

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-609 of 1996

(Date of decision 5.1997)

Arvind Kumar

S/o Shri R.N.Prasad,

Permanent resident of Road No.3,

Gardanibagh, Patna.

. . . . . Applicant

By Advocate: Shri S.K.Singh.

Versus

1. The Union of India, through the Secretary,  
Ministry of Environment and Forest, New Delhi.
2. The State of Bihar, through the Secretary,  
Forest Deptt., Patna.
3. Principal Chief Conservator of Forest, Ranchi.
4. Regional Chief Conservator of Forest, Hazaribagh.
5. Conservator of Forest, Social Forestry & Aff.Circle,  
Hazaribagh.

. . . . . Respondents

By Advocate: Shri B.N.Yadav, Standing counsel  
for State of Bihar.

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

Hon'ble Mr. K.Muthu Kumar, Member (Administrative)

ORDER

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the  
Administrative Tribunals Act, 1985 with a prayer that  
the notification dated 20.6.1996 (Annexure-1, order dated  
27.6.1996, Annexure-2A and article of charges dated

15.5.1996 Annexure-2B be quashed. The applicant has also prayed that he be promoted to Senior Time Scale with retrospective date. The facts of the case are that the applicant, Shri Arvind Kumar is a Member of Indian Forest Service. He was posted as D.F.O, Afforestation Division, Giridih on 30.4.1991. It is asserted that he was suddenly transferred from Giridih on 9.7.1991. He filed OA-371 of 1991. The transfer order was quashed by this Bench by order dated 18.11.1992. Subsequently, on some allegations he was suspended on 21.7.1992. He filed OA-346 of 1992. The suspension order and disciplinary proceedings were quashed by order dated 22.12.1992. The State Government thereafter filed S.L.P. No.4182 of 1993 in the Supreme Court. The S.L.P was dismissed by order dated 11.3.1996 with the observation that if the Government wants to proceed with the inquiry against the respondents on any charges, it can do so in accordance with law. It is alleged that the Government thereafter initiated fresh disciplinary proceedings against the applicant. The impugned order of suspension, Annexure-1 was passed on 20.6.1996 and thereafter memorandum of charges Annexure-2A dated 27.6.1996 along with the charge memo, Annexure-2B dated 15.5.1996 were served on the applicant.

2. The applicant has asserted that he has been harassed by his superior authorities as he had detected defalcation and various illegalities and irregularities committed by different officers as detailed in Para 4.3 and 4.4 of the application. It is further asserted that the applicant brought these illegalities and irregularities to the notice of his superior officers in writing but he was illegally divested of administrative and financial powers vide memo dated 25.6.1993. It is further asserted that he had refused to pass bogus vouchers which were submitted to him. He had also lodged FIRs against certain employees when he found

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offence being committed by them. It is said that it was due to these reasons that he was suspended under the order dated 20.6.1996 and fresh disciplinary inquiry has been initiated against him. It is claimed that the charges framed against him are completely bogus and wrong and that the entire proceedings were not in accordance with the relevant rules and law.

3. It has also been asserted that actually a preliminary inquiry in respect of the same charges was held by Shri Parekha Chaudhary, Deputy Secretary to the Govt. of Bihar and the inquiry officer actually found that the charges against the applicant were not correct. It is thus prayed that the order suspending him as also the memorandum of charge along with the charges in question be quashed.

4. On behalf of the respondents the allegations made by the applicant have been denied. It has been contended that the applicant was guilty of committing several illegal and wrongful acts. His superior authorities had complained against him in respect of the same. It is alleged that the applicant also misbehaved and abused the Conservator of Forest who was <sup>his</sup> superior authority, against which the said officier had complained. It is asserted that the disciplinary proceedings have been validly initiated for sufficient reasons and the applicant has been placed under suspension pending the disciplinary proceedings.

5. We have heard the learned counsel for the parties and perused the material on record. During the hearing we have called the entire record of the inquiry as well as preliminary inquiry, which was held against the applicant for our perusal.

6. During the arguments the learned counsel for the applicant did not raise the plea regarding the promotion of the applicant to the selection grade and so we will not be considering the same in this judgment.



7. We will at first take up the plea that in the preliminary inquiry held in respect of the charges against the applicant the Inquiry Officer, Sri Parekha Chaudhary had exonerated the applicant. We have perused the records of the preliminary inquiry. It indicates that this preliminary inquiry, which has been initiated in respect of some charges, was never concluded but in fact the inquiry was still pending due to the transfer of the Inquiry Officer to another department. The applicant has filed copy of an order dated 23.9.1994 which is signed by Sri Parekha Chaudhary and on the basis of the same it has been argued that by this order the applicant has been exonerated. However, we are unable to accept this argument. The order itself shows that the inquiry officer recorded certain facts after examining the reply by the present applicant and charges forwarded on behalf of the State Government. It was observed that in order to simplify the preliminary inquiry these documents have been examined by the Inquiry Officer. In this order itself it has been mentioned that the inquiry be fixed for 24.10.1994 and on that date Shri Madhu Singh, MLA be requested to appear. It appears that this preliminary inquiry was initiated on a complaint by Shri Madhu Singh. Thus, it cannot be said that the Inquiry Officer had concluded the preliminary inquiry and had exonerated the applicant.

8. The learned counsel for the applicant has then argued that in this case the provisions of Rule 8 of All India Services (Discipline and Appeal) Rules, 1969 (hereinafter called the rules) were not followed and so the entire proceedings are illegal and stand vitiated.

