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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 4th DAY OF JULY, 1996

Original Application No.644 of 1988

HON.MR. JUSTICE B.C. SAKSENA, V.C.

HON.MR. D.S. BAWEJA, MEMBER(A)

Rajan Verma, son of late Sri kishori Lal,
Store Keeper Cum Accounts Clerk
Office of the Development Commissioner
(Handicrafts) Field Administrative Cell,
Vijai Smriti, 64 Mall Road, Varanasi

Applicant

BY ADVOCATE SHRI N.L.SRIVASTAVA

Versus

1. Union of India, through Secretary
Ministry of Textile, Udyog Bhawan
New Delhi
2. Development Commissioner, Handicrafts
Office of the Development Commissioner,
Handicrafts, West Block No.7,
R.K. Puram, New Delhi.

Respondents

BY ADVOCATE SHRI ASHOK MOHILEY

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant seeks quashing of an order dated 30.12.87 passed by the Development Commissioner(Handicrafts) contained in Annexure 13. By the said order a penalty of recovery of Rs.2973.83 was imposed upon the applicant after a departmental inquiry was held under Rule 14 of the CCS(CCA) Rules 1965. The applicant also seeks quashing of an order passed by the Appellate Authority which was communicated to him vide letter dated 3.5.88 Annexure 15.

2. The brief facts and the pleas on the basis of which the applicant seeks quashing of the aforesaid two orders may be noted.

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3. The applicant was appointed on the post of Store Keeper Cum Accounts Clerk on 5.5.78 in the office of the Development Commissioner (Handicrafts). A Memorandum of charges dated 25.3.86 was served on the applicant. The allegation in the said charge sheet was that the petitioner embezzled the Government stores worth Rs.5947.66 in collusion with the Chaukidar. Shri T.S. Venkatesh Asstt. Director was appointed as Enquiry Officer. He started the enquiry. Shri Venkatesh was transferred during the inquiry and subsequently Shri A.K. Singh, Deputy Director FAC was appointed as Enquiry Officer. He submitted a report on 8.7.87 and held that the applicant was not guilty of the charges levelled against him. However, the Disciplinary Authority expressing its disagreement with the findings of the Enquiry officer indicating the reasons for its disagreement and passed the impugned order of punishment dated 30.12.87. The applicant preferred an appeal to the Secretary, Ministry of Textiles, Govt. of India. By an order dated 3.5.88 the applicant was informed that the Appellate Authority was examined the records of the case and found that the Disciplinary Authority had applied its mind in concluding that he (Disciplinary Authority) does not agree with the findings of the Enquiry Officer. It was also indicated in the order dated 3.5.88 that the Appellate Authority feels no hesitation for imposing the penalty of recovery and the appeal preferred by the applicant was rejected.

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4. The applicant amended the OA and through certain paras indicated that the Disciplinary Authority did not supply the enquiry report dated 8.7.87 alongwith the punishment order dated 30.12.87. It was also pleaded that no show cause notice and opportunity of hearing was given to the applicant before imposition of the punishment. A further plea was taken that the Appointing Authority of the applicant is the Development Commissioner while the charge sheet was sissued to him by Smt. Neera Yadav who was the Addl. Development Commissioner Handicrafts and was only performing the current charge of the post of Development Commissioner(Handicrafts).

5. A detailed counter affidavit has been filed on behalf of the respondents. The applicant filed a supplementary affidavit making the same averments which were subsequently added by amending the OA and he has also filed a rejoinder.

6. We have heard the learned counsel for the parties.

7. Shri N.L. Srivastava counsel for the applicant urged that since the Enquiry Officer's report has not been furnished and no opportunity to show cause was given prior to the imposition of the punishment there has been violation of principles of natural justice. The learned counsel in support of the said submission cited before us a Full Bench decision of the CAT in Prem Nath K. Sharma Vs. Union of India reported in (1988) 6 ATC 904.

8. The order of punishment is dated 30.12.87. The law on the question in the light of the 42nd amendment of the Constitution of India deleting the first proviso to Art. 311(2) was influx. The question squarely placed before a bench of 3 learned Judges of the Apex court in the case of Union of India Vs. Mohd. ramzan Khan, (1991) 16 ATC 505. the said decision was rendered on 20.11.1990. The decision in Mohd. Ramzan Khan's case was specifically valid to be prospective in operation. The question again

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in the Larger Bench of the Hon'ble Supreme Court in Managing Director ECIL, Hyderabad and Ors. vs. B. Karunakar and Ors 1993 SCC(L&S) 1184. In the said case in para 33 it was observed:

" It was for the first time in Mohd. Ramzan Khan's case that the question squarely fell for decision before this court. Hence till Nov. 20,1990 i.e. the day on which Mohd. Ramzan Khan's case was decided, the position of law on the subject was not settled by this court. It is for the first time in Mohd. Ramzan Khan's case that this court laid down the law. That decision made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after Nov: 20,1990. The law laid down was not applicable before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the Authority to supply the copy of the Enquiry Officer's report to the employee. The only exception to this was whether the Service rules with regard to the Disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee. "

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9. In para 43 of the said decision stated that:

" It will, therefore, have to be held that notwithstanding the decision of the ~~Gujrat~~ High Court in N.N.

