

(12)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.132 of 2005.

Allahabad, this the 3rd day of December, 2008.

Hon'ble Mr. A.K. Gaur, J.M.

Hon'ble Mrs. Manjulika Gautam, A.M.

Sunil Kumar Gautami, aged about 45 years, S/o Sri N.D. Gautami, R/o 457/2 Khusipura, Jhansi.

.....Applicant.

By Advocate : Sri R.K. Nigam.

Versus

1. Union of India through G.M., N.C.R., Allahabad.
2. Chief Personnel Officer, General Manager's Office, N.C.R., Allahabad.
3. Additional D.R.M. N.C.R., Jhansi.
4. Sr. Divisional Personnel Officer, N.C.R., Jhansi.

.....Respondents.

By Advocate : Shri R. Sharma.

O R D E R

BY Mrs. Manjulika Gautam, MEMBER-A

The applicant is a Head Clerk in the Personnel Branch posted at Jhansi. On the basis of vigilance report, disciplinary proceedings were initiated against the applicant. He was placed under suspension from 8.10.1998 to 30.10.1998 and from 2.5.2001 to 6.11.2003. The first chargesheet dated 6.8.2001 was served upon him (Annexure-4) and then without canceling this, new chargesheet was issued against him on 28.9.2001 (Annexure-5). On receipt of second chargesheet, the applicant made representations dated 14.1.2002, 17.2.2002, 26.2.2002, 8.3.2002 and 11.3.2002. In all these representations, the applicant was seeking copies of documents which were relied upon in the chargesheet and which were not supplied to him. When his request

h

(13)

was not considered, he made a representation dated 15.7.2002 (Annexure-8) to the General Manager (respondent no.1). Prior to starting of the proceedings, summons were sent to Sri K. Ramachandaran, Chief Vigilance Inspector, who is only prosecution witness mentioned in the chargesheet, but he did not turn up to authenticate the documents or to establish the charges. The respondents have said that the Vigilance Inspector had retired from service, therefore, he did not turn up. The Hon'ble High Court in the case of Govind Narain Vs. Union of India & Ors reported in U.P. Services Cases 1984 page 4 has held that the documents relied upon in the chargesheet cannot be read as evidence unless the same are authenticated by the prosecution witness.

2. The applicant filed O.A. bearing no. 207 of 2003 challenging the order dated 11.2.2003 passed by the respondents and has sought that he had not been given the relevant documents asked for by him. The said O.A. was disposed of at admission stage itself with direction to the applicant to place his demand for the documents before the Enquiry Officer who shall consider the request of the applicant and pass appropriate orders whether those documents are relevant or not and are required to be supplied or not. The direction was also given to the applicant to cooperate in the enquiry and the respondents should ensure that the disciplinary proceedings are concluded within a period of six months. The report of the Enquiry Officer is placed at Annexure-15. A perusal of enquiry report shows that the charge nos. 1 and 2 have been shown to be proved, but the Enquiry Officer has also mentioned in his report that only prosecution witness who have retired has not given his evidence and held that the mistakes made by the applicant were mainly to the haste carelessness, rather than no motive. The Enquiry

h

(14)

Officer has also commented that there is no mens-rea proved against the applicant. On the basis of this report, the disciplinary authority having inflicted the penalty of reduction in rank reducing from the pay scale of Rs.5000-8000/- to Rs. 4500-700/- fixing his pay at Rs. 4500/- for a period of three years with cumulative effect vide order dated 6.11.2003. Feeling aggrieved, the applicant preferred an appeal to the appellate authority dated 1.12.2003. Vide order dated 9.2.2004 the appellate authority reduced the punishment of reduction to lower grade for a period of one year with non-cumulative effect. The applicant then submitted his Revision Petition dated 10.3.2004 which was decided vide order dated 6.4.2004 by which the order of the appellate authority was upheld with remarks that lenient view has already been taken by the appellate authority.

3. The applicant has filed this O.A. against the orders of the disciplinary authority, appellate authority and revisionary authority.

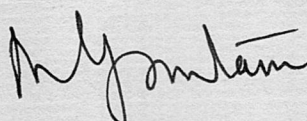
4. We have heard both the counsel and perused the pleadings on record. Learned counsel for the applicant has vehemently argued that several irregularities exist in the proceedings against the applicant. The first irregularity is that the second chargesheet cannot be served without canceling the first one, but this was not done in the case of the applicant. The chargesheet itself based on relied upon documents, which could be proved only by solitary witness, but even he was not produced and the enquiry has been finalized without the documents being proved. In the report of the Enquiry Officer, it is also mentioned again and again that no mens-rea has been proved against the applicant and that mistake committed was possibly due to carelessness or being in hurry.

✓

5. Learned Counsel for the respondents, on the other hand, has submitted that the enquiry was properly conducted as per rules. He was given all opportunities and he also supplied the copies of documents required by him and since the period of one year has already been served out by the applicant, there is no reason to interfere in the matter.

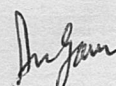
6. After perusing the records on file and hearing the learned counsel, we are of the considered opinion that the proceedings initiated against the applicant stands vitiated because second chargesheet was served without canceling the first one and also the documents relied upon in the chargesheet were not proved by the solitary prosecution.

7. In view of the above, the O.A. succeeds and is allowed. The impugned orders dated 6.11.2003, 9.2.2004 and 6.4.2004 are hereby quashed and set-aside. The matter is remitted back to the disciplinary authority to take action against the applicant as per rules.



{Mrs. Manjulika Gautam}
MEMBER-A

Girish/-



{A.K. Gaur}
MEMBER-J