

70

AB
1

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 23rd day of February 1995.

Original Application no. 896 of 1987.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Man Bahadur, S/o Shri P. Bahadur, R/o Village Kunwawala,
P.O. Harrawala, District Dehradun.

... Applicant

C/A Shri C.D. Bahugwana

Versus

1. The Union of India, through Secretary, Ministry of Defence, Defence Sectt. New Delhi.
2. The Director General, Ordnance Factories, 6, Explanade, East Calcutta.-1
3. The General Manager, Ordnance Factory, Raipur, Dehradun.


... Respondents

C/R Shri N.B. Singh

O R D E R

(Hon'ble Mr S. Dayal, Member-J)

This is an application under section 19 of the Administrative Tribunal Act, 1985, against an order of removal from service.

- 
2. Since it pertains to a service matter relating to Dehradun district, it comes within the purview of Allahabad Bench of the Central Administrative Tribunal. The departmental remedies have been availed of by the applicant and the applicant has stated that this matter

is not pending before any other court of law.

3. The order of removal was passed on 07.05.86 and appeal was preferred against it on 12.08.86. This application was filed on 24.09.87 in this Tribunal. Therefore, the application has been filed well within the period of limitation.

4. The facts given in the application shows that applicant was recruited as a 'Darban' in the Ordnance Factory, Raipur, Dehradun in 1963 and was promoted as a Line Mistry (Skilled). It is claimed that he had no previous record of misconduct or gross negligence. It is claimed that the applicant was falsely implicated in a charge of theft of a gunny bag containing 41.55 Kgs of brass scrap kept on a bicycle at 4.55 A.M. on 28.07.84 by chargeman Shri Gurbux Singh who nursed a grudge against him. The applicant was made to sign some paper in English on 28.07.84 which ~~turned~~^{turned} out to be his confessional statement and it was said that it was recorded in the presence of Shri G.K. Sethi, Duty Officer for that day but Shri Sethi denied in the enquiry that it was signed in his presence. It is alleged that gunny bag was planted at a spot and the applicant was called on the pretext of urgent work through Darbans Shri Harboo Lal, Shri Sher Singh Gurang and Shri Ram Chand. The gunny bag was not weighed nor its contents taken out in the presence of the applicant. The applicant was suspended on 28.07.84. A Charge sheet dated 08.08.84 was served on him for attempted theft of govt. property and thus his failure to maintain absolute integrity. It is alleged that charge sheet

83
3

(12)

// 3 //

was issued by the Deputy General Manager, who was not authorised as he was not the disciplinary authority. The applicant filed written statement on 16.08.84 denying the allegations. The enquiry authority and presenting officers were appointed by the General Manager. The applicant was asked to give a panel of three names of defence assistants by notice of first hearing dated 11.09.84. The applicant's request for a legal practitioner was refused. A replacement of the first presenting officer was done on 13.10.84. The applicant appointed a defence assistant on 4.1.85. It is stated that principles of natural justice were violated in the manner enquiry was conducted. It is stated that Shri C.K. Sethi admitted in his cross examination during the enquiry that he did not remember whether any confessional statement was recorded in his presence. The applicant was given a show cause notice dated 27.03.86 without a copy of report and asked for a copy on 5.4.86. On receiving a copy of the enquiry report the applicant gave his reply dated 17.04.86 giving details of the conspiracy hatched against him. He was imposed the penalty of removal of the General Manager of the factory on 7.5.86 removing him with effect from the same date. The name of the applicant was struck off from the strength of the factory with effect from 12.5.86. The applicant filed an appeal dated 12.9.86 against this order to the Director General Ordnance factories.

5. The applicant seeks following reliefs:-
- i. Quashing the order of removal dated 7.5.86 and the removal of the name from the strength of

// 4 //

(13)

AB
4

factory dated 12.5.86.

- ii. Direction to the respondents to reinstate him from the date of suspension and treating the applicant as continuing in employment with full consequential benefits.
- iii. Award costs and any other relief deemed fit and proper.

