CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Date of Decision : 17.9.2001

OA/661//93

Sureshkumar Prajapati : Petitioner (s)

Mr. P.H.Pathak : Advocate for the applicant(s)

Versus

Union of India & Ors. : Respondents

Ms.P.B.Sheth : Advocate for the Respondents(s)

CORAM :

THE HON'BLE MR. A.S.SANGHVI : MEMBER (J)

THE HON'BLE MR. G.C.SRIVASTAVA : MEMBER (A)

JUDGMENT

1. **Whether Reporters of Local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporter or not ?**
3. **Whether their lordships wish to see the fair copy of the judgment ?**
4. **Whether it needs to be circulated to other Benches of the Tribunal ?**

NO

Sureshkumar Prajapati
Boda's Street,
Nadiol Gate,
Vadnagar,
Dist.Mehsana. : Applicant

Advocate: Mr.P.H.Pathak

Versus

1. Union of India
   Notice to be served through:
   The Director General,
   Labour Welfare,
   Jaisalmer House,
   Mansingh Road,
   New Delhi-110 011.

2. The Welfare Commissioner,
   Labour Welfare Organisation
   44-A, Gandhinagar.
   Bhilwara-311 001.

3. The Welfare Administrator
   Labour Welfare Organisation,
   Kalyan Marg,
   Kankaria,
   Ahmedabad-28. : Respondents

Advocate: Ms.P.B.Sheth

JUDGMENT

OA/661/93

Date: 17-9-2001

Per: Hon'ble Mr.G.C.Srivastava : Member (A)

The applicant who was working as Pharmacist under the respondents is aggrieved by the order of his dismissal from service passed by the Disciplinary Authority (D.A.) and the order of Appellate Authority (A.A.) rejecting his appeal and has prayed for the following reliefs.:-

"(A) The Hon'ble Tribunal be pleased to hold that the inquiry proceeding conducted against the applicant, where the investigating officer has acted as a Judge of his own cause, is violative of principle of natural justice and fair play and therefore be pleased to quash and set aside the inquiry proceeding conducted by the Welfare Administrator who has conducted the investigation in the matter and declare that no penalty can be imposed on the applicant relying on the finding of such inquiry officer's report and therefore be pleased to quash and set aside the order of penalty imposed on the applicant with the order of appellate authority confirming the same and direct the respondents to reinstate the applicant in service with all consequential benefits with 18% interest.

(B) Be pleased to declare that the disciplinary authority has failed to apply the mind to the circumstances of the present case and has failed to observe the principle of natural justice and fair play while conducting the inquiry against the applicant by not considering the case of changing the inquiry officer and therefore, be pleased to quash and set aside the penalty imposed by him about removal from service of the applicant.

(C) Be pleased to declare that the disciplinary authority has not applicd thc mind to thc circumstanccs of thc casc and furthcr hold that the applicant is not allowed to defend his case by the defence counsel of his choice in the present case and therefore be pleased to hold that no penalty can be imposed on the applicant relying on such proceeding against the applicant and be pleased to quash and set aside the penalty.

(D) Be pleased to declare that the appellate authority has also failed to observe the principle of natural justice and fair play and has not at all considered any of the contention of the applicant and on that ground alone the penalty imposed on the applicant is required to be quashed and set aside and direct the respondents to reinstate the applicant in service with all consequential benefits.

(E) Any other rclicf to which thc Hon'blc Tribunal and propcr in interest of justice together with cost."

