IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 739 /1993 Date of Decision: 22 - 4 -1998

Shri Harjit Singh .. APPLICANT

(By Advocate Shri R. Doraiswamy

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri V. K. Rao with Shri Ajit Pudussery)

CORAM:

THE HON'BLE ~~SHRI~~ Smt. Lakshmi Swaminathan

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)
22.4.98

Cases referred:

1. UOI V. Parma Nanda (1989)2 SCC 177
2. UOI & Anr. Vs. G. Ganayutham, JT 1997(7) SC 572
3. Maharashtra State Board of Sec. & Hr. Sec. Edn. V. K.S. Gandhi (1991)2 SCC 716 (748)
4. State of TN V. S. Subramaniam (1996)7 SCC 509
5. B. C. Chaturvedi V. UOI (1995) 6 SCC 749
6. State of TN V. T. V. Venugopalan (1994) 6 SCC 302
7. UOI V. Upendra Singh (1994) 3 SCC 357
8. Govt. of TN V. A. Rajapandian 1995(1) SCC 216
9. State Bank of Patiala & Ors. V. S. K. Sharma JT 1996(3) SC 722

CENTRAL ADMINISTRATIVE TRIBUNAK, PRINCIPAL BENCH

OA No.739/1993

New Delhi, this 22nd day of April, 1998

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Harjit Singh
s/o Shri Mota Singh
611, Pocket A, SFS, Sarita Vihar
New Delhi-110 044 .. Applicant

(By Advocate Shri R. Doraiswamy with Sant Lal)

versus

Union of India, through

1. Director General
Council of Scientific & Industrial Research
Anusandhan Bhavan, New Delhi

2. Director
Central Road Research Institute
Delhi-Mathura Road, New Delhi .. Respondents

(By Advocate Shri V.K. Rao with Ajit Pudussery)

ORDER

Hon'ble Shri S.P. Biswas

Heard the learned counsel for both the parties, perused the materials available on record and files handed over to us by the respondents.

2. The applicant, a Scientist (E-1 in the grade of Rs.3700-5000) who retired from service with effect from 31.10.91, was served with Annexure A-4 revised major penalty charge-sheet on 19.12.88. Of the 11 Articles of charges, four of them including two in parts were established in the disciplinary proceedings concluded after his superannuation. Proceedings were initiated under Rule 14 of the CCS(CCA) Rules, 1965. Charges held proved against the applicant related to (i) allowing abnormally astronomical rates against low estimated rates; (ii) allowing execution of additional quantities

of work against the estimated requirement without aproval of competent authority; (iii) allowing full payment without execution of works as per specifications; (iv) allowing use of inferior materials; (v) payment of contractor without proper measurements for executed works; and (v) delayed action in presentation of bills thereby resulting in forfeiture of conditional rebate available for prompt payment and (vii) non-supervision thereby resulting in use of sub-standard material and defective work etc.

3. Based on the Enquiry Officer's (EO for short) report dated 30.12.91, applicant was punished by A-1 order dated 22.1.93 with "penalty of cut @ 10% of his pension for a period of five years". The said order was signed by the President, CSIR.

4. Shri R.Doraiswamy, learned counsel for the applicant, argued strenuously and assailed the aforesaid order of punishment on a large number of grounds. But for the sake of brevity, we propose to examine only those considered most important and mainly relied upon by the applicant. The main plank of applicant's attack is that the President of the Council is not the Disciplinary Authority (DA for short). The condition-precedent for invoking Rule 9 of CCS(Pension) Rules, 1972 has not been complied with. In other words, the DA should not have abdicated his authority. Consequently, the order issued is in violation of provisions of Rule 9 of CCS(Pension) Rules, 1972. Applicant contended that exercise of power by any authority higher than the designated DA is prohibited

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under Government of India Instructions No.6 below Rule 12 of CCS(CCA) Rules, 1965. Other pleas taken by the applicant include (i) non-offering of full opportunities in terms of examination or non-production of vital documents as well as cross-examination of material witnesses, (ii) EO's report being without any application of mind vitiated by prejudice, perversity and malafides and cannot therefore be said to have proved the charges, (iii) it being a case of "no evidence" calling for immediate intervention by the Tribunal, (iv) issuance of second charge-sheet being prohibited by law, (v) findings not being based on reliable documents or reliance having been placed wilfully on the presumptions instead of evidence and (vi) admission of fabricated documents as evidence. Malafides on the part of respondents are evident in that the new charge-sheet dated 19.12.88 in replacement of the earlier one dated 4.8.87, was served only to bail out respondent No.2 from the allegation of charges in which the DA himself was deeply involved.

