

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

16

ORIGINAL APPLICATION NO. 310/2007

DATE OF ORDER : THIS THE 12TH DAY OF FEB.'08.

CORAM :

HON'BLE MR. JUSTICE A.K. YOG, MEMBER[J]

HON'BLE MR. R.R. BHANDARI, MEMBER [A]

✓ Bhaga Ram Meghwal S/o Shri Sadul Ram Meghwal, aged about 45 years, presently working as Superintendent, Central Excise Department, Jodhpur R/o 56-A, Meghwal Basti, Masuria, Jodhpur.

By Mr. Manoj Bhandari, Advocate, for the applicant.

Versus

1. The Union of India through the Secretary, Ministry of Finance, Finance Department, Department of Revenue (Excise), North Block, New Delhi.
2. The Chief Commissioner, Central Excise (Jaipur Zone), Jaipur, New Central Revenue Building, Statue Circle 'C' Scheme, Jaipur.
3. The Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur.
4. The Additional Commissioner (P&V), C/o Office of the Commissioner, Central Excise, Jaipur - 1, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur.

✓

5. The Superintendent (Vig.), Central Excise, Jaipur.



6. The Dy. Commissioner, Central Excise, Jodhpur Division,
1-C Panchwati Colony, Ratanada, Jodhpur.

7. Shri S.R. Prasad, Additional Director, Department of Revenue
Inlegancy (DRI), Ahmedabad.

ORDER

[PER R.R.BHANDARI, MEMBER (A)]

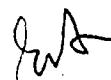
Shri Bhaga Ram Meghwal, applicant, preferred this Original Application under Section 19 of the Administrative Tribunals Act, 1985, and prayed for the following relief(s) :-

"(i) by an appropriate order or direction, the order dated 17.10.2006 (Annex.A/1) passed by the Revisional Authority i.e. by the Chief Commissioner, Central Excise, Jaipur Zone, Jaipur be declared illegal and be set aside.

(ii) by an appropriate order or direction, the order dated 2.7.2004 (Annex.A/2) passed by the Appellate Authority i.e. by the Commissioner, Central Excise, Jaipur-1, be declared illegal and be set aside.

(iii) by an appropriate order or direction, the order dated 3.3.2003 (Annex.A/3) passed by the Disciplinary Authority i.e. by the Additional Commissioner (P&V), Central Excise, Jaipur Zone, Jaipur, be declared illegal and be set aside.

(iv) by an appropriate order or direction, the Charge-sheet dated 17.01.2000 (Annex.A/4) be declared illegal and be set aside.



3/8

(v) by an appropriate order or direction, the show cause notice dated 20.1.2003 issued by the Disciplinary Authority disagreeing with the findings of the Enquiry Officer be declared illegal and be set aside.

(vi) any other appropriate order or direction which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. A brief matrix of the case from the documents filed by the applicant and arguments made by the applicant's counsel, are as follows :

The applicant was issued with a Memorandum dated 17th January, 2000 (Annex.A/4) for holding an inquiry under Rule 14 of the CCS (CCA) Rules, 1965. The Memorandum was annexed with (a) statement of Articles of Charges, (b) statement of imputation of mis-conduct for mis-behaviour in support of the Articles of the charges and (c) other documents on the basis of which the charges were framed.

An inquiry was conducted by the Inquiry Officer. The Inquiry Report submitted by the Inquiry Officer on 17th December, 2002 is kept at Annex. A/8 (Page 122 of the O.A.). The Inquiry Officer after conducting the inquiry, gave his findings and concluded that in the case of the applicant, there has been no violation of Rule 3(1)(i), 3(1)(ii), 3(1)(iii) and Rule of Central Civil Services (Conduct) Rules, 1964. The Disciplinary Authority, after going through the inquiry report, did not agree with the findings and issued a Show Cause Notice vide his orders dated 20th January, 2003 a copy of which is kept at Annex. A/9. The Disciplinary Authority mentioned as under :-

JK

109

"..... AND WHEREAS, the findings of the inquiring authority having been found not agreeable to by the disciplinary authority it is expedient to record the reasons for such disagreement and the findings of the disciplinary authority on each article of charge in the following manner."

