

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2619/93

(3)

NEW DELHI THIS THE 11 TH DAY OF JANUARY, 1996.

HON'BLE MR.N.V.KRISHNAN, ACTING CHAIRMAN
HON'BLE MRS.LAKSHMI SWAMINATHAN, MEMBER(J)

Shri Gangu Ram
S/o Late Shri Ranjit Singh,
R/o Quarter No.178, Sector 4,
R.K.Puram,
New Delhi.

.... Applicant

(By Advocate Sh.S.C.Luthra with Sh.P.L.Mimroth, Counsel)

vs.

1. Union of India through
Secretary to the Ministry of Health,
Nirman Bhawan, New Delhi.
2. The Director General of Health Services,
Nirman Bhawan,
New Delhi.
3. The Medical Superintendent,
Safdarjung Hospital,
New Delhi-110029.
4. Director of Estate,
Type B(A) Section,
Nirman Bhawan,
New Delhi-110011.

... Respondents

(By Advocate Shri M.K.Gupta)

ORDER

Hon'ble Mr.N.V.Krishnan:

The applicant was a Store Keeper in the Safdarjung Hospital. By the impugned order dated 6.4.1993, (Annexure A-1) of the Medical Superintendent, the third respondent, the applicant was found guilty of some of the charges framed against him in disciplinary proceedings and accordingly a penalty of compulsory retirement was imposed upon him. The appeal preferred by him had been dismissed by the Annexure -A-1/A order of the Director General of Health Services, the second respondent. Hence, this OA has been filed to quash these two orders and to reinstate the applicant in service. The applicant has also challenged the Annexure A-10 order dated 14.5.1993 issued by the fourth respondent, the Director of Estates, cancelling the allotment of his quarter.

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2. The following charges were framed against the applicant:

" Sh.Gangu Ram,Store Keeper is dealing with the Linen, and printed forms stores, refuses to issue printed forms to the departments/wards as and when asked for but instead starting grumbling and shouting on them, stating that the printed forms can be obtained either from A.S.S./C.M.O.or report to Medical Supdt.

2. Sh.Gangu Ram never goes to the Printed forms stores which is attended by Sh.Chand Singh,Nursing Attendent provided to the store-keeper. He is not attending relevant papers marked to him by A.S.S. and use abusive language "GADHA".

3. Sh.Gangu Ram opened his pant on 20.3.91 in front of other staff working in General Store and used unparliamentary language that you have seen "SHANKAR BHAGAWAN" every day in the morning.

4. Sh.Gangu RAM generally leaves office without prior permission of the A.S.S./C.M.O. and rather passes irrelevant and untolerable remarks. It is also alleged that Sh.Gangu Ram is running an optical shop.

5. Sh.Gangu Ram,quarreled almost with every member of the staff including Group 'D' in General Store. He threatened to hit and break the head and leg whosoever lodged complaint against him.

Sh.Gangu Ram,Store Keeper is not having cordial relations with his colleagues and misbehaved by using unparliamentary and filthy language, which is unbecoming of a govt. servant and in contravention of Rule 3(i)(iii) of C.C.S.(Conduct) Rules,1964."

A statement of imputations in support of the articles of charges was given. An inquiry was conducted in which the inquiry officer examined witnesses and submitted a report (Annexure A-9) on 17.3.1993. He found that charges No.1 & 4 were not proved. Charge No.2 was proved to the extent that the applicant used to call the Assistant Store Keeper "Gadha". He also held that charge No.5 was proved to the extent that the applicant was in the habit of quarelling with the employees of the General Store. In regard to charge No.3, the inquiry officer held that this was proved beyond doubt not only from the evidence but also from the manner in which the witnesses were examined by the charged officer. He held that the applicant did open his pant and used filthy and derogatory language. A copy of the inquiry officer's

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report was forwarded to the applicant on 17.3.1993 to make a representation. However, the applicant declined the offer by stating that he did not feel fit to represent at that stage and that the authority should straightway take a decision as deemed fit.

3. The disciplinary authority has agreed with the findings of the inquiry officer. He has also held with reference to charge No.3 that cross examination of Shri Gian Singh, Electrician by the applicant is in itself a confession by him. The appellate authority had considered the appeal in some detail and decided to confirm the penalty imposed upon the applicant.

