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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 168/2003

DATE OF DECISION: 23.11.2004

H.R. Beniwal : Petitioners

Mr.S.K. Malik : Advocate for the Petitioner

VERSUS

Union of India & Ors. : Respondents

Mr. Vinit Mathur : Advocate for the respondents

CORAM:

THE HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
THE HON'BLE MR. G.R. PATWARDHAN, ADM. MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

(G.R. Patwardhan)
Admv. Member

(Kuldip Singh)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO. 168/2003
DATE OF DECISION : THIS THE 23RD DAY OF NOVEMBER, 2004

Hon'ble Mr. Kuldip Singh, Vice Chairman
Hon'ble Mr. G.R. Patwardhan, Administrative Member

H.R. Beniwal S/o Shri Khuma Ramji
Aged about 46 years, R/o 59 A Income Tax
Colony, Paota C Road, Jodhpur. Presently working
on the post of Senior Store Keeper in the
Office of Commandant, No. 6 FOD
C/o 56 A.P.O. Jodhpur (Raj).

.....Applicant.

[By Mr. S.K.Malik, Advocate, for the applicant]

Versus

1. Union of India through the Secretary
Ministry of Defence,
Raksha Bhawan, New Delhi – 110 010.

2. Director General Ordinance Services
Master General of Ordinance Branch,
Army Headquarters DHQ PO New Delhi - 011.

3. Officer-In-Charge, Army Ordinance Corps Records,
Post Box No. 3, Trimulgherry Post,
Secundrabad, Andhra Pradesh 500 015.

4. Commandant, 6 Field Ordinance Depot,
C/o 56 APO

.....Respondents.

[By Mr. Vineet Mathur, Advocate, for the respondents]

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ORDER
[BY G.R.PATWARDHAN,MEMBER (ADMV)]

This is an application by H.R. Beniwal, working on the post of Senior Store Keeper in the office of Commandant, 6 Field Ordnance Depot (FOD) at Jodhpur. There are four respondents led by the Secretary, Ministry of Defence representing Union of

India, Director General Ordnance Services, Officer-In-Charge, AOC Records and Commandant, 6 FOD. Seven orders are under challenge – beginning from 16.11.1991 ending 13.8.2002 contained in Annexs. A/1 to A/7 through which the applicant was initially suspended and thereafter punished by way of reduction of pay by two stages for a period of two years with cumulative effect. The last order passed on 13.8.2002 at Annex. A/7 has been passed by Lt. General T.J.S. Gill, Director General of Ordnance Services and is addressed to the applicant. This has been passed on appeal preferred by the applicant on 6.3.2001. Through it, after summarizing the reasons for the order, the same has been rejected as lacking in substance and penalty awarded by the disciplinary authority vide order dated 13.1.2001, has been confirmed. The O.A. has been filed on 11.8.2003 and is thus, within the period of limitation.

2. The cause of action essentially relates to allegations of misconduct and disobedience of orders as contained in the Chargesheet, a copy of which is placed at Annex. A/3 and reveals that the applicant is alleged to have refused to sign some documents, failed to give report on daily activities, refused to obey some office orders, remained absent without permission and thus showed utter disregard towards his superior authority and conduct of lawful duties.

3. There are in all eight points taken to challenge the impugned orders and the ninth is an omnibus averment that the

application is based on many other grounds which would be submitted at the time of hearing. But, only the following are important and deal with the basic issues involved. These are as follows :-

(i) Suspension order and the chargesheet have been issued under CCS(CC&A) Rules, 1965, (for short 'the Rules of 1965'), but, these rules are not applicable in the instant case and thus the entire exercise is without jurisdiction and deserves to be quashed and set aside.

(ii) The inquiry officer has not assessed the evidence correctly.

(iii) It is a case of no evidence against the applicant.

(iv) The punishment imposed is not commensurate with the allegations.

(v) The applicant was not given an opportunity of personal hearing either by the disciplinary authority or by the appellate authority and thus there has been violation of principles of natural justice.

