

(14) 12

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 141 of 1987

Allahabad this the 23rd day of March, 1995

Hon'ble Mr. Justice B.C. Saxena, Vice Chairman
Hon'ble Mr. S. Das Gupta, Member(A)

Uma Shanker Misra, S/o Late Sri Sheetla Prasad Misra,
Selection Grade Auditor, Account No.8287744, Office of
of the Controller of Defence Accounts(Pension), Allaha-
bad.

Applicant.

By Advocate Dr. R.G. Padia

Versus

1. Union of India through Financial Advisor(Def. Services), Ministry of Defence, Government of India, New Delhi.
2. Controller General of Defence Accounts, New Delhi.
3. Controller of Defence Accounts(Pension), Allahabad.

Respondents.

By Advocate Sri N.B. Singh

O R D E R

By Hon'ble Mr. S. Das Gupta, Member(A)


This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the orders dated 30.11.1981, 24.2.1983, 12.7.1985 and 11.6.1986 which relates to the refusal to grant to the applicant Leave Travel Concession(L.T.C. for short) facility, be quashed and the respondents be directed to refund to the applicant the amount of L.T.C. advance which was recovered from his salary. It has been further prayed that the order dated 21.11.1985/04.12.1985

(15) 12/2

:: 2 ::

(Annexure- XXXV) by which the applicant was reverted be quashed and he be allowed to work as Selection Grade Auditor.

2. Briefly stated, the facts of the case are that the applicant was appointed as U.D.C. in the department of the respondent no.3 on 08.10.1959. He was made substantive U.D.C. w.e.f. 01.12.1964; thereafter, he was promoted to the post of Selection Grade Auditor on 01.6.1976 and was subsequently confirmed on the said post. In 1980, the applicant submitted an application to respondent no.3 for the grant of advance of L.T.C. He had stated that this facility was required for his family to visit Rameshwaram. He himself did not want to avail of the said facility. He was given an advance of Rs.1200/- on 12.12.80 and a further advance of Rs.1,000/- on 02.1.1981. The members of his family actually visited Kanyakumari by Bus which was chartered from Allahabad and ⁱⁿ which several other employees of the same department were also travelling to Kanyakumari. The applicant claims that he submitted an application on 27.12.1980 to the authority concerned intimating that the members of his family were going by Bus to Kanyakumari. It is alleged that the said application was given by him to the Section

(16) 

:: 3 ::

Officer concerned who advised him to present it before Sri Vishnu Dutt Sharma, Accounts Officer. The applicant personally took the application to Sri Sharma and ~~0000~~ latter acknowledged the receipt of the same by putting his signature on the copy of the said application. He claims to have sent true copy of the said application to be forwarded to the certain other authorities concerned. He has filed photostat copy of the said application(Annexure A-II) and also the postal receipt(Annexure-III).

3. The applicant thereafter was given a letter dated 19.6.1981 alleging that the members of the applicant's family had not commenced the journey within a period of 30 days. He communicated to the authorities concerned that the members of his family had actually travelled to Kanyakumari by Bus. However, a letter dated 30.11.1981 issued on behalf of the respondent no.3 informing the applicant that since his reply was found sketchy and inadequate, the claim of L.T.C. was to be rejected. A copy of this letter is at Annexure.V. The applicant responded to this, requesting reconsideration of the matter. This was followed by another letter but when no suitable reply was received, he submitted an appeal to the respondent no.2. The said appeal was, however, rejected and the applicant was informed of such rejection by

.....pg.4/-

66

(17) 12

:: 4 ::

the letter dated 24.2.1983(Annexure-IX). Further representation submitted to the respondent no.1 was also rejected and this was communicated to him by the letter dated 12.7.1985(Annexure-XII). He wrote another letter to the respondent no.2 and also to respondent no.3 to re-consider his case but, by the letter dated 11.6.1986(Annexure-XIV) he was informed that his appeal to various authorities to re-consider his case, has been rejected.

4. Meanwhile, the respondent no.3 had issued a letter dated 20.3.1982(Annexure-XV) alleging that the applicant had made a false statement while claiming L.T.C. and thus, failed to maintain absolute integrity. He was asked to explain the circumstances under which he had made a false statement and tried to defraud the Government. The applicant submitted his explanation but, he was served with the charge memo dated 29.11.1983 under Rule 14 of the CCS(CCA) Rules, 1965. It was alleged in the charge memo that he ~~had tried to submit false L.T.C. claim and also forged the signautre of an Account Officer who to substantiate his statement that he had already intimated to the authorities the change in destination and mode of travel. An inquiry was conducted and the Inquiry Officer gave his report stating that the charges have been established. Thereafter, accepting the inquiry~~

:: 5 ::

