institute(CSIR),
Roorkee-247 667.
Residing at
A-28, Shantinagar,
Roorkee-247 667.

....Applicant

(By Advocate: Shri J.C.Madan)

Versus

1. Union of India,
through
Director General,
Council of Scientific and
Industrial Research,
Anusandhan Bhavan,
Rafi Marg, New Delhi-110001.

2. The Joint Secretary(Admn)
Council of Scientific and
Industrial Research,
Anusandhan Bhavan,
Rafi Marg, New Delhi-110001.Respondents

(By Advocate: Ms.Sheet Sethi)

O R D E R

HON'BLE MR.N.SAHU, MEMBER(A)

The prayer in this O.A. is as under:-

"(i) To pass an appropriate order or direction quashing and setting aside the impugned orders dated 12.3.1992 and 15.7.1992 issued by the respondents vide Annexure A-1 and A-2 respectively; with consequential benefits;

(ii) To pass an appropriate order or direction to the respondents to promote the applicant with effect from 15.4.1991 to the grade of Deputy Secretary/Controller of Administration in the Scale of Pay of Rs.3700-5000 and fix the seniority in the grade of Deputy Secretary/Controller of Administration accordingly."

2. We will take up the second ground first. The case of the applicant is that by the time the DPC met on 15.4.91, he was cleared from the vigilance and therefore, there was no need for the sealed cover. The proceedings recorded in the file on 3.9.98 by us, are extracted as under:-

"The relevant file No.13(34)/90-Vig is placed for our perusal by the learned counsel for the respondents. In 8.1 the applicant's claim is for quashing of the impugned penalty order dated 12.3.92 and impugned appellate order dated 15.7.92. In 8.2 he seeks a direction to promote the applicant w.e.f. 15.4.91 to the grade of Dy. Secretary/Controller of Administration in the scale of pay of Rs.3700-5000. In order to justify this ground he refers to para 5(b) of the ground for relief in which he states that he was cleared from the vigilance angle by the time the DPC met. This is disputed by the learned counsel for the respondents. Even so, Shri Madan argues that satisfaction of the Competent Authority was recorded to initiate disciplinary proceedings only after the date the DPC met in April 1991. Even if we assume the applicant's contentions to be true, Ms. Sheel Sethi, learned counsel for the respondents submits that the court cannot be blind to the subsequent events in this case: namely passing of the penalty order by the disciplinary authority and confirmed by the Appellate Authority. Shri Madan states that the Court must only take cognizance of the relevant date of the DPC and if no charge-sheet was issued and if no satisfaction was recorded the applicant should have been promoted. Learned counsel for the applicant submits in this connection the decision of the Tribunal in N. Sanjivi vs. U.O.I. - 1991 (1) SLJ 390. Dr. Madan wants to file other authorities and seeks one weeks time. Learned counsel for the respondents also is given an opportunity to file any other case in the reply."

3. The applicant's counsel has not furnished any further papers or authorities in support of his case. We have waited sufficiently long. The background facts of the case are as under.

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4. On a raid conducted by C.B.I., a regular case was registered by them against the four officers of Central Road Research Institute (in short CRRI) including the applicant for entering into criminal conspiracy with contractors with the intention of cheating by way of processing the bills for payment of unexecuted or partially executed works by the contractors. Before a regular case was registered, CBI had also registered a case R.C. No.45(A)/89-DLI against the applicant and three others for reported irregularities in the purchase of sweet earth and sludge manure for the Institute. In their report, C.B.I. recommended to the respondents the initiation of major penalty proceedings against the applicant. The C.V.C. concurred with the findings of C.B.I. and approved initiation of major penalty proceedings against the applicant. This recommendation of the C.B.I. and C.V.C. was received as early as October 1990. The office note shows that proposals were being placed before the competent authority for accepting the advice of the C.V.C. for initiation of major penalty proceedings but the competent authority wanted to examine certain primary documents before accepting the advice of the C.V.C. There was delay in sending the documents. Ultimately, by a note dated 25.1.91 the Sr.D.S.(Vig.) stated for the reasons mentioned in his note that this was not a case of major penalty proceedings but the case of procedural lapses and therefore, minor penalty would be adequate and accordingly on 20.7.91, a draft charge-sheet for initiating minor penalty proceedings against the

applicant was approved on 30.9.91. This charge-sheet was served on 4.10.91 for certain procedural lapses while counter-signing the bills preferred by the contractors for supply of sweet earth and sulge manure for C.R.R.I.

5. The question at issue is whether the respondents were justified in adopting the sealed cover procedure. The learned counsel for the respondents relied on the decision of the Hon'ble Supreme Court in the case of Union of India vs. Keval Kumar - 1993 (3) SCC 204. That was a case where the decision to initiate disciplinary proceedings against Shri Keval Kumar for imposition of major punishment was taken by the competent authority on the basis of FIR registered by the CBI prior to the meeting of the DPC but the charge-sheet was issued thereafter. The Hon'ble Supreme Court held that the sealed cover procedure was rightly adopted by the DPC in view of such decision. Their Lordships of the Supreme Court referred in this connection to the O.M.No.22011/2/86-Estt(A), dated 12.1.88 issued by the DOPT. As in this case, the decision to initiate disciplinary proceedings was recorded on 28.9.91 following the note of Sr. Deputy Secretary(Vig.). The question is whether the DPC which met in April 1991 was competent to consign the case of the applicant to the sealed cover procedure. Apparently, it looks as though that even the case of Keval Kumar(supra) does not come to the rescue of the respondents. But the law laid down by the Hon'ble

Supreme court in Keval Kumar's case is as under:-

"The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the first information report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent."

6. In this case the FIR was registered as early as 1990. Investigations took place and search was conducted and although the date is not known, a regular criminal case was also registered in or around April-May, 1991. In this view of the matter, this is a fit case where the decision in Keval Kumar's case squarely applies. That apart, the criminal proceedings are also pending. Therefore, the DPC was justified in adopting the sealed cover procedure.

7. With regard to the merits of the case, it is very clear that the applicant had failed to undertake proper checks and exercise due care as an Administrative Officer, CRRI resulting in his recommendations for full payment against short supply of the material which but for the timely interception by Chairman(Works) would have resulted in pecuniary loss to the CRRI/CSIR. A penalty of reduction by two stages in his time scale of pay for a period of two years, without cumulative effect, was imposed on him. The appellate authority, for very valid reasons, confirmed the punishment.

8. We are satisfied that the procedure laid down under Rule 16 (Major Penalty) of CCS(CCA) Rules has been followed. Adequate opportunity has been provided to the applicant and the findings of the disciplinary authority are basis of evidence on record. The DGSR also observed as under:-

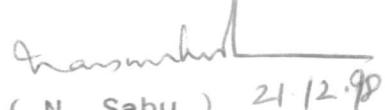
"The irregularities committed (by the applicant) cannot be expected from A.O. who functions as a Vigilance Officer in his respective Lab./Instt. This clearly shows that Shri Chohan has acted in a very irresponsible manner."

9. In view of the above, we do not consider any merit in the contentions raised by the applicant. There is no justification for interfering with the impugned orders.

10. The O.A. is dismissed. No order as to costs.


(Dr. A. Vedavalli)

Member (J)


(N. Sahu)
Member (A) 21/12/98

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