

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 1104 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.
Hon'ble Mr. G. S. Maingi, Administrative Member.

KEWAL KRISHNA KALIA

Vs.

UNION OF INDIA & ORS.

For the applicant : Mr. Samir Ghosh, counsel.

For the respondents: Mr. B. Chatterjee, counsel.
Ms. B. Mandal, counsel.

Heard on : 13.8.1999

Order on : 13.8.1999

ORDER

D. Purkayastha, J. M.

The applicant belongs to Indian Police Service and was allotted the West Bengal Cadre. He held different posts in police service under the Govt. of West Bengal.

2. The applicant, by this application, has challenged the charge sheet dated 27.8.1995 (annexure 'B' to the application), where the imputations of mis-conduct as brought out against the applicant are to be found, wherein it has been stated that the applicant while working as Superintendent of Police, 24 Parganas, during the period 1982-84, earned assets disproportionate to his known source of income. The applicant has also challenged the enquiry report as well as the show-cause notice dated 11.9.1997 (annexure 'G' to the application), on the ground that the said charge sheet has been issued by an incompetent person for holding the disciplinary proceedings and

the enquiry report is liable to be vitiated for denial of principles of natural justice. The show-cause notice dated 11.9.1997 is violative of the principles of natural justice as well as the provisions of rules of All India Services (DA & Appeal) Rules, 1969. Therefore, it is submitted by the applicant that the charge sheet at annexure 'B' to the application, the enquiry report and the show-cause notice at annexure 'G', are liable to be quashed.

2. The respondents have denied the claim of the applicant. It has been stated by the respondents that though the applicant is a member of the Indian Police Service, his service was allotted to the State Govt. and, therefore, the disciplinary authority for imposing penalty is the Governor of West Bengal and the charge sheet was issued by the Governor of West Bengal, ^{who is} the competent authority for holding enquiry for imposition of major penalty. It is also stated by the respondents that the applicant was allowed all reasonable opportunity to defend his case before the inquiring authority and after conclusion of enquiry in accordance with the rules, the inquiring authority appointed by the disciplinary authority, submitted his report and the respondent no.2 as the disciplinary authority of the applicant, made a tentative decision to impose penalty on the basis of the said enquiry report by passing an order of removal from service of the applicant. The applicant was given full opportunity to represent his case against the enquiry report as well as to the tentative decision of punishment mentioned in annexure 'G' to the application, and, therefore, the application is devoid of merit and liable to be dismissed.

3. On a perusal of the charge sheet it is found that the charge sheet has been issued by the Principal Secretary, Home Department, West Bengal, in the name of the Governor and the said order at annexure 'B' is an authentic order of the Governor and thereby we do not find any infirmity in ^{respect of issuing} the order dated 25.8.1995 (annexure 'B' to the application).

4. Now the question comes whether the Governor can be said to be the disciplinary authority for the purpose of imposition of penalty, as proposed in the charge sheet. It is an admitted fact that the applicant is a member of the Indian Police Service and he was allotted ^{to} the West Bengal cadre ^{under the State govt of W. B.}. So he was placed under the control of ^{the State} Govt. of West Bengal. Mr. Samir Ghosh, ld. counsel appearing for the applicant, submits that from the show cause notice it is found that the applicant was to be removed from service by an order of compulsory retirement which is a major penalty and that cannot be issued by the Governor of West Bengal, without prior concurrence of the Central Govt. So the disciplinary authority of the applicant is the President of India and not the Governor of West Bengal.

5. Rule 7 of All India Service Rules deals with the authority to order proceedings and impose penalty. Rule 8 provides procedure for imposition of major penalty and Rule 9 provides the actions on the enquiry report. Rule 10 provides for imposition of minor penalty. Rule 8 provides that no order of imposition of major penalty specified under Rule 6 shall be made except ~~up to~~ holding of the enquiry as far as in the manner provided in the rules.

6. It is found that the alleged mis-conduct in respect of omissions or commissions related to the work which the applicant performed while he was holding the post under the State of West Bengal. In view of the above circumstances, we find no infirmity in this case in respect of framing of charge sheet against the applicant for imposition of major penalty by the order dated 25.8.1995. We find that the Governor of West Bengal is the competent authority to impose major penalty upon the applicant, subject to the condition that dismissal, removal and compulsory retirement, which are major penalties, should be imposed upon the charged official belonging to IPS cadre with prior approval of the Central Govt. So we are of the view that it cannot be said that respondent no.2, State of West Bengal, is not the competent authority to initiate

departmental proceedings against the applicant. Therefore, the contention of Mr. Samir Ghosh is not sustainable on that score.