Prajapati's case and of the CAT's case in Prem Nath K. Sharma and of the other courts and Tribunals, the law was in an unsettled condition till atleast Nov. 20,1990 on which day Mohd.

Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the Disciplinary Authority after Nov 20, 1990."

It was further observed:

" the proceedings pending in courts/ Tribunals in respect of orders of punishment passed prior to Nov: 20,1990 will have to be decided according to the law that prevailed prior to that date and not according to the law laid down in Mohd. Ramzan Khan's case. This is so notwithstanding the view taken by the different benches of the CAT or by the High courts or by this court."

10. In view of the above categorical observations we do not find any merit in the plea taken by the applicant which has been noted in para 7 of our order.

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11. The learned counsel for the applicant further submitted that the Enquiry Officer's report dated 8.7.87 was furnished to the applicant first time alongwith penalty order dated 30.12.87. After inviting our attention to para 6(22-B to 22-D) the learned counsel submitted that in view of the decision of the hon'ble Supreme Court in Union of India Vs. E. Bashyan J.T. 1988(10) S.C. 627. It was submitted that there has been violation of principles of natural justice and denial of reasonable opportunity to the applicant to contest the findings of the Enquiry officer before imposition of the punishment.

12. As far as this plea is concerned, it needs to be noted that the question that has been raised squarely arose before a bench of two learned Judges of the Apex court whether the failure to supply the copy of the report of the Enquiry officer ~~to~~ ^{to the} delinquent employee before the Disciplinary Authority makes up its mind and records the finding of guilt would constitute violation of Art. 311(2) of the Constitution and also the principles of natural justice. It was held that the non supply of the copy of Enquiry officer's report would constitute violation of principles of natural justice and accordingly will tantamount to denial of reasonable opportunity within the meaning of Art. 311(2) of the Constitution. However, the court ~~xx~~^{xx was of the view} ^{Re} that the said point required consideration by a Larger Bench and referred the matter to the Hon'ble Chief Justice of India for placing it before a Larger Bench. A Larger Bench was constituted and its decision is reported in 1993 S.C.C(L&S) 1184 Managing Director ECIL, Hyderabad and Ors Vs. B. Karunakar and Ors. The observations from the said judgment which have been quoted hereinabove by us also meets this aspect of the matter. In para 33 the Larger Bench took the view that ^{Re}

the question was mooted but not decided in E. Bashyan's case by the two learned judges who therefore referred the question to the Larger Bench. Accordingly the law laid down in Mohd. Ramzan Khan's case ~~in which~~ was also provided to have prospective operation ~~would~~ govern the situation. Since the order of punishment ~~was~~ was passed earlier than 20th November, 1990 the day on which the decision in Mohd. Ramzan Khan's case was rendered. It may also be noted that the direction with regard to the prospective operation of the law laid down in Mohd. Ramzan Khan's case was followed by various Benches and approved in the following subsequent decisions of the Hon'ble Supreme Court viz:

(i) S.P. Vishwanathan Vs. Union of India

(1991) 17 ATC 941

(ii) Union of India Vs. A.K. Chatterjee

(1993) 24 ATC 111

(iii) Managing Director, Food Corporation

of India Vs. Narendra Kumar Jain, (1993) 24 ATC

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13. The learned counsel for the applicant submitted that the Appointing Authority of the applicant is the Development Commissioner while the charge sheet was issued to him by Smt. Neera Yadav, who was the Addl. Development Commissioner (Handicraft) and was only performing the current charge of the post of Development Commissioner (Handicraft). In the counter affidavit to the amendment application it has been stated that initiation of Disciplinary proceedings and the charge sheet issued to the applicant had been approved by the regular Development Commissioner (Handicrafts) Shri Shiromani Sharma on 24.5.85. and 28.11.85. The charge sheet so approved by the regular Development Commissioner (H) had, however, issued over the signature of Smt. Neera Yadav who had been

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performing concurrent duties of Development Commissioner.

It has further been stated that final penalty order has been issued by regular Development Commissioner Sri P.K. Dutta. In the Rejoinder affidavit the applicant does not specifically dispute the correctness of the said averments. We are therefore not impressed with the plea taken and it is held to be untenable.

14. The learned counsel for the applicant next submitted that the appellate order deserves to be quashed since it does not meet the requirement of Rule 27 of the CCS(CCA) Rules. This ground had not been specifically taken initially in the OA or in the amendment application. The learned counsel for the applicant, however, at the bar while dealing the said plea cited the decision of Hon'ble Supreme Court in Ram Chander Vs. union of India and Ors 1986 ATR 252. the order passed by the Appellate Authority is Annexure 15. in para 3 of the said order it has been stated:

"The Appellate Authority has examined the appeals and records of the case and ~~findings~~
finds that the Disciplinary Authority has taken care to examine the evidence and has applied its mind in concluding that he(Disciplinary Authority) does not agree with the findings of the Enquiry officer. The Appellate Authority see no reason to interfere with the orders passed by the Disciplinary Authority for imposing the said penalty of recovery.

