

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.251/2010
This the 13th day of July 2012**

**Hon'ble Mr. M. Kanthaiah, Member (J).
Hon'ble Ms. Jayati Chandra, Member (A)**

Raj Kumar Awasthi, aged about 57 years, son of Late Shri Devi Charan, Resident of E-3/254, Vinay Khand, Gomti Nagar, Lucknow.

...Applicant.

By Advocate: Sri A.K. Jauhri.

Versus.

1. Union of India, through the Secretary, Home Department, New Delhi.
2. Registrar General of India, Census Department, New Delhi.
3. Director Census Operation, Lekhraj Market, Indira Nagar, Lucknow.
4. Deputy Director (Karyalaya Adhyaskh)/Disciplinary Authority, Director Census Operation, Lucknow, Lekhraj Market, 111 Indira Nagar, Lucknow.
5. Suresh Chand, Assistant Director (Administration), directorate Census, U.P. Lucknow.

.... Respondents.

By Advocate: Sri Alok Trivedi for Sri G.K. Singh.

(Reserved on 09.07.2012)

ORDER

By Hon'ble Mr. M. Kanthaiah, Member (J).

The applicant has filed the O.A. to quash the impugned order dated 07.01.2010 issued by the Disciplinary Authority (Respondent No.3) imposing the major penalty of compulsory retirement of the applicant

from service and confirmation of the same by the Appellate Authority (Respondent No.2) vide order dated 10.05.2010 and consequential medical benefits, which was provided earlier to the applicant.

2. The respondents no. 1 to 4 have filed reply denying the claim of the applicant and stating that the impugned orders are passed in accordance with the rules and there is no illegality committed for interference of this Tribunal and thus, opposed the claim of the applicant. They also raised certain preliminary objections.

3. The applicant filed Rejoinder Affidavit denying the stand taken by the respondents.

4. The respondents also filed reply to the rejoinder affidavit.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief as prayed for.

7. The brief facts of the case are that the applicant while working as Peon in the office of Directorate of Census Operation, U.P. served with the major penalty charge sheet against him under Rule-14 of CCS (CCA) Rules, 1965 vide Charge Memorandum dated 24.10.2008 (Annexure-A-10), alleging three charges against the applicant. Though, the applicant submitted his reply/explanation to the charge memorandum, dated 12.01.2009 (Annexure-A-11), the Disciplinary Authority, who was not satisfied with the reply appointed the inquiry officer to conduct the disciplinary proceedings against the applicant. The inquiry officer after conducting his proceedings submitted his report dated 27.2.2009 (Annexure-A-12) with a finding that charge no.2 is proved

whereas Charge No.1 is proved partially and Charge No.3 is not proved. A copy of the report was supplied to the applicant asking his objection, if any,. Upon which the applicant also submitted his explanation/reply to the inquiry proceedings and finding of the inquiry officer on 12.9.2009 (Annexure-13). The Disciplinary Authority (Respondent No.3), considered the inquiry order and also explanation of the applicant passed order on 07.01.2010 (Annexure-A-1), awarding penalty for compulsory retirement of the applicant from service.

8. Aggrieved with such penalty the applicant submitted an appeal dated 13.01.2010 (Annexure-14) to the appellate authority. In the meantime, the applicant also filed O.A.No.50/2010 before this Tribunal challenging the order dated 07.01.2010 of the Disciplinary Authority. But, this Tribunal dismissed the O.A. on 08.02.2010, giving direction to the Appellate Authority to decide the pending appeal of the applicant dated 13.01.2010 with a reasoned order within a period of three months from the date of receipt of a copy of judgment and order. Annexure-15 is the copy of the judgment and order passed in O.A.No.50/2010 dated 08.02.2010. Thereafter, the Appellate Authority passed an order on 10.05.2010 (Annexure-A-2) on the appeal of the applicant with a result of dismissal and thus, confirmed the order of penalty of compulsory retirement imposed by the Disciplinary Authority.

9. Aggrieved with such an order of the disciplinary authority dated 07.01.2010 (Annexure-A-1) and appellate authority dated 10.05.2010 (Annexure-A-2)the applicant has filed the present O.A. mainly challenging that no

opportunity of hearing was given to him by the inquiry officer including cross-examination of witnesses and thus, find fault with the inquiry proceedings conduct by the inquiry officer. He further sated that there was no evidence before the inquiry officer to prove charges against him and thus, he find fault with the inquiry proceedings and findings of the inquiry officer. He also further stated that when he brought all such objection before the disciplinary authority, and appellate authority but they have not taken then into consideration and simply passed the impugned orders against applicant and such orders are not at all reasoned orders and liable to be set aside. The respondents filed counter denying the grounds taken by the applicant for quashing impugned orders and stated that no justified material is available for interference of this Tribunal.