Officer's report, a penalty of reduction to the lower post of Auditor was imposed on the applicant by the respondent no.3 by the impugned order dated 21.11.1985/04.12.1985. The applicant filed an appeal dated 17.1.1986. It is stated that the same has not yet been decided. ~~The respondents~~

5. The respondents have filed the counter-reply in which it has been stated that the applicant had obtained first L.T.C. advance on 12.12.1980 stating that ~~on~~ his wife and a daughter would visit Rameshwaram. The second advance was obtained on 02.1.1981 stating that his son and the other daughter would visit Trivandrum by Rail. As they did not perform the journey to the destination and went to Kanyakumari and that to by bus, the applicant was asked to explain the circumstances under which the destination and mode of journey were changed. The applicant submitted an application dated 09.7.1981 stating that the circumstances of the changing the destination had already been explained in his application dated 28.1.1981. The said application was received after completion of the journey accompanying his adjustment claim also dated 28.1.1981. As his explanation was not found convincing and also ~~in~~ terms of the provisions of Government of India, Ministry of

Wp.

Home Affairs O.M.No. 31011(2)/75-Ests(A) dated 03.2.1979, which provides that the declared ~~ooo~~ place of visit can be changed only with the prior approval of the controlling authority before commencing of the journey, his L.T.C. claim was rejected. His various representations against such rejection were also rejected by the various authorities. It is alleged that the applicant had not mentioned the facts of submission of his earlier application dated 27.12.1980 in his applications dated 28.1.1981 and 09.7.1981. The contention that he submitted an application dated 27.12.1980 intimating the change in destination is, therefore, an afterthought. The applicant failed to submit the original receipt given by the Accounts Officer and the matter was referred to a Hand Writing Expert who opined that the ~~ooo~~ signature of Sri Vishnu Dutt appearing on the receipt is forged one. The applicant was, therefore, served with a charge ~~oooo~~ memo for major penalty and an inquiry was held providing him full opportunity to defend his case. The report of the inquiry was considered by the Disciplinary Authority who awarded the penalty of reduction to the lower post. It has already been stated that the appeal filed by the applicant has been rejected by an order dated 17.11.1986, a copy of which has been placed at Annexure C.A.-6.

:: 7 ::

6. The applicant has ~~added~~ filed a rejoinder affidavit in which the averments made in the O.A., have ^{been} reiterated.

7. We have heard the learned counsel for the parties and have carefully gone through their pleadings.

8. There are two issues in this case which requires our consideration, first is whether the rejection of the L.T.C. claim of the applicant by the respondents is valid or not. The second issue relates to validity or otherwise ^{of} disciplinary action taken against him. It is, however, noted that both the issues are inextricably linked with each other since the basis for disciplinary action is lodging of ~~invalid~~ claim of L.T.C. and it is also ~~not~~ ^{the} ground on which the L.T.C. claim has been rejected. Taking ^{up} of the first issue for ^{the} consideration, we find that initially ~~the~~ applicant, admittedly, obtain L.T.C. advance in two instalments stating that his family members would visit Rameshwaram/Trivandurum by Rail. However, according to him the actual ~~ly~~ journey was performed to Kanyakumari and that ~~to~~ by chartered bus. The rejection of the L.T.C. claim is not merely

W.C.

(21) 2/8

;; 8 ::

because the destination and the mode of travel were changed but that such a change was made without prior approval of the competent authority. It is not in dispute that such approval was necessary. The applicant himself has averred that he submitted an application prior to the commencement of the journey intimating the change in destination. It is, however, ^{this} very fact as to whether he gave such a prior intimation is in dispute. The applicant has set up a story that he had submitted this application dated 27.12.1980 to Sri V.D. Sharma, Accounts Officer and obtained the signature as a token of the receipt of the application. However, it is ~~curious~~ ^{curious} to note ~~that~~ that in a subsequent letter of explanation dated 28.1.1981 and 09.7.1981, no mention has been made regarding submission of an earlier application dated 27.12.1980. The respondents have taken a view that this was only an afterthought and it is not a fact ^{that he} submitted such an application dated 27.12.1980 before commencement of the journey. From the circumstances of the case, we are inclined to agree with the respondents. Once this position is accepted, the so ~~called~~ ^{h.b.a} signature of Sri V.D. -Sharma would also appeared to ^{be a} fabricated one and this was ^{the} a view of ^{to} Handwriting Expert.

.....pg.9/

9. The applicant of course has disputed the opinion of the Handwriting Expert in this regard but, that is beside the point in ~~correlation~~ relation to his claim for L.T.C. and would be discussed when we come to the validity of the disciplinary action taken against him which we ~~now~~ now proceed to discuss.