6. The grounds of claiming relief are that charge sheet was issued by an authorised person, that the charge was a concocted one due to enmity, that the confession by the applicant was not proved, that D.S.C. guard Lance Naik Gajendra Chandra and Sepoy Kewal Ram were not examined as prosecution witnesses but were examined as defence witnesses inspite of the request of the applicant to summon them and thus prosecution withheld evidence, that the findings arrived at were perverse and arbitrary as no reasonable person could arrive at the findings from the evidence on record, that the defence of the applicant has not been accepted without giving any reasons, that the applicant was caught in a semi-public place and the case should have been tried in a court of Law and that the principles of natural justice were violated in conducting the enquiry.

7. The respondents in their reply have stated that the applicant was recruited as a temporary Durban in Ordnance clothing factory, Shahajampur, on 9.4.63 and was transferred to Ordnance Factory Dehradun on his request as Labourer 'B' with effect from 7.9.64 and was promoted as Ld Minstry w.e.f. 30.8.82. The service

// 4 //

(13)

AB
4

factory dated 12.5.86.

- ii. Direction to the respondents to reinstate him from the date of suspension and treating the applicant as continuing in employment with full consequential benefits.
- iii. Award costs and any other relief deemed fit and proper.

6. The grounds of claiming relief are that charge sheet was issued by an authorised person, that the charge was a concocted one due to enmity, that the confession by the applicant was not proved, that D.S.C. guard Lance Naik Gajendra Chandra and Sepoy Kewal Ram were not examined as prosecution witnesses but were examined as defence witnesses inspite of the request of the applicant to summon them and thus prosecution withheld evidence, that the findings arrived at were perverse and arbitrary as no reasonable person could arrive at the findings from the evidence on record, that the defence of the applicant has not been accepted without giving any reasons, that the applicant was caught in a semi-public place and the case should have been tried in a court of Law and that the principles of natural justice were violated in conducting the enquiry.

7. The respondents in their reply have stated that the applicant was recruited as a temporary Durban in Ordnance clothing factory, Shahajanpur, on 9.4.63 and was transferred to Ordnance Factory Dehradun on his request as Labourer 'B' with effect from 7.9.64 and was promoted as Lye Mistry w.e.f. 30.8.82. The service

// 5 //

(14)

A3
5

record of the applicant was tainted and as many as eight punishments were given to him from 4.11.67 to 27.12.77 for sleeping while on duty, for ~~quashing~~^{gambling} and for cutting a dry tree ~~by~~^{and} not remaining at the place of duty, etc. The allegation of bias against the applicant on part of Chargeman Shri Gurbux Singh has been denied and it has been stated that there was no such complaint against Shri Gurbux Singh earlier. It is stated that the confessional statement was recorded in English by foreman, Security Shri B.K. Manran in the presence of Shri C.K. Sethi but it was read out to the applicant and explained in Hindi. It is stated that the statements of Shri Gurbux Singh, Shri Harboo Lal, Shri Sher Singh and Shri R. Chandra who were on night patrolling of the Estate show that the applicant was caught red handed taking away 41.5 kgs of brass scrap in a gunny bag at 0455 hrs near the outside perimeter wall of the factory. It is stated that the contents of the gunny bag were weighed and sealed in the presence of the applicant. It is stated that the legal assistance was disallowed in terms of Rule 14(8) because the Presenting Officer was not a legal practitioner and the circumstances of the case did not require engagement of a legal practitioner. It is said that the Dy General Manager, Administration (Vigilance) signed the Charge Sheet duly approved by the Disciplinary authority and that he was authorised by the General Manager to do so vide his note dated 7.8.84. It is denied that the conclusions of the enquiry were based only on the confessional statement but on evidence collected in a full-fledged enquiry. It is stated that the applicant was caught red handed and

therefore, the findings of the enquiry were appropriate. It is stated that Shri Kewal Ram and Shri Gajendra Chand were examined as defence witnesses by the applicant's defence ^{Assistant-}~~statement~~ and were cross examined by the Presenting Officer without any protest from the applicant. It is admitted that the report dated 26.2.86 of the enquiry officer could not be sent along with show cause memorandum and was supplied ^{later}. It is denied that appeal dated 12.8.86 and reminder dated 21.9.86 were received from the applicant.

