

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA**

NO. O.A. 1302 of 1996

PRESENT : HON'BLE MR. S.K. MALHOTRA, ADMINISTRATIVE MEMBER
HON'BLE MR. G. SHANTAPPA, JUDICIAL MEMBER

RABINDRA NATH DAS

VS.

1. Union of India, through the Secretary,
Ministry of Commerce, New Delhi-11.
2. The Director General of Foreign Trade,
Ministry of Commerce, Udog Bhawan,
New Delhi-11.
3. The Joint Director General of Foreign Trade, ^
4, Esplanade East, Calcutta-69.

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. A.K. Dutta, Counsel

Date of Order: 20.4.05

ORDER

MR. G. SHANTAPPA, J.M.:-

The above O.A. was filed under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

- a) Direct the respondents and/or their servants and/or their agents to withdraw, cancel, and/or rescind the impugned order dated 25.12.1995 and the appellate order dated 21.5.1996.
- b) Direct the respondents to quash the entire D & A proceedings, Charge-sheet, findings of the enquiry officer and punishment order as well as appellate order.
- c) Any other order or orders as to your Lordships may seem fit and proper."

2. After hearing from either side the short question that arises for our consideration is

Whether the impugned order of the disciplinary authority vitiates for not supplying the enquiry report before passing the order?



3. The brief facts of the case are that the applicant was issued charge memo dated 6.5.92. The charges are as follows:-

Article of Charges framed against Shri Rabindra Nath Das,
L.D.C. Office of the Joint Chief Controller of Imports and
Exports, Govt. of India, 4, Esplanade East, Calcutta-69.

Whereas Shri Rabindra Nath Das, L.D.C. was functioning as receiving clerk at the counter in the office of the Joint Chief Controller of Imports and Exports, Government of India, 4, Esplanade East, Calcutta-69 during March, 1988 and committed gross misconduct inasmuch as on or about 14.3.88 and 16.3.88 he demanded and accepted a bribe of Rs.500/- from Shri R.N. Mukherjee, Managing Director of Measures Firma K.L.M. Pvt. Ltd, 257, B.B. Ganguly St. Calcutta-12 as illegal gratification for not divulging the contents of the invoice of said Sri R.N. Mukherjee to other firms and also for arranging to divulge the contents of the invoices of other firms to Shri Mukherjee.

2. Further the said Shri Rabindra Nath Das, LDC had committed misconduct by unauthorisidely retaining Government documents such as Government Cheques, invoices and rubber stamps of the various firms.

3. That Shri Rabindra Nath Das thus failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a public servant and thereby contravened Rule 3(i)(ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964."

4. On the basis of the complaint of M/s. Firma K.L.M. Pvt. Ltd., Calcutta, F.I.R. was filed under Section 161 of IPC. The applicant was discharged by the Chief Metropolitan Magistrate Calcutta with a direction to appear before the departmental enquiry, which is being initiated in respect of this case. Then the proceedings under Rule-14 of the CCS (CCA) Rules, 1965 proceedings were initiated. The applicant participated in the proceedings and an opportunity was given to him in the enquiry. The enquiry officer has submitted the report to the Disciplinary Authority. On the basis of the findings of the enquiry officer, the disciplinary authority has imposed the penalty. The findings of the enquiry officer are as follows:-

- 1. He visited the officer of an exporter at 5.40 PM i.e. during officer hours.
- 2. He did accept a sum of Rs.500/- from an exporter with whom he had no personal connection, for reasons not clearly established.
- 3. He was found to be in possession of various cheques and rubber stamps pertaining to some exporters. Apparently he was acting as a 'Collection Agent' of these exporters,

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which was highly irregular and unbecoming on the part of a Govt. Servant.

Following aspects of the charge sheet, however could not be established:-

1. That the CD "Demanded" an amount of Rs.500/- from the complainant.
2. That he accepted an amount of Rs.500/- from the complainant as "Bribe".

The report is submitted to the Disciplinary Authority for appropriate action."

5. The disciplinary authority has imposed the penalty on 29.12.1999. The operative portion of the Disciplinary Authority is as follows:-

"ORDER"

It is, therefore, ordered that the pay of Shri Rabindra Nath Das, L.D.C. be reduced by 3 stages from Rs. 1150 to Rs.1090/- in the time scale of Rs. 950-20-1150-EB-25-1500/- for a period of 2 (Two) years w.e.f. 29.12.95. It is further directed that Sri Rabindra Nath Das will not earn increments during the period of reduction of pay and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay."

6. Subsequently on 5-3-1996, a copy of the enquiry report was served on the applicant. The applicant preferred an appeal on 3-4-96 being aggrieved by the orders of the Disciplinary Authority. The appellate authority has confirmed the penalty on 27.5.96. The applicant is challenging the impugned orders that the respondents have not followed the principles of natural justice. Enquiry report was not given to him prior to imposing the penalty and there was no opportunity given to the applicant, hence the entire proceedings vitiated.

7. The respondents have supported the impugned order; the facts narrated by the applicant are admitted, except the violation of principles of natural justice. There is no prejudice caused to the applicant for non-supplying the enquiry report. The enquiry officer has decided the request of the applicant for non-supplying the documents and non-examination of the witnesses. The respondents have requested for dismissal of the O.A.

8. While arguing the case, the applicant was restricted his argument on the following points:-



- 1) In the enquiry, the witnesses Nos.4 & 5 were not examined.
- 2) Item No. 02 & 03 of list of documents were not given.
- 3) Enquiry report was not supplied before passing the impugned order by the disciplinary authority.
- 4) The orders of the appellate authority is not a speaking order."

