

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 248 of 2005

Friday, this the 19th day of January, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

T. Ramakrishnan,
S/o. Late Thevan,
Head Security Guard,
Cochin Special Economic Zone,
Kakkanad, Kochi -37,
Residing at Quarter No. C-16,
CPWD Quarters,
Kunnumpuram,
Kakkanad P.O.,
Ernakulam 658 524

... Applicant.

(By Advocate Mr. P.A. Kumaran)

v e r s u s

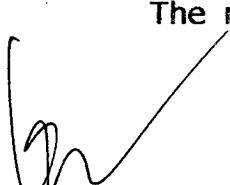
1. Union of India represented by its Secretary, Ministry of Commerce and Industry, Government of India, New Delhi.
2. The Joint Secretary, Ministry of Commerce & Industry, Department of Commerce, Government of India, Udyog Bhavan, New Delhi : 110 001
3. The Development Commissioner, Cochin Special Economic Zone, Ministry of Commerce and Industry, Kakkanad, Cochin - 682 037.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)



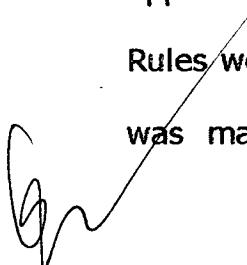
ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was issued with a Rule 14 Memorandum of Charges dated 29.03.2004 (Annexure A-5) stating that while functioning as Assistant Security Officer, Cochin Special Economic Zone, he has violated Rule 3(1)(i), (ii) & (iii) of CCS Conduct Rules on 30-01-2004. This was amended vide Annexure A-8 order which read, " That the said Shri T. Ramakrishnan, while functioning as Assistant Security Officer, Cochin Special Economic Zone on 30-01-2004, has failed to prevent the removal of the auctioned goods unauthorizedly from the Zone area by Smt. Sibi Sonny, Security Guard. Shri T. Ramakrishnan, Assistant Security Officer has failed to make any entry about the incident in the ASO diary on the same day and later he inserted some mention in the ASO diary about the incident. Thus, he has violated Rule 3(1) (ii) & (iii) of CCS (Conduct) Rules on 30-01-2004. To describe the same, in the statement of imputation, it has been alleged that on that day the applicant was assigned to supervise removal of auctioned goods from Plot No. 16/A-1, At about 5.30 p.m. on receiving information from one of the security guards that one Sibi Sonny, Security Guard was carrying a Plastic bag from the said plot and she was summoned by the Security Officer and on inspection, one synthetic overall (pant and shirt stitched together) was found in it. She had no written authorization/permission to remove the item. The material was confiscated. The applicant was following the said Sibi



Sonny, just five or six steps behind her. As a responsible officer, he had not prevented the Security Guard from taking unauthorizedly the auctioned goods and also not reported the matter to the security officer. On the same day, the Head Security Guard on duty has mentioned the incident in the HSG diary, but the applicant failed to make any entry about the incident in the ASO diary on the same day. He had inserted some mention in the ASO diary about the incident subsequently. His act reveals lack of integrity, devotion to duty and is one unbecoming of a Government servant.

2. The applicant having denied the charges, the authorities processed further the proceedings, by appointing inquiry officer, who at the request of the applicant had been changed but no presenting officer was appointed. The Inquiry authority himself functioned as the Presenting Officer. Objection of the applicant in this regard was overruled. Again, when the applicant demanded certain documents, the I.O. refused to make available the same on the ground that the same was not necessary at that stage. Further, certain new document was brought on record, which the applicant objected to vide Annexure A-12. Applicant's requestion for production of additional documents and for examination of defence witnesses have been rejected by the Inquiry authority. His further requests (Annexure A-17) for affording opportunities as provided for Rules 14(17), (18) and (19) of the CCS (CC&A) Rules were also denied. For submission of defence brief just a day's time was made available and request for 15 days was refused. Applicant



submitted the written brief on 26-07-2004 and on the very same day, inquiry report was given by the Inquiry Officer, vide Annexure A-21. Applicant filed representation against the said Report but the Disciplinary authority has imposed penalty of demotion to the lower post of Head Security Guard vide Annexure A-1 order consequent to which the applicant's pay was fixed at Rs 5,200/- in the pay scale of Rs 4000 – 6000, vide Annexure A-22. Appeal preferred by the applicant vide Annexure A-23 failed and the penalty order was confirmed vide Annexure A-24 order of the appellate authority.

