

**Central Administrative Tribunal
Principal Bench, New Delhi**



(Through Video Conferencing)

OA No.1636/2020

Date of orders reserved : 16.06.2021

Date of pronouncement of orders: 15-07-2021

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

GP Capt (Retd.) S.K.Sinha,
Aged about 61 years,
Group 'A' Services,
Retired as Ex-Joint Deputy Director (Logistics),
Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat, R/o Apartment No.101,
Kalypso Tower No.4, Jayapee Greens Wish Town,
Sector -128, Noida-201 304.

...Applicant

(By Advocate: Ms.Akanksha Choudhary)

VERSUS

1. Union of India, Through Additional Secretary (SR), Cabinet Secretariat (SR), Room No.1001, B-I Wing, 10th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003.
2. Director, Cabinet Secretariat (SR), Room No.1001, B-I Wing, 10th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003.
3. Special Secretary, Aviation Research Centre, Directorate General of Security, Cabinet Secretariat, Block-V, R.K.Puram, New Delhi-110 066.

...Respondents

(By Advocate: Mr. R.K.Jain)

ORDER



Justice L. Narasimha Reddy:

The applicant joined from Indian Air Force as Pilot Officer, in the year 1980 and retired in the year 2011 as Group Captain. He said to have obtained commendation on four occasions in his service. Soon after his retirement in Air Force, he was offered appointment as Joint Deputy Director (Logistics) in Aviation Research Centre (ARC) under the Cabinet Secretariat, on 23.12.2011, on re-employment basis. He was also put on probation for two years, and he successfully completed the same.

2. It is stated that the applicant highlighted a number of grave irregularities and infirmities in the logistics activities of ARC in the year 2014. His services were terminated, vide order dated 24.11.2014, to be effective from 23.12.2011. The applicant filed OA.No.987/2015, challenging the order of termination. When that was pending, the appointing authority passed an order dated 25.06.2015 withdrawing the order of termination, and accordingly the OA was dismissed on 07.07.2015, as infructuous.

3. After reinstatement into service, the applicant was placed under suspension, vide orders dated 23.07.2015, contemplating disciplinary action. He was issued a charge memo dated 26.10.2015 with certain allegations. The applicant submitted his explanation denying the allegations, and not satisfied with that, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO). The IO submitted a report on 23.03.2018, holding that the charges I, II and III, framed against the



applicant, are proved. A copy thereof was furnished to the applicant for his remarks. The IO made an observation that had the administration taken proper precautionary measures, the lapse would not have occurred. As regards, Article –IV, the IO held that it was not proved.

4. The DA issued a disagreement note in respect of Article-IV on 27.04.2018. The applicant submitted his explanation for that on 31.05.2018. Thereafter, the applicant retired from service on 31.08.2018. The report of the IO, together with the disagreement note and the explanation offered by the applicant was forwarded to the UPSC. On receipt of the advice from the UPSC, the respondents forwarded a copy of the same to the applicant on 23.06.2020 for his remarks and comments. The DA passed an order dated 26.08.2020, imposing the penalty of withholding of 20% of the gratuity, as admissible to the applicant. The applicant filed this OA challenging the order of penalty.

5. The applicant contends that the very initiation of disciplinary proceedings against him was a vindictive measure, once the respondents have realised that the earlier order passed by them terminating the service was untenable and it is evident from the fact that he was placed under suspension soon after he was reinstated and the OA No. 987/2015 was dismissed. He submits that the disciplinary proceedings are required to be concluded within six months as per the guidelines issued by the CVC, and the same was



not adhered to, in his case. Another contention of the applicant is that he was not extended the benefit of the defense assistant.

6. The applicant further states that the inquiry was not held properly and that he was not provided with adequate opportunity.

Certain other contentions are also urged.