2. According to the applicant while he was working as a Pharmacist at Ranavav (Juangadh District) he was placed under suspension vide order dated 22.11.91 (Anneuxre-A) and issued a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 (Anneuxre A-2) for his alleged payment of Rs.2316 on 7.3.1991 on a false acquittance of Late Shri Pratap Singh Karshan Bhai (a Beedi worker) who was not alive on that date and misappropriation of Rs.100 payable to Shri Himat Bhai Somabhai Chauhan (another Beedi worker). He submitted his reply on 6.12.1991 denying the charges (Anenxure A-2). His defence was not accepted and disciplinary proceedings initiated by appointing Inquiry Officer(I.O.) and Presenting Officer (P.O.) (Annexure A-3) . He requested for change of the

I.O. on grounds of bias against him vide his letter dated 6.4.92 (Annexure A-4). An ex parte inquiry was however conducted and both the charges were held to be proved. The inquiry Report dated 22.4.92 was supplied to the applicant vide letter dated 29.4.92 directing him to submit his reply (Anneuxre A-5). The applicant stated vide his letter dated 12.5.92 that he had requested for change of the I.O. but he has not been changed. The D.A. passed the order dated 9.6.92 dismissing him from service (Annexure A-6) He preferred appeals dated 21.6.92 (Anneuxre A-7) and 7.12.92 (Annexure A-9) to the Director General, Govt. of India, Ministry of Labour, New Delhi which were rejected vide order 26/27.7.93 (Annexure A-10). Aggrieved by these orders, the applicant has approached this Tribunal.

3. In their reply the respondents have stated that on receipt of the submissions of the applicant vide his letter dated 12.5.92 (Anneuxre R-3) he was offered a chance for a personal hearing by the D.A. but he did not avail of the opportunity. After considering the record of the inquiry and the facts and circumstances of the case the respondent No.2 (i.e. the D.A.) came to the conclusion that the applicant while functioning as Pharmacist in Borsad dispensary defrauded the Government to the tune of Rs.2316 on 7.3.91by preparing a false acquittance of Late Pratapsinh Karsanbhai Parmar (a

beedi worker) who was not alive on the date of purported payment. Similarly the applicant misappropriated a sum of Rs.300 payable to Shri Himatbhai S. Chauhan (a beedi worker). Thus by the above acts he exhibited lack of absolute integrity thereby contravening Rule 3 (1) (I) of the CCS (Conduct) Rules, 1964. The gravity of the charges did not permit the applicant to be retained further in service and the D.A. was therefore of the view that the ends of justice would be met if he is dismissed from service. Accordingly, the D.A. passed the impugned order dated 9.6.92 dismissing him from service. On receipt of his appeal dated 21.6.92 the A.A. gave him another opportunity of furnishing his further comments on the merit of the case vide letter dated 30.10.92. Accordingly, he submitted another appeal dated 7.12.92 and on further scrutiny of the appeal the A.A. dismissed the same vide impugned order dated 26/27.7.93.

4. We have heard Mr.P.H.Pathak and Ms.P.B.Sheth the learned counsels for the applicant and the respondents respectively and have carefully examined the pleadings and the documents produced on records. We have also perused the disciplinary proceedings file of the applicant made available at our instance by the learned counsel for the respondents.

5. Before we go into the merits of the case we would like to state by way of preamble that the role of Tribunal in disciplinary matters is limited and judicial invention is permissible ordinarily in cases where the penalty is based on no evidence or where it is in violation of statutory rules or principles of natural justice or where the same is disproportionate to the gravity of charge or where it is arbitrary, malafide or perverse.

6. In the light of the above preamble we would now go into the merits of the case to ascertain if the present OA falls in any of the categories listed above in para-5 (supra) where the intervention of this Tribunal is warranted.

7. (i) The first contention of the applicant is that the person who has conducted the preliminary investigations into the allegations has subsequently been appointed as an Inquiry Officer. According to him the Welfare Administrator (Shri P.S.Pillai) who initially investigated into the allegation about false acquittance of Rs.2316 in favour of Shri P.K.Parmar and during the above investigation had obtained the so called statement of Shri Parmar on 29.4.91 was later appointed as I.O. in his case. This point was raised by him at the inquiry stage but the I.O. was not changed. Accordingly, he contends that the I.O. has acted in a prejudicial mind, the inquiry

against him suffers from malafide and violates principles of natural justice and therefore, any punishment based on such inquiry is bad in law and without application of mind.