10. Before touching the merits of the case, the respondents have raised preliminary objection stating that the applicant added the name of the complainant as Respondent No.6, which is the basis for initiating the disciplinary proceedings but not taken notice against him and thus argued for dismissal of P.A. on the ground of mis-joinder of parties. This O.A. is for the year 2010, though the applicant added the name of the complainant in the departmental proceedings as Respondent NO.6, this Tribunal has not taken any cognizance and thus not ordered any notice to him. Thus the objection of the respondent to dismiss the O.A. on the ground of mis-joinder of parties has no merits.

11. The respondents have also taken a preliminary objection that the applicant while challenging impugned

penalty order, he also sought for restoration of medical benefits and the same is noting but claiming multiple reliefs in a single O.A. Though the applicant claimed medical benefit, the same is only by way of consequential relief on setting aside impugned penalty orders alongwith other consequential benefits. Thus, the argument of the respondents that the applicant claimed multiple reliefs is also not at all valid and justified.

12. The applicant mainly contested in respect of the disciplinary inquiry proceedings conducted by the inquiry officer stating that he had not given proper opportunity for hearing and also not given an opportunity to cross-examination of the witnesses and thus, questioned the validity of such inquiry report, which is the basis of imposing penalty by the disciplinary authority as such, it requires consideration whether the inquiry proceedings were conducted in a fair and proper manner and there was any irregularity or violation of rules or principles of natural justice while conducting such proceedings.

13. Admittedly, three charges are levelled against the applicant in the Charge Memorandum dated 24.10.2008. Charge No.1 is that on 13.6.2008 Forenoon the applicant while working as peon in the office of Directorate of Census Operation, he entered into the chamber of Sri Suresh Chand, Assistant Director (Accounts) and abused him in the name of his caste "Chamar". Charge No. 2 is that the applicant also used unparliamentarily language against Sri Suresh Chand that it is not your father's office. Charge No.3 is that the applicant threatened Sri Suresh Chand. Annexure-A-3 to the Charge Memorandum shows the list of documents, which

are relied upon to prove the charges against the applicant. But in respect of the witnesses, no list of witnesses has been furnished alongwith charge memorandum. In the list of documents (Annexure A-3) four documents are relied upon;- (1). Complaint given by Sri Suresh Chand, Assistant Director (Accounts) dated 13.6.2008. (2). Statement of Sri Nadeem Safi, Assistant in Account Section (3). Statement of Sri Sunil Kumar Srivastava, L.D.C. Account Section. (4). Preliminary Inquiry Repot conducted by Shri A.M. Ansari, Deputy Director (EDP). After conclusion of inquiry proceedings the inquiry officer submitted his report to the disciplinary authority on 27.2.2009 (Annexure-A-12). It consists of three pages.

14. On conclusion of inquiry proceedings the inquiry officer submitted his report. The report does not refer any of the details in respect of examination of witnesses on either side and also documents. The inquiry report reveals that he commenced the inquiry on 7.1.2009 and held on 12.1.2009, 15.1.2009, 19.1.2009 and 27.1.2009, 4.2.2009 and 9.2.2009. The report para (अ) shows that on 7.1.2009 the applicant appeared before the inquiry officer and when he was asked for appointment of his defence assistant the applicant declined to take any such defence assistant and upon which the inquiry was posted to 12.1.2009 for examination of witnesses. Para (ए) shows that on 12.1.2009 the applicant appeared before the inquiry officer and also submitted five pages representation alongwith 2 enclosures denying the charges. It also refers that two witnesses Sri Sunil Kumar Srivastava and Nadeem Safi have been examined and

thereafter, adjourned the matter to 15.01.2009. On 15.01.2009, the applicant appeared before the inquiry officer and when he demanded the documents as required by him vide his earlier representation dated 7.1.2009.

