

15

X

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.295 of 1989.

Date of decision : July 10, 1990.

Gobinda Chandra Satapathy ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.P.Palit,
B.Mohanty, A.Kanungo,
A.K.Patnaik, M.P.Mohapatra,
Advocates.

For the respondents. Mr.Tahald Dalai,
Addl. Standing Counsel(Central)

.....

C O R A M :

THE HON'BLE MR.P.S.HABEEB MOHD, MEMBER(ADMN.)

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER(JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER(J) The applicant has prayed for a declaration that the disciplinary proceeding started against him is null and void and for a direction to quash Annexure-23 to the application which is a letter to him requiring him to be present at the hearing of the disciplinary proceeding

*W.S.P.
10/7*

2. The case of the applicant is that the

applicant was appointed as Junior Stenographer in the Heavy Water Project at Vikrampur in the year 1965. On 29.2.1988 Respondent No.4, i.e. Works Manager of the Heavy Water Plant placed him under suspension with immediate effect on the ground that a disciplinary proceeding was being contemplated against him (the applicant). A memorandum of charges was served on him on 18.7.1988 and with that a statement of imputations was also annexed. He was required to submit his written statement of defence within 10 days from the date of receipt of the memorandum of charges. On 20.7.1988 Respondent No.4 appointed Respondent No.3 as the enquiring Officer and he also appointed a Presenting Officer. On 20.7.1988 he (the applicant) made an application for supply of the connected documents to him so as to enable him to prepare his written statement of defence but this prayer of the applicant was rejected by Respondent No.4 vide his letter dated 20.7.1988 at Annexure-3. There are other allegations running into several pages but for the purpose of this judgment it is not very much necessary to state them in detail, only those of the allegations which have a bearing are being mentioned here. On the next date i.e. on 21.7.1988 he (the applicant) again made a representation for supply of copies of the relevant documents and it was turned down. A written statement of defence was filed on 16.8.1988. He was called upon to nominate his defence assistant for the enquiry which was scheduled to commence from 4.10.1988 and the letter requiring nomination by him was received

*Heavy Water Project
10.7.90*

17

by him on 3.10.1988. After receipt of the letter, he nominated one Shri R. Sukla, an employee of the Atomic Energy Commission posted at Kota in the State of Rajasthan as his Defence Assistant. After that 10.10.1988 was fixed for making preliminary enquiry but as the time was too short he could not contact his Defence Assistant. On 10.10.1988 some interim orders were passed by the Enquiring Officer, ~~as he~~ ^{that he} he felt aggrieved by those interim orders, and on 14.10.1988 he made known his grievances to the authority concerned. There was some correspondence between him and the disciplinary authority. Subsequently on 15.11.1988 he was informed that the controlling officer of the nominated defence assistant was unwilling to spare the said person and so he (the applicant) should nominate another as his defence assistant. He made an application on 3.12.1988 for grant of two months' time to find out another defence assistant but his prayer was not acceded ^{to} and the disciplinary proceeding was posted to the 3rd week of January, 1989 for enquiry. Finally, on 27.2.1989 he was informed by the disciplinary authority that Mr. R. Sukla cannot act as the defence assistant. Having received that intimation, on 27.4.1989 he made an application to allow him to engage a legal practitioner as his defence assistant. A copy of the letter praying for permission to appoint a lawyer is annexed herewith as Annexure-22 to the application. Thereafter, on 14.6.1989 the impugned order at Annexure-23

was issued.

3. The respondents in their counter have not disputed many of the factual aspects averred in the application but they have disputed some of the facts alleged in the application which may be noticed at the appropriate place. The case of the respondents, in substance, is that the applicant having been in detention in a criminal case for more than 48 hours was deemed to have been under suspension from 6.7.1982 and this order of deemed suspension was revoked on 23.10.1982 though by then the criminal proceeding had not been disposed of. Subsequently, the applicant was suspended as it was thought necessary in view of the allegations made against him, the allegations against the applicant were that he went to the room of his superior officer, there he used harsh language in a loud voice which was unbecoming of him, he made indecent demonstration and instigated others there to join him. After the material facts were collected, charge was framed and issued on 18.7.1988. With regard to the inspection and grant of copies of the documents, the case of the respondents is that the charge-sheeted officer would be entitled to copy of the documents or to inspect the documents only during the enquiry and not prior to that. Therefore, the applicant cannot make a grievance for not giving him the copies of the documents. The applicant, according to the respondents was given more

*Manohar
10.7.90*

indulgence than was due and in fact all opportunities have been given to him to defend himself. The applicant is not entitled as of right to nominate a person working outside the Headquarters (State of Orissa). In the instant case as the person who was nominated by the applicant to act as his defence assistant could not be spared by the controlling authority of the proposed person, the applicant was given liberty to choose another person from amongst those who work at his headquarters. The applicant has not availed of this opportunity. The original application being rather lengthy, the reply in counter has also been little lengthy. But what has been stated above represents the substance of the case^s of the applicant and the respondents.