(ii). The respondents have on the contrary stated that Shri Pillai Welfare Administrator was appointed as I.O. after the charge sheet was served on the applicant and after receipt of his defence thereto Shri Pillai is working as Welfare Administrator in Ahmedabad since 8.4.1991 and being the Head of the Office looks after all the dispensaries in the State of Gujarat. On getting a complaint received in his office on 29.4.91 which was signed by one Shri P.K.Parmar about non receipt of payment of subsistence allowance he had made a preliminary inquiry at his own initiative . The above complaint was not actually signed by Shri Parmar as he had already died in December, 1990. Shri Pillai had no personal knowledge of the irregularities committed by the applicant. In support of their contention the respondents have relied on the judgment of Bombay High Court in the case of D.A. Koregaonakar vs. State (AIR 1958 Bombay 167) where it was held that where the officer holding a preliminary inquiry had only reached a prima facie conclusion holding of any regular inquiry by him was in order. As regards the contention of the applicant that the investigating officer had obtained statements from the witness at the investigation stage they

have stated that the applicant gave a letter dated 7.5.91 to the Medical Officer(M.O.), Borsad addressed to the Welfare Commissioner (W.C.), Bhalwara in which he admitted that he had not paid the amount of Shri P.K.Parmar on 7.3.91 but paid the money to his father Shri K.C.Parmar at a later date on 3.5.91 ; in fact the said beneficiary Shri P.K.Parmar already expired as long back as on 15.12.90. The M.O. Borsad forwarded the letter to the W.C. vide his letter dated 23.5.91 stating that this was a clear case of fraud and corruption done by Shri Prajapti and recommended taking disciplinary action against him. In view of this the contention of obtaining any statement from any other witness is baseless. According to them the applicant has failed to cite any specific evidence in support of his allegation of bias/prejudice on the part of the I.O.

(iii) We have examined the rival claims in this regard and have gone through the judgments relied upon by both the sides. Mr.Pathak for the applicant has referred to the judgment of Hon'ble High Court of Andhra Pradesh where it has been held that a person who has conducted a preliminary inquiry and found a prima facie case for regular inquiry will not be permitted to conduct the regular inquiry because he has already in some way formed an opinion in the case; where

an administrative superior has expressed a definite view on the conduct of a delinquent officer he will not be permitted to hold an inquiry (AIR-1957- Andhra Pradesh 414). Mr.Pathak also drawn our attention to the observation of the Hon'ble High Court of A.P. in another case of Suryanarayanan vs. State of A.P. (1967) 2 Andhra W.R. 253 referred to in the above case as reproduced below.

> " The above facts clearly indicate that the Inquiry Officer had already prejudiced the issue and can never be expected to maintain an open mind during the course of the inquiry. In other words, the Enquiry Officer gave the judgment ever before the trial rendering the whole trial a mere farce. We are therefore, justified in coming to the conclusion that the Enquiry Officer in the present case has not started the enquiry with an open mind but that he has prejudiced the very issue before him. "

(iv) A close examination of the aforesaid judgment however, reveals that they do not enunciate/prescribe a general embargo that the person who has initially conducted the preliminary investigation should not act as the I.O. As observed by the learned judges in the above case the facts in each case will have to be taken into consideration in determining whether there is a violation of principles of natural justice and fair hearing. In our view the crucial test in cases where the investigating officer also acts as the inquiry officer is whether the inquiry officer has acted in a prejudicial

