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CIRCUIT BENCH
LUCKNOW

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.643 of 1986

Mahabir Singh ... Applicant

Vs.

Union of India
and 3 others ... Respondents.

Hon.Ajay Johri,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the applicant, an employee of Pay Accounts Office, Lucknow has challenged the order dated 24.12.1985 of his punishment reducing him in rank passed by the Contoller General, Defence Accounts- respondent no.3 in a disciplinary proceedings and the