

Central Administrative Tribunal , Lucknow Bench, Lucknow

O.A. No. 274/2006

this the ^{29/5} day of ^{May} May, 2007

Hon'ble Shri A.K. Singh, Member (A)
Hon'ble Shri M. Kanthaiah, Member (J)

Manoj Kumar Jaiswal aged about 36 years son of Shri S.N. Chowdhary, presently posted as Sub Inspector ,Central Bureau of Investigation, Anti Corruption Branch, Lucknow presently residing at House No. 4/273, Vivek Khand , Gomti Nagar, Lucknow.

Petitioner

By Advocate: Shri Manish Kumar

Versus

1. Union of India through Secretary, Department of Personnel and Training, Govt. of India, North Block, New Delhi.
2. The Director, Central Bureau of Investigation, Govt. of India/ Bharat Sarkar, Block No. 3, 4th Floor, CGO, Complex Lodhi Road, New Delhi.
3. Deputy Director (Administration), Central Bureau of Investigation , Govt. of India/ Bharat Sarkar, Block No. 3, 4th Floor, CGO Complex, Lodhi Road, New Delhi.
4. Deputy Inspector General (DIG) Central Bureau of Investigation, Lucknow Region, 7 Naval Kishore Road, Lucknow.
5. Superintendent of Post Offices (SP) Central Bureau of Investigation, Anti Corruption Bureau, 7 Naval Kishore Road, Lucknow.

..Respondents

By Advocate: Shri S.P.Singh.

ORDER

By Hon'ble Shri A.K. Singh, Member (A)

Original Application 274 of 2006 has been filed by the applicant Manoj Kumar Jaiswal (of the address given in the O.A.) against order dated 27.10.2005 passed by respondent No. 3 withholding increments of the applicant for 2 years with cumulative effect under Rule 6 of the Delhi Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 as well as and appellate order dated 22.2.2006 passed by Director CBI, New Delhi upholding the aforesaid order of punishment passed by the disciplinary authority.

2. The applicant submits that Sub Clause (V) of Rule 6 of Delhi Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 defines the nature and scope of penalties. Sub Rule (V) only provides for

withholding of increment or promotions. Rule 8(i) clarifies that the punishment of withholding of increment or promotion is a minor punishment. The rule does not make any mention of the word "with cumulative effect. Disciplinary authority who is respondent No.3 has thus traversed beyond the scope of sub clause V of Rule 6 of Delhi Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961.

3. In the second place, the applicant also submits that in imposing the aforesaid punishment, the respondents have completely denied even the basic principles of natural justice to him. The entire enquiry proceedings were conducted ex parte by the inquiry officer. The applicant submits that the disciplinary enquiry proceedings are quasi judicial in nature. The entire proceedings were conducted only within a period of 10 days. No notice regarding the names and witnesses to be examined were issued to him. The statement of prosecution witnesses as well as copies of different documents were also not provided to him despite fact that he had informed the respondents about relevance of the same. The prosecution witnesses were examined on 28.10.2004 and onwards. The entire proceedings took place behind his back and as such there has been a gross violation of principles of natural justice in the conduct of enquiry proceedings which has vitiated the decision of the disciplinary authority dated 27.10.2005 as well as that of appellate authority vide orders dated 22.2.2006. He also submits that the departmental enquiry as well as criminal proceedings against him in the court are based on identical set of facts and evidences. CBI has admitted before the Special Judge, Anti Corruption that they have no evidence against the applicant, which could stand the test of judicial scrutiny. Hence the case against him was closed by the Hon'ble Court. The Departmental enquiry which is based on the same set of facts and evidence should also have been closed as per settled law in this regard. Hence it was unfair on the part of the respondents to have continued the departmental enquiry on the same facts

and evidences and to have passed an order of punishment on the same basis. In view of the above, the applicant prays for the following reliefs in the O.A.:-

- i) To quash the impugned punishment order dated 27.10.2005 passed by the disciplinary authority i.e. respondent No.3 as well as order in appeal dated 22.2.2006 passed by respondent No. 2 ..
- ii) To direct the consequential reliefs to the applicant including grant of increment to the applicant from the relevant date on which his increments due were withheld and to issue such other directions like promotion of the applicant to the higher cadre of Inspector as his case has been kept in sealed cover by the Departmental Promotion Committee, which had met sometimes back to consider promotions from the grade of Sub Inspectors to the grade of Inspectors.
- iii) To direct the respondents to pay full salary to the applicant for the period under which he was under suspension.
- iv) To grant any other relief which this Tribunal may deem fit and just under the circumstances of the case.