4. Detailed arguments have been heard from both the sides; a reply has also been filed on behalf of respondents.

5. The learned counsel for the applicant has based his arguments on the premise that Hon'ble the Supreme Court has categorically held in number of judgements that provisions of the Rules of 1965 are not applicable to the civilian employees in defence establishments. In particular, reference has been made to

the judgement of the Apex Court in the case of Union of India and Others Vs. Mohd. Aslam reported in 2001 SCC (L&S) 302 to show that civilians employed in defence establishments are not governed by the Rules of 1965.

6. The questions for decision appear to be the following :-

(a) whether this Tribunal has jurisdiction to entertain the application ;

(b) what is the scope of applicability of the CCS (CC&A) Rules, 1965; in the instant case and in particular as the impugned orders seem to have been passed with reference to that.

(c) if the question 'a' and 'b' is answered in the affirmative whether the Tribunal should go behind the entire disciplinary proceedings and find out the liability of the applicant for the mis-deeds attributed to him.

To answer the first question, suffice it to record that in Mohd. Aslam's case, which is a case of Unit Run Canteens of Army, Navy and Air Force, where the Union of India took the stand that the employees of such canteens were not paid from the budget of the Ministry of Defence and were, therefore, not government servants and where the Central Administrative Tribunal Jodhpur Bench, held that not only these employees were government servants but were also amenable to jurisdiction of the Tribunal, Hon'ble the Supreme Court held that the status of the employees in the Unit Run Canteens must be held to be that

of government employees and consequently, the Tribunal would have the jurisdiction to entertain applications of such employees.

7. In its judgement, their Lordships in paragraph 5 have observed that though they have recorded conclusion that the employees serving under the Unit Run Canteens would be treated as Government servants, it did not necessarily mean that the service conditions of such employees would abide by the Fundamental Rules and as there was no decision of the respondents that Fundamental Rules would be applicable, in the absence of such decision, the Tribunal was not justified to direct that the question of payment of subsistence allowance should be reviewed in accordance with the provisions of Fundamental Rules. Here, the case was of a category of individuals who were brought in the purview of definition of Government servants by this judgement and naturally, therefore, it was held that without a conscious decision of the employer i.e. the Ministry of Defence, it was not possible to hold that they automatically got covered by the provisions of Fundamental Rules. We propose to highlight this point, because in the case before us H.R. Beniwal, is very much a government servant enjoying the benefits of regular pay scale and allowances and this issue is not in dispute. Mohd. Aslam's case therefore is distinguishable.

8. Coming now to the scope of the Rules of 1965. The learned counsel for applicant, by citing an order of this Tribunal passed in OA No. 307 of 2001 on 29.4.2003 in Sher Singh Vs. UOI and Ors. proposes to show that the provisions of the Rules of 1965 are not

applicable in the instant case and, therefore, the entire exercise undertaken by the respondents of punishing the applicant is without basis. In the case cited, Sher Singh, was Vice President of 6 FOD Employees Union and while working on the post of Senior Store Keeper, was placed under suspension in November 1991 and a Chargesheet was issued in due course alleging violation of Rule 11 of the CCS (Conduct) Rules,. He denied the charges and replied to the chargesheet whereafter an inquiry was conducted, a copy of the inquiry report furnished to him and after going through his representations against the same, was awarded the penalty of reduction of pay by one stage for a period of one year with cumulative effect. The suspension order was also revoked immediately thereafter in June 1999, with the provision that the period spent on suspension would be treated as duty but without pay and allowance except the subsistence allowance already paid. An appeal against the same also got rejected. There also, Mr. Malik, learned advocate for the applicant, submitted that the Rules of 1965 as well as the CCS (Conduct) Rules, 1964, under which the inquiry was conducted and charges framed, did not apply to the case of applicant who was a civilian in the defence establishment and so the whole disciplinary proceedings including the penalty and suspension orders were inoperative and void ab initio. Reliance was placed on number of cases to show how the entire proceedings were undertaken by non-observance of the principles of natural justice. The Tribunal came to the conclusion that no prejudice was caused to the applicant and the action of the respondents in imposing the penalty could not be

said to be faulty. However, the Tribunal ordered that the period of suspension from November 1991 to November 1999 could be treated as on duty for all purposes including pay and allowances.

