CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 534 of 2007

Friday..., this the 6th day of March, 2009

CORAM:

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Abraham John,
S/o. John,
Deputy Field Officer (GD),
SB, Kochi (Stands removed),
Residing at : Ayyamala House,
Erattayal North (PO), Idukki : 685 510 ... Applicant.

(By Advocate Mr. U. Balagangadharan)

v e r s u s

1. The Secretary-cum-Appellate Authority,
Cabinet Secretariat, New Delhi.

2. The Joint Secretary (Pers.)-cum-
Disciplinary Authority, Cabinet Secretariat,
New Delhi.

3. Union of India represented by the Secretary,
Ministry of Home Affairs,
North Block, New Delhi. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

(The Original Application having been heard on 22.01.09, this Tribunal on 6-3-09 delivered the following) :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant faced certain charges and denial of the charges resulted in conducting of the inquiry which culminated into penalty of removal from services. Appeal preferred not having been successful,

the applicant has moved this OA, challenging the issue of charge sheet, the inquiry report, penalty order and the appellate order. The charges levelled are as under:-

"Article – 1

That the said Shri Abraham John, DFO (GD) while posted and functioning as DFO (GD) at SB, Bangalore, during the period from 19.7.2004 to 2.4.2005 committed acts under the influence of liquor lowering the prestige of the Department in the eyes of others.

By the aforesaid acts of omission and commission the said Shri Abraham John conducted himself in a manner highly unbecoming of a Government servant and has thus violated Rule 3 (I)(III) and Rule 22 of CCS (Conduct) Rules, 1964.

Article – II

That the said Shri Abraham John, DFO (GD) posted at SB, Bangalore during the aforesaid period absented himself on many occasions unauthorisedly without intimation and overstayed his leave because of his habit of excessive drinking of liquor.

By the aforesaid acts of omission and commission the said Shri Abraham John conducted himself in a manner highly unbecoming of a Government servant and has thus violated Rule 3 (I)(III) and Rule 22 of CCS (Conduct) Rules, 1964.

Article-III

That the said Shri Abraham John, DFO (GD) posted at SB, Bangalore during the aforesaid period by his association with unscrupulous people has compromised the security of the Department.

By the aforesaid acts of omission and commission the said Shri Abraham John conducted himself in a manner highly unbecoming of a Government servant and has thus violated Rule 3 (I)(III) and Rule 22 of CCS (Conduct) Rules, 1964."

2. The applicant having denied the charges, enquiry was conducted and the inquiry authority vide his Annexure A-3 report had rendered his findings as under:-

> "27. The undersigned examined the articles of charge, the documents received from Hqrs. And statements of witnesses, PO and CO. The articles of charge against Shri Abraham John state :-
>
> (a) during the period of posting at SB, Bangalore, Shri Abraham John committed acts under the influence of liquor lowering the prestige of the Office/Department;
>
> (b) during the above period, Shri John absented himself on many occasions without intimation and overstayed his leave because of his habit of excessive drinking of liquor; and
>
> (c) his association with unscrupulous people has compromised the security of the Department.
>
> The Article II of charge of absenting himself for long period without intimation/permission was reported from 21.09.04 to 28.09.04 and 17.01.05 to 20.01.05. During the above mentioned periods, the CO did not inform about his absence from duty and the office had to engage search party to make enquiries with the possible places of his stayand to friends and relations. During his absence from 21.09.04, he was located in a small hotel in inebriated condition. Both the officers SW-2 and SW-7 confirmed that Shri John was in the habit of remaining absent without any intimation. SW-7 also confirmed that Shri John never submitted his leave application prior to proceeding on leave. His absence from office, and the efforts of officers and colleagues to trace him out at various hotels/lodges, supported by their statements have proved the Article I & II.
>
> 28. During the period of his stay in 'Hotel Hindustan', Shri John was reported to have shared the room with one Tahir and Mohammed, who were working in "Dhabha" type Hotel or businessmen on the pavements. The CO joined them reportedly identifying himself as a Government Officer, and got the accommodation at a cheaper rate. SW-3 and SW-7 did not confirm if his roommates were unscrupulous or Sheri shared any security related information to the unknown people, but they maintained that his association with

hawkers and low paid employees and his habit of excessive drinking could prove detrimental to the security of the organisation. The statements of the SWs or the PO could not prove Article III of the charge conclusively.