7. Turning to the question of enquiry report and the show-cause notice dated 11.9.1997, we find that the applicant attended the enquiry as ordered by the disciplinary authority, respondent no.2. After conclusion of the enquiry, the inquiry officer i.e. respondent no.5, submitted his report. The respondents, on receipt of the report from the inquiry officer, considered the same and agreed with the findings of the inquiry officer and a tentative decision has been taken to impose penalty by way of compulsory retirement from service with immediate effect.

8. On a perusal of the show-cause notice and a perusal of the records, it remains an admitted fact that the applicant was not furnished with a copy of the enquiry report submitted by the enquiry officer, who has been appointed by the respondent no.2, and before receiving any representation from the applicant against the enquiry report, the respondent no.2 tentatively decided to impose major penalty by way of compulsory retirement from service. Under the provisions of the rules, there is no provision calling for a delinquent or charged official to show-cause against the proposed penalty. After the decision of the Hon'ble Apex Court in the case of Ramzan Khan vs. UOI & ORS. (AIR 1991 SC 471) it has become a mandate on the part of the disciplinary authority that the enquiry report shall be furnished to the delinquent officer to make a representation against the enquiry report and after receiving of the representation, the ^{disciplinary authority} respondents shall consider the enquiry report ^{and} ~~as to~~ the representation against the enquiry report submitted ^{by} ~~against~~ the charged official. Then he can proceed to impose punishment in accordance with law as the case demands.

9. In the instant case, we find that a tentative decision has been taken by the respondents regarding major penalty without obtaining the representation of the applicant against the enquiry report. In view of the aforesaid circumstances, we have no

doubt in our mind that the applicant has been prejudiced for non-furnishing of the enquiry report to the charged official before taking any tentative decision regarding imposition of major penalty and there is no doubt in our mind that the applicant was denied reasonable opportunity to state his case against the enquiry report. On a perusal of the enquiry report, it is found that out of the charges, charge no.2 has been proved during enquiry but the enquiry officer did not recommend any punishment on the charge proved during enquiry.

10. Mr.B.Chatterjee, appearing for the respondents has contended that the mind of the authority remained open and the decision to impose penalty was communicated to the applicant by the letter of show cause dated 11.9.1997 is a tentative one. Therefore, the applicant cannot be said to be prejudiced.

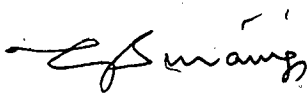
11. We are unable to accept the contention of Mr.Chatterjee on that score. The rules provide that if the disciplinary authority himself is not the inquiring authority then the enquiry report submitted by the enquiry officer appointed by the disciplinary authority shall have to be furnished to the applicant to state his case against the enquiry report. Having not done this, the applicant was denied reasonable opportunity to defend himself. We are of the view that the applicant has been prejudiced for non-granting of opportunity to a charged official by furnishing the enquiry report before taking a tentative decision regarding imposition of punishment as per annexure 'G' to the application.

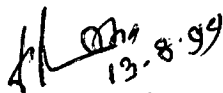
12. In view of the aforesaid circumstances, we hold that the show cause notice dated 11.9.1997 is bad in law since it is contrary to the provisions of law and not supported by any justification. Hence the show cause notice dated 11.9.1997 at annexure-G to the application is hereby set aside.

13. In view of the aforesaid circumstances, we direct the respondents to allow the applicant to submit representation to the enquiry report of the enquiry officer, respondent no.5, within the time specified by him. If the charged official files such representation against the enquiry report within the period specified in the letter for making representation, then the

respondent no.2, without being influenced by the earlier decision regarding imposition of penalty, as communicated by the notice at annexure 'G' dated 11.9.1997, consider the representation of the applicant and proceed in accordance with law as prescribed under the rules.

14. The O.A. is disposed of with the above directions. No order is passed as to costs.


(G.S. Maingi) 13.8.99
Administrative Member


(D. Purkayastha)
Judicial Member

r.s.