manner and whether there are any instances of a bias/prejudice on his part against the delinquent employee which result into denial of principles of natural justice and fair hearing. Coming to the question whether there was such a bias/prejudice on the part of the I.O. in the instant case we find that the I.O. Shri P.S.Pillai who was also the Welfare Administrator and had investigated the case was in his office at Ahmedabad on 29.4.91 when he received the letter by post on the same date purported to have been signed by Shri P.K.Parmar regarding non-payment of subsistence allowance to him. We also find that Shri Pillai took charge of the post of Welfare Administrator on 8.4.91 just 21 days before the receipt of the letter dated 29.4.91 and therefore, chances of his developing bias against the applicant within such a short period of 21 days are quite remote particularly when both had no chance to meet each other within the said period. There is no evidence produced by the applicant to prove that Shri Pillai has concocted the case against the applicant and also obtained the statement of Shri Parmar . Moreover, as per the death certificate dated 15.11.91 produced on record Shri P.K.Parmar had already expired long back on 15.12.90 and therefore, the allegation that Shri Pillai had managed to obtain the statement dated 29.4.91 from Shri P.K.Parmar is not only controverted but is also rendered baseless. On the basis of preliminary investigations made by Shri Pillai as Welfare

Administrator and as the Head of the Office he had only come to a prima facie conclusion that there was a case of false payment on the part of the applicant but he did not take any follow up action against him at his level and holding him guilty etc. Therefore, the mere fact that he has investigated earlier is no way a bar for the same officer to conduct the inquiry on a regular basis. Since there is no evidence to prove that Shri Pillai had collected or obtained any statement from anybody including the witnesses as also that the preliminary investigation conducted by him was in his capacity as the Head of the Office, we are unable to find any justification in the contention of the applicant that merely because the investigating officer has been appointed as an Inquiry Officer the punishment based on the Inquiry report of such an officer is vitiated. Moreover, while replying to the applicant's letter dated 14.2.92 asking the D.A. to quote the rule under which the I.O. once appointed cannot be changed the D.A. has stated that the former has not mentioned any single instance in support of his claim that the I.O. is prejudiced against him. We also find that except a mere allegation that the I.O. has been the Investigating Officer and hence he is biased against him no evidence has been brought either before the D.A. or before us to prove that he has acted in a prejudicial manner. In fact we find that the I.O. stayed the proceedings pending a

decision on his request for change of the I.O. which bears a testimony of his unbiased mind. Under the circumstances, we find that the first contention of the applicant is without any merit and is therefore rejected.

8. (i) The next contention of the applicant is that he was not allowed to engage a lawyer as his defence assistant during the course of inquiry. He contends that the it has been held by the Supreme Court that if an employee is served with the charge-sheet which may result into a penalty of dismissal from service which deprives him of livelihood he must be allowed to defend his case by a lawyer failing which the action on the part of the administration would be imposing the economic death penalty without offering him reasonable opportunity to defend his case. The respondents have stated that the applicant was not allowed to engage a legal assistant to defend his case in view of Rule 14 (8) (a) of CCS (CCA) Rules, 1965 ; he was however, intimated that he could take the assistance of another Govt. servant or a retired Govt. servant to defend his case vide letter dated 21.2.92. However, the applicant did not avail of the opportunity for the reasons best known to him. The respondents have further contended that the allegation against the applicant had been given in the charges with regard to the irregularities committed by him and he was the best person to give proper explanation. The

circumstances in the evidence against him were clearly put to him and he had to give his reply . According to them since there was no legal complexity involved in this case a lawyer could have hardly helped him in his case and since the presenting officer appointed in the case was only a Junior Clerk who was not even a law graduate it cannot be said that the absence of a lawyer deprived the applicant of reasonable opportunity to defend himself.

(ii) In support of the above contention Mr.Pathak for the applicant has relied on the judgment of the Supreme Court in the case of Board of Trustees of the Part of Bombay vs. D.K.Nadkarni and others (AIR 1983 SC 109) and those of the Gujarat High Court in the case of M.S.Poon vs. State of Gujarat and others (1991 GLR Vo..XXXII (2) P.1104) and in the case of Rajkot District Panchayat vs. Mansukh Lal Dali Chand Mehta (1991 GLR Vol.XXXII (2) p.1128).

