

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Transfer Application No. 1011 of 1987
(Writ Petition No. 13079 of 1991)

Allahabad this the 3rd day of Jan 1996

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

B.D. Tiwari C/o Shri R.A. Tiwari, Chandra Shekhar
Azad University of Agriculture and Technology Library,
Nawabganj, Kanpur.

APPLICANT.

Advocate Shri S.C. Budhwar
Shri Arun Tandon.

Versus

1. Union of India
2. The Director, National Sugar Institute, Kanpur.
3. Shri S.K Dubey, Manager, Experimental Sugar Factory,
National Sugar Institute, Kanpur.
4. Shri R.K. Verma, Assistant Engineer(Mech.) National
Sugar Institute, Kanpur.

RESPONDENTS.

Advocate Shri Ashok Mohiley.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

This T.A. which was decided by the
Tribunal on 12.8.1992, is received on remand from
the Hon'ble Supreme Court where the appeal was
filed and was decided on 08.8.1994. Their Lordships
of Supreme Court allowed the appeal and remitted the

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matter to this Tribunal for consideration of other grounds raised in the original matter. Hence, this matter is again listed before us.

2. The brief facts of the case are that the applicant-Shri B.D. Tiwari was discharging duties as ad-hoc Research Assistant in the National Sugar Institute, Kanpur. On 09.11.1978, Shri S.K. Dubey Manager, Experimental Sugar Factory, National Sugar Institute, Kanpur (Respondent No.3) and Shri R.K. Verma Assistant Engineer(Mech.), National Sugar Institute, Kanpur (Respondent No.4) found the applicant absent on his place of work. On the instructions of respondent no.3, one Shri Kaptan Singh was sent to search out the applicant but, there was no trace. Shri Kaptan Singh, therefore, returned and intimated respondent no.3 and 4 accordingly. The respondent no.3 then directed the respondent no.4 to issue memo to the applicant, with direction to see him(respondent no.3) in the afternoon. It is said that the applicant was not traceable till 3.15p.m. and, therefore, the respondent no.4 had informed the respondent no.3 about the matter. When the applicant reached the place of his work, he got the information of his search and, therefore, he reached the office of respondent no.4, where he was informed to receive the memo. After reading the memo, the applicant lost his temper and started abusing the respondent no.4. He also tried to get out of the room with the memo-book. When the respondent no.4 asked for the return of the memo-book, the applicant ² ~~manhandled~~ the respondent no.4 and also assaulted. Thereafter, the applicant took one chair out of the

room and sat at the door of the office of respondent no.4. The matter was brought to the notice of Manager, respondent no.3 and thereafter in the notice of the Director of the Institute-respondent no.2.

3. It appears that the Director of the Institute-respondent no. 2 placed the applicant under suspension and started departmental proceedings against him. The charge-sheet was served and Professor J.C. Bhargava was made the Inquiry Officer. The applicant had raised objection of non-supply of the complaints which were made by the respondent no.4 through respondent no.3 and the report made by Shri Kaptan Singh. It appears that the copy of these two reports, were made available to the applicant and, therefore, he filed supplementary reply to the charges. The original reply of the charges was already filed. The inquiry proceeded and ultimately the Inquiry Officer held that the applicant was absent on that day without permission and he had assaulted the respondent no.4 with fist and blows on his face. He did not find any evidence that the applicant had threatened to inflict fatal injuries to the respondent no.4. The inquiry officer also found the applicant guilty of indiscipline and misconduct by assaulting his superior officer-Shri R.K. Verma and thus, there was contravention C.C.S. Conduct Rules, 1964. The Director-respondent no.2 agreed with the conclusion of the Inquiry officer and therefore, served a notice on the applicant to show-cause as to why the penalty of removal from service be not passed. The applicant submitted reply and on the consideration of

the said reply, passed the impugned order (Annexure-12) on 30th June, 1980 whereby the applicant was removed from service with immediate effect. The applicant filed appeal against this order to the Secretary, Govt. of India, Ministry of Agriculture and Irrigation Deptt. of Food, New Delhi. The appeal was decided on 25.7.1981 and the same was rejected. The order of penalty which was imposed by the disciplinary authority, was confirmed.

4. Feeling aggrieved by this order, the applicant filed Civil Misc. Writ Petition 13079 of 1981 before the High Court at Allahabad. On the creation of the Central Administrative Tribunal, the said Writ Petition was transferred to the Allahabad Tribunal, where it was re-numbered as T.A. 1011 of 1987. The matter came up for decision before the Tribunal. Since, it was held by the Tribunal that the copies of the reports of Shri R.K. Verma (respondent no.4) and Shri Kaptan Singh, were not given to the applicant, the proceedings of disciplinary action, were vitiated. The result was that vide Judgment dated 12.8.1992, the Tribunal quashed the order of punishment including the appellate order and directed the respondents to proceed with the fresh inquiry after giving the copies of those two reports to the applicant.

5. We have already stated that this order was challenged before the Hon'ble Supreme Court and where the order of Tribunal, was set aside. It was observed by their Lordships of Supreme Court that the copies of both the reports were supplied to the applicant

and the supplementary reply was also filed on behalf of the applicant. Thus, the proceedings could not be held vitiated on that ground. Since, other points were not taken into consideration by this Tribunal, and, therefore, the matter was remanded.

