

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH :: HYDERABAD**

OA/020/00115/2015

Date of CAV: 15.03.2021

Date of Pronouncement: 25.03.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

K.S.R. Pradeep Mathur, S/o. late Sri K. M. Krishna,
Aged 57 years, Deputy Director of Training,
Regional Directorate of Apprenticeship Training,
DGET, ATI-EPI Campus, Ramanthapur,
Hyderabad – 500013, R/o. Flat No. 303,
H. No. 3-11-6/A, Gokhale Nagar,
Ramanthapur, Hyderabad – 500013.

...Applicant

(By Advocate: Mr. K. Sudhakar Reddy)

Vs.

1. Union of India, Rep. by its Secretary,
Ministry of Labour, Shram Shakti Bhawan,
New Delhi – 110 001.
2. The Director General/ Addl. Secretary, DGET,
Ministry of Labour, Shram Shakti Bhawan, New Delhi – 110 001.
3. The Director (Administration), DGET,
Ministry of Labour, Shram Shakti Bhawan, New Delhi – 110 001.
4. The Regional Director, Regional Directorate of
Apprenticeship Training,
ATI-EPI Campus, Ramanthapur, Hyderabad – 500013.
5. Shri M.R. Gajre,
Regional Director, Regional Directorate of Apprenticeship Training,
ATI-EPI Campus, Ramanthapur, Hyderabad – 500013.

....Respondents

(By Advocate : Mrs. C. Vijaya Lakshi, Proxy Counsel
for Mr. T. Hanumantha Reddy, Sr. PC for CG)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)



2. The OA is filed by the applicant challenging the charge sheet dt. 04.02.2009 and the penalty order dt. 09.07.2014 imposing the penalty of “reduction by two stages in the time scale of pay for a period of two years with further direction that he will not earn increments of pay during the period of such reduction and the reduction will have the effect of postponing his future increments of pay”.

3. The brief facts of the case are that the applicant a Group ‘A’ officer and while working as Deputy Director in the respondents organisation at Howrah, he was issued a charge sheet in October 2004. Applicant went on medical leave by producing Medical certificate for a period of 46 days but the same was treated as dies-non and salary withheld. When the same was challenged before the Tribunal in November 2008, part payment up to February 2008 was paid in December 2008. Another charge sheet was issued on 4.2.2009 containing 4 charges and penalty of reduction by 2 stages with accompanying clauses, was imposed on 9.7.2014 for moving the Tribunal in November 2008 in regard to non-payment of salary. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the charge sheet dated 4.2.2009 was issued by the Director and not by the President, who is the appointing Authority for Group ‘A’ officers and that too, when the matter is subjudice, since one of the charges is about non-receipt of salary cheques. The initiation of disciplinary proceedings and appointment of I.O were not approved by the Hon'ble Minister as required under Government of India

(Transaction of Business) Rules, 1961. I.O. who was not appointed by the disciplinary authority, finalised the report when the bias petition was pending against him and also when respondents failed to arrange salary for 7 years working out to Rs.12.5 lakhs. The applicant could not attend the inquiry due to financial stringency owing to non-release of salary and thereby, reasonable opportunity was not afforded to him to defend himself.



The inquiry was conducted in violation of CCS (CCA) Rules, Article 311(2) of the Constitution, departmental manuals and Principles of Natural Justice. Director General sought reply from the applicant against the I.O. report and there was no action for 10 months and hence, appeal was preferred to the Labour Secretary. In the absence of any response, OA 157/2014 was filed seeking finalisation of the disciplinary case, which was allowed and when the respondents failed to comply with the said direction, contempt petition was filed, resulting in compliance of the order of the Tribunal by imposing the penalty in question. There is an unexplained delay of more than 5 years in finalising the disciplinary case. Due to the delay, juniors to the applicant were promoted as Joint Directors. Applicant cited the judgments of the superior judicial fora in regard to delay in completion of disciplinary proceedings. The penalty imposed by a non speaking order will have an adverse effect on pension.

5. Respondents, *per contra*, state that the applicant was issued a charge memo dated 4.2.2009 with four charges which were held to be proved in an ex-parte inquiry and therefore, penalty in question was imposed on 9.7.2014 after seeking UPSC advise. The medical treatment and grant of medical leave have no relevance to the charge sheet issued. There is no link

to the issue of charge sheet and the salary cheques. The appointment of the I.O and issue of charge sheet were approved by the Minister but, by mistake, the sentence to the effect that the order was issued in the name of the President was omitted in issuing the charge memo dated 4.2.2009, which was a clerical mistake. The salary cheque bearing No. 601686 for a sum of around Rs.5.71 lakhs dated 25.6.2009 was drawn in favour of the applicant, but he refused to accept it and hence, non disbursement of salary does not arise. The applicant attended only one sitting out of the 11 sittings fixed by the I.O and therefore, ex parte inquiry had to be conducted. After submission of the I.O report on 28.12.2011, applicant sought personal hearing by the DG/Secretary, Labour which was not granted since the applicant did not avail of the opportunities during the inquiry. The contempt petition was closed after hearing both the sides. The disciplinary case was finalised as per the orders of the Tribunal. In sum and substance, the applicant indulged in misconduct and hence, action was taken against him.