CONCLUSION:

29. After taking all factors into consideration and giving a fair judgement to all of them, I have come to the conclusion that Articles I & II of charges have been fully proved. As far as Article III is concerned, it is a logical conjecture and there is nothing to substantiate the charge. Therefore, the charge has not been proved."

3. The applicant had furnished his representation to the inquiry report and the Disciplinary authority, after considering the report as well as the representation accepted the inquiry report and imposed the penalty of removal from service, vide order dated 9th April, 2007 at Annexure A-4.

4. The applicant had filed his appeal memorandum dated 2nd May 2005 and the main contentions raised therein are as under:-

(a) Cryptic and vague Charges;

(b) No misconduct within the meaning of the Rules;

(c) Charges based on surmises and conjectures;

(d) Leading questions asked by PO;

(e) Documents relied behind the back of the applicant;

(f) Rule 14(18) had not been followed;

(g) Statement of witnesses were not directing to the charges;

(h) Witnesses were not appropriate;

(i) Findings of the inquiry officer are perverse and based on no evidence;

(j) Charge No. 2 did not specify the period of unauthorized absence;

(k) Disciplinary authority did not apply his mind while arriving at the decision to impose the penalty;

(l) Penalty is grossly disproportionate.

5. The appellate authority had, vide Annexure A6 order dated 5th July 2007 rejected the appeal and confirmed the penalty of removal from service.

6. The applicant has, thus, assailed the issue of charge sheet, inquiry report, penalty and appellate orders.

7. Respondents have contested the O.A. According to them, the orders are speaking and full opportunity had been given to the applicant. The applicant has not exhausted the remedy under the statutory provisions as no revision/review has been filed by him. None of the grounds is tenable.

8. The applicant had filed his rejoinder reiterating his contentions as contained in the O.A. And, in support of his contentions, he has relied upon the decisions in 2006 SCC (L& S) 919, AIR 1988 SC 434, 2007(1) SCC (L&S) 254 and 2004(2) ATJ SC 44.

9. In their additional reply, the respondents have stated that adequate evidences were available to prove the charge of the applicant having been under the influence of intoxication, which had lowered the prestige of the institution and that evidences go to prove that he was habitual absentee. Annexure R-1 would go to show that the applicant had been absent on a number of occasions.

10. Counsel for the applicant had taken us through the depositions to show that the case is one of no evidence and the findings arrived at by the inquiry authority are based on surmises and conjectures. He has also argued that the charges are cryptic and vague. Details of absence have not been furnished in the charge sheet. The counsel further submitted that the disciplinary authority had not applied his mind nor for that matter the appellate authority. It has also been argued that as the period of absence had been regularized, the respondents cannot initiate action for the alleged absence of the applicant. In any event, the penalty is shockingly disproportionate.

11. Counsel for the respondents reiterated the contentions as raised in the counter.

12. Arguments were heard and documents perused. The questions for consideration could be itemized as hereunder:-

(a) Are the charges cryptic and vague as alleged and if so, whether the same would make the entire proceedings illegal and void?

(b) Whether the Inquiry authority had followed the procedure in accordance with rules and whether Rule 14(18) had been meticulously followed and whether the findings are based upon the evidences as per rules or whether the findings are based on no evidence?

(c) Whether the grant of leave incapacitates the authorities to take disciplinary action for absence?

(d) Whether the disciplinary authority has applied his mind while arriving at the decision to accept the report and awarding the penalty?

(e) Whether the Appellate authority had considered the appeal in accordance with the prescribed rules?

(f) Whether the penalty is disproportionate as contended by the applicant?

13. It is seen from the imputation of charges that the applicant absented himself on many occasions unauthorisedly without intimation and overstayed his leave because of his habit of excessive drinking of liquor. The statement of imputation reflects details and period of absence as under:-

(a) Absence w.e.f. 21-09-2004 without any intimation till 29th September 2004.

(b) Leave for 12 days from 4th October 2004 to 15th October 2004, which was later extended upto 21st October 2004.

(c) Medical certificate for leave from 22nd October 2004 to 5th November 2004, followed by extension of leave upto 15th November 2004.

(d) Application for extension of leave for another 30 days received on 8th December 2004.