4. The applicant has challenged the impugned orders on the following grounds:

(1) the services of a defence assistant were not permitted to him and it was turned down without any reason.

(2) the applicant was deprived of an opportunity to submit his defence at any stage of the proceedings.

(3) major penalty has been imposed on the basis of charge No.3 which refers to an incident which is alleged to have taken place on one day.

(4) grave irregularities have been committed which have been referred to in the appeal memorandum.

5. The respondents have denied all the allegations. They have contended that the inquiry was conducted properly and the applicant had been given reasonable opportunity to defend himself.

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6. When the matter came up for final hearing, the learned counsel for the applicant pressed only three grounds. Firstly, that the applicant was not provided with a defence assistant. Secondly, that after the inquiry commenced, some of the witnesses were summoned by the inquiry officer and examined on 16.9.1991 without any notice to the applicant and the applicant was not present to cross examine them. To cover up this irregularity, the inquiry officer summoned them again to enable the applicant to cross examine them. Thirdly, the penalty imposed is harsh considering the charges.

7. In the OA, it is stated that the applicant failed to secure defence assistant from amongst the staff of the department who did not come forward because of the fear of the authorities. He, therefore, asked for loan from the authorities of a Government servant employed in some other department in terms of the Ministry of Home Affairs Office Memorandum dated 6.10.1978 (Annexure A-5). This was turned down by the Annexure A-7 Memorandum which does not assign any reason for this purpose.

8. We notice that Annexure A-5 Memorandum of the Ministry of Home Affairs is in connection with the providing of legal assistance to Government employees for proceedings instituted in respect of their official duty or position by another Government employee. In other words, if a criminal or civil proceeding is instituted by one employee against another in connection with latter's official duty, this Office Memorandum permits the defence of the Government employee against whom a complaint has been filed in public interest by Government. That Office Memorandum has nothing

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to do with the engagement of a defence assistant in a departmental proceeding. Perhaps, the very fact that no one was prepared to defend the applicant would lend colour to the charge framed against him which alleges that he quarrels with every member of the staff including group 'D'. That apart, a perusal of the disciplinary proceedings file shows that on 6.9.1991, when the charges were read over to the applicant, he informed the inquiry officer that he would defend his case personally. A perusal of those proceedings shows that the applicant did not request for postponement of the proceedings until a defence assistant was provided to him. Therefore, the first ground has no merit.

9. In regard to grave irregularities, Sh.S.C. Luthra, learned counsel for the applicant pointed out that the proceedings would show that the witnesses were examined by the inquiry officer on 16.8.1991 ~~and~~ in the absence of the applicant and that subsequently this mistake was corrected by recalling the witnesses to enable the applicant to cross examine them. The learned counsel contended that this was an attempt to tutor the witnesses behind the back of the applicant and hence the inquiry is vitiated on this ground.

10. It is seen that on 16.9.1991 the ~~only~~ witnesses, Latif Mohd., Store Keeper, C.D.Sarkar, Painter, Chet Ram, Ganga Das and Kapil Dev Sharma were examined obviously in the absence of the applicant. They were, however, allowed to be cross examined subsequently.

11. We have considered the matter whether this undoubtedly irregular procedure would vitiate the whole inquiry. In the normal course, the witnesses should have been examined only in the presence of the delinquent. This is not a case where the delinquent was prevented from availaing the right of cross examination. The witnesses were admittedly called again and subjected to cross

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examination . We do not see any evidence of tutoring of these witnesses because many of them had given a joint statement in favour of the applicant and they further stood by it during the cross examination. This is particularly true of the cross examination of Shri Gian Singh, Electrician to which a reference will be made subsequently. In the circumstances, it cannot be held that this irregularity vitiates the inquiry.

12. There is further allegation that the applicant was subjected to cross examination even before the witnesses were examined. We do not find any evidence of any such ~~cross~~ examination. On 9.10.1991, the delinquent was present. He was only asked whether he wanted to produce any documents and any witnesses in his defence and he was also informed that copies of the complaint made to the Medical Supdt. will be made available to him. The allegation is thus not borne out.