9. It may be seen from the pleadings and the arguments advanced during the course of hearing that the main thrust of the applicant is to show that the Rules of 1965 are not applicable in the instant case. Admittedly, the position of civilians in defence establishments is slightly different from the civilians in establishments not paid form the defence estimates. In Union of India and another Vs. K.S. Subramanian reported in AIR 1989 SC 662, where the respondent got appointed in 1951 as an ordinary Industrial Labourer in Naval Base, Cochin and whose services were terminated in October 1968 under Article 310 of the Constitution without assigning any reason and where the Hon'ble High Court of Kerala confirmed a decree awarding damages together with interest for illegal termination of service, Hon'ble the Supreme Court in its judgement observed as follows :-

> "10. By virtue of Art. 311(2), no civil servant can be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. Article 311 (2) thus imposes a fetter on the power of the President or the Governor to determine the tenure of a civil servant by the exercise of pleasure. Tulsi Ram case (AIR 1985 SC 1416) concerned with the exclusion of Art. 311 (2) by reason of second proviso thereunder. We are also concerned with the exclusion of Art. 311 (2), if not by second proviso but by the nature of post held by the respondent. We have earlier said that the respondent is not entitled to protection of Art. 311 (2), since he occupied the post drawing his salary from the Defence/Estimates. That being the position, the exclusionary effect of Art. 311 (2) deprives him the protection which he is otherwise entitled to. In other words,

there is no fetter in the exercise of the pleasure of the President or the Governor.

11. It was, however, argued for the respondent that 1965 Rules are applicable to the respondent, first, on the ground that R. 3 (1) thereof itself provides that it would be applicable, and second, that the Rules were framed by the President to control his own pleasure doctrine and, therefore, cannot be excluded. This contention, in our opinion, is basically faulty. The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Art. 311 (2). When Art. 311 (2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule-making power under Art. 309 is subject to Art. 311. This would be the legal and logical conclusion.

12. The next contention urged for the respondent depends upon the admission made by the appellants before the High Court. The appellants seem to have admitted before the High Court that the 1965 Rules would be applicable to the respondent. Relying on this admission, it was argued before us that the decree under appeal should not be set aside. The poverty of the respondent and the long drawn litigation by which the respondent has suffered immeasurably were also highlighted.

13. We gave our anxious consideration to this part of the submission. It is true that the parties appear to have proceeded before the High Court, that the 1965 Rules would be attracted to the case of respondent. It might be on a wrong assumption of law. The appellants cannot be estopped to contend to the contrary. They are not bound by such wrong assumption of law. Nor it could be taken advantage of by the respondent. But the submission made before us about the poverty of the respondent and the long drawn litigation seems to be appealing. It is a plus point in his favour under equity. This Court, while granting special leave has imposed a condition on the appellants that they will bear the cost of the respondent in any event. That was evidently because of the need to have the law clarified and inability of the respondent to come up to this Court. There cannot be any dispute about the poverty surrounding him. He has instituted the suit as an indigent person. There is yet another aspect. When the respondent commenced the litigation and continued up to the High Court, the law on the question was nebulous. It was only thereafter an authoritative pronouncement was made by tthis Court with regard to the impact of Rules made under the proviso to Art. 309 on the pleasure doctrine under Art. 310 (1). These facts and circumstances therefore call for a sympathetic

consideration of the case of respondent. This Court will not deny any equitable relief in deserving cases. The case on hand cannot be an exception to that rule and indeed, it is eminently a fit case. We, therefore, accept the submission made for the respondent and decline to disturb the decree under appeal.

14. In the result, the appellants succeed on the question of law, but the respondent retains the decree in his favour purely on compassionate grounds. The appellants also must pay the cost to the respondent as already bound.

It may be seen here that the matter before the Court was of the claim of the Union of India to apply the doctrine of pleasure as enshrined in the Article 310 (1) of the Constitution of India and that power was held to be exercisable and protection to a Government servant under Article 311 (2) was held withdrawn and to that extent the Rules of 1965 which provided the procedure for imposing the three penalties, were held to be in-applicable. It would be difficult to accept the contention of Mr. Malik that through this judgement Hon'ble the Supreme Court held that the Rules of 1965 in their entirety had no application to civilians in defence establishments.