9. Sub-Rule 4, 5 and 6 (a) of Rule 8 of these rules read as follows:-

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(4) Where it is proposed to hold an inquiry against a member of the Service under this rule and or Rule, 10, the disciplinary authority shall draw up or caused to be drawn up-

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-
  - (a) a statement of all relevant facts including any admission or confession made by the member of the Service;
  - (b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

(5) The disciplinary authority shall deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(6) (a) On receipt of the written statement of defence, the disciplinary authority may appoint under sub-rule (2), an inquiry authority for the purpose of inquiring into such of the articles of charge as are not admitted, and, where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in Rule 9.

10. The learned counsel for the applicant has argued that under Rule 8 (4), it is for the disciplinary authority to draw or caused to be drawn up the memorandum of charges etc. However, in the present case the charges under Annexure-2B which have been served on the applicant were not drawn up by the disciplinary authority nor he had caused the same to be drawn up but, instead, these charges were drawn up and signed by the Principal Chief Conservator of Forest, Bihar on 15.5.1996. It is further argued that these charges were not even signed by the disciplinary authority.

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11. We have perused the charges under Annexure-2B. These charges are not signed by the disciplinary authority but are signed by the Principal Chief Conservator of Forest, Bihar. These charges were actually signed by that officer on 15.5.1996. The record of the inquiry proceedings shows that the sanction of the Minister concerned regarding the suspension and initiation of departmental proceedings was obtained on 17.5.1996, while the sanction of the Chief Minister, Bihar for this purpose was obtained on 18.6.1996, and the charge memo accompanied by the charges was issued on 27.6.1996. The Principal Chief Conservator of Forest had prepared these charges on 15.5.1996 and he had sent the same to the Govt. of Bihar. It is obvious that these charges were not drawn up by the disciplinary authority nor the disciplinary authority had caused the same to be drawn up. It appears that on the basis of the letter sent by the Principal Chief Conservator of Forest, Bihar, accompanied with these charges (Annexure-2B), Govt. of Bihar decided to initiate disciplinary proceedings against the applicant. It cannot be said that these charges were drawn up on being required by the disciplinary authority after it was decided to initiate disciplinary proceedings against the applicant.

12. The next point which has been argued by the learned counsel for the applicant is that the charges served on him are very vague and actually these are mere statement of imputations of alleged misconduct and misbehaviour without framing specific charges.

13. We have examined the charges Annexure-2B and we find that though the charges contained statement of the imputations of misconduct and misbehaviour, several of them cannot be said to be definite and distinct article of charge. Charges no.1, 2, 4, 10 and 11 come in this category.

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13. The learned counsel for the applicant has further argued that along with memorandum of charge Annexure-2A, a list of witnesses by which the article of charges was proposed to be sustained was never served on the applicant. The learned counsel has pointed out that under Rule 8(5) (supra), the disciplinary authority was bound to serve a list of the witnesses who were proposed to be examined during the inquiry.

14. We have examined the argument by the learned counsel for the applicant. The documents on record including the documents filed on behalf of the respondents do not indicate that any list of witnesses proposed to be examined in the inquiry was served on the applicant. The record of the inquiry which has been placed before us also does not indicate that any such list was prepared and served on the applicant. The learned standing counsel for the Govt. of Bihar has also conceded that it appears that no list of witnesses proposed to be examined was served on the applicant. This argument raised by the learned counsel for the applicant appears to be quite valid.

15. The learned counsel for the applicant has further argued that under Rule 8(5), the disciplinary authority while delivering the copy of articles of charges etc. requires the charged officer to submit a written statement of his defence within the stipulated period and it is only after the receipt of the written statement that the disciplinary authority has to appoint the inquiry authority for the purpose of inquiring in the matter as provided under sub-rule 6(a) of the rule. It is contended that in the present case the disciplinary authority appointed the inquiry officer while serving the memorandum without waiting for the filing of the written statement by the applicant and without examining the same. This argument

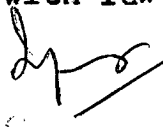
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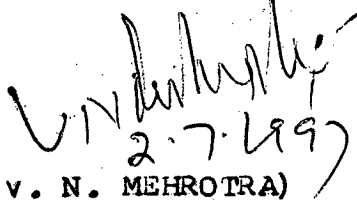
by the learned counsel for the applicant is supported by the memorandum Annexure-2(A) and is obviously against the provisions of sub-rule 6(a) of Rule 8.

16. The learned counsel for the applicant has further argued that the charges framed against the applicant and the allegations made against him is baseless and unsustainable. We are, however, unable to give any opinion on this question. We cannot act as disciplinary authority as if we were holding an inquiry nor we can give a finding on the question as to whether these charges were correct and acceptable or were otherwise. This function is best left to the disciplinary authorities.

17. In view of the above discussion we are of the view that illegality has been committed while serving memorandum as well as article of charges on the applicant and for this reason the disciplinary inquiry has been vitiated. Under the circumstances this OA should be allowed to the extent that the memorandum of charges Annexure-2A along with the charges Annexure-2B should be quashed, and further the order of suspension Annexure-1 which was followed by the memorandum of charge and articles of charges should also be quashed.

18. This OA is allowed to the extent that the memorandum of charges Annexure-2A as well as the charges Annexure-2B and also suspension order Annexure-1 are hereby quashed. However, in case the Govt. of Bihar wants to initiate fresh inquiry against the applicant it can do so in accordance with law. No order as to costs.

  
(K. MUTHU KUMAR)  
MEMBER (A)

  
2.7.1997  
(V. N. MEHROTRA)  
(VICE-CHAIRMAN)