4. We have heard Mr. B. Mohanty, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. It has been urged on behalf of the applicant that the very fact that before the applicant submitted his written statement of defence an enquiring officer was appointed would show the eagerness of the disciplinary authority to harm the applicant. Mr. Mohanty has drawn our attention to the provisions under the Central Civil Services (Classification, Control & Appeal) Rules and has urged that this fact alone would be sufficient to quash the disciplinary proceeding. Doubtless the order in which the appointment of an enquiring officer is to be made would be after the fixing of the written statement of defence and after considering wheth-

PLS. SIT

20

er an enquiry would be necessary or not, but it has been stated in the reply in counter by the respondents, an enquiring officer was appointed to save time. The appointment of an enquiring officer before the filing of the written statement of defence though may not be very regular, yet it is not a fact sufficient to vitiate the proceeding. To this extent we are unable to accept the contention of Mr. Mohanty that the disciplinary proceeding was vitiated from its very beginning.

5. Mr. Mohanty has next contended that denial of the opportunity to have an access to the documents relevant for the purpose of enquiry made the enquiry void. It would be worthwhile to make a reference to Annexure-2, copy of memorandum of charges. To the memorandum of charges was annexed a list of documents by which the articles of charge were sought to be proved and they were mostly statements of persons recorded or made prior to the date when the charges were framed. Of course, unless a person knows what those statements are or what they contain, it would not be possible to file a proper written statement of defence but as would be found, later the applicant was given opportunity to inspect them and take notes, therefore, the initial refusal to give copies of those documents though was not justified, does not cause any real prejudice to the applicant in his defence (Refer to Annexure-10 to the application where the applicant was informed that he

*Mr. Mohanty
10/11/90*

was at liberty to inspect the documents which were in the custody of the enquiring officer and also to ask for production of additional documents if he felt such production ~~is~~ necessary).

6. Mr. Mohanty, learned counsel for the applicant has very vehemently urged that the applicant was denied the fundamental right of having a defence assistant of his own choice when the disciplinary authority cancelled the appointment of Mr. Sukla as his defence assistant. This submission is based on the analogy of the provisions of Article 22 of the Constitution of India. But that article really bears on the subject of arrest and defence in a criminal case. However, as a general principle of equity and justice, unless there be other reasonable grounds, ordinarily a person nominated by the charged officer as defence assistant should be allowed to assist the charged officer in the enquiry in a disciplinary proceeding. In this connection a reference to Rule 14(8) of the C.C.S. (C.C.A.) Rules, 1965 may be ~~referred~~ made. It specifically provides that the defence assistant should be a Government servant working either at the headquarters of the charged officer or at the place where the enquiry is held. In the instant case, admittedly, Mr. Sukla was not a person of that category. There is also another condition for appointing a defence assistant i.e. such defence assistant should not have engagement in his hands more than two disciplinary cases. The authorities

*Mr. Mohanty
21/6/99*

72

had required of the proposed person, Mr. Sukla to inform as to in how many cases at that time he was to appear as defence assistant and Mr. Sukla gave evasive replies. To add to this, the controlling officer of Mr. Sukla informed his inability to spare Mr. Sukla. In these circumstances, it cannot be said that there was no reasonable ground to cancel the nomination of Mr. Sukla as the defence assistant. We would, therefore, say that the cancellation of Mr. Sukla's nomination cannot be found fault with.

7. In Annexure-23 the applicant was asked to inform of a fresh nomination of defence assistant by him. Thus, he was given an opportunity to have himself defended adequately. In the meantime, the date of enquiry as mentioned in Annexure-23 has passed. Taking an overall view of the case giving rise to this case, we would direct the applicant to nominate a person satisfying the requirements of Rule 14(8) of C.C.S. (C.C.A.) Rules within a month hence and inform the Enquiring Officer and the disciplinary authority of the said nomination and also within that period state if he requires copies of any document connected with the case which should be delivered to the applicant within a month from the date of intimation by the application to the concerned authority. Thereafter the enquiry should be completed within a period of three months. The application is accordingly disposed of.

No costs.

.....
Member (Administrative)

M. S. S. 107 90
Member (Judicial)

