

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 343/2010

Jodhpur, this the 23.4.14.

Reserved on : 11.04.2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Ibrahim son of Shri Nizamudin, aged about 52 years, resident of Near Middle School, Udaya Mandir Asan, Jodhpur (Raj), at present employed on the post of Mazdoor T No. 730 (under suspension), in 19 Field Ammunition Depot, Pin-909719 C/o 56 APO.

.....Applicant

Mr. J.K. Mishra, counsel for applicant

Vs.

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commandant cum Disciplinary Authority, HQ 19 Field Ammunition Depot, Pin-909719 C/o 56 APO.
3. Major Anoop Kumar, Inquiry Officer, HQ. 19 Field Ammunition Depot, Pin-909719 C/o 56 APO.

...Respondents

Mr Vijay Rajpurohit, proxy counsel for Ms K. Parveen counsel for the respondents.

ORDER

Per Justice K.C.Joshi, Member (J)

The applicant Shri Ibrahim has filed this application under section 19 of Administrative Tribunals Act, 1985 for seeking following relief(s) :

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- (i) That impugned charge sheet dated 28.06.2010 (Annexure A/1), and all subsequent proceedings thereof, may be declared illegal and the same may be quashed. The applicant may be allowed all consequential benefits including the payment of pay and allowances for the period he is kept under suspension etc.
 - (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
 - (iii) That the costs of this application may be awarded.
2. The short facts necessary to adjudicate the issue are that the applicant was initially appointed to the post of Mazdoor in the office of Commandant 19 FAD C/o 56 APO and he was convicted for the offences under section 326, 324 IPC and section 4/25 of Indian Arms Act and was sentenced to undergo simple imprisonment for 5 years with fine of Rs 1,000/- and further to serve the sentence in default for fine. On filing the appeal he was released on bail by the Hon'ble Rajasthan High Court in SBC Criminal Appeal No. 128/2010 vide order dated 12.03.2010. The applicant immediately informed regarding his conviction to the dealing official/time keeper, union leader and the administrative officer and he was taken on duty on 13.03.2010. Thereafter vide order dated 07.04.2010 he was put under suspension and further vide order dated 28.06.2010, the applicant was issued charge

sheet under rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 [CCS (CCA) Rules]. The applicant filed representation in response to the charge sheet vide letter dated 08.07.2010 in which he raised the objection regarding applicability of CCS (CCA) Rules, 1965. The 2nd respondent did not decide the above representation and issued an order to appoint Inquiry Officer (IO) and Presenting Officer (PO) vide order dated 31.07.2010. The applicant was issued with a letter dated 26.08.2010 by the IO and fixed the inquiry on 21.09.2010. The applicant endeavoured to submit a representation dated 20.09.2010 to the IO with the copy to the disciplinary authority but the PO asked the applicant to take back the same and assured that he would be favoured if he signed four papers and he was made to sign the same without knowing contents of the same being illiterate. The applicant was issued with a letter dated 27.08.2010 regarding release of his subsistence allowance and certain information/documents were asked therein by the Admin Officer and the applicant submitted the same vide letter dated 20.09.2010. The applicant reported the matter regarding some papers got signed by him when he came to know that some foul play had been planned against him. The applicant has been supplied a copy of inquiry report dated 25.11.2010 vide letter dated 18.11.2010. The inquiry has been concluded against the applicant and papers got signed from the applicant were used as documents of admission of the charges by the applicant. The inquiry report has been prepared while no subsistence allowance

was paid to the applicant during course of inquiry, therefore, his defence has been gravely prejudiced by this denial of opportunity for defence of his case. The action of the respondents giving finding against the applicant cannot be sustained as CCS (CCA) Rules, 1965 has no application in case of the applicant who is a civilian in defence and this position of law has been specifically disclosed in catena of judgments. The applicant has averred that application of the judgment by Division Bench of this Tribunal passed in Sher Singh Vs UOI & Ors, 2001 (2) SLJ CAT 229 has not been done and the judicial notice of the same has also not been taken by the IO, thus, the inquiry against the applicant is ex-facie illegal, void and without jurisdiction and is not sustainable in the eyes of law being violative of Article 14, 16 and 21 of Constitution of India. The applicant in support of his application annexed the following documents :

A/1 – Memorandum of charge sheet for Major penalties dated 28.06.2010 under CCS (CCA) Rules, 1965.