10. The charge-sheet against the applicant was for submitting the false L.T.C. claim, making false statement and for-ging the signature of Sri V.D. Sharma, Accounts Officer with a view to substantiating his statement ~~to~~ ^{that} ~~the fact~~ that he had intimated the change of destination and mode of travel to the C.D.A.(P). We have already discussed (supra) ^{that} the applicant's contention that he gave a prior intimation of the change of destination and mode of travel to the competent authority prior to the commencement of the journey by a letter dated 27.12.1980 does not appear to be credible. The other charge which remain is that of forgery of the signature of Sri V.D. Sharma, this was sought to be proved in the inquiry by adducing the evidence of a Handwriting Expert, M/s Alexander & Alexander. The applicant states that from the report itself, it is evident that no clear case ~~would~~ be made out of forgery by the applicant. On the other hand,

(23)
AR
10

:: 10 ::

he himself contacted the Handwriting Expert who gave an opinion that in respect of the applicant his opinion was not final and that infact on the basis of the photostat copy, no opinion was possible. The applicant has annexed a copy of the said report at Annexure-XXX. Furthermore, the applicant had also obtained an opinion of another Handwriting Expert M/s Radha Krishna Gupta, who opined that no case of forgery was made out against the applicant, a copy of this opinion is at Annexure-XXXI.

11. An appraisal of the relative weightage to be given to various opinions given by Handwriting Expert, would take us to the realm of re-appraisal of evidence recorded in the inquiry. It is the settled principle of law that no Court/Tribunal shall re-appraise the evidence in a departmental inquiry unless the findings of the Inquiry Officer appear to be wholly perverse on the basis of the evidence recorded. We have noticed no such perversity in the appraisal of the evidence and the findings recorded by the Inquiry Officer. We^{are,} therefore, not called upon to enter into this controversy.

12. While, we are not called upon to re-appraise the evidence in the absence of any

.....pg.11/-

w/c

(24)
A2
11

:: 11 ::

perversity in the findings, we are certainly called upon to see whether there has been any procedural infirmity in the disciplinary action taken against the applicant and whether there has been any violation of principles of natural justice requiring that the applicant be given adequate opportunity to defend himself. The applicant is fully entitled to raise such points and he has done so.

13. The first point raised by the applicant^W that on receipt of the charge-sheet, he requested the respondent no.4 to supply him true copies of certain important papers and documents to enable him to give a reply to the charge memo. The respondent no.4, however, replied by his letter 21.12.1983 that it was not possible for the department to supply the ~~relative~~ papers to the applicant. The respondents have submitted in their counter-reply that the applicant was informed that he would get full opportunity of inspecting the listed documents during the course of inquiry and he was, at that stage, only to specifically admit or ~~denied~~ the charges.

14. The point raised by the applicant cannot be considered as ~~stated~~ infirmity in the proceedings. At that stage, the applicant was only to state whether he ^{pleads} ~~pleads~~ guilty or not

who

to the charges levelled and, therefore, the documents listed would not have been necessary at that stage to make his plea of guilty or not guilty. The respondents have clearly averred that the applicant was given full opportunity to inspect such documents during the course of inquiry. ^{to are,} We, therefore, of the view that there has been no denial of opportunity to the applicant on this score.

15. The next point urged by the applicant is that he made several applications requesting the authority to adjourn the inquiry proceeding on account of the fact that his appeal against rejection of the L.T.C. claim was pending before the Financial Advisor(Defence Service). As the respondents have rightly pointed out in the counter-reply, the applicant was charge-sheeted for alleged submission of false L.T.C. claim and forging of the signature of an Accounts Officer and there was no reason to pend the inquiry merely because his representation against rejection of L.T.C. claim was pending.

16. The next point taken by the applicant is that Inquiry Officer himself was personally biased against him and since in the past there had been mutual altercation and exchange of hot words between him and the Inquiry Officer

(26) 2
B

:: 13 ::

the applicant had made a request to the departmental authorities including the respondent no. 3 and 4 to change the Inquiry Officer. This request was, however, not acceded to. The respondents have stated in their counter-reply that the facts brought out by the applicant were carefully examined and the same were found to be incorrect and accordingly his request for the change of the Inquiry Officer on account of bias, was not accepted by the disciplinary authority.

17. * Proven and bias on the part of the Inquiry Officer against the delinquent employee is a serious infirmity in disciplinary proceedings. Such a bias would flaw a disciplinary proceeding to such an extent that the infirmity is irremediable. However, to take such a plea successfully the applicant ~~deposed~~ must prove the existence of such a bias or must successfully establish proper foundation for an inference that such bias existed. Bias can be both in fact and in law but then the applicant must either aver fully substantiated facts or bring out irrefutable evidence to circumstances from which bias can be inferred.