(e) Absence on 17th January 2005 and thereafter. Ultimate joining only on 31-03-2005.

14. The above would go to prove that the though the charge reflected unauthorized absence, sufficient details have been given in the statement of imputation. As such the applicant had ample information as to the period of absence and as such it cannot be stated that the charges were cryptic or vague.

15. As regards the conducting of the inquiry, it is to be seen whether the inquiry authority had meticulously followed the rules and regulations and whether the findings are based on proper evidences.

16. A perusal of the inquiry report shows that after the prosecution had closed its witnesses, the defence witness did not include the applicant. As such rule 14(18) warrants the inquiry officer to generally question the delinquent official on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him. This drill has not been performed by the inquiry officer. The question is whether the omission to perform this part of the proceedings by the inquiry officer vitiates the entire inquiry. Answer to this question is available in the decision of the Apex Court in the case of ***Ministry of Finance v. S.B. Ramesh, (1998) 3 SCC 227***, wherein the Apex Court has held as under:-

13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:

> *"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the* ***Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority.*** *The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge,* ***he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority.*** *Secondly, we notice that the Enquiry Authority has marked as many as 7 documents in support of the charge, while SW 1 has proved only one document, namely, the statement of Smt K.R. Aruna alleged to have been recorded in his presence. How the other documents were received in evidence are not explained either in the report of the Enquiry Authority or in the proceedings. Even if the*

documents which were produced along with the charge-sheet were all taken on record, unless and until the applicant had requested the Enquiry Officer to mark certain documents in evidence on his side, the Enquiry Authority had no jurisdiction in marking all those documents which he had called for the purpose of defending himself on the side of the applicant while he has not requested for marking of these documents on his side. It is seen that some of these documents which are marked on the side of the defence not at the instance of the applicant, have been made use of by the Enquiry Authority to reach a finding against the applicant. This has been accepted by the Disciplinary Authority also. We are of the considered view that this is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should not have been received in evidence and that, any inference drawn from these documents is misplaced and opposed to law. We further find that the Enquiry Authority as well as the Disciplinary Authority have freely made use of the statement alleged to have been made by Smt K.R. Aruna in the presence of SW 1 and it was on that basis that they reached the conclusion that the applicant was living with Smt K.R. Aruna and that, he was the father of the two children of Smt K.R. Aruna. SW 1 in his deposition which is extracted above, has not spoken to the details contained in the statement of Smt K.R. Aruna which was marked as Ex. 1. Further it is settled law that any statement recorded behind the back of a person can be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross-examination, to prove his or her veracity. The Disciplinary Authority has not even chosen to include Smt K.R. Aruna in the list of witnesses for offering her for being cross-examined for testing the veracity of the documents exhibited as Ex. 1 which is said to be her statement. Therefore, we have no hesitation in coming to the conclusion that the Enquiry Authority as well as the Disciplinary Authority have gone wrong in placing reliance on Ex. 1 which is the alleged statement of Smt K.R. Aruna without offering Smt K.R. Aruna as a witness for cross-examination. The applicant's case is that the statement was recorded under coercion and duress and the finding based on this statement is absolutely unsustainable as the same is not based on legal evidence. The other documents relied on by the Enquiry Authority, as well

> *as by the Disciplinary Authority for reaching the conclusion that the applicant and Smt K.R. Aruna were living together and that they have begotten two children have also not been proved in the manner in which they are required to be proved."* (emphasis supplied).

17. Pari materia with the provisions of Rule 14(18) of the CCS (CC&A) Rule is the provision of 9(21) of the Railway Servants (Discipline and Appeal) Rules 1968, which reads as under:-

> "(21) The Inquiry Authority may, after the Railway servant closes his case, and shall if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidences for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

18. In ***Moni Shankar v. Union of India,(2008) 3 SCC 484,*** the Apex Court has considered the effect of omission to comply with the above provision and held as under:-

> ***"28.*** *The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied the said opportunity.*

19. In view of the law laid down by the Apex Court, in the event of omission to comply with the mandatory provisions of Rule 14(18) of the CCS(CC&A) Rules, 1965, makes the entire proceedings vitiated. The applicant has raised the above issue before the Appellate authority, who had also recorded the same in his appeal, but the appellate authority has not addressed the issue in his analysis. It has been held in the following

cases that the appellate authority has a duty to deal with all the points raised in an appeal, especially the legal issues:-

(1) ***Ram Chander v. Union of India, (1986) 3 SCC 103*** ,

> "**4.** The duty to give reasons is an incident of the judicial process. So, in *R.P. Bhatt* v. *Union of India (1986) 2 SCC 651* this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed:
>
> > It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (*1*) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (*2*) whether the findings of the disciplinary authority are warranted by the evidence on record; and (*3*) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.
>
> It was held that the word consider in Rule 27(2) of the Rules implied due application of mind. The Court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record."