A/2 – Order dated 12.03.2010 passed by Hon'ble Rajasthan High Court in SB Criminal Appeal No. 128/2010

A/3 – Suspension order dated 07.04.2010

A/4 – Submission of Statement of Defence dated 08.07.2010

A/5 – Order for appointment of Inquiring Authority dated 31.07.2010

A/6 – Order for appointment of Presenting Officer dated 31.07.2010

A/7 – Notice to attend preliminary inquiry dated 26.08.2010

A/8 – Representation of the applicant to IO dated 20.09.2010

A/9 – Representation of the applicant to IO dated 10.11.2010

A/10 – Representation of the applicant for payment of salary & allowances dated 20.09.2010

A/11 – Letter of Admn. Officer regarding subsistence allowance dated 28.10.2010

A/12 – Letter for forwarding of copy of Inquiry Report dated 18.11.2010

3. The respondents by way of reply denied the charges of violation of Article 14, 16 and 21 of Constitution of India. The respondents have averred that the applicant was employed under the respondents on 10.04.1982 and during course of employment, he was involved in a criminal case in which he was convicted and awarded sentence for 5 years simple imprisonment and a fine of Rs 1000/- and was sent to Central Jail on 10.03.2010. The applicant never informed about this fact to the answering respondents rather he concealed this very material fact. The applicant thereafter filed an appeal against the conviction order wherein the Hon'ble High Court was pleased to grant bail vide order dated 12.03.2010. On getting the information vide letter dated 12.03.2010, the applicant was put under suspension w.e.f. 07.04.2010 under rule 10(1) of CCS (CCA) Rules, 1965. Therefore, the applicant was issued a charge sheet under rule 14 of CCS (CCA) Rules, 1965 on 28.06.2010. The applicant after oral inquiry was found guilty as he himself pleaded guilty and accepted the charges. The fact averred in the original application that the applicant informed the authorities regarding his conviction and judicial custody, has been denied by the

respondents by way of reply. In response to suspension order, the applicant submitted an application before the respondents on 01.05.2010 in which he stated that his punishment order has been challenged in a criminal appeal No. 128/2010 before the Hon'ble Rajasthan High Court at Jodhpur and his punishment has been suspended vide order dated 12.03.2010.

So far as applicability of CCS (CCA) Rules, 1965 is concerned, the respondents in their reply have referred the direction issued by the DGOS, IHQ, MoD (Army), New Delhi vide letter dated 11.06.2010 that CCS (CCA) Rules, 1965 are applicable to every defence civilian employee, therefore, action can be taken against the applicant under CCS (CCA) Rules, 1965. The applicant admitted his guilt while accepting admittance of charges in writing in Hindi language vide his application dated 21.09.2010. It has been averred in the reply that no transaction or assurance from anyone during the inquiry proceedings was given by any member and the ground of pressurizing the applicant by PO has also been denied. The subsistence allowance for the period from 10th April to November, 2010 has been paid to the applicant as per following details:

- (a) Period 07.04.2010 to 31.10.2010 amount Rs 56,710/-
Cheque No. 454054 dated 01.12.2010
- (b) Period 01.11.2010 to 30.11.2010 amount Rs 8590/-
Cheque No. 454059 dated 24.12.2010.

By way of reply to the grounds, all grounds have been denied by the respondents.

4. By way of rejoinder, the applicant reiterated the same facts and averred that non-applicability of CCS (CCA) Rules, 1965 has been settled by the Constitution Bench of the Apex Court and this Tribunal in the case of Sher Singh Vs. UOI & Ors (Supra) has referred those judgments in para No. 4.4 of the judgment.
5. The additional affidavit has been filed by Major Sumit Kumar and the same facts have been averred in additional affidavit as averred in the reply.
6. Heard both the parties. As per the averments made in the OA, the charge sheet and further proceedings have been challenged by the applicant on mainly 2 grounds:
 - (i) on the ground of inapplicability of CCS (CCA) Rules, 1965 on the applicant.
 - (ii) on the ground of non-payment of subsistence allowance during the period of suspension.
7. Counsel for the applicant while arguing on first ground vehemently contended that the provisions of CCS (CCA) Rules, 1965 are not applicable in case of the applicant because the applicant is a civilian Govt. servant in defence services and his salary and perks are being paid from estimated defence budget of Govt. of India, so he cannot be subjected to the jurisdiction of CCS (CCA) Rules, 1965. Therefore, the suspension order as well as order

of initiation of departmental inquiry against the applicant are ab initio void and require to be set aside by the Tribunal. In support of his argument, he relied upon the judgment dated 29.04.2003 of this Tribunal passed in Sher Singh Vs UOI & Ors, reported in 2001 (2) SLJ CAT 229. He contended that the Division Bench of this Tribunal while relying upon the judgments of Hon'ble Apex Court passed in Lekh Raj Khurana v. UOI, AIR 1971 SC 2111, UOI and Anr. v. K.S. Subramanian, AIR 1989 SC 662 and The Management Hotel Imperial, New v. Hotel Workers' Union, AIR 1959 SC 1342 held that a civilian employee serving in defence department and drawing the salary from the estimated budget of defence is not subject to the jurisdiction of CCS (CCA) Rules, 1965 and in support of his argument he also relied upon the same judgments as relied upon by this Tribunal in Sher Singh Vs UOI & Ors, 2001 (2) SLJ CAT 229.