7. On behalf of the respondents, a detailed reply is filed. It is stated that the charges framed against the applicant are very serious in nature and that he has compromised with the high level of security under which, the ARC functions. It is stated that having regard to the security in the organization, the employees or officers are not permitted any private drivers and that, though the applicant was accorded permission for a period of 15 days, as a special case, he continued to bring the private driver beyond that period. They submit that the applicant has thereafter changed the vehicle as well as driver. It is also stated that the drivers of the applicant were found in possession of the mobile phones, with prohibited features such as Camera and being a senior officer, the applicant was not expected to compromise with the security establishment, in such manner.

8. The respondents stated that every step in the departmental inquiry was conducted strictly in accordance with the prescribed procedure and the delay was mostly on account of the fact that the advice of the UPSC became necessary, once the applicant retired from service.



9. We heard the arguments of Ms. Akanksha Choudhary, the learned counsel for the Applicant and Mr. R.K. Jain, the learned counsel for the Respondents, in detail.

10. The particulars of the career of the applicant and the circumstances that gave rise to passing of the order of penalty, are mentioned in the preceding paragraphs. The applicant joined the ARC, after he retired from Indian Air Force. He was placed under probation for a period of two years from 26.12.2011, and he completed that on 26.12.2013. Within one year i.e., 21.11.2014, his services were terminated. Though the order was to be effective immediately, it was made to be operative from 20.12.2014, vide a corrigendum. Even while O.A.No.987/2015, challenging the said order was pending, the department has taken a decision to reinstate the applicant, without prejudice to the right of initiation of the disciplinary proceedings. Accordingly, an order was passed on 25.06.2015, treating the earlier order of termination as *void ab initio*. In view of this development, the OA was dismissed, as infructuous.

11. The applicant was placed under suspension, vide order dated 23.07.2015. He was also served with the charge memo with the following articles of the charges:

“Article of charge –I

That the said Gp. Capt. (Retd.) S.K. Sinha while functioning as Joint Deputy Director (Logistics) at ARC Mahipalpur, New Delhi, knowingly and consciously permitted entry of the personal vehicle driver employed by the officer inside the securd premises of ARC Mahipalpur Complex, almost for a period of 02 years.



The aforesaid continued act of commission, Gp. Capt. (Retd.) S.K.Sinha, JDD (Logistics) has resulted in a breach of security. Gp. Capt. (Retd.) S.K. Sinha has not only violated Departmental Standing Instructions but has failed to maintain absolute integrity and has acted in a manner which is highly unbecoming of a Government servant, and has thus violated the provisions of Rule 3 (1) (i) and (iii) of CCS (Conduct) Rules, 1964.

Article of charge –II

That the personal vehicle driver of said Gp. Capt. (Retd.) S.K. Sinha functioning as Joint Deputy Director (Logistics), ARC Mahipalpur, who was allowed entry inside the office complex by the said officer, was in possession of a mobile phone that contained features banned for possession inside the secured zone of the office complex. As the said personal driver was Gp. Capt. (Retd.) S.K. Sinha' personal employee and his entry into and continued presence inside the secured complex was on the officer's account, responsibility for this violation of security instructions was also Gp. Capt. (Retd.) S.K. Sinha's.

By this act of omission/commission, Gp. Capt. (Retd.) S.K.Sinha, JDD (Logistics) has acted in a manner which is highly unbecoming of a Government servant, and has thus violated the provisions of Rule 3 (1) (i) and (iii) of CCS (Conduct) Rules, 1964.

Article of charge –III

That the said Gp. Capt. (Retd.) S.K. Sinha, Joint Deputy Director (Logistics) while functioning as JDD (Logistics), at ARC Mahipalpur, and having allowed entry of his personal driver inside the office complex with a mobile phone possessing banned features including recording facility; thereafter failed to ensure that the personal driver does not enter/move inside the office premises whereas the said diver entered the restricted office premises and recorded pictures and videos of ARC aircrafts and other sensitive areas



of the campus on his mobile phone; thus endangering security.

By this act of negligence and omission, Gp. Capt. (Retd.) S.K.Sinha, JDD (Logistics) has acted in a manner which is highly unbecoming of a Government servant, and has thus violated the provisions of Rule 3 (1) (i) and (iii) of CCS (Conduct) Rules, 1964.