5. Respondents have controverted all the pleas taken by the applicant. They would contend that the EO has fully complied with the principles of natural justice and it is only after giving the charged officer adequate opportunities that they came to the conclusion about the charges against the applicant.

6. We find CCS(CCA) Rules, 1965 are applicable to CSIR employees as adopted by them through a Memorandum dated 19.12.88. The aforesaid punishment was imposed on 22.1.93 when the applicant had already retired.

Determination of the issues call for elaboration of law/Rules touching upon continuation of the disciplinary proceedings after retirement in a situation where charge memo was served on the official before retirement.

7. Sub-rule 1 of Rule 9 of the CCS(Pension) Rules, 1972 stipulates that the President reserves to himself the right of withholding or withdrawing a pension or part threof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct, provided that the UPSC shall be consulted before any final orders are passed. Rule 2(a) which is very relevant for our pujrpose is reproduced below:

> "(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service".

Applicant's case gets covered under the above provisions

8. Two important safeguards are perceptible from the provisions under CCS(Pension) Rules and are applicable in the facts and circumstances of the present case. Firstly, if the proceedings had continued under rule 9(2), a report is to be submitted to President even if the DA is subordinate to the President (emphasis added). Of course, if the President is the DA, the report has necessarily to be submitted to him. Secondly, the

penalty can be imposed only if in any departmental proceedings the Government servant is found guilty of grave misconduct or negligence and that too after consulting the UPSC. In no event the pension can be reduced to an amount below Rs.60/- per month.

9. Annexure A-1 order in the name of the President, CSIR was signed by Shri S.K.Verma, Senior Deputy Secretary (Vigilance). This is following proviso No.13 under Memorandum of Association/Rules & Regulations and Bye-laws adopted by the Council. Bye-law No.13 provides that orders made in the name of the President, Vice-President(VP for short), Director General(DG for short) and other officers of the Society under the CCS(CCA) Rules shall be authenticated by the signature of an officer designated for the purpose by the DG. Under Rule 56 of the Rules and Regulations and Bye-Laws of CSIR, 1956, the then Hon'ble Prime Minister (Jawaharlal Nehru) on 22.3.58 authorised the VP of the Council to exercise all or any of his powers as the President thereof. Since the disciplinary proceedings in the instant case continued beyond the date of applicant's superannuation, i.e. 21.11.91, these were dealt with under Rule 9 of the Pension Rules as applicable to CSIR since 1988. Since orders on behalf of the President, CSIR can be passed by the VP, CSIR in such matters as per aforesaid provisions under the bye-laws, the case was submitted to the VP, CSIR who passed reasoned and speaking orders on 15.11.92.

Based on the rules and reasons aforequoted, the basic foundation on which the applicant's contention is made falls on the ground.

10. We shall now proceed to examine other issue raised by the applicant.

The scope of judicial review in respect of a departmental disciplinary actionsis very limited. A court/Tribunal cannot normally enter into the area of assessment of evidence unless the findings of the IO would appear to be totally perverse. In the leading case of UOI Vs. Parma Nanda (1989) 2 SCC 177, the Hon'ble Supreme Court inter alia held:

> "If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence,even if some of it is found to be irrelevant or extraneous to the matter".

11. The judicial review as regards "proportionality of punishment" has been reiterated by the Apex Court in UOI & Anr. Vs. G.Ganayutham, JT 1997(7) SC 572.

12. We find the EO under the heading - "Analysis of evidence" under each individual article of charges/statement of imputations have examined separately in details the points raised by the charged

officer. Even the minutest points have been discussed and benefits of doubts either given or denied alongwith reasons recorded. Specific points of irregularities in the disciplinary proceedings as alleged by the applicant like assumption of EO that engineering service division did not give sanction for higher quality of work or EO's assumption that C.O. did not highlight abnormal variation in rates or some payments having been made before or after the sanction of the Director or not calling fresh quotations for substitute items etc. etc. have figured in the detailed discussions of EO. We are, therefore, unable to countenance the applicant's plea that the report is without application of mind or based on prejudice.