The appeal has, therefore, been dismissed. "

15. The Hon'ble Supreme Court in Ram Chander's case had occasion to consider the provision of Rule 22(2) of the Railway Servants(Discipline & Appeal) Rules, 1968. It would be relevant to indicate that Rule 27(2) of the

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CCS(CCA) Rule is imperimateria with rule 22(2) of the Railway Servants (D&A) Rules. This aspect was also noted by the Hon'ble Supreme Court in Ram Chander's case in para 4 and referred to a decision of the Hon'ble Supreme Court in R.P. Bhatt Vs. union of India and Ors. The order passed by the Appellate Authority did not contain any indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service and thus the order passed by the Appellate Authority was quashed and the Appellate Authority is directed to hear and dispose of the appeal after affording a personal hearing on merit by a reasoned order in confirmity ~~xxfixxx~~ with the requirement of Rule 22(2) of the Railway Servants (D&A) Rules. ~~xx~~.

16. The learned counsel for the respondents in reply invited out attention to a decision of the Hon'ble Supreme Court in State Bank of India Bhopal Vs. S.S. Koshal reported in 1994 SCC(L&S) 1019. In the said case Rule 51(2) which provided for orders passed by the Appellate Authority had been extracted in para 7. The relevant part of the said rule reads as under:-

" The Appellate Authority shall consider whether the findings are justified and/ or whether the penalty is excessive or inadequate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or to any other authority with such direction as it deems fit in the circumstance of the case."

In effect the said provision of Rule 51(2) is imperimateria to Rule 27(2) of the CCS(CCA) Rules. The Hon'ble Supreme Court in the said case proceeded to deal R.C.



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with the view taken by the High Court assuming the said view to be correct. The High court had taken the view that the rule requires the Appellate Authority to pass a speaking order even if it is an order of affirmance. The order passed by the Appellate Authority have been quoted in para 2 of the said decision which is identical to the order passed by the Appellate Authority in the case in hand. The Hon'ble Supreme Court came to the conclusion that the appellate order shows that it considered at length the facts of the case including the fact that the Appellate Authority(sic Disciplinary Authority) had differed from the finding of the Enquiry officer in respect of the two charges. It was held that since it was an order of affirmance it would not obligatory on the part of the Appellate Authority to say more than this as the order as it is, shows application of mind. It was held that the order cannot be characterised as a non speaking order.

17. We also consider it necessary to advert to another decision of the Hon'ble supreme Court in State Bank of India Bikaner, Jaipur and oRs Vs. Prabhu Dayal Grover reported in 1996(1)SLJ 145. In para 14 while dealing with the challenge to the order passed by the Appellate Authority the provision of Regulation 70(2) was noted. The said provision required the Appellate Authority to consider whether the findings recorded against the concerned officers are justified and/ or whether the penalty is excessive or inadequate and pass appropriate orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the Authority which imposed the penalty or any other Authority with such directions as it deems fit in the circumstances of the case. The Hon'ble Supreme Court held that the said regulation does not obligate the Appellate Authority to give any reasons for its order. However, it further proceeded to make the *Reb*

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following observation:-

" Assuming that by necessary implication this Regulation also requires the Appellate Authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the Disciplinary action and submissions made by Grover.

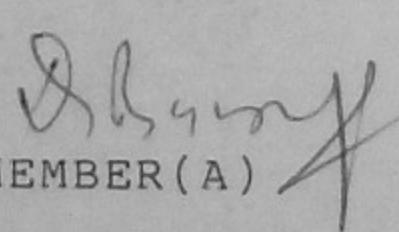
In otherwords, the order clearly demonstrates that the Appellate Authority had applied its mind not only ~~to~~ to the proceedings of the inquiry but also the ground raised by Grover in appeal and on such application found that there was no substance in the appeal."

18. It would be relevant to point out that in para 5 various decisions including the decision in Ram Chander

Vs. union of India and ors ~~was~~ noted as having been cited by the learned counsel for the respondents in support of his submission that the order passed by the Appellate Authority cannot be legally sustained as no ~~new~~ ^{new} reasons ^{or} have been given to support the decision.

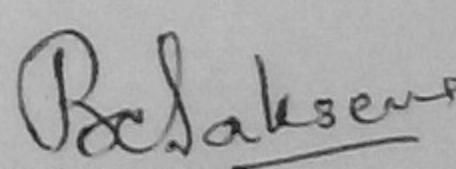
19. No other point was urged nor remains to be considered.

20. In view of the discussion hereinabove since all the pleas raised have not impressed ~~us~~ ^{us}, we do not find any merit in the OA which is accordingly dismissed. Parties to bear their own costs.


MEMBER (A)

Dated: July 11, 1996

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VICE CHAIRMAN