4. The respondents contest the O.A. on the following grounds:-

- a) That one Sri Sunil Lahoti filed a complaint against the applicant for demanding an amount of Rs. 20,000/- and a computer for showing undue favour to him in the case which was being investigated by him during his posting as a Sub Inspector, CBI, in Bhopal. The case was registered as RC 6 (A) 2001- BPL. As a complaint had been received against the applicant, the competent authority decided to transfer the case to another branch i.e. CBI, ACB IV, New Delhi. While investigating the aforesaid case, the official of CBI, ACB IV came to know that the applicant had demanded an illegal gratification of Rs. 50,000/- from one Sri Sunil Lahoti who was an accused in the CBI case Registered as RC 6 (A) 2001- BPL as mentioned above. This case was being investigated by the applicant earlier from 4.4.2001 to 10.9.2001. The demand of Rs. 50,000/- was subsequently negotiated and brought down to Rs. 20,000/- and a computer. The amount, in question, was to be paid to the applicant for showing undue favour of Sri Lahoti in the case.

The applicant, thus contravened the provisions of Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964. Respondents submit that applicant committed another misconduct in as much as he did not comply with the direction/orders of the DIG, CBI, Bhopal while investigating the aforesaid case registered as RC.6(A)-2001-BPL. Hence, he further contravened the provisions of Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964.

5. In pursuance of the above mentioned acts of misconduct, the applicant was charge sheeted vide memorandum of charges sheet dated 21.11.2003, wherein he was also asked to explain whether he plead guilty to the charges or prefer an open enquiry. The applicant denied the charges levelled against him and thus preferred an open inquiry.

6. Accordingly, Sri Bhanu Bhaskar, SP, CBI, ACB, Dehradun was appointed as Enquiry Officer to conduct the inquiry proceedings. During the course of enquiry, the Charged Officer willfully absented himself from the enquiry proceedings with a view to delay a decision in his case. As such, there was no option left for the Inquiry Officer except to conduct the proceeding ex-parte. The applicant did not produce any defense witness. Instead he only kept on mentioning names of various serving/retired CBI officers including former Director, CBI, Jt. Director, CBI for being examined as defence witnesses who had no relevance to the proceedings. He also did not produce any defence witnesses even during the course of proceedings. After conclusion of the enquiry proceedings, the enquiry officer submitted his report on 29.4.2005. Copy of the enquiry report was also provided to the applicant by the disciplinary authority as per memorandum dated 7.6.2005. The applicant was directed to submit his comments on enquiry report. The applicant did so. On careful consideration of his explanation vis-a-vis the report of the inquiry officer, the disciplinary authority decided that the charges of in-subordination and disobedience of the orders of the then DIG, CBI, Bhopal were not proved

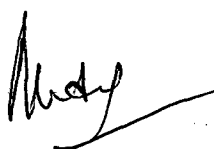
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against the applicant. Accordingly, the disciplinary authority exonerated him from the said charge.

7. As regards the 2nd charge relating to demand for bribe from Sri Sunil Lahoti the disciplinary authority found the charge as duly proved against the applicant and hence imposed penalty of withholding of increments for 2 years with cumulative effect vide order dated 27.10.2005 with immediate effect. The enquiry report also mentions that despite several reminders and directions from the inquiry officer, the applicant did not attend the enquiry proceedings, hence the allegation of the applicant that principles of natural justice were denied to him during the enquiry proceedings, are completely false and baseless.

8. As regards the allegation of the applicant that disciplinary authority went beyond the scope of Rule 6 (V) of Delhi Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 in as much as he awarded punishment of stoppage of two increments with cumulative effect with immediate effect, while the Rule permits only stoppage of increments respondents submit that there is a provision for stoppage of increments as well as promotions in the aforesaid rules. The punishment of stoppage of increments to the applicant with cumulative effect is fully covered by the aforesaid rules. On the basis of the above, respondents submit that there is no merit in the O.A. No274/2006 and therefore, the same deserves to be dismissed.

 9. The applicant as well as respondents were heard on 30.4.2007 through their respective counsels. Shri Manish Kumar, Advocate appeared on behalf of the applicant and Shri S.P.Singh, Government counsel appeared on behalf of the respondents. Both counsels reiterated their submissions as above in support of their respective case..

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10. We have given our anxious consideration to the submissions raised by the learned counsels on both sides and have also perused the records of the case.

11. As regards the first objection raised by the applicant that disciplinary authority has traversed beyond the scope of Rule 6 of Delhi Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961, we find that this arguments of the applicant does not hold water. This provision is analogous to Rule 11 (iv) of CCS (CCA) Rules, 1964, which reads as under:-

“11. Penalties:

The following penalties may, for good and sufficient reasons as hereinafter provided, be imposed on a Government servant, namely:-

(i) xxxxxxxxxxxxxxxxxxxx

(iv) withholding of increments of pay;”

12. When the disciplinary authority under rule 11 (iv) of CCS (CCA) Rules, 1964 is competent to withhold the increment of a delinquent employee under the aforesaid rule, there is no reason as to why under the same or analogous provision contained in the form of Rule 6 (V) of Delhi Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961, a disciplinary authority should have analogous power to impose the penalty of stoppage of increments with cumulative effect. Hence the arguments advanced by the applicant in this regard does not stand the test of judicial review.