The principles of natural justice are violated and hence the entire proceedings are illegal. The procedure followed by the enquiry officer, the disciplinary authority and the appellate authority are liable to be quashed in view of the judgment of the Hon'ble Apex Court in the case of Managing Director, E.C.I.L., Hyderabad Vs. B. Karuna Karan reported in 1994 (1) SCT 319 and Union of India and Ors. Vs. Md. Ramzan Khan reported in AIR 1991 SC 471.

9. Per contra, the respondents have argued that mere non supplying of enquiry report, the proceedings does not vitiate. The applicant was not acquitted from the charge. He was only discharged from the charge of offence committed under Section 161 of IPC. A detailed enquiry was held. Sufficient opportunity was given to the applicant in the enquiry and all the relevant documents were supplied and the witnesses were examined. Opportunity was given to the applicant to cross examine the witnesses. The impugned order of the disciplinary authority and the appellate authority are speaking orders. The authority has exercised the powers vested with them. The main contention of the applicant regarding non-supply of the enquiry report before imposing the penalty and he has cited a judgments above of the Hon'ble Supreme Court.

10. We carefully examined the contentions of the applicant and he has restricted his argument regarding non-supply of the enquiry report. The said issue was already settled by the Hon'ble Supreme Court. We apply the facts of the case and legal issue and decide the case in accordance with the direction of the Hon'ble Supreme Court. The entire proceedings of the enquiry vitiated, if the copy of the enquiry report was not given to the delinquent applicant in view of the judgment of the Hon'ble Supreme Court in the Case of Union of India & Ors. Vs. Ramzan Khan and Managing Director, ECIL, Hyderabad Vs. B. Karuna Karan. Subsequently, to ECIL case the law has developed and in view of the latest judgment of the Hon'ble Supreme Court the enquiry proceeding does not vitiate unless the delinquent's rights are prejudiced.



"As regards the fact of non-furnishing the copy of the enquiry report to the delinquent, the Constitution Bench has laid down that the facts and circumstances of each case will have to be committed to know whether any prejudice has been caused to the employee or not, on account of denial of the enquiry report to him, and further observed that to direct the reinstatement of cases would again to refusing the principles of natural justice to a technical rituals. The said observation was made in Managing Director, E.C.I.L. Vs. B. Karuna Karan. Reported in 1994(1) SCT 319.

In subsequent decisions also Hon'ble Supreme Court confirmed the non-supply of a copy of the enquiry report to the delinquent before the said report is considered by the disciplinary authority, does not warrant interference by Courts unless the delinquent shows to the court that such non supply of the copy of the enquiry report has caused prejudice to him. The said observation is made in the case of S.K. Singh Vs. Central Bank of India reported in 1997 (1) SLJ 235 (SC).

Whether in particular case any prejudice has been caused to the delinquent employee on account of non-supply of enquiry report at the appropriate stage would depend upon the facts and circumstances of the case. However, such cases would be very rare, more so in view of a subsequent judgment of the Hon'ble Supreme Court, wherein the facts that a copy of the enquiry report was not supplied to the delinquent till the disciplinary authority passed an order of dismissal. The respondents were however, in possession of inquiry report and at the time of filing of an appeal. In the said appeal he had assailed binding of the enquiring authority. The High Court has set aside the order of penalty on the ground of nonsupply of enquiry report at the appropriate stage to the delinquent. The Hon'ble Supreme Court however reversed the orders of the High Court and observed that non-supply of the enquiry report and findings have not caused any prejudice to the delinquent. The said observation is made in the case of Union Bank of India Vs. Viswa Mohan.. reported in 1998(3) SLJ 207 (SC). The said judgment has been followed by the Chandigarh Bench of this Tribunal in a similar case where the delinquent was exonerated by the enquiry officer and the said enquiry report stood supplied to the delinquent vide letter dated 25.11.1989. Subsequently, however the disciplinary authority recorded a dissenting note and without giving any show cause notice to him for making a representation. Against such dissenting note the dismissal order dated 22.3.90 was passed. The Hon'ble Supreme Court has held that the principles of natural justice stood sufficiently complied with and there had been no prejudice caused to the delinquent since he had raised all the possible points in his appeal.

In an another judgment of the Hon'ble Apex Court in the case of Depot. Manager APSRTC Vs. V. Velayudham & Anr. Reported in 2003 SCC (L &S) 1033, the same view has been taken.

The judgments referred by the applicant are considered and which are relied on by the Hon'ble Supreme Court in the latest judgment.



11. In the present case, there is no prejudice caused to the interest of the applicant hence, the stand taken by the respondents is accepted. We answer the issued raised above accordingly.

12. We carefully scrutinized the orders of the disciplinary authority and the appellate authority; they have assigned the reasons and passed the speaking order. We hold that the principles of natural justice are not violated. Since the charge against the applicant is grave, the disciplinary authority has imposed lesser penalty for that he has to be thankful; instead he is challenging the impugned orders. We are not interfering with the powers exercised by the disciplinary authority. It is for the disciplinary authority to impose the penalty. When there is no procedural irregularities committed in the entire proceeding in view of the judgment of the Hon'ble Apex Court, we are not inclined to interfere with the impugned orders. The applicant has not made out a case for grant of relief. The O.A. is devoid of merit. Accordingly, we dismissed the O.A. No costs.



MEMBER(A)



MEMBER(B)