10. The second case of Union of India Vs. S.B. Mishra reported in AIR 1996 SC 613, also seem to support the same reasoning. In this case, S.B. Mishra, was a Lecturer in the College of Military Engineering, Pune, who was compulsorily retired by proceedings on 27.7.1987 as a measure of punishment following a departmental inquiry. This was challenged in OA No. 616/1990 by him before the Central Administrative Tribunal on the ground that he was not supplied with a copy of the inquiry report. The

Tribunal vide its order of July 2002 set aside the order giving a liberty to the Union of India to take appropriate action from the stage of supplying copy of the inquiry report. The competent officer exercised power under the Rules of 1965 and passed an order that Mr. Mishra was deemed to be under suspension till the inquiry was over on which, it was challenged again by filing a Contempt Petition before the Tribunal. By order in September 1992, the Tribunal held that Rule 10 (iv) of the Rules of 1965, had no application as Mr. Mishra was not kept under suspension pending inquiry and, therefore, he may be deemed to be in service and issued directions to reinstate him with all consequential benefits. Hon'ble the Supreme Court posed a question for answer when Union of India challenged this order whether, the respondent could be deemed to be under suspension. It was contended on behalf of Mr. Mishra that the Rules of 1965 had no application and, therefore, he could not be treated under suspension and since after a direction of the Tribunal, he had been reinstated, the appeal of Union of India in the Apex Court became infructuous. The Apex Court however allowed the appeal of the Union of India and also made the following observations :

> "6. Thus, it is settled law that the Rules made under proviso to Article 309 will be subject to doctrine of pleasure enshrined in Article 310. Article 310 (1) expressly excludes the applicability of the provisions of the Rules to the defence personnels. We, therefore, hold that the CCS (CC&A) Rules have no application to the defence personnel. Consequently the respondent is not entitled to the supply of the Inquiry Report as contemplated by Clause (2) to Article 311 of the Constitution read with the Rules. As a result, the order of the Tribunal directing the appellant to supply the copy of the inquiry Report and to take further action thereon and to

reinstate him till the inquiry is illegal. The order of the Tribunal is set aside.

The appeal is allowed. No costs."

Perhaps, the observation of their Lordships in paragraph 6 quoted above that the Rules of 1965 have no applicability to the defence personnel has allowed the present applicant to believe that there is practically nothing that guides conduct of civilian government servants in defence establishments and, therefore, any action taken by the respondents in the instant case was without basis. We are unable to appreciate this logic. What the Hon'ble Court in this case observed was (and it had also referred to the case of Union of India Vs. K.S. Subramanian quoted above) that the individual concerned (S.B. Mishra, the respondent) was not entitled to the supply of inquiry report as contemplated by Clause (ii) to Article 311 of the Constitution read with Rules and the order of the Tribunal directing that a copy of the inquiry report be supplied and that he be reinstated was illegal.

11. There is yet another aspect of the matter. There was a set of rules called 'Civilians in Defence Services (Classification, Control and Appeal) Rules 1952, wherein, not only the civilians in different services were classified into four classes, there are specific provisions of conduct and discipline. In particular Rule 13 provides 8 different kinds of penalties including suspension. Rule 18 provides for appeals and Rule 30 authorises the Government of its motion or otherwise to call for the record of any case and examine the same. When the Rules of 1965 were promulgated in

1965, in Rule 34 sub clause (1), the earlier Rules of 1952 quoted above, were specifically repealed. If at all, for a moment the logic offered by Mr. Malik is held to be tenable, that the Rules of 1965 are not applicable in the instant case, then the next logical step would be the revival of the 1952 Rules and its availability to the respondents which empowers them not only to impose penalty of dismissal or removal from service but also lists suspension as a punishment.

In the given premises, the second question also has to be answered in affirmative. There is nothing to infer that the Rules of 1965 in so far as conduct of disciplinary proceedings are concerned, are not applicable. If at all they are not applicable, it is only those provisions which militate against Article 310 of the Constitution and which has been amply clarified in Subramanian's case, quoted above.