6. After receipt of the case, it was listed before the Tribunal on 19.9.1994 and it was ordered that it should be listed again on 29.9.1994 for hearing. When the matter was taken up on 29.9.1994, counsel for the parties did not appear because they had resolved not to work. The matter, therefore, adjourned to 15.11.1994 when the counsel for both the parties had requested for adjournment and ultimately the case was adjourned to 16.12.1994. On that date, no sitting of the Tribunal could take place hence, the matter was adjourned to 04.1.1995. When it was taken up on 04.1.1995, none appeared for the applicant but, Shri Mohiley, counsel for the respondent was present and had requested for adjournment. Consequently, it was adjourned to 07.2.1995. Again on 07.2.95, none appeared for the applicant while the adjournment on the ground of illness of the counsel for the respondents was sought. Thereafter, it was adjourned to 10.4.95 when it could not be taken because there was no Division Bench. It was, however, postponed to 02.5.95 but, on 02.5.95 it was not listed and, therefore, it was ordered that the matter be listed and put up on 16.5.95. Again there was no Division Bench on 16.5.95 and, therefore, it was adjourned to 07.7.95. On that date Shri S.C. Buhwar, counsel for the applicant appeared and intimated that the papers were taken by the applicant from him

and, therefore, the notice was required to be sent to the applicant. The matter was adjourned to 22.8.95 and in the meantime, notice was issued to Shri B.D. Tiwari- the applicant. On 22.8.95, the applicant did not turn up but, Shri Budhwar sent illness slip. It was then adjourned to 05.9.95. On this adjourned date of 05.9.95, none had appeared for the parties and Shri S.C. Budhwar had sought adjournment. The matter was, therefore, again adjourned to 27.9.95. It is on this date that neither the applicant nor Shri S.C. Budhwar, counsel for the applicant had turned up but, Shri A. Mohiley ^{or} ^{Mohiley} counsel for the respondents was present and we heard ^{him} and the Judgment was reserved. Although, the arguments were heard from the side of the respondents but, we waited for, if, the applicant or his counsel could ^{turn} ^{up} and may argue the case, but, nobody turned up ^{are,} ^{or,} after waiting for about 2 months. We, therefore, disposing of it on the basis of the pleadings available on record.

7. The grounds on which the order of punishment as well as the appellate order, are challenged are that the copies of two reports which were already discussed, were not given to the applicant, the statement of Shri S.K. Dubey-respondent no.3 was believed partly and was rejected partly. The statement of Kaptan Singh was altogether ignored. The defence case of the applicant was not considered fully and that two orders of punishment as well as in appeal were passed without considering the facts put up by the applicant.

8. The respondents on the other hand came with the version that the inquiry was done in accordance with the rules and full opportunity of defence was given to the applicant. It is also contended that the inquiry officer arrived at the correct conclusion and the punishing authority as well as the appellate authority, had passed the orders after taking into consideration ~~of~~ the facts and circumstances. It is further averred that there is no illegality and thus, the plea of the applicant is not maintainable.

9. So far as the question of furnishing the copies of the reports given by Shri R.K. Verma- respondent no.4 and by Kaptan Singh is concerned, it is established and even the Hon'ble Supreme Court also observed that the copies were furnished to the applicant and in the light of those copies of two reports, supplementary explanation was also submitted by the applicant. Thus, it becomes no ground to challenge the order of punishment.

10. The contention of the applicant through his pleadings is that the proper appreciation of evidence was not done. He assailed the view taken by the inquiry officer, whereby the statement of Shri S.K. Dubey - respondent no.3 was partly believed. It was, therefore, pleaded on behalf of the applicant that either the witness should be believed in toto or he should be dis-believed completely. In our view this is not the correct position in law. The statement of a witness may be partly true and because part of the statement was not accepted, it does not mean

that the other part of statement which is true, should be thrown out. As a matter of fact, this aspect cannot be considered by the Tribunal because if, we do take up this kind of scrutiny, it will amount the appraisal of evidence which does not fall within the purview of judicial review. Thus, this plea does not hold good.

11. It is also prayed in the pleadings of the applicant that the defence witnesses were not allowed to be summoned and examined. We have gone through the report of the inquiry officer and found that several witnesses in defence, were examined. The inquiry officer had taken pains to ^{deal} ~~delay~~ with every aspect of evidence and had given reasons therefor. It is, therefore, incorrect that the opportunity of defending the applicant, was not given. In this way, even there is no substance in this plea also.

12. The pleadings of the applicant do not say or suggest any irregularity or illegality in procedure. The inquiry officer had adopted the procedure as was given under rules. The opportunity of defence was given, witnesses were cross-examined and defence witnesses were also examined on behalf of the applicant. Thus, we do not see any ground of procedural defect or illegality. The disciplinary authority had passed the order of punishment after taking into account all the facts and circumstances. Similarly the appellate authority had also passed the detailed and speaking order.

13. On the consideration of the facts of

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the case, we come to the conclusion that there is no merit in the case of the applicant and, therefore, it is rejected. The T.A. 1011 of 1987 is decided accordingly. No order as to costs.

Member 

1. Indonesia
Member (J) —

/M.M./