(iii) We have examined the rival contentions in this regard and also the judgments cited above and would like to observe that these are not applicable here as in the first two citations relied upon by Mr.Pathak the employer was represented by a legally trained officers in the inquiry while in the third citation the request for engaging a lawyer was rejected by the I.O.

himself. In the instant case, however, the department was represented by a Junior Clerk who acted as a P.O. and was not even a law graduate. Hence, he cannot be considered to be a legally trained mind by any standard and accordingly denial of assistance of a lawyer in the inquiry cannot be question. Moreover, in the instant case the order denying the assistance of lawyer has been issued by the D.A. and not by the I.O.

(iv) In this regard we would also like to refer to Govt. of India's instruction No.21 and 22 below 14 CCS (CCA) Rules which provide as under:-

> " (21) Permission to engage a legal practitioner for the defence- Rule 14 (8) (a) of the CCS (CCA) Rules, 1965, provides, inter alia that a delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority, unless the Presenting officer appointed by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority, having regard to the circumstances of the case, so permits. It is clarified that, when on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner.

Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent Government servant.

(22) Assistance of legal practitioner to be decided on merits of each case- The assistance of a legal practitioner should not be refused to the officer concerned if the Present Officer is a legal practitioner. The rule however, vests discretion in the Disciplinary Authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the Disciplinary Authority as to in what circumstances such justification may be said to exist. The matter has been carefully considered and after taking into account the judgments delivered by some High Courts on this point it has been decided that the Disciplinary Authority should bear, in each case, such circumstances in mind, as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision as to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the Disciplinary Authority is vast and it should exercise such direction in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself."

As far as the present case is concerned the responsibility for presenting the case was entrusted to a Junior Clerk who acted as a P.O. Therefore, the Junior Clerk acting as a P.O. is neither a Prosecuting Officer of CBI nor a Govt. Law Officer(such as Legal Adviser, Junior Legal Adviser) nor can he

be considered to be having a legally trained mind. Moreover, while replying to the letter dated 14.2.92 of the applicant about the rule under which the assistance of a lawyer has been denied the D.A. has given detailed reasons quoting relevant rule 14 (8) of CCS (CCA) Rules 1965. Under the circumstances, the action of the D.A. in not permitting the applicant to engage a lawyer in the inquiry cannot be questioned. The D.A. had however, advised him to engage any other serving/retired Govt. employee as defence assistant as provided under rules. In view of this, we do not consider that the action of the respondents in not permitting a lawyer to assist him as defence assistant in the inquiry can be considered to be a denial of reasonable opportunity to him to defend himself. Moreover, he was given opportunity to take the assistance of another Govt. servant or a retired employee to assist in the inquiry but he failed to avail of this opportunity and chose not to attend the inquiry on any of the dates. Accordingly, this contention is also rejected.

9. The next contention of the applicant is regarding the second charge that no identity card was given to the workers who are beneficiaries of the scheme and hence, one has to depend an identification of sarpanch for making payment. In view of this he contends that he cannot be said to have misappropriated the amount of Rs.100/- and at the most he

can be said to have made wrong payment. Rebutting this contention, Ms.P.B.Sheth, learned counsel for the applicant has argued that as per the written reply submitted by the applicant an amount of Rs.700/- had been paid by him later which clearly shows that he had not paid the full amount due to the beneficiary Shri S.H.Chauhan. This is nothing but an admission of the charge leveled. The respondents have also contended that the staff of the dispensary under the respondents need not necessarily depend on the sarpanch/gazetted officers for identification as the beneficiaries have already been issued with the prescribed identity cards and the details are already recorded in their identity card register maintained in the dispensary. We find substance in the argument of Ms.Sheth and hold that the applicant should have raised all the issues pertaining to his guilt or otherwise but as he did not attend the inquiry at all for which he himself is responsible he cannot now be permitted to raise a grievance about adequacy/inadequacy of evidence against him. We cannot obviously go into reappreciation of evidence (Rai Barely Kshetriya Gramin Bank vs. Bhola Nath 1997 (2) SLR 433 (S.C.). In view of this, this contention of the applicant is also rejected.

