



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No.6434/2020

Order Reserved on: 28.01.2021
Order Pronounced on: 05.02.2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Abdul Rashid Magrey, age 46 years,
S/o Shri Abdul Gani,
R/o Nowapachi (Marwah)
Tehsil Kishatwar,
District Doda

- Applicant

(Shri Yasser Ejaj Tak, Advocate)

Versus

1. State of Jammu & Kashmir,
Through Commissioner/Secretary,
Food & Supplies Department,
J&K Govt. Srinagar
2. Director,
Food & Supplies Department,
Kashmir

- Respondents

(Mr. Sudesh Magotra, Advocate)

O R D E R



Justice L. Narasimha Reddy:

The applicant was appointed as a Store Keeper in the Consumer Affairs and Public Distribution Department. Between 1987 and 1993, he was posted at Sale Centers Dharna/Nowpatchi. Several complaints were received, alleging that he resorted to black marketing of food grains and accumulated wealth. After verification of the matter, an order of recovery was passed against him. He filed Writ Petition before the Hon'ble High Court of Jammu & Kashmir, challenging the same and the recovery was stayed. Thereafter, the Writ Petition was dismissed by the Hon'ble High Court on 15.07.1998. In an LPA filed by the applicant, a Division Bench passed an order dated 26.4.1999, directing the respondents to conduct an inquiry and to complete the same within six months. When the applicant was placed under suspension, he filed a Writ Petition and that was followed by an LPA.

2. The Disciplinary Authority (DA) appointed an Inquiry Officer (IO) on 09.03.2004. The IO submitted his report, holding that the applicant misappropriated an amount of Rs.74,15,316/- between 1994 and 1997 and the same is liable to be recovered. A show cause notice was issued to the applicant



on 14.09.2004. Since he did not submit any explanation, the DA passed an order dated 10.05.2005, dismissing the applicant from service.

3. The applicant filed SWP No.1182/2005, challenging the order of dismissal. He pleaded that no show cause notice was issued to him, indicating the penalty and that several irregularities have taken place in the course of inquiry. Ultimately, he prayed for quashing of the order of dismissal and for granting him, the consequential relief.

4. The respondents filed a detailed counter affidavit. They have narrated the various steps that were taken after the complaints were received against the applicant. Reference is made to the orders passed in the Writ Petitions and the corresponding LPAs. It is also mentioned that the Hon'ble Division Bench issued certain directions as regards the steps to be taken by the respondents and that all of them were strictly complied with.

5. In view of the re-organization of the State of Jammu & Kashmir, the SWP was transferred to the Jammu Bench of this Tribunal and re-numbered as TA No. 6434/2020.



6. We heard Mr. Yasser Ejaj Tak, learned counsel for the applicant and Mr. Sudesh Magora, learned counsel for the respondents.

7. The dismissal of the applicant was on the ground that he misappropriated funds, while functioning as Store Keeper at the establishment of the Consumer Affairs & Public Distribution Department. It is also alleged that he resorted to the black marketing of the food grains.

8. Before initiating the disciplinary proceedings, the respondents took steps for recovery of the resultant amount. That was initially stayed by the Hon'ble High Court. Ultimately, the Writ Petition was dismissed. In LPA preferred by the applicant, a set of directions were issued that included initiation of disciplinary proceedings and conclusion of the same within six months. The charge memo was issued to the applicant and he was placed under suspension. That gave rise to filing of another appeal. Ultimately, the DA passed an order dated 10.05.2005, dismissing the applicant. He raised several objections to the impugned order in the Writ Petition. One of them is that he was not issued any notice, indicating the quantum of punishment and that the requirement under the relevant provisions of the Constitution is not complied with.



9. This is a typical case in which the entire disciplinary proceedings against the applicant took place under the specific directions, issued by the Hon'ble High Court. It is not disputed that a detailed inquiry was conducted and on conclusion of the inquiry, the applicant was issued a show cause notice. In the impugned order, it is categorically stated that though the applicant received notice dated 14.09.2004, he did not choose to submit any reply. The complaint as regards the violation of principles of natural justice can be entertained, if only there was total lapse on the part of the concerned authority. When record discloses that a notice was issued and the employee does not dispute the receipt of the same, the nature of inquiry undergoes a substantial change. The principles of natural justice stand complied with, and to a large extent, the provision of law also.

10. In case the notice was defective, it was obligatory on the part of the applicant to point out the same. In such a case, the respondents would have corrected the mistake, if it is shown to have occurred. Having remained silent about the same, the applicant cannot complain of any defect. Added to that, the allegations made against him are of a grave nature. Not only he accumulated wealth for himself but also deprived the hungry and needy people, of their access to food grains. He was found



to have black marketed the food grains, meant for public distribution.

11. We, therefore, do not find any merit in the TA and the same is accordingly dismissed. There shall be no order as to costs.



(Pradeep Kumar)
Member (A)



(Justice L. Narasimha Reddy)
Chairman

/lg/