(2) ***Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713***

> *31. Consideration of appeals .(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.*

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

* * * *

32. *The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. ..... He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.*

33. *An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.*

34. *In Apparel Export Promotion Council v. A.K. Chopra which has heavily been relied upon by Mr Gupta, this Court stated:*

16 . The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. (emphasis supplied)

> ***35.*** *The Appellate Authority, therefore, could not ignore to exercise the said power.*
>
> ***36.*** *The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.*

20. When the requirement as per the law laid down by the Apex Court is so elaborate and exhaustive, the order of the appellate authority would show that these aspects were never considered and thus, his order is also liable to be set aside and quashed.

21. As the foundation to the decision by the Disciplinary authority viz the Inquiry Report is shaky due to the serious and inherent legal lacuna inasmuch as the mandatory requirement of Rule 14(18) of the CCS (CC&A) Rules has not been followed, the edifice erected by the Disciplinary authority has to naturally crumble down to the earth.

22. Though the above would suffice to allow the O.A., yet, since the other questions have been raised, the same may also be dealt with. The applicant has raised the issue that once leave has been sanctioned or period regularized, the authorities are precluded from proceeding

against the applicant on account of absence from duty. This contention has to be rejected in view of the decision of the Apex Court in the case of ***State of Punjab v. Charanjit Singh,(2003) 8 SCC 458,*** wherein the Apex Court has held as under:-

> ***"4.*** *The learned counsel appearing for the appellants, inter alia, urged that the view taken by the courts below that since the disciplinary authority has treated the period of absence as leave without pay, therefore, the misconduct stood condoned, is patently erroneous. The learned counsel also relied upon a decision of this Court in Maan Singh v. Union of India[1]. Having heard the learned counsel for the respondent, we find that the argument raised by the learned counsel for the appellants has merit.*
>
> ***5.*** *In State of Punjab v. Bakshish Singh (1998) 8 SCC 222 which was relied upon by the courts below in holding that the misconduct stood condoned, was explained in Maan Singh . No law has been laid down in Bakshish Singh to the effect that only in the event, leave without pay is directed to be granted while passing an order of punishment, the leave having been regularised the order of punishment also becomes bad in law and void ab initio. While deciding Bakshish Singh this Court had not taken into consideration an earlier binding precedent in State of M.P. v. Harihar Gopal wherein it has clearly been stated that such an order is passed only for the purpose of regularising the leave and thereby the effect of punishment is not wiped out. In Maan Singh it was held that the period of absence when treated as leave without pay, was with a view to regularise the leave and not for condonation of misconduct."*

23. In view of the above the O.A. succeeds. The orders of the Disciplinary authority and the Appellate Authority are hereby quashed and set aside. The applicant is entitled to reinstatement which we order. However, he is not entitled to any back wages. His pay would be as for

last pay drawn without any increment being added during the period of absence from service on account of removal order (necessary revision under the VI Pay Commission Recommendations would, however, be admissible). This decision of no back wages has been ordered, keeping in view the fact that the quashing of the proceedings is on technical grounds and the Apex Court has in the case of ***Kanailal Bera v. Union of India,(2007) 11 SCC 517***, held as under:-

> ***"12.*** *It is now a trite law that back wages cannot be directed to be granted automatically. Several factors are required to be taken into consideration therefor. Furthermore, we have not and could not have gone into the question as to whether the appellant in fact has committed any misconduct or not as we are inclined to set aside the impugned order of punishment only on technicality."*

24. Respondents shall reinstate the applicant within a period of two months from the date of communication of this order. In case of any delay in reinstatement the reason for which is not attributable to the applicant, the applicant would be entitled to pay and allowance from the date of commencement of the third month from the date of communication of this order.

25. No costs.

(Dated, the 6th March, 2009)

(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.