

RESERVED

THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 23 day of December 1996
Original Application No. 661 of 1996

District : Allahabad

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Captain S.C. Gulati,

Ex-Dy. Director

R/o Housr No.88 HG(D)

A.D.A. Naini, Allahabad.

(By Applicant in person)

..... Applicant

Versus

1. Union of India & Others

Through DC(SSI) Nirman Bhawan,
New Delhi-110011.

2. Shri Lalit Krishna

C/o Director SSI-Industrial Estate,
Naini, Allahabad-211009.

(By Kmsadhna Srivastava, Advocate)

.... Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

Through this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the charge memo dated 23-3-1995 which has been served on him and has prayed that the same be quashed with all consequential benefits.

2. Shorn of the verbiage, the essential facts of this case are that the applicant who was working as Deputy Director Small Industries Service Institute, (SISI for short), Allahabad, was served with an order

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dated 2-2-1993 transferring him from SISI, Allahabad to the Regional Testing Centre, Madras. The applicant challenged this order of transfer through an OA filed before this Tribunal and the said OA was dismissed. The applicant did not, however, join at the new station of posting and eventually the impugned charge memo was served on him alleging unauthorised absence. The applicant retired from service on 31-7-1995 and as till that time the proceedings initiated against the applicant had not been brought to conclusion, the proceedings which were instituted prior to his retirement were continued after his superannuation in view of the relevant provisions contained in the CO(Pension) Rules. In these circumstances, the applicant has filed this OA assailing the charge memo served on him on several grounds seeking quashing of the said memo.

3. The grounds taken by the applicant are that the Annexures to the charge memo, namely, the articles of charges, statement of imputations of misconduct, the list of documents and other relevant annexures have not been supplied to him and that once he ~~has~~ retired from service on 31-7-1995 the relationship of master and servant had come to an end and the erstwhile employee no longer remains under the disciplinary control of the erstwhile employer. The other ground taken by the applicant is that the officer, who had been appointed to enquire into the charges is wholly biased.

4. Counter affidavit on behalf of both the respondents ^{Second} has been filed by the respondent, who has been impleaded by name. The respondent no.2 has also filed a separate counter affidavit on his own behalf. It has been stated in the first counter affidavit that the disciplinary

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proceedings were initiated against the applicant as a result of his misconduct in not obeying the order of transfer and for ~~useful~~ and unauthorised absence. It has been alleged that the applicant remained unauthorisedly absent from duty w.e.f. 8-2-1993, till the date of his super-annuation. It has also been contended that the charge memo containing article of charges, statement of amputations, list of documents and the list of witnesses ~~were~~ delivered to the applicant by the memo dated 23/30-3-1995 and he acknowledged the same by his letter dated 12-5-1995.

5. In the counter affidavit filed personally by the respondent no.2, it has been stated that the applicant had earlier raised objections to the appointment of the respondent no.2 as the Inquiry Officer. However, the representation of the applicant in this regard was rejected by the competent authority. He has also denied that he had any bias against the applicant and has refuted ~~that~~ the circumstances enumerated by the applicant in his OA in respect of his allegations of bias on the part of respondent no.2.

6. The applicant has filed a rejoinder affidavit in which it has been pointed out that the Deponent in the first counter affidavit is also the inquiry authority and it would be clear from the averments in the counter affidavit that he has already pre-judged the issue. Also, although he has not specifically denied that he received the various annexures to the charge memo, he has stated that his letter dated 12-5-1995, which according to the respondents is an acknowledgement to the charge memo with annexures is only his reply to the charge memo. It appears ^{that} at the admission stage itself ~~that~~ the allegation that these annexures were not furnished to the applicant was noted by the Bench hearing the matter and the

respondents were directed to furnish the copies of the same. As the applicant had filed a reply to the charge memo, the presumption would be that he received the copy of the articles of charge, statement of imputations etc., as otherwise he could not have given a reply to the charge memo.