The Disciplinary Authority then, at length discussed the reasons for his dis-agreement with the findings of the inquiring authority covering 8 paras from page 133 to 135 of Annex. A/9 and concluded :

"Now, therefore, the said Shri Bhaga Ram Meghwal, Inspector is directed to show cause and explain to the undersigned within a period of ten days of the receipt of this notice as to why :-

- (i) The report of the inquiring authority holding therein that none of the articles of charge framed against the CO stands proved should not be rejected and all the articles of charge should not be held as proved in view of the findings recorded here-in-above and
- (ii) An appropriate penalty under Rule 11 of the CCS (CCA) Rules, 1965 should not be imposed on him.

The said Shri Bhaga Ram Meghwal, Inspector is further informed that if he fails to show cause against the action proposed to be taken against him within the stipulated period of time, the matter shall be taken up for decision without making any further reference to him."

The applicant replied to the Show Cause Notice on 14th February, 2003 copy of applicant's reply is kept at Annex. A/10. The Disciplinary Authority and the Additional Commissioner (P&V) Central Excise, Jaipur, not agreeing to the reply to the show cause notice decided to impose a penalty of 'reduction by two stages in the time scale of pay for a period of two years w.e.f. 4.3.2003'. Further, it was mentioned that reduction will not have the affect of postponing the future increments in the pay (Annex.A/3).

JK

The applicant filed an Appeal against the order of the Disciplinary Authority, the Appeal dated 15.4.2003 is kept at Annex. A/11. The Appellate Authority and the Commissioner Central Excise, Jaipur, disposed of the Appeal by order dated 2nd July, 2004, a copy of which is kept at Annex. A/2. The Appellate Authority gave its reasoning in the order while rejecting the appeal.

Not satisfied with this, the applicant filed a Revision Petition dated 19th November, 2004 (Annex.A/12).which was dealt with by the Chief Commissioner, Central Excise; copy of order dated 17th October, 2006, disposing of the Revision Petition is kept at Annex. A/1 and is quoted as the impugned order. In the said order, the Chief Commissioner and the Revisional Authority gave the following orders :

"ORDER

I have considered the revision petition and gone through the records. I find that the Order-in-Appeal has been passed after considering all aspects and taking into accounts all the relevant facts. However, I feel the ends of justice would be met by reducing the penalty to one stage in the time scale of pay for a period of one year."

3. The learned counsel for the applicant argued and stressed on the following points :

- (a) The applicant was punished without following the provisions of CCS (CCA) Rules specially with reference to Rule 15 'Action on the Inquiry Report'.
- (b) 'Notice to Show Cause' issued by the Disciplinary Authority vide Annex.A/9 is invalid as, 'no opportunity' has been given to the applicant on points of Disciplinary Authority's disagreement with the inquiring authority'. In support of this,

SWA

the learned counsel cited the following three Supreme Court judgements viz. (i) AIR 1987 AIR 71 - **Institute of Chartered Accountants of India Vs. L.K. Ratna and Others**, (ii) AIR 1998, SC 2713 - **Punjab National Bank and Others Vs. Kunj Bihari Mishra** and (iii) AIR 2003 SC 1100 - **State Bank of India and Others Vs. K. P. Narayanan Kutty**. The learned Advocate pressed the point that non-granting of opportunity to the applicant is, prejudicial to him.

(c) An 'Adverse Entry' was made in the Service Records of the applicant for the year 2001-2002 for the same offence by the respondents, thus, double punishment was imposed.

4. We have gone through the arguments put forth by the learned counsel, Documents on record, CCS (CCA) Rules and the Case Laws referred to by the learned counsel for the applicant.