3. The legal grounds raised by the applicant in the OA are as under:-

- (a) The case is one of no evidence and hence, the decision is contrary to the law laid down by the Apex Court in the case of Union of India H.C. Goel (AIR 1964 SC 364 and State of A.P. Vs Chitra Venkata Rao (1975 SC 2152) .
- (b) Principles of Natural Justice have been violated inasmuch as the documents called for by the applicant were not provided.
- (c) The I.O. acted both as inquiry officer and presenting officer which is impermissible.
- (d) There was no brief of P.O., in the absence of which it was not known as to what was the stand of the prosecution to build up an effective written brief.
- (e) The findings of the I.O. and D.A are perverse.

(f) Provisions of Rule 27(2) of the Rules have not been complied with. The appellate order was passed without considering the appeal preferred by the applicant and confirms total non application of mind by the appellate authority.

4. Respondents have contested the OA. According to them, the proceedings were conducted in accordance with the provisions of the Rules. They have asserted that the Disciplinary Authority and the Appellate Authority considered all the matter on record in detail and thus prayed for dismissal of the O.A.

5. The counsel for the applicant, in addition to the written submissions, submitted that right from the inquiry stage upto appellate stage, there has been violation of rules in this case. He had reiterated all the grounds as levelled in the O.A. and submitted that the decisions of the Apex Court and various other decisions of the Tribunal would support the case of the applicant. In particular, the counsel referred to the following decisions:-

- (a) ***Ram Chander v. Union of India, (1986) 3 SCC 103,***
- (b) ***R.P. Bhatt v. Union of India (1986) 2 SCC 651***
- (c) ***State Bank of Patiala vs S.K. Sharma ((1996) 3 SCC 364***
- (d) ***Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713,***
- (e) ***Prem Babu vs Union of India (1987) 4 ATC 727***

6. Counsel for the respondents submitted that the disciplinary authority's order being comprehensive and speaking one, the appellate authority need not have to furnish a speaking order when he endorses the decision of the disciplinary authority.

7. Arguments were heard and documents perused. The following legal issues as raised by the applicant in the OA and through arguments are to be considered:-

- (a) Whether the inquiry authority could function as Presenting officer also and cross examine the witnesses?
- (b) Whether non supply of defence documents and non summoning of defence witnesses vitiated the proceedings?
- (c) Whether the provisions of Rule 27(2) of the CCS (CC&A)Rules 1965 were scrupulously followed in this case?

8. To substantiate the first legal issue, counsel for the applicant relied upon the decision of Prem Baboo vs Union of India and Ors., (1987) 4 ATC 727. The Principal Bench in that case held as under:-

"7. The second point that was urged by the counsel for the applicant was that as the inquiring authority himself has cross-examined the delinquent, there is violation of the principles of natural justice. He invited our attention to sub-rule (18) of Rule 14 of the Rules, wherein the inquiring authority is enabled only to generally question the delinquent on the circumstances appearing against him in the evidence, in a case where the delinquent has not examined himself. (This is a case where the delinquent did not choose to



examine himself). It is clear from the sub-rule that the purpose is to enable the delinquent to explain any circumstances appearing in the evidence against him. It is settled that if in the guise of exercise of power under sub-rule (18), the inquiring authority proceeds to make a cross examination of the delinquent, there is clear violation not only of sub rule (18) but of the role of the prosecutor. A Bench of this Tribunal has held in Babu Singh vs. Union of India, ATR 1986 CAT 195, that where the inquiry officer had subjected the delinquent employee to cross-examination and had thus assumed the role of a Judge as well as the prosecutor, then the factum of the inquiry officer assuming the role of the prosecutor vitiates the entire proceedings."

9. Again, in para 9 of the judgment in the case of Brahm Singh vs Union of India and Others, (1990) 13 ATC 447, the Principal bench relied on the judgment in the case of Babu Singh (as also relied on in the above judgment of Prem Baboo) and held as under:-

"9. Coming to the enquiry proper, we notice several irregularities which vitiate the entire proceedings. It is clear from the record that after the charge was framed and he was asked to adduce his defence evidence, the plaintiff examined himself and curiously enough, the Enquiry Officer cross-examined him which is not permitted under the rules governing the disciplinary proceedings. Any such examination of the charged officer vitiates the proceedings. In Babu Singh vs. Union of India, (1986) 1 ATR 195, a Bench of this Tribunal held that where the Enquiry Officer had subjected the delinquent employee to cross-examination and had thus assumed the role of both a Judge and a Prosecutor, the entire proceedings are vitiated. That the plaintiff was cross-examined is borne out by the record and the material was used to hold the plaintiff guilty of the charge. We, therefore, hold that the departmental enquiry was vitiated on this ground also."

10. The respondents have stated in the counter and during the course of

arguments, that appointment of Presenting Officer is discretionary and when there is no Presenting Officer, the I.O. could well perform the dual role. It is exactly this proposition that had been held illegal in the aforesaid decision. Hence, in view of the above decision, the inquiry officer's functioning in a dual capacity both as Inquiry Authority as well as Presenting Officer is held to be illegal.

