

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

DATE

O.A.No./P.A.No. 541 of 1990

DATE OF DECISION 7.6.96

Narendra Singh Bhaduria - - - - - APPLICANT (S)

Sri R.K. Jain - - - - - ADVOCATE FOR THE APPLICANT (S)

V E N U S

O.O. & others - - - - - RESPONDENT(S)

Sri Ashok Mohile - - - - - ADVOCATE FOR THE RESPONDENT(S)

S O H A M

The Hon'ble Mr. T.L. Verma - Senior Member (J)

The Hon'ble Mr. D.S. Bawagi - Member (A)

1. Whether Report of local newspaper may be allowed to see the judgment? ✓
2. To be referred to the Bench or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgment? ✓
4. Whether to be circulated to all other Bench? X

Jh
(SIGNATURE)

cc. Memo to:-

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

A L L A H A B A D

DATED: THIS THE ^{June} 7th DAY OF ~~MAY~~ 1996

O.A.No. 541 of 1990

CORUM: Hon'ble Mr. T.L. Verma JM
Hon'ble Mr. D.S. Baweja AM
-

Narendra Singh Bhaduria,
s/o Sheo Paltan Singh Bhaduria,
r/o quarter no.3, Shaheed Bhawan,
Sadar Bazar, Agra Cantt. last employed
as Store Keeper, PN 6962186m Central Ord. Depot,
Agra. - - - - - Applicant

C/A Shri R.K. Jain.

VERSUS

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Director General of Ordnance Services,
Army Headquarters, New Delhi.
3. Officer Incharge, Army Ordnance Corps
(Records) Trimulgharry, P.O. Secunderabad,
Andhra Pradesh.
4. Commandant, Central Ordnance Depot,
Agra. - - - - - Respondents

C/R Sri Ashok Mohiley.

ORDER

By Hon'ble Mr. T.L. Verma JM

The applicant, in this application
under section 19 of the Administrative Tribunals Act, 1985,
seeks quashing of order dated 20.6.1987 imposing penalty

of removal from service and order dated 22.4.1988 passed by the appellate authority upholding the order of removal of the applicant from service.

2. The applicant while working as Store Keeper in the Central Ordnance Depot, Agra at the relevant time was issued major penalty charge sheet dated 24.3.84. The allegation against the applicant was that he made a link with and was active member of a racket and that he and other members of the racket hatched a criminal conspiracy to commit theft of government property and pursuant thereto facilitated commission of theft of government property on 09 February, 1984 in Shed no.21 and N.H.No.319 of group no.1 of C.O.D., Agra. The articles of charge served on the applicant are as follows:

ARTICLE OF CHARGE NO.1

GROSS MISCONDUCT

That the said Sri Narendra Singh Bhaduria while functioning as Storekeeper in DGD and as a representative of DGD in NH-319 and Shed no.21 of Group 1 of COD, Agra during February, 1984, committed an act of criminal conspiracy in respect of theft of government stores in COD Agra on 09 Feb 84.

ARTICLE OF CHARGE-II

GROSS MISCONDUCT

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Narendra Singh Bhadoria working as Store-keeper in DGD and as a representative of DGD in NH 319 and shed no.21 of DOC Agra, during Feb'84, committed an act of criminal breach of trust in respect of government property (Stores) entrusted to him in his capacity as Storekeeper (Representative of DGD)

ARTICLE OF CHARGE-III

GROSS MISCONDUCT

That during the aforesaid period and while working as a representative of DGD in NH-319 and shed no.21 of group I of COD, Agra during february 1984, committed an act of theft of government stores from shed no. 21 and NH-319 on 09 Feb 84. "

3. An Inquiry Officer was appointed, who held, after due enquiry, that all the charges are proved. The disciplinary authority agreed with the findings recorded by the Inquiry Officer and imposed the penalty of removal from service. An appeal preferred against the order of the disciplinary authority was dismissed by order dated 22.4.1988. Hence this application for the reliefs mentioned above.