13. As regards the second objection raised by the applicant that principles of natural justice were denied to him during the enquiry proceedings, it is clearly mentioned in the enquiry report that applicant was regularly reminded about the dates of enquiry and notices were also duly sent to him for appearance in the enquiry proceedings but he never cooperated with the enquiry officer during the proceedings nor even presented himself for examination or cross examination of witnesses during the said proceedings. According to the respondents, the applicant deliberately absented himself from enquiry proceedings despite notices sent to him. The applicant also did not produce any material defence witness to be examined during the course of proceedings. On the contrary, he kept on insisting on summoning of retired

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CBI officers , such as Director and Joint Directors of CBI for being examination as witnesses. As examination of these witnesses were not at all relevant to the enquiry proceedings, the enquiry officer , naturally rejected the request of the applicant in this regard. A copy of the enquiry report was also provided to the applicant by the disciplinary authority for his comments and on full application of mind the disciplinary authority (i.e. respondent No. 3) decided that the charges of in-subordination and disobedience of the directions of the then DIG, CBI were not proved against the applicant. In view of the above, it is crystal clear that applicant , who should have cooperated with the enquiry officer during the proceedings did not do so. He willfully absented himself from the enquiry proceedings. As such he cannot allege at this stage that principle of natural justice were denied to him. Once he himself did not avail the opportunities of hearing , he cannot now turn around and come up with the objection of denial of principle of natural justice during the course of the enquiry proceedings before us. Hence the second objection of the applicant relating to denial of principles of natural justice also does not hold water.

14. As regards the third objection raised by the applicant that CBI authorities had affirmed before the trial court that they had no such evidence with them which could stand the test of judicial scrutiny ^{in the} the criminal case proceedings against the applicant. The Departmental disciplinary proceedings against the applicant , too, were based on identical set of facts and evidences and hence should have also been closed on that basis. We do find some merit in this objection. It is on record that the criminal case and the departmental proceedings , as they stand before us, are based on identical set of facts and evidences. The above affirmation ^{of CBI, before the trial court} is mainly based on written complaint of Sri Sunil Lahoti dated 1.3.2002 that the applicant had demanded a bribe of Rs. 20,000/- and a computer from him to bestow undue favour to him in a Criminal case RC 6(A) 2001-BPL which was being investigated by him at the material point of time. The initial demand was for an amount of Rs 50,000/- which was subsequently brought down to Rs. 20,000/- + a computer

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during the negotiations. It is also on record that Sri Lahoti, in two different affidavits dated 28.3.2002 and 6.8.2002 before the Court of Special Judge, subsequently denied to have written any such complaint of his own free will. He had, in fact written the complaint dated 1.3.2002 against the applicant under coercion from the CBI authorities. In view of this the entire complexion of the criminal case as well as disciplinary proceedings against him, which are based on identical set of facts and evidences, undergo a material change. The entire disciplinary proceedings at this stage are rendered into a tale, full of sound and fury, signifying nothing.

Whether a disciplinary proceedings, based on identical set of facts and evidences, can survive even after dismissal of criminal case ^{as in the criminal case} ^{based on the} evidences ^{relied upon thereunder} came up for consideration before the Hon'ble Supreme Court of India in the case of Capt. M. Paul Anthony Vs.

Bharat Gold Mines Ltd. and another in Civil Appeal No. 1906 of 1999

decided on 30.3.1999 [Reported in AISLJ page 152], the Hon'ble Apex Court

in paras 33,34 and 35 of the judgment, settled the law as under:-

“33. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely ‘the raid conducted at the appellant’s residence and recovery of incriminating articles thereon.’ The findings recorded by the Inquiry Officer a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

34. Since the facts and the evidence in both the proceedings, namely the departmental proceedings and the criminal proceedings case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

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35. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge in so far as it purports to allow the Writ Petition, is upheld."


15. The decision of the Hon'ble Supreme Court fully applies to the facts of this case. Hence O.A. No. 274 of 2006 ^{to 2005} is allowed. The impugned orders of disciplinary authority dated 27.10.75 and appellate order dated 22.2.2006 are accordingly set aside with consequential benefits including payment of arrears of increments withheld, promotion to the next higher grade of Inspector by opening the sealed cover, in case no other criminal case or disciplinary proceedings are pending against him. The applicant will also be entitled to full pay during the period of his suspension minus the subsistence allowance already paid to him.

176. In consequence, the O.A. is allowed in full. The parties will bear their own cost.

 MEMBER (J)

HLS/-

28-05-07


MEMBER (A)