12. The question that now remains to be answered is, if at all the proceedings was conducted in a fair manner. Much has been written in the pleadings and said by way of arguments by Mr. Malik against the way the disciplinary proceedings have been conducted. Nothing more is required to infer otherwise than to read copy of proceedings of inquiry annexed as Annexure A/12 and Annex. A/13 which is a representation against the same and which says the following important submissions by the applicant :

> "2.After nominating defence assistant, the enquiry was conducted regularly and conducted by the Enquiry Officer.

4. After nominating defence assistant on 23 Jul 1997, the enquiry was continuously conducted.

17. That lastly I would like to pray before your Hon'ble that before taking any decision in the matter on my representations I may be permitted personal hearing alongwith my defence helper without prejudice what I have stated aforesaid.",

However, the inquiry report in paragraph 12 mentions that on 8.12.1999 when the Court assembled at 15.30 hours and the applicant had no sufficient reason to substantiate the absence of his defence assistant despite adequate opportunity being given and he was informed that as he has failed to plead his case through his defence assistant or through pleadings, it was not possible to accept his request for further time, the applicant refused to sign the said daily order sheet and left the Court showing disrespect to the conducting officer.

13. In the circumstances, it is difficult to believe that no opportunity was afforded to the applicant and that rules of natural justice have been flouted.

14. The other point that needs to be now examined is, if it is a case of no evidence. It may be seen that the charges are essentially of dis-obedience of orders of superiors. From Annex. A/12 which is a copy of the inquiry report, it appears that Lt. Col. P.C. Chona, UDC, Shri Lal Chand and Mazdoor Shri Murli Singh, have been examined, whereas despite the written requests to the delinquent officer, the applicant failed to submit the name of any defence witness and the defence assistant Shri P.S. Ratni was not made available to the inquiry officer. The report also discloses

that during the preliminary investigations Naib Subedar Shri Umed Singh and Naib Subedar Shri Atma Ram, UDC, provided evidence of dis- obedience of orders. It also appears from contents of Annex. A/4 that the applicant initially delayed the case for nearly three years by not giving the name of his defence assistant on the pretext that he had filed a case in C.A.T. which appears to have been disposed of on 6.10.1994.

15. These are then the facts and sequence of events revealed by pleadings. Mere denial of opportunity to defend – in the face of these, is not adequate to prove the charge of unfair treatment and need of going behind the proceedings to ascertain the extent of culpability of the applicant and the question of punishment. The Tribunal need not venture into that area. This is a settled legal position. The third question – therefore has to be answered in the negative.

16. Mr. Malik, learned counsel for applicant, lastly highlighted the fact that the applicant was kept under suspension for nearly ten years and for this period, he will be getting only the subsistence allowance and not full pay. This, according to him is harsh as also the penalty that has been imposed. He therefore pleaded relief on both these counts.

The settled position of law – in view of cases discussed above – however does not permit the Tribunal to scrutinize the quantum of punishment, especially after it is held that broadly

speaking, principles of natural justice have been adhered to. We are therefore unable to accept this submission.

17. Maintenance of discipline in any organization is becoming a difficult task – appears to be also in an organization which has ample representation of civilians not amenable to the provisions of Army, Air Force or Navy Act. Further in the matters of day to day administration where superior officer is expected to carry out the task assigned to him and achieve a particular target, it is necessary to allow him some freedom of action towards that. It is inconceivable to expect him to follow the provisions of the Evidence Act to keep record of witnesses for any eventuality ready and then conduct his daily business which includes giving oral instructions, seeking information and expecting presence of his staff during duty hours. An organisation works mainly on trust, cooperation and mutual understanding. Taking a different view would lead to disastrous consequences where subordinates would be free to challenge every instruction on any pretext. In the instant case, it is difficult to accept that it is a case of no evidence or that there has been violation of principles of natural justice to the extent that it has resulted in absolute mis-carriage of justice. The order passed in appeal by Lt. General T.J.S. Gill at Annex. A/7 is a detailed and speaking one and shows application of mind. The Original Application, therefore, has no merits and is accordingly dismissed with no orders as to costs.

[G.R.Patwardhan]
Administrative Member

[Kuldip Singh]
Vice Chairman

Jrm