4. The impugned orders have been assailed on the ground that copy of the inquiry officer's report was not supplied before passing the punishment, the appellate order is non speaking, that the findings of the Inquiry Officer and Disciplinary Authority are based on no evidence ~~and~~ should, therefore, be characterised perverse, and that the applicant was ^{not} given adequate opportunity to defend himself in as much as documents asked for were not supplied and cross-examination of some ^{of the} witnesses ^{who} not allowed which vitiates the disciplinary proceedings.

5. The respondents have resisted the case of the applicant. In the counter affidavit filed on their behalf, allegations of the applicant have been denied and it has been stated that all relevant documents were supplied and that the applicant was given adequate opportunity to defend himself.

6. We have heard the learned counsels for the parties and perused the records. Learned counsel for the applicant relied on the decision of Ramjan Khan ~~and~~ ^{urged} ~~case and alleged~~ that the ~~entire~~ proceedings was vitiated because copy of the Inquiry Officer's report, before imposing the penalty, was not supplied to the applicant. This argument of the learned counsel cannot be accepted in view of the decision of the Hon'ble Supreme court in Managing Director, E.C.I.L., Hyderabad V/s Karunakar 1993 S.C.C. (L & S) 1184. In the said decision, it has been held that Mohd. Ramjan's case will have prospective effect. The punishment order of this case was passed on 20.6.87 by the Disciplinary Authority and the same was affirmed by the Appellate Authority on 22.4.1988. The impugned order of punishment, as would thus appear, was imposed prior to the date of decision (20.11.1990) in Ramjan Khan's case. That being the position, non supply copy of the inquiry report, in our opinion will have no adverse effect as contended by the learned counsel for the applicant.

7. *Before* ~~dealing~~ dealing with the other grounds, we consider it appropriate to deal with the ground that findings of the Disciplinary Authority is based on no evidence, therefore, the same should be characterised as pervers. The charge against the applicant was that he in connivance with his co-conspirators committed theft of government store from NH-319 and shed no.21 of COD, Agra during February, 1984. We have perused the enquiry proceedings (annexure 3). From the evidence, recorded during the enquiry, one thing is very clear that theft of govt. store was committed from NH-319 and shed no.21 of group-I COD, Agra in February, 1984. It is also evident from the evidence ~~on~~ ⁱⁿ recorded ⁱⁿ course of ^{the} enquiry that the applicant

was functioning as store-keeper as a representative in NH-319 and shed no.21.

8. Evidence of the witnesses recorded in the course of enquiry, ^{has} established beyond doubt that on 9.2.1984, two civilain trucks entered into the premises of the respondents, where govt. store was kept in shed no.21 and with the help of labourers removed articles kept in from the said store and NH-319. Inquiry Officer after analysing the entire evidence held that the afore-said store were removed pursuance to a conspiracy hatched by the applicant and others. There is sufficient material to substantiate the above findings of the Inquiry Officer.

9. In view of the foregoing conclusion, the next question that arises for our consideration is whether there is evidence to substantiate the involvement of the applicant in the said conspiracy. Seven witnesses were examined in support of the charge in the disciplinary proceeding. Enquiry report discloses that six out of the seven witnesses did not support the allegation that the applicant had ~~actively~~ ^{fully} participated in the lifting of the store from shed no.21 and NH-319 although these witnesses in their examination in the preliminary enquiry had ^{fully} supported the allegation against the applicant. They, however, resiled from their statement, made in the course of preliminary enquiry, while giving the evidence in the ~~course of~~ oral enquiry. Attention of these witnesses was drawn to their earlier statements. The fact, however, remains that from their evidence, ^{also} it is absolutely clear that the civil trucks were allowed ~~entry~~ ^{entry} ~~into~~ ^{the} ~~store~~ ^{shed}.

into the premises of the respondents and store material was removed from NH-319 and shed no.21 of GP-1 without proper authority.