8. We have perused the judgments cited by counsel for applicant and judgments cited by the Division Bench of this Tribunal in their judgment. The Division Bench of this Tribunal in the case of Sher Singh Vs UOI & Ors, 2001 (2) SLJ CAT 229 while deciding the applicability of CCS (CCA) Rules, 1965 in para No. 15 has held that :

"15. As regards the other primary issues, the argument of the learned Counsel for the applicant that once CCS (CCA) Rules, 1965 do not have any application to his case, the complete disciplinary proceedings held under such rules are without jurisdiction being void ab initio and ex facie illegal besides there was denial of principles of natural justice. As far as the applicability of CCS (CCA) Rules, 1965, is concerned, the law position is not in dispute but, the Supreme Court has also held that these

rules enunciate the principles of natural justice and no prejudice can be said to have been caused to an employee. Thus, we, inescapably, reach to the conclusion that the disciplinary proceedings cannot be declared as illegal on the ground that the same were conducted under the CCS (CCA) Rules, 1965. This contention stands repelled."

And the Tribunal refused to declare the disciplinary proceedings illegal on the ground that the same were conducted under CCS (CCA) Rules, 1965. In our considered view, the view expressed by the Tribunal was not in favour of the applicant. We find support in our view from the judgment of the Hon'ble Apex Court passed in Director General of Ordnance Services and Ors. v. P.N. Malhotra reported in AIR 1985 SC 1109. In this judgment Hon'ble Apex Court while considering the judgment passed in Lekh Raj Khurana v. Union of India reported in AIR 1971 SC 2111 (Constitution Bench) has held that an employee cannot be said to have suffered prejudice by following the procedures prescribed in CCS (CCA) Rules, 1965, and proceedings cannot be quashed or set aside because the said rules are nothing but a codification of the principles of natural justice. In our considered view, the judgment of the Hon'ble Apex Court clearly says that unless and until any prejudice is caused to the applicant by holding the inquiry under CCS (CCA) Rules, 1965, no such proceedings can be set aside. In this particular case there are no specific allegations by the applicant except that he is drawing the salary from the estimated budget of defence and in absence of any allegation no such denial could be made by the respondent-department also.

Although the Division Bench of this Tribunal in the case of Sher Singh (supra) also considered the judgment of Hon'ble Apex Court passed in Director General of Ordnance Services and Ors. v. P.N. Malhotra but ratio of that judgment has been held in para No. 15 of the judgment and other judgments cited by counsel for the applicant bears different facts from the present case. Accordingly, the first ground contended by the applicant does not carry any force.

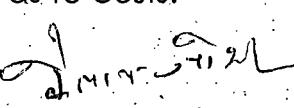
9. Turning to the second ground contended by counsel for the applicant regarding non-payment of subsistence allowance during the period of suspension is concerned, counsel for the applicant relied upon the judgment of Hon'ble Apex Court passed in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. AIR 1999 SC 1416. In this case Hon'ble Apex Court held that as the employee's right has been prejudiced by non-payment of subsistence allowance, an injustice has been done, punishment order passed has been set aside by the Hon'ble Apex Court. In the present case, payment of subsistence allowance was made in December, 2010 but the inquiry report has been made on the basis of admission of guilt by the applicant. Further, in this particular case, the HQ of the applicant was Jodhpur and the inquiry was also conducted at Jodhpur. Therefore, by delayed payment of subsistence allowance, it cannot be said that any prejudice has been caused to the applicant or any substantial right of the applicant has been denied by the respondent-department. The judgment cited by

counsel for the applicant is only applicable in case of adjournments prayed on the ground of non-payment of subsistence allowance or any other ground and absence from inquiry on account of non-payment of subsistence allowance. In this particular case no substantial right of the applicant has been infringed by the Enquiry Officer because in cases of inquiry or disciplinary proceedings infringement of right of the delinquent has to be seen to decide whether inquiry procedures have been followed or not. Looking to the entire facts and circumstances of the case, the facts of present case are different from the cases cited by counsel for the applicant; therefore, second argument also does not carry any force. Other judgments cited by counsel for the applicant in support of his argument bear different facts from the present case.

10. In view of the aforesaid discussions, no case is made out for grant of any relief or interference to be made in the disciplinary proceedings initiated by the respondents as per Annex. A/1 i.e. charge sheet dated 28.06.2010 under CCS (CCA) Rules, 1965 and action of suspension and conduct of inquiry in this regard. The respondents would be at liberty to proceed further with the disciplinary proceedings as per law.

11. Accordingly, OA is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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