Applicant filed a rejoinder wherein it was stated that the applicant did not refuse the salary cheque. Respondents admitted that they made a mistake by not adding the sentence of “By order of the President” in the charge sheet. Besides, the first stage advise was not taken from CVC/UPSC as required in respect of a Group A officer. The respondents have acted in a biased manner and that the charge sheet is null and void.

6. When the case came up for hearing on 11.03.2021, Ld. Counsel for the applicant submitted that he was not pressing for the OA since the client was not in touch with him. However, sought time till 15.03.2021. When the

case was listed again on 15.03.2021, the Ld. Applicant counsel was absent and since the case relates to 2015, it was adjudicated. Heard the respondents counsel and perused the pleadings on record.

7. I. The dispute is about imposition of penalty of reduction by two stages in the time scale of pay for a period of two years with further direction that he will not earn increments of pay during the period of such reduction and the reduction will have the effect of postponing his future increments of pay, vide order dt. 09.07.2014, by violating rules and law, as alleged by the applicant. The charge sheet was issued on 04.02.2009 containing the following the charges:



“Article – I

That the said Shri K.S.R.P. Mathur, Deputy Director did not sign the attendance register in compliance with circular No. GL/Cal./61(2)/91/42 dated 29.10.2003 issued by the then Director, ATI, Howrah.

Article – II

That the said Shri K.S.R.P. Mathur, Deputy Director failed to conduct ‘Workshop Calculation’ classes for ROD & A Trade of Craft Instructors Training (one year course) for session 2007-08 and refused to receive the Circular No. Trg./ATI/(CTI)/INS.SCH/07-08/08 dated 7.9.2007.

Article III

That Shri K.S.R.P. Mathur, Deputy Director refused to accept the official letters sent to him through the Peon Book and also refused to accept salary cheques from the month of September 2007 till February 2008. Further he failed to submit his explanation called for as per OM No. DGET-C-13011/2/2008-VFTA dated 28.05.2008.

Article IV

That Shri K.S.R.P. Mathur, Deputy Director failed to take over the charge of the Micro Processor and Industrial Electronics Lab in compliance with Office Order No. 51 dated 29.11.2004.

Thus, by the above mentioned acts, the said Shri K.S.R.P. Mathur, Deputy Director has failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant thereby violating Rule 3 (1) (ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.”

II. Respondents conducted a full-fledged disciplinary inquiry wherein out of the 11 sittings held, applicant has attended only one of the them. The applicant states that he could not attend the inquiry as he was not paid salary for a long time. The salary issue was more or less settled by 2008 and the inquiry was conducted later to 2009. Hence, the said contention does not have a valid basis. Nevertheless, applicant could have attended the inquiry and placed this difficulty before the inquiry officer, if he had one. Instead, he has avoided the inquiry and therefore, respondents had to conduct the ex-parte inquiry. The respondents have given reasonable opportunity to the applicant to defend himself in the inquiry. Without doing so, the applicant seeking personal hearing from the DG/Labour Secretary after the submission of the I.O report would not be of much use. Thereafter, the applicant claiming that the Principles of Natural Justice and Article 311 (2) of the Constitution have been infringed, lacks substance. The disciplinary inquiry process is an effective forum where the applicant could have defended himself effectively. An employee who refuses to participate in the inquiry, cannot complain that the penalty imposed is against the principles of natural justice. The conduct of the applicant cannot be appreciated, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the Tribunal stating that the principles of natural justice had been violated. We are aware that, no punishment could be imposed without an inquiry. In the instant case, the inquiry was held and the charges were held to be proved to the extent indicated in the I.O report. We rely on the observations of the Hon'ble Supreme Court in **State Bank of India And Ors vs Narendra Kumar Pandey on 14 January, 2013** in Civil Appeal



No. 263 of 2013[Arising out of SLP (Civil) No. 34118 of 2011], as under,
in making the above remarks.



25. This Court in [Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup](#); AIR 1957 SC 82 held where a workman intentionally refuses to participate in the inquiry, cannot complain that the dismissal is against the principles of natural justice. Once the inquiry proceed *ex parte*, it is not necessary for the Inquiring Authority to again ask the charged officer to state his defence orally or in writing. We cannot appreciate the conduct of the charged officer in this case, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the High Court stating that the principles of natural justice had been violated.