10. Naeb Subdar Ganga Saran, however, has supported the allegation against the applicant. From the inquiry report, it appears that the statement of this witness taken before the preliminary inquiry was read over and explained to him and he was asked whether he confirms the same as correct or desires to make fresh statement. The witness confirmed the statement as correct and accordingly the same was taken in evidence. This was done in presence of the applicant and his defence assistant. When the defence assistant was asked to cross examine the witnesses, he made a request to defer the cross examination pending inspection of the place of occurrence by him and inspection of the documents, requested for by the application dated 10.4.1985. Hearing of the inquiry was thereupon adjourned for 11.9.1985. On that date also cross examination could not be done as the defence assistant said that the cross examination will be done only after the place of occurrence ~~was inspected~~ and the documents were inspected. The documents were, however, not supplied on the ground that they were not relevant for the disciplinary proceedings. From the statement of Naeb Subedar Ganga Saran, it is established that 3 or 4 persons were standing near the shed no.21 at the time the stores were loaded in the civilian trucks. In his statement at the time of preliminary investigation, he had admitted that the applicant was present at the time of loading stores in NH-319 and Shed no.21 in the civilian trucks. The Inquiry Officer and also the disciplinary authority have accepted the evidence and have come to the conclusion that loading of stores from the aforesaid sheds done in presence of the applicant. In this connection, it may be relevant to point out that Naeb Subedar Ganga Saran though in his

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statement during the inquiry did not admit the presence of the applicant at the time of loading, but in his statement at the time of preliminary investigation, ^{which} he admitted ~~the~~ ~~statement~~ to be true, when the same was read over to him in the course of inquiry in presence of the applicant. The Inquiry Officer has come to the conclusion, on analysing ~~the~~ the evidence of Naeb Subedar Ganga Saran before the preliminary inquiry and the oral inquiry, that the applicant was present at the time the store was loaded in the civilian trucks. We do not find any perversity in the aforesaid conclusion in the light of the evidence on record. We, therefore find no substance in the argument of the learned counsel for the applicant that the conclusion of the disciplinary authority is based on no evidence.

11. We now come to the argument of the learned counsel for the applicant that adequate opportunity was not provided to the applicant to defend himself. It was argued that the documents asked for were not supplied and cross examination of Naeb Subedar Ganga Saran was not ^{allowed} ~~done~~. The applicant had filed a petition on 10.4.1985 (annexure-5) for production of nine documents mentioned in the petition. The Inquiry Officer, however, declined to supply ~~the~~ ~~copies~~ the copies of the additional documents mentioned in annexure no.5 on the ground that they were not relevant for the purpose of inquiry. The learned counsel for the applicant failed to satisfy us that the additional documents demanded by the applicant were relevant and that non supply thereof has materially prejudiced ^{applicant} ~~the~~ in his defence. The applicant had among other ^{documents} ~~things~~ demanded copy of preliminary proceedings. It may be mentioned that the applicant was supplied copies of the statement of witnesses recorded in the course of preliminary enquiry alongwith the charge Memo. The statement of witnesses only, in our opinion, are relevant to enable the delinquent employee to draw the

attention of the witnesses, if necessary, in the course of their cross examination. The report of the preliminary enquiry is, ~~the~~ relevant only for the purpose of deciding whether a prime facie case is made out to proceed against the charged employee. Once a decision to proceed against him is taken on the basis of the preliminary enquiry, it loses its relevance. Therefore, non supply of the proceedings of preliminary enquiry, in our opinion, has caused no prejudice to the applicant.

12. The other documents demanded pertain to the auction sale, bid sheets and loading proforma etc. These documents, in our opinion, were not at all necessary in view of the fact that entire proceedings was based on the allegation that the trucks were allowed to enter into the premises of the respondents without pass and completing other formalities required to be observed for allowing entry ^{to private vehicles in the premises of the respondents}. That being so, the documents demanded would have been of no help to the applicant in his defence. Therefore, non supply of these documents ^{also} has caused no prejudice to the applicant.