8. The learned counsel for the applicant Shri C.D. Bahuguna was heard. He contended that the respondents did not file any criminal complaint as there was no evidence. It was also stated that disciplinary authority could not redelegate its authority to issue charge sheet and cited decisions of the Supreme Court reported in 1983 AIR SC 109, 1991 AIR SC 121 and 1981 All India Service Law Journal CAT 501, as supporting his contentions. It is also stated that Shri Gurbux Singh's statement recorded in the preliminary enquiry was not supplied. It is further stated that the arguments raised by the applicant in his defence statement were not considered by the enquiry officer. He reiterated other grounds of application in the O.A. He also submitted the written arguments. The learned counsel for the respondents reiterated the contentions contained in the respondent's reply.

9. The written arguments cite judgement in favour of the contention that the applicant should have been

allowed a legal practitioner. He has quoted AIR 1972 SC 2178-CL Subramanian Vs. Collector of Customs in which it has been held that when a case against a person is handled by a trained prosecutor, it is a good ground for allowing a person to engage a legal practitioner. In Board of Turstees Vs. Dilip Kumar AIR 1983 SC 109, it has been held that when a delinquent employee is pitted against a legally trained mind, refusal of permission to engage a legal practitioner would amount to denial of a reasonable request to defend himself thereby violating principles of natural justice. In T. Kanni Vs. The Director of Postal Services reported in 1989 (3) All India Service Law Journal (CAT) 501, it has been held that request to engage a legal practitioner can only be allowed or rejected after taking into account the circumstances of the case. In J.K. Aggarwal Vs. Haryana Seeds Development Corporation it was held that in that case refusal to sanction the services of a lawyer in the inquiry was not a proper exercise of the discretion under the Rule resulting in failure of natural justice. The second issue argued at length is that framing or drawing up of charge sheet and delivery of charge sheet can be delegated by a disciplinary authority to a subordinate official but the signing and issuance of charge sheet has to be by only the disciplinary authority. The applicant has also said that no reliance could be placed on the confessional statement as it was in English and it is not proved that it was made without any threat, inducement or promise. He has said that non furnishing of Shri Gurbux Singh's statement and non production of D.K. Mannal's report violate the ratio of state of Punjab

Vs. Bhagat Ram AIR 1974 SC 2335 that non supply of full statements means denial of an opportunity to the delinquent to make an effective and useful cross examination. The same ratio has been given in Kashinath Dikshita vs Union of India AIR 1986 SC 2118. It has been stated that non prosecution of the applicant in a criminal court for an incident which took place at a public place led to denial of constitutional right to the applicant to defend himself. The applicant has quoted the principle of probability in throwing a 41 Kg. gunny bag over 11 ^{high} feet ~~at~~ wall and barbed wire and a person trying to get away with stolen property would not be walking with his cycle which was loaded with stolen brass scrap.

10. The main ground on which the applicant has sought to challenge the report of the Enquiry Officer leading to his removal is that the findings of the Enquiry Officer are such which no reasonable person would arrive at on the basis of materials on record. We have gone through the report and we find that the enquiry officer has taken the defence of the applicant into account. The findings of the Enquiry Officer rule out any conspiracy by the superiors to implicate the applicant on false grounds. Various grounds put forth by the applicant and his departmental assistant have been considered by the Enquiry Officer and found untenable. We find no bias or perversity in the findings arrived at by the Enquiry Officer. The evidence presented against the applicant in the departmental enquiry against him is quite consistent. The applicant is not able to substantiate his allegation of ^{Conspiracy} ~~conspiracy~~ by Gurbux Singh, the allegation of planting of bag, the allegation of wrong weightment of bag and the allegation

// 9 //

18

A3
P

of impossibility of throwing gunny bag and 41.5 Kg. of brass scrap across a 7 feet high wall having 4 feet high barbed wire. The conclusions arrived at the Enquiry Officer in the enquiry report are neither biased nor perverse and take into account the evidence presented on behalf of the applicant.

11. The applicant has challenged the confession recorded as not a confession because it was in English. He is right in stressing this fact. The statement of Shri Man Bahadur forming a part of Annexure 2 of the OA is not a statement but a summary record of what he stated in the presence of the Duty Officer in English. It has no value as confession and could not have been treated as admission of guilt; based on which the imputation on the charge sheet could have been taken as proved. The Enquiry Officer had taken the summary record into account but has based his findings on the evidence of witnesses examined on behalf of the employer and not solely on this so called confessional statement. There is an independent corroboration of the sequence of events given in the so call confessional statement by other evidence presented against the applicant in the enquiry proceedings. Therefore, the enquiry of proceedings are not vitiated because of the existence of this so called confessional statement.