7. We have heard the applicant in person and also heard learned counsel for the respondents and perused the pleadings on record carefully.

8. The plea that the applicant was no longer under the disciplinary control of his erstwhile employer and, therefore, no proceedings could have been initiated against him after his retirement is clearly not tenable. Rule 9(2)(a) of the CCS(Pension) Rules 1972, clearly specifies that 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. There is a proviso to this Rule which ~~shows~~ ^{states} that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

9. Admittedly the impugned charge memo was served on the applicant much before his retirement. Thus, the departmental proceedings were initiated prior to his retirement and ^{continuation} ~~initiation~~ of such proceedings is ^{lawful} ~~unlawful~~ in terms of Rule 9(2)(a) of the CCS (Pension) Rules.

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We, therefore, see no irregularity in the proceedings being continued after the retirement of the applicant.

10. We have, however, noted the submission made by the applicant in his rejoinder affidavit that the Inquiry Officer has already ~~been~~ pre-judged the issue in view of his submission in the counter affidavit. The applicant, who appeared in person also stressed this aspect of the matter during the course of argument.

11. We have also noticed ~~that~~ in the counter affidavit filed on behalf of both the respondents ~~through~~ the assertions that the proceedings against the applicant has been initiated, "as a result of the misconduct of not obeying the order of transfer from Smal Industries Service Institute, Allahabad to the Regional Test Centre, Madras and wilful unauthorised absence". Similar assertions in this vein are that the respondents have asked the petitioner to report ~~for~~ duty at R.I.C. Madras, but he failed to comply with the order and kept himself on unauthorised absence and the petitioner remained unauthorisedly absent from duty from 8-2-1993 onwards till the date of superannuation.

12. The aforesaid assertions in the counter affidavit, which have been filed by respondent no. 2 on behalf of both the respondents would prima facie indicate that as a part of the ~~administration~~, he has come to the conclusion that the applicant did not comply with the order of transfer and remained unauthorisedly absent. Since the burden of allegations against the applicant in the charge memo is unauthorised absence, there is no doubt, that respondent no. 2 should not continue as the Inquiry Officer.

13. In a departmental inquiry it is but natural that the departmental officers will only be nominated to act as the Inquiry Officer. However, if the officer,

who is nominated for the enquiry, has already a ~~fore-~~ knowledge of the facts of the allegations and is shown to have already formed an opinion about such allegations, the principles of natural justice would warrant that such an officer is not allowed to inquire into the charges. Disciplinary proceedings under the departmental rules are held in the nature of quasi-judicial proceedings. While the some of the ~~rigours~~ and the regimen of a judicial proceedings imposed by the ~~Fundamental Act~~ and ~~other~~ Criminal/Civil Laws may be dispensed with in a quasi judicial proceedings, the person who is charged with some mis-conduct, deserves to have the allegations inquired into by an impartial person. In the case before us, it is very clear that the respondent no.2 is in no position to conduct the inquiry in an impartial manner having become the Deponent of a counter affidavit in which the assertions indicated above have been made.

14. In view of the foregoing, we dispose of this application with the following directions:-

- (I) The copies of the annexures to the Charge Memo, if not supplied so far to the applicant, shall be furnished to him within a period of two weeks from the date of communication of this order and thereafter he shall be allowed 10 days time for submitting a detailed reply to the charge memo. In case, however, there is ~~is~~ irrefutable evidence with the respondents of having furnished the copies of the relevant documents to the applicant, no further action in this regard need be taken.
- (II) The order dated 3-8-1995 appointing the

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respondent no.2 as the inquiry authority stands quashed. The respondents shall issue a fresh order appointing another officer, who has no nexus with the charges against the applicant, as the inquiry authority, to inquire into the charges framed against the applicant.

(III) The proceedings against the applicant shall be brought to a conclusion with all reasonable expedition.

15. The parties shall bear their own costs.

J. Flurin
Member (J)

L. R.
Member (A)

Dube/