

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 18TH DAY OF FEBRUARY, 2002

Original Application no.108 of 2001

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Virendra Mohan Tewari, Son of
Late Shri Kripa Shanker Tewari
R/o 261/4, New Labour Colony,
Kanpur.

... Applicant

(In person)

Versus

1. Union of India through:
Director General of Foreign Trade
Udyog Bhawan,
New Delhi.
2. The Joint Director General
of Foreign Trade(CLA)
6-7 Ashaf Ali Road,
B.K.Roy Court,
New Delhi.

... Respondents

(By Adv: Shri Ashok Mohiley)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

The facts of the case giving rise to this OA u/s 19 of A.T.Act 1985 that applicant joined his service as L.D.C in the Department of Foreign Trade on 10.9.1979. After some time he was promoted as UDC on adhoc basis. The applicant while serving as UDC was served with a memo of charge dated 27.4.1995. There were four charges against the applicant. As usual the Inquiry officer was appointed. He submitted the inquiry report dated 21.9.1999 with the conclusion that charge no.1 has not been proved but he found charge nos 2,3,&4 proved. Disciplinary Authority agreed with the report of the Inquiry Officer and passed the impugned order dated 23.5.2000(Annexure A-1) awarding punishment to the applicant of compulsory retirement from service. Against the above order applicant filed appeal which has been dismissed by order dated

12.1.2001, aggrieved by which applicant has approached this Tribunal. Applicant who appeared in person has assailed ~~the~~^{an} order on various grounds.

The first submission is that about charge no.2 his defence was not considered in the correct perspective. He was assigned the work of record and listing which is done from the section other than the record branch. It is also submitted that the same defence when was raised by other employees before the same Inquiry officer it was accepted but in case of applicant it has not been accepted and contradictory view has been taken. In support of this submission applicant has placed before us his reply with regard to charge no.2 and finding of the same Inquiry officer in respect of similar charge against another employee, a copy of which has been filed as (Annexure A-12)

The second submission of the applicant is that he specifically denied charge no.2 in his reply and gave explanation but Appellate Authority has proceeded with the impression that there was no denial on the part of the applicant. The submission is that it appears that the Appellate Authority passed the order without applying its mind to the reply submitted by the applicant.

~~The~~^{My} third submission, it has been submitted that the applicant specifically denied his signatures on the attendance register which was crossed and circled by the officer but this plea has been rejected, without either tallying the signatures with admitted signatures of the applicant and after recording the finding there on or without calling for a report from the Handwriting Expert. It is also submitted that this serious aspect of the case has not been considered by Appellate Authority as well as by Disciplinary Authority.

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The applicant has finalaly submitted that the punishment of compulsory retirement awarded to the applicant is highly excessive and not commensurate to the cahrges found allegedly proved against the applicant.

Shri Ashok Mohiley, learned counsel for the respondents, on the other hand, submitted that the report of the Inquiry officer is detailed and he has taken into account every aspect of the matter, punishment awarded to the applicant is commensurate and is not excessive. He has submitted that the applicant has failed to make out any case calling for interference by this Tribunal.

We have carefully considered the submissions made by the parties. However, we are ^{not} satisfied that in this case Disciplinary Authority and Appellate Authority have discharged their legal obligations to examine the case analytically before passing the order of punishment, that too ^{when avoading extreme penalty,} ~~of a screening level~~ like compulsory retirement. Applicant ^{on} had already stated above, raised a dispute that the work of recording and listing is not done from the record branch but from other sections. He also submitted that on similar defence the Inquiry Officer took a different view. The conclusion of the Inquiry officer in case of ^{Kamlesh} ~~Kailash~~ Kumar was as under:

: Recording listing of files in the record room, it is not clear how listing was to be done by the officials of the record room. As a matter of rule only ^{or} ~~un~~ listed files are to be transferred to record room and thereafter officials of the record room will take care of the record and manage the same."

If the above was the position, the applicant was not expected to be present in record room for the duty assigned and he could discharge duty with respect of certain files from the section concerned.

This defence was not properly examined by the Inquiry officer as is clear from the finding. He failed to record any finding about the defence of the applicant ^{that} ~~that~~ he was never posted in record section. As the report of the Inquiry officer did not contain any finding with regard to the aforesaid defence of the applicant, it was obligatory on the Disciplinary Authority as well as the Appellate Authority to record a finding on the basis of the material available on record.

As clear from the order, Appellate Authority proceeded with the impression that the charge no.3 has not been denied by the applicant, but the fact is different. Applicant denied the charge and ^{only} ~~only~~ explained ^{that he left} ~~he is leaving~~ the office a little earlier, only to catch the train Prayag Raj Express as he was going back to his home town on casual leave for which applications were already submitted. None of the authorities has considered this defence.

The allegation in charge no.4 was that applicant signed the attendance register after it was crossed and circled by the Superior Authority. The applicant denied his signatures on the attendance register. The Inquiry officer has rejected this defence merely on the ground that it was raised at the late stage. From the statement recorded by the Inquiry officer it appears that applicant was shown the original paper then he stated that these are not his signatures. A question was again put to the applicant that does he deny his signatures. The applicant replied in affirmative. In these circumstances, as the question was going to the root of the matter it became obligatory on the Inquiry officer to either call for a report from the Handwriting Expert or tally himself the signatures on the attendance register with the admitted signatures of the applicant available on record and then to record a finding about the defence of the applicant. The Inquiry officer failed to do the same. As the Inquiry officer has not been able to discharge his function in accordance with law, it was for the Disciplinary



Authority and Appellate Authority to take care of the defence of the applicant. Unfortunately, both the authorities passed the order ignoring aforesaid important aspect of the case. On account of the above facts, we are of the view that the case requires reconsideration by the authorities. We may also mention here that the applicant raised the point that punishment of compulsory retirement is very harsh and not commensurate to the alleged charges. However, since we are sending the matter back we are not expressing any ~~thing~~^{opinion} on this question and we are leaving it for the Disciplinary Authority and the Appellate Authority to decide ~~with the~~^{charge} aspect of the matter if charges are ultimately found proved against the applicant.

For the reasons stated above, this OA is allowed. The impugned orders dated 23.5.2000(Annexure A1) and order dated 12.1.2001(Annexure A-3) are quashed. The proceedings shall start again from the stage as if it is pending before the Disciplinary Authority. He shall hear the applicant again on each point and pass order in accordance with law in the light of the observations made above. As the proceedings is pending since 1995 we direct that the Disciplinary Authority shall pass order within a period of four months from the date a copy of this order is filed before him. There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 18th Feb: 2002

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