12. The applicant has stated that non examination of Shri Gajendra Chandra and Shri Kewal Ram as prosecution witnesses shows that the prosecution wanted to suppress evidence in applicant's favour. The respondents have rightly pointed out in their reply that both these

A3
10

(19)

// 10 //

persons were examined as Defence witnesses and their evidence was taken into account. The contention of the applicant that the enquiry is vitiated simply because they were not examined as prosecution witnesses is not tenable.

13. The contention of the applicant that the respondents should have lodged a first information report for theft as the spot where the applicant was alleged to have been caught carrying the stolen material was a semi-public place and suggests by implication that the respondents should, thereafter, have acted in accordance with the result in the criminal case. The respondents could in this case have lodged a first information report also and should preferably have done so. However, the fact that no such report ^{was} lodged does not vitiate the departmental enquiry. The departmental enquiry was justified because the applicant was found in possession of the material in the ^{vicinity of} ~~vicinity~~ the factory. The points of view in both types of cases ~~and~~ criminal and departmental enquiry are different and both can be launched and pursued independently. The violations in these two cases are different of the criminal law in the first and of the conduct rule in the second. The standards of proof are also different as establishment of mens rea without any iota of doubt and without any suspicion of pressure or duress on the accused while the strong probability of occurrence is sufficient in the enquiry. The punishment in one is most likely to result in loss of liberty while in the other it is loss of employment. Hence, the enquiry can not be considered to have been vitiated if criminal case was not launched.

14. It is said that the issuance of the Charge Sheet signed by Deputy General Manager, who was not the appointing authority, renders the enquiry vitiated. The respondents have stated that the D.G.M. was authorised by the G.M. to issue the charge sheet. ~~such a specific authorisation by the G.M. to issue the charge sheet~~ Such a specific authorisation is, however, not necessary in view of the provisions of Rule 13 (2) of the Central Civil Services (Classification, Control and Appeal) Rules. There is no defect in issuance of the charge sheet in view of Rule 13 (2) of the aforesaid Rules.

15. The applicant has alleged denial of reasonable opportunity on the ground that he was not permitted to engage a legal practitioner. Rule 14 (8) (a) of CCS (CCA) Rules provides that a government servant may engage a legal practitioner if the presenting officer appointed by the disciplinary authority is a legal practitioner or disciplinary authority having regard to the circumstances of the case so permits. Annexures 9 to 12 of the OA shows that the request of the applicant for engaging a legal practitioner was patiently considered by the disciplinary authority and rejected. Having regard to the circumstances of the case where a specific ^{alleged} incident of taking material belonging to the government outside the factory was in issue, the order of the disciplinary authority on applicant's request for engagement of a lawyer is a reasonable and judicious one.

16. The non supply of the copy of the report along with the notice for show cause was not proper but

// 12 //

(21)

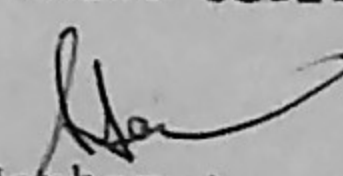
A3
12

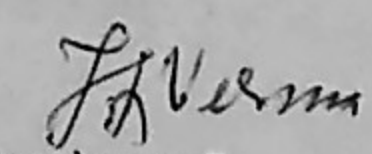
the fact is admitted by the applicant himself that the report was asked for by him and supplied to him before he furnished his reply to the show cause notice shows that the enquiry report was made available in time and the applicant had been given a reasonable opportunity though belatedly. Therefore, proceedings are not vitiated on this ground.

17. As regard the appeal, the applicant claims to have sent a petition for appeal and the respondents have denied receiving the petition. The petitioner has merely claimed that the petition for appeal was sent and received without ^{adducing} ~~adducing~~ any proof although he claims to have sent it by the Registered Post Acknowledgment Due. At this stage, it is now not considered necessary to direct the respondents to consider the appeal on applicant making a copy of it available.

18. In effect, the application fails and, therefore, the applicant is not entitled to any of the reliefs asked for.

19. There shall be no order as to costs.


Member-A


Member-J

/pc/