Article of charge –IV

That inspite of having been issued a vehicle pass for a vehicle of specific registration number, the said Gp. Capt. (Retd.) S.K. Sinha, while functioning as JDD (Lgs), at ARC Mahipalpur, used a different vehicle to enter the secured complex. Thus, vehicle without a valid permit/pass was taken inside by Gp. Capt. (Retd.) S.K. Sinha. This was a violation of security instructions and conduct becoming of a Govt. servant.

By this act of commission, Gp. Capt. (Retd.) S.K.Sinha, has violated the provisions of Rule 3 (1) (i) and (iii) of CCS (Conduct) Rules, 1964.”

The applicant submitted his explanation and not satisfied with the same, the DA appointed an IO. The manner in which the order of Penality came to be passed, has been mentioned in the preceding paragraph.

12. One of the contentions advanced by the applicant is that the disciplinary proceedings were not concluded within the reasonable period of six months. It is true that the CVC opined that the disciplinary proceedings must be concluded within six months. However, there are several practical difficulties in adhering to that time frame. The employee or officer must submit his explanation within time, the department must identify the competent IO and the charged officer must extend cooperation for the inquiry. The



requirements such as, obtaining the advice of the UPSC is another factor, which adds to the prolongation of the proceedings. Howsoever advisable and desirable it is, to conclude the disciplinary proceedings, at an early date; the delay by itself would not vitiate them muchless, the end result would become a nullity.

13. The applicant is a fairly senior officer. However, he wanted the help of a defence assistant. The guidelines are framed, indicating the persons, who can be permitted as defence assistants. The applicant is said to have made a request to permit him to avail the services of a person, who is otherwise impermissible. That in turn necessitated in passing of the orders, and the corresponding delay. We do not find any serious infirmities in the context of dealing with the request of the applicant for allowing the help of a defence assistant.

14. Though it is pleaded that the applicant was not provided with adequate opportunity, we do not find any support for this contention from the record. The IO followed every step meticulously and the objectivity with which he acted is evident from the report itself. He held that the articles of charge I, II and III are proved and article of charge IV is not proved.

15. Even in relation to charge no.IV, the DA issued a disagreement note and the applicant was provided with an opportunity to submit his explanation. Since the applicant retired from service during the pendency of the disciplinary proceedings, it became necessary to obtain the advice of the UPSC, as provided for under the CCS (Pension) Rules. A copy of the advice was also furnished to the



applicant and ultimately, the penalty of withholding of 20% of the gratuity was imposed.

16. This is not a case in which any question is raised about the competence of the authority, which initiated the disciplinary proceedings or the one who passed the order of penalty. Though a plea is raised about the delay or certain steps in the inquiry, we do not find much substance in it. What the Tribunal has to examine is as to whether the charges are of serious in nature and whether the findings thereon are vitiated in any manner. A perusal of the articles of charge discloses that the applicant had purposely or inadvertently brought about a situation where the security in sensitive organization was seriously compromised.

17. The applicant held very high positions in a disciplined organization like Air Force. More than any one, he was supposed to be aware of the security issues relating to Aviation. Instead of being a role model to others, he became responsible for compromising with the security issues. On the one hand, he brought private drivers to the prohibited area without there being proper authorization and on the other hand he did not ensure that such persons do not hold any mobile phones, with prohibited features.

18. For all practical purposes, the private drivers engaged by the applicant breached the security parameters by citing the position and authority of the applicant. The lapse was very serious and the charges are held proved. The services of the applicant in the ARC was for few years, and the gratuity component is not that



considerable. Forfeiture of 20% thereof cannot be said to be disproportionate. Things would have been different altogether, had the applicant made an effort to help the organization in preserving the security factors, instead of going on challenging every steps taken by the respondents, under one excuse or the other. Such an approach cannot be countenanced in a sensitive organization like ARC.

19. We do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

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