13. The applicant has also come out with allegation that the EO has acted in a perverse manner. To establish his claim, he cites EO's action in approving some portion of a particular document (Laboratory test report) while ignoring the other portion of the same document. Again, the EO's findings have been challenged as one of "no evidence/ no proof" and based on fabricated evidences. These allegations are relatable to EO's conclusions in respect of use of sub-standard materials in work of water-proofing, anti-termite treatment, use of ordinary cement instead of white cement and delay in recording measurements, amongst others. We find the EO has examined all these issues at page 3-12 of his report and has come to the conclusion based on reasons recorded therein.

14. In civil/departmental proceedings, balance of probability is the governing standard. In **Maharashtra State Board of Secondary and Higher Secondary Education V. K.S. Gandhi, (1991) 2 SCC 716 (748)**, the Supreme Court has made the following weighty observations about that standard of proof required in departmental proceedings or in a domestic enquiries:-

> "It is open to the authorities, to receive and place on record all the necessary, relevant cogent and acceptable material facts, though not proved strictly in conformity of the evidence Act. The material must be relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available.....In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases, the inference do not go beyond reasonable probability..... Therefore, when an inference of proof that a fact in dispute has been held established, there must be some material facts or circumstances on record from which such an inference could be drawn. the standard of proof, is not proof beyond reasonable doubt. But the preponderence of probabilities, tending to draw an inference that the fact must be more probable. No mathametical formula can be laid on degree of proof. The probative value would be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic inquiries"(emphasis added).

The aforesaid position clears the doubt about the necessity about the standard of proof required in departmental proceedings. Strict ruels of evidence do not apply to disciplinary cases(see **Orissa Maining Corporation & Anr. V. A.C.Prusty, 1997(1) SLJ 133).**

15. That apart, in judicial review, it is now a settled law that the court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. The Tribunal is not a court of appeal. Judicial review is not an appeal from a decision but a review of the manner in which the

decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct. When conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence. "see **State of Tamil Nadu Vs. S.Subramaniam (1996) 7 SCC 509; B.C. Chaturvedi Vs. UOI (p.759-60) (1995) 6n SCC 749; State of Tamil Nadu Vs. T.V.Venugopalan (para 7) (1994) 6 SCC 302; UOI Vs. Upendra Singh (para 6)(1994) 3 SCC 357 and Govt. of Tamil Nadu Vs. A. Rajapandian (para 4), 1995(1) SCC 216}.**

16. As regards supply of additional documents and production of certain specific witnessses, the applicant has not indicated the relevancy of those required by him. We also find that under Government of India instructions at Sl.No.4 below Rule 14, the DA has inherent power to reveiw and modify the articles of charge or drop some of the charges or all the charges after the receipt of the written statement of the charged officer submitted under Rule 14 (4) of the CCS(CCA) Rules, 1965. The applicant's contention that issue of second charge-sheet is prohibited in law cannot, therefore, be sustained.

17. We find that proceedings continued over as many as 39 sittings and the applicant was given all the opportunities to represent his case. Fair treatment appears to have been given at all the stages of enquiry. Thre has been neither any abuse of power, nor denial of facilities under principles of natural justice.

18. It is thus not a case of there being "no evidence". Neither is it a case of "no hearing", "no opportunity" or 'no notice'. What is crucial in such cases is to ensure that there was no violation of procedural provisions causing prejudice to the case of the delinquent officer. The Hon'ble Supreme Court in **State Bank of Patiala & Ors. V. S.K. Sharma (JT 1996(3) SC 722)** has catalogued the "Tests" to be carried out in identifying "prejudice" in disciplinary proceedings. While applying these principles, we hold that no prejudice has been caused to the applicant herein in conducting the entire proceedings.

19. In the light of reasons aforequoted, we are of the firm view that the applicant has not made out a case warranting our inteference in the matter. The application is devoid of merits and deserves to be dismissed and we do so accordingly, but in the circumstances of the case, without any order as to costs.

(S.P. BISWAS)
MEMBER(A)

(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

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