13. It was argued by the learned counsel for the applicant that enquiry was closed on 12.6.1986 without giving the applicant an opportunity to cross-examine Sri Ganga Saran. Naeb Gubedar Ganga Saran was examined on 4.9.1985. The cross examination examination of this witness was deferred for some time on the request of the applicant pending inspection of the place of occurrence and inspection of documents. Thereafter the defence assistant started cross examination of the said witness on 25.8.1985 and it was adjourned to 13.6.1986. On that date the witness and the delinquent employee were present, but the defence assistant was not present. The applicant was asked to cross examine the witness, which he declined to do in ^{absence} ~~presence~~ of his defence assistant. In view of the fact that the cross examination of the witness had lasted for more than eight months

and that the defence assistant failed to appear despite specific instruction, the Enquiry Officer closed the prosecution holding that the applicant had ^{deliberately} adopted dilatory tactics to delay the conclusion of the proceeding. ^{In the facts and circumstances discussed we found no fault with this conclusion of the Enquiry Officer}

14. The learned counsel next argued that the entire proceeding was vitiated because the Inquiry Officer did not provide opportunity to the applicant either to submit his defence brief or examine witnesses in his defence and thus violated the mandatory provision of Rule 14 of the CCS and CCA rules. Rule 14 (16) of the CCS (CCA) Rule provide :

" when the case for the disciplinary authority is closed, the government servant shall be required to state his defence, orally or in writing as he may prefer. If the defence is made orally, it shall be recorded and the government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer."

After the above, evidence on behalf of the government servant is to be produced as provided by Subrule 17 of Rule 14. Thereafter, the Enquiry Officer may permit the parties to file written briefs of their respective cases. From the perusal of material on the record, it is quite apparent that the accused official has not examined defence witness. The parties have also not ^{filed} the briefs of their respective cases. The Inquiry Officer, in page 5 of the enquiry proceeding annexure 3, has mentioned that after closing the case for the disciplinary authority, he asked both the delinquent employee and the Presenting Officer, if they had to say something. Both of them, as recorded by the Inquiry Officer, did not wish to say anything. Hence the need to ask them

to submit briefs of their respective cases did not arise. The question is whether what has been recorded by the Inquiry Officer should be treated as compliance with the provisions of Rule 14(16), 14(17), 14(18) and 14(19) of the CCS (CCA) Rules. The Inquiry officer, has taken the extreme step of closing proceeding after being satisfied that the delinquent employee was deliberately delaying the conclusion of the proceeding. In the aforesaid back ground, we held that requirement of rules have been substantially complied with.

15. We will now examine whether the impugned orders are non speaking or not. The order passed by the disciplinary authority is at annexure A-6. A perusal of the order does indicates that detailed reasons for accepting the the findings recorded by the Inquiry Officer, have not been given in the orders of disciplinary authority. However, in para 2 of the order, it has been specifically mentioned that the disciplinary authority, after carefully considering the report agreed with the findings of the Inquiry Officer. In our opinion, where the punishing authority agrees with the findings of the Inquiry officer and accepts the reasons given in support of the findings, it is not necessary for the disciplinary authority to discuss the evidence again and repeat the reasons given by the Inquiry officer. We are, therefore, not in agreement with the learned counsel for the applicant that the punishment order is vitiated as the same is non speaking.

16. We now come to the plea of the learned counsel for the applicant that the appellate order is non speaking betraying non-application of mind on the part of

the appellate authority. This argument of the learned counsel for the applicant is also not tenable. We have perused the appellate order. The appellate order indicates ~~XXXX~~ application of mind by the appellate authority before rejecting the appeal. The appellate order also, therefore, cannot be said to be non-speaking.

17. In the facts and circumstances of the case discussed above, we find no merit in this application and dismiss the same, leaving the parties to bear their own cost.

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