15. On 19.1.2009, the applicant appeared before the inquiry officer and submitted a representation stating contradictions of the statements of the witnesses and brought it to the notice of the inquiry officer. The applicant also made a request for supplying of 8 documents. Upon which the inquiry officer directed the Presenting Officer to produce the said documents on the next date of hearing and then posted the matter on 27.1.2009. He also gave direction for production of other witnesses Nadeem Safi on the next date of hearing on 27.1.2009. On 27.01.2009 the applicant appeared before the inquiry officer and also made one more representation stating certain contradictions are there in the witnesses and matter adjourned to 04.2.2009. On 4.2.2009 the applicant appeared before the inquiry officer and made a representation to the inquiry officer. On that day, complainant was also present and also submitted that whatever he gave statement on earlier occasion is correct. Thereafter, the inquiry officer asked the applicant to produce his witness to deny his absence at the place of incident for which the applicant did not produce any of the witnesses. The inquiry officer also granted three days time to the applicant for production of his statements and adjourned the matter to the next date. On 9.2.2009, the applicant appeared before the inquiry officer and submitted one more representation in which he did not

mention the names of the witnesses but questioned in respect of rules and procedure adopted for conducting the proceedings.

16. Next Para-3 deals with the findings of the inquiry officer which shows that the Inquiry officer gave an opportunity to the applicant to defend his case in respect of the charges levelled in the charge memorandum and also evidence of witnesses and other material but he did not avail the same for disproving the charges levelled against him. Thus, he concluded with a finding that the Charge No.1 is partly proved, Charge No.2 proved and Charge No.3 is not proved and submitted his report.

17. The inquiry report does not refer to any thing in respect of the evidence of any witnesses against the applicant to support the charges. It is not at all clear whether any of the witnesses have been examined, they deposed anything in respect of the charges and no material and discussion is there how he came to a conclusion that the charges are proved. The inquiry report is silent who are the witnesses and what they deposed in respect of each charges. Without any such material, he simply stated that the applicant has not availed an opportunity to defend his case and on such pretext disproving his case, gave finding against the applicant on the charges is not at all valid. Thus, the report of the inquiry officer is not at all helpful to say that any of the witnesses deposed against the applicant in support of the charges. Further the findings of the inquiry officer is also require that so and so material is available against the delinquent officer to prove the charges but, all such material requirement is missing in

the inquiry report. Thus, the inquiry report and finding is full of infirmities and such report is not at all helpful to say that the charges against the applicant are proved.

18. Admittedly, the charge memo has been issued against the applicant for imposing major penalty under Rule 14 of the CCS (CCA) Rules, 1965. It is the duty of the inquiry officer to follow the procedure provided under the rules while conducting the inquiry proceedings. It is also incumbent on the inquiry officer to examine the witnesses and to call for the witnesses on behalf of the prosecution and give an opportunity to the delinquent officer for cross-examination of such witness and during examination required documents/statements are to be marked in the presence of the delinquent officer. After conclusion of prosecution of witnesses an opportunity has to be given to the delinquent officer to cross-examine the witnesses. But the inquiry report is silent on all such basic material and requirement which clearly shows that the enquiry officer has not followed any such rules and procedure more particularly Rule-14 (9) to (23).

19. The contention of the applicant is also that the inquiry officer has not followed the procedure and also not given an opportunity to him to cross-examine the witnesses. On perusal of the inquiry report it clearly supported such stand of the applicant and with such infirmity in the procedure, giving any validity to such inquiry report is not at all justified. On the face of the record, the inquiry report reveals that the inquiry officer has not followed the procedure and further no evidence is available against the applicant to prove the charges and such report is not at all helpful for taking any action

against the applicants misconduct. Thus the inquiry report which is the basis for taking decision by the disciplinary authority is not at all valid and finding of the enquiry officer is without any evidence and perverse.

20. Admittedly, the disciplinary authority (Respondent No.2) basing on the inquiry report gave finding against the applicant imposing grave penalty of compulsory retirement. But, the inquiry officer has not followed the procedure while conducting the inquiry and further his finding on the charges is without any evidence and thus not at all valid for imposing penalty against the applicant. The disciplinary authority has not considered the objections raised by the applicant in respect of the inquiry proceedings and findings of the inquiry officer and imposed major penalty. Thus the penalty order dated 07.01.2010 issued by the disciplinary authority imposing major penalty of compulsory retirement of the applicant is liable to be set aside. Similarly, the appellate authority also not considered the objection raised by the applicant in his appeal and confirmed the penalty order imposed by the disciplinary authority based on enquiry report and the same is also liable to be set aside.

21. In the result, the impugned order dated 07.01.2010 issued by the disciplinary authority and confirmation of the same by the Appellate Authority vide order dated 10.05.2010 is set-aside and thus ordered for reinstatement of the applicant into service with all consequential benefits as per rules. No order as to costs.

J Chandra

(Jayati Chandra)
Member (A)

Amit/-

M. Kanthaiah

(M. Kanthaiah)
Member (J)

13.07.12