18. In the case before us, the applicant made certain vague submissions regarding bias on

.....Pg.14/-

26

the part of the Inquiry Officer. These submissions ^{are} ~~have~~ totally insufficient to ^{h.} ~~lay~~ down any ~~one~~ foundation for inference of any bias. He has not even impleaded the Inquiry Officer by name, so that ^{not} ~~the~~ latter could get an opportunity to controvert whatever vague submission of bias have been made by the applicant. We are, therefore, of the view that the plea taken by the applicant that the Inquiry Officer was biased against him has no force.

19. The next point raised by the applicant is that he had been appointed as Auditor by the Controller General of Defence Accounts(Pension), New Delhi whereas the inquiry proceeding had been initiated against him by the sub-ordinate authority viz. the Controller of Defence Accounts(Pension), Allahabad. To this, the respondents have submitted that in terms of the provisions in Rule 13(2) of the C.C.S.(C.C.A.) Rules, 1965, a disciplinary authority competent to impose any of the penalties specified in Clause I to IV of Rule 11 may institute disciplinary proceedings against ~~any~~ any government servant for imposition of the penalties specified in Clause V to IX of the said rule notwithstanding that such disciplinary authority is not competent to

(28)

✓

:: 15 ::

~~to~~impose any of the latter penalties. Since the Controller of Defence Accounts(Pension), Allahabad was competent to ~~award~~ award the penalties in Clause I to IV of Rule 11 of the said rules, the proceedings ~~initiated~~ initiated against the applicant was in order.

20. We have adverted to Rule 13(2) of the C.C.S.(C.C.A.) Rules, 1965 and found that the contention of the ~~opponents~~ respondents is correct, provided the Controller of the Defence Accounts (Pension), Allahabad was competent to impose any of the penalties specified in Clause I to IV of Rule 11, I.B.D.I. That he was so competent has not specifically been denied by the applicant in his rejoinder-affidavit. In view of this, the applicant's contention in this regard is ~~also~~ rejected.

21. Lastly, the applicant has raised a plea that M/s Alexander and Alexander had not given any clear findings regarding forgery and that M/s Radha Krishna Gupta whose opinion was obtained by the applicant himself also stated that no case of forgery against the applicant has been made out. He has also taken a plea that Sri V.D. Sharma himself was not examined as a witness and his request in this regard was turned down by the Inquiry Officer. As we

have already pointed out, we see no reason to assess the relative weightage of the opinion of the Handwriting Experts. Moreover, we have seen from the opinion given by the M/s Alexander and Alexander (Annexure - XXIX) that they have given clear opinion to the effect that the disputed signature had not been made by the writer of the comparison signature marked A-1 to A-3. The specimen signatures were those of Shri Vishnu Dutt Sharma. On the other hand, the opinion given by M/s Radha Krishna Gupta cannot be relied upon since, it is not clear what specimen signatures were furnished by the applicant for comparison.

22. As regards non-production of Shri Vishnu Dutt as a witness, the respondents have stated that no such request was ever made by the applicant. These have been controverted by the applicant in his rejoinder affidavit by referring to the daily order-sheet no.11 dated 17.5.1985 maintained by the Inquiry Officer, it would appear therefrom that the applicant wanted Sri V.D. Sharma to be produced as his witness but the Inquiry Officer after hearing the applicant decided that the evidence of Shri V.D. Sharma would not be necessary as the original receipt signed by

30

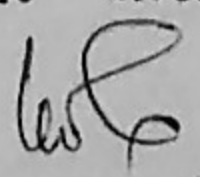
A2
17

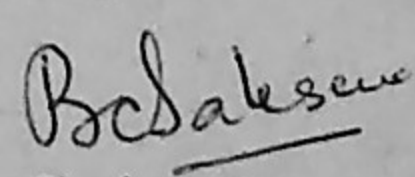
:: 17 ::

by him could not be produced before the Inquiry Officer by the applicant.

23. The non-examination of Sri V.D. Sharma would have been a major defect in the inquiry, as had the entire case against the applicant depended on his admission or otherwise that he did put a signature on the letter dated 21.12.1980, which the applicant contends to have been submitted to Sri Sharma. However, in this case even on the basis of evidence on record including the opinion of the Handwriting Expert, the Inquiry Officer had arrived at a finding that charges against the applicant was established. We have already stated that we find no perversity in the said finding. We cannot, therefore, hold that the non-examination of Sri V.D. Sharma is so serious a defect as to vitiate the inquiry.

24. No other point has been urged before us by the applicant. We, therefore, find that the application is devoid of merit and deserves to be dismissed. We, therefore, dismissed the application. There shall be no order as to costs.


Member(A)


Vice Chairman.

/M.M./