11. As regards (d) above, i.e. whether non supply of documents is fatal to inquiry proceedings and vitiates as such the proceedings, it is appropriate to refer to the judgment of the Cuttack Bench of the Tribunal in the case of Patitpaban Ray vs Union of India and others, (1987) 2 ATC 205 wherein it has been observed as under:-

"In this connection, we would say that in a judgment of the Supreme Court State of Punjab v. Bhagat Ram, (1975) 1 SCC 155, the Hon'ble Chief Justice of India speaking for the Court was pleased to observe as follows:

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and

produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

The very same view was taken by Their Lordships of the Supreme Court in a case of State of Uttar Pradesh vs Mohd. Sharif. At paragraph 3 of the judgment, their Lordships were pleased to observe as follows:

Secondly, it was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary enquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence.

6. Keeping in view the observations made by Their Lordships in the judgements laying down that non-supply of the copies of the documents to the petitioner deprives him to properly and adequately defend himself and therefore principles of natural justice have been violated and these judgements made law having come into the field in the year 1974, we are at a loss to find the reason as to how the Department could say that it was within the discretion of the inquiring authority or the disciplinary authority to take decision as to the documents which would be relevant for the purpose of giving opportunity to the petitioner to properly defend himself. We hope, hereafter, the concerned department would seriously take note of the observations of Their Lordships in the above mentioned cases. Taking into account, the submission made by the learned counsel for the petitioner and the strenuous opposition advanced by Mr. A.B. Misra, learned Standing Counsel (Central), we are of the opinion that non-supply of the documents to the petitioner is violative of the principles of natural justice thereby prejudicing the interest of the petitioner to properly defend himself. The other matters contended by the learned counsel for the petitioner need not be discussed as this

illegality committed by the authority cuts at the root of the case. Therefore, we do not think it necessary to discuss other matters urged on behalf of the petitioner."

Thus, the above argument of the learned counsel for the applicant as to the non supply of document also has substance and makes the inquiry vitiated.

12. And lastly, the question relating to the manner in which the appeal should have been dealt with by the Appellate authority. In the case of ***Ram Chander v. Union of India, (1986) 3 SCC 103***, the Apex Court has held as under:-

"the majority in *Tulsiram Patel* case unequivocally lays down that the only stage at which a government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-second Amendment as interpreted by the majority in *Tulsiram Patel* case that the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

13. In a latest case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713***, the Apex Court has held as

under:-

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: (SCC p. 770, para 16)

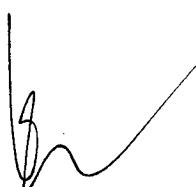
16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and *in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence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

....

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.

37. In *R.P. Bhatt v. Union of India* this Court opined: (SCC p. 654, paras 4-5)

4. The word consider in Rule 27(2) implies due application of mind. 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 provisions of the Constitution 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



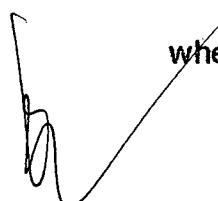
confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27 (2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

14. The above decision of the Apex Court when telescoped upon the facts of the instant case would go to show that the appellate authority has not at all applied his mind in upholding the decision of the disciplinary authority.

15. In view of the above, it is on more than one ground that the entire disciplinary proceedings get vitiated and the O.A. deserves to be fully allowed.

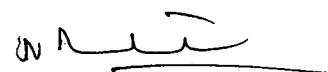
16. Accordingly, the OA is allowed. The impugned orders dated 29.11.04 (Annexure A/1) whereby the applicant was demoted to the lower post by the Disciplinary Authority and order dated 17.2.05 (Annexure A/24) whereby the appellate authority has confirmed the penalty order of



removal from service, are hereby quashed and set aside. Consequence of the setting aside of Annexure A-1 Order also renders Annexure A-22 order dated 17.12.04 as non est. The applicant shall be restored to his original post of Assistant Security Officer and is entitled to the consequential benefits of pay and allowance in that post for the period from the date he was demoted till his position is restored, with annual increments etc., If there be any promotion due to the applicant above the post of Asst. Security Officer for which his juniors were considered and the applicant had been ignored to be considered on account of his reduction in the post by virtue of the penalty order, the Department shall as a part of consequential benefit, arrange review DPC to consider the case of the applicant also for the promotional post. Necessary orders for restoration and payment of arrears be passed within a period of six weeks from the date of communication of this order. Payment of the arrears of pension be made within a period of two months thereafter.

17. Under the above circumstances, there shall be no order as to costs.

(Dated, the 19th January, 2007)



N.RAMAKRISHNAN
ADM. MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.