10. (i) The only other contention of the applicant is that the D.A. as well as the A.A. have not applied their mind

while passing the order of his dismissal in service and rejecting his appeal in violation of the principles of natural justice. According to him, the D.A. has blindly accepted the findings of the I.O. without assessment of the evidence and arriving at a finding of his own. The respondents in their reply have stated that though the applicant raised the question of bias on the part of the I.O. but as he failed to give any instance of bias on the part of the I.O. his request for change of the I.O. was rejected but he was given full opportunity to defend his case. In spite of these opportunities the applicant did not attend the inquiry on 28.1.92, 18.2.92 and 7.4.92 . A copy of the inquiry report was also supplied to the applicant and the disciplinary authority after considering the reply of the applicant to the inquiry report as well as the other facts of the matter passed the order dated 9.2.92 imposing the penalty of dismissal from Govt. service w.e.f. the afternoon of 9.2.92.

(ii) We have examined the impugned order dated 9.2.92 and find that the D.A. has examined each article of charge, statement of imputation of misconduct on which articles of charges are based, the finding of the I.O. and the written submissions made by the applicant. After considering the above documents he has found that the applicant in his

require his consideration . The applicant was also offered a chance for personal hearing by the D.A. but he did not avail the opportunity given to him. Therefore, in the light of the submissions made by the applicant with reference to the copy of the inquiry report the D.A. has accepted the findings of the I.O. and has come to the conclusion that the applicant is guilty of the charges leveled against him and the gravity of charges does not permit to retain him further in Govt. service. Therefore he is of the view that the ends of justice will be met if the applicant is dismissed from service. Accordingly, he has passed the order of dismissal. To our mind, the order of the D.A. does not suffer from non-application of mind and consider that the same is self contained, reasoned and a speaking order and cannot be assailed on the ground of non-application of mind or being arbitrary.

(iii) Similarly we have also examined the appellate order passed by the A.A. dismissing the appeal of the applicant. We find that on receipt of the appeal from the applicant the A.A. permitted him another opportunity to furnish his comments on the merits of the case within 15 days and the applicant submitted another appeal dated 17.11.92 .The A.A. has considered both the appeals submitted by the applicant and has passed a detailed speaking order. As per the provisions

contained in Rule 27 of the CCS (CCA) Rules the A.A. is required to consider :

> " (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
>
> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
>
> (c) whether the penalty or the enchanced penalty imposed is adequate, inadequate or severe."

(iv) A close scrutiny of the order passed by the A.A. reveals that the A.A. has considered the above questions and has also discussed the evidence in support of the charges leveled against the applicant. He has also gone into the allegation of bias on the part of the Inquiry Officer and has come to a conclusion that since the applicant has not put forward any substantive point which would vitiate the proceedings against him, he has rejected the aforesaid allegations. The A.A. has also mentioned that the applicant himself submitted his application dated 7.5.91 to Welfare Commissioner of Bhilwara Region that he had not made payment as per the entries made by him in the cash memo and this is further corroborated by the fact that the beneficiary was not alive on the day of

payment. The A.A. has also considered the quantum of punishment awarded to the applicant and has come to the conclusion that the said penalty of dismissal from service imposed by the D.A. is justified and well warranted and commensurate with the gravity of offence committed by the applicant. In view of this we are unable to find any fault with the order of the A.A. dismissing the appeal of the applicant.

11. In the light of the foregoing discussions, we are of the considered view that the O.A. does not fall in any of the categories mentioned in para-5 supra where the intervention of the Tribunal is warranted and is accordingly devoid of any merit which deserves to be rejected.

12. Accordingly, the OA is rejected with no order as to costs.

(G.C.Srivastava)
Member (A)

(A.S.Sanghvi)
Member (J)

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