26. We are also conscious of the fact that even if the Inquiring Authority set the charged officer *ex parte* that would not absolve him from deciding that the charges levelled against him were proved or not. In other words, no punishment could be imposed without an inquiry. We notice in this case the Inquiring Authority had elaborately considered the charges levelled against the charged officer and also the materials produced by the bank because some evidence is necessary to establish the charges. In some cases, proof may only be documentary and in some cases oral. The requirement of proof depends on the facts and circumstances of each case. Appellant - Bank in this case has succeeded in establishing the charges levelled against the delinquent officer and was rightly dismissed from service which called for no interference by the High Court under [Article 226](#) of the Constitution of India.

III. The charge sheet was approved by the Labour Minister on behalf of the Hon'ble President but for a minor procedural mistake of not adding the sentence of 'By order of the President' in the memo issued on 4.2.2009 as admitted by the respondents. However, the content of the charge sheet remained the same and the charge sheet was approved by the Labour Minister. Hence the competency of the authority who issued the charge sheet is not in doubt except for the clerical mistake of omitting the sentence cited in the memo. Even the I.O was appointed by the Labour Minister and hence the contention of the applicant that the charge sheet and appointment of I.O were not approved by the Labour Minister is incorrect. The applicant filed a rejoinder wherein he has not refuted these facts.

IV. Before imposing the penalty, UPSC was consulted and based on its advice, the penalty was imposed and thus, the requirement of keeping UPSC in the picture has been met. Regarding first stage advise from CVC, it is usually taken in vigilance cases and the case of the applicant does not have that character.



V. The applicant is questioning the findings of the I.O at this stage rather than participating in the inquiry and oppose it tooth and nail with all the defence material he could muster. Moreover, the Tribunal is not expected to re-appreciate evidence brought out in the inquiry as observed by the Hon'ble Supreme Court in *State of Bihar vs Phulpari Kumari* on 6 December, 2019 Civil Appeal No. 8782 of 2019 (Arising out of SLP (C) No.21197 of 2019) as under:

It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.

VI. The applicant avers that the charges are not proved but it would not suffice by stating so in the OA. The right occasion to assert the same was during the conduct of the disciplinary proceedings and the applicant did not use the said opportunity. We have gone through the I.O report appended to the reply statement and found it to be comprehensive covering the articles of charge as an impartial adjudicator. The first article

of charge was partially held to be proved and the rest were held to be proved. Further, the charge sheet had four articles of charge and there was no order from the Tribunal to stay the inquiry. Applicant claimed that one of the articles of charge was in regard to refusal to accept salary cheque and since the non-payment of salary was under challenge before the Tribunal in November 2008, the matter is subjudice requiring respondents not to take action in the matter. We have examined this aspect and found that the III article of charge was in regard to refusal to accept official letters sent to him through peon book and non acceptance of salary cheques from the month of September 2007 to February 2008 and for failing to submit explanation to the memo dated 28.5.2008. The respondents took positive action to release salary which is the grievance of the applicant by Dec 2008 and later, in accordance with the order of the Tribunal on 18.11.2008 as admitted by the applicant in the OA as at para 4.2. The article of charge referred to the in subsequent charge memo dated 4.2.2009 was in regard to refusal to accept the salary cheques which the applicant denies and it was for the applicant to come clear on this in the disciplinary inquiry, which he did not do. Therefore, the matter cannot be said to be subjudice, as claimed by the applicant, since the aspect of salary disbursement was more or less over by December 2008 and later in bits and pieces.



VI. In regard to delay, the disciplinary case is in regard to a group A officer and there are many stages through which it has to be processed involving different departments like UPSC, law etc and therefore it would take time. Moreover, the Principles of Natural justice require that the stages prescribed should not be short circuited and that the employee should be

given reasonable opportunity to defend himself and therefore, it is understandable that some time would be taken. Further, it is observed that the applicant has also been a part of the delay by not cooperating with the respondents in participating in the inquiry and completing it early. Mostly, we observe in the OA that the applicant has relied on minor technical aspects and not the substantive aspect of the charges. It is well settled that the substantive justice would prevail over technical justice. The judgments of the superior judicial fora cited by the applicant would not render any assistance to the applicant as the facts and circumstances in the cited cases are different. The penalty order as Annexure A-9 of the OA is speaking and reasoned order. Other contentions made were also gone through, but since they were irrelevant, the same have not been touched upon.



VII. Therefore, after considering the different aspects of the dispute as at above, we are of the view that the OA lacks merit and hence, is dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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