13. The third issue is about the quantum of punishment. It was strenuously contended that it was harsh. It is meted out only because of charge No.3. That was based on an incident which allegedly took place on one day. In so far as this incident is concerned, it is necessary to add that the learned counsel for the applicant was himself ⁱⁿ it feeling so embarrassed that he left ^{it} to us to read from the proceedings as to what exactly the imputations were.

14. We have reproduced charge No.3 against the applicant in para 2. Even the statement of imputations in regard to this charge is veiled. It reads only as follows:

" That on 20.3.1991 Sh.Gangu Ram, Store Keeper opened his pant in front of other staff working in General store and used unparliamentary language that you have seen the "SHANKAR BHAGWAN" every day in the morning, he talks in a taunting way and passes indecent remarks at both the female employees working in the General Store. Sh.Gangu Ram also quarrelled if any member of the staff ask him not to use indecent language."

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However, a perusal of the inquiry proceedings shows that what happened was that the applicant not only opened his pant but also took out his penis to show it to others saying that they were seeing Shankar Bhagwan. This is the allegation about this incident, about which the sensitiveness of the learned counsel for the applicant prevented him from putting this allegation bluntly to us. It is because of this allegation that we find, as we will show ^{presently} ~~presumably~~, some sense in the inquiry officer's report (Annexure A-9) where he states that this charge is proved not only from the evidence of the witnesses but also from the manner in which the witnesses were examined by the charged officer. We were also perplexed initially by the observations of the disciplinary authority that the cross examination of Shri Gian Singh by the applicant is in itself a confession by him in relation to charge No.3.

15. The evidence recorded by the inquiry officer of the witness Gian Singh duly translated in English has been produced for our information by the learned counsel for the respondents. A copy was also duly supplied to the applicant's counsel. There was no objection to this translation from the side of the applicant. In his examination-in-chief, this witness had stated as follows:

" At the time of argument with Sh. Shiv Charan on 20.3.91 just before lunch, Sh. Ganga Ram uttered "LO SHANKAR BHAGWAN KE DARSHAN KARO." and he opened his pant zip and put his penis out. On this act, we turned our face to other side. At that time Sh. Shiv Charan, Sh. Chait Ram and Sh. Ganga Dass were present and rest I do not remember."

He was subjected to cross examination which reads as follows:

" Q. Who was your incharge on 20.3.91 ?
A. A.S.S. was my incharge.
Q. On that day to whom did you visit ?
A. On that day I came to visit Sh. Shiv Charan.
Q. When you came, what matter was being discussed ?
A. I don't remember. After arguments he opened his pant just after my entry in General Store.
Q. What was the colour of pant ?
A. I don't remember.

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Q. Did you see "SHANKAR BHAGWAN" ?

A. After opening the zip of his pant and taking out-see.

Q. Where I showed you " SHANKAR BHAGWAN " ?

A. He was on his seat in General Store.

Q. Had you worn your specks at that time ?

A. Yes, I always use specks and my vision is O.K.

Q. In which month your intro-ocular lense were fitted ?

A. I don't remember exactly. For one eye in 1990 and for another eye before 1990 and I saw "SHANKAR BHAGWAN" with both eyes.

Q. What was the position ?

A. It was lying downward.

Q. If it is shown again, will you identify it ?

A. Yes, at that time there were no hair."

It is this cross examination that the inquiry officer and the disciplinary authority were referring to. Then an observation was made that it amounted to a confession by the applicant relating to charge No.3. The text of the questions and answers, reproduced above, shows that a person innocent of this charge would not have resorted to this line of cross examination. One could not have connected Shankar Bhagwan with the penis if that kind of obscene act and dialogue did not take place on that date. The last two questions in cross examination tend to show that the applicant wanted to discredit this witness on a matter of detail. We are satisfied that in these circumstances, the inference drawn by the inquiry officer and the disciplinary authority are justified.

16. We are of the view that as charge No.3 has been held to be proved, the applicant richly deserves the penalty that had been imposed upon him. There is no

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of his question/ deserving leniency because the incident took place only on one day. What is relevant is the nature of the incident that took place. In our view, the applicant indulged in obscenity, of a kind, which perhaps, has no parallel. In the circumstances, we do not find any merit in this OA. It is dismissed.

17. There shall be no order as to costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member(J)

N.V.Krishnan
11.1.96

(N.V.Krishnan)
Acting Chairman

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