To resolve the controversy, it will be fruitful to narrate ~~para~~ ^{Rule} 15 of the CCS (CCA) Rules which reads :

"15. Action on the inquiry report :

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

[(1-A) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

8/8

(1-B) The disciplinary authority shall consider the representation, if any, submitted by the Government servant before proceeding further in the manner specified in sub-rule (2) to (4).]

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the Articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

5. We have gone through the three case laws, cited by the learned counsel for applicant, the relevant portions are reproduced below :-

[AIR 1987 SC 71]

"A member accused of misconduct is entitled to a hearing by the Council when, on receipt of the report of the Disciplinary Committee, it proceeds to find whether he is or is not guilty. The finding by the Council operates with finality in the proceeding, and it constitutes the foundation for the penalty imposed by the Council on him. The power to find and record whether a member is guilty of misconduct has been specifically entrusted by the Act to the entire Council itself and not to a few of its members who constitute the Disciplinary Committee. It is the character and complexion of the proceeding considered in conjunction with the structure of power constituted by the Act which leads to the conclusion that the member is entitled to a hearing by the Council before it can find him guilty."

lw

[AIR 1998 SC 2713]

"The disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is necessary for the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will, therefore, not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. Under Regn. 6 the inquiry proceedings can be conducted either by an Inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry."

[AIR 2003 SC 1100]

"4..... After referring to various decisions including the decisions relied on behalf of the Bank, this Court has clearly held that where the disciplinary authority disagrees with the report of the enquiring authority in regard to certain charges, providing of an opportunity is necessary to satisfy the principle of natural justice. Paragraph 19 of the said judgement reads thus :

"..... The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it

lw

1/11

records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

By going through these judgements of the Apex Court, it is clear that if the Disciplinary Authority dis-agrees with the Inquiry Officer, an opportunity should be given to the delinquent employee. It is observed that the Disciplinary Authority while dis-agreeing with the findings of the inquiring authority, had given his reasoning in detail vide order dated 20th January, 2003 (Annex.A/9). After discussing various issues, the Disciplinary Authority ~~applied his mind~~ ^{came to the inference} that the articles of charges framed against the charged official stand proved and that an opportunity was given to the applicant to explain as to why an appropriate penalty is not imposed on him. It is, thus, clear that the charged official i.e. the applicant was given an opportunity to defend himself. The applicant, did avail this opportunity by replying to the show cause notice. The Disciplinary Authority passed the final order kept at Annex. A/3, only after considering the representation to the show cause notice. Thus, the directions of the Apex Court quoted in above, have not been flouted in any way.

6. We also observe that the applicant not satisfied with the decision of the Disciplinary Authority, made an appeal to the Appellate Authority. The Appellate Authority gave a detailed speaking order concluding that he rejects the appeal and the penalty order issued by the Disciplinary Authority holds good. The applicant, not satisfied, made a petition for revision and that too, was disposed of by the Revisionary Authority. The order on revision is also a detailed one giving reasoning and concluding that the order under Appeal has been

sh

passed after considering all aspects and taking into account all the relevant facts. I/15

It is thus observed that at all stages, the applicant got an opportunity to defend himself and thus, there is no lacuna in the process and the Rule 15 of CCS (CCA) Rules has been followed. EAF

7. Now, coming to the question of double penalty i.e. imposing a penalty of with-holding of increment and making an entry into the service records, we are of the opinion that these two issues are not connected with each other. Whenever, any penalty is imposed, it is corollary that service records also mentions the same. Further, any entry in the service record is not a punishment in itself. The learned counsel's argument of double punishment does not hold good.

8. In view of the above discussions, the O.A. does not have any merit and is dismissed at the stage of admission itself.

9. No orders as to costs.

R.R.Bhandari
(R.R.Bhandari)

Admv.Member

A.K.Yog
(A.K.Yog)

Judl. Member

Part II and III destroyed
in my presence on 10/2/14
under the supervision of
Section Officer (Visas for
embassy) (1) as per
Section Officer (Records)
Section Officer (Records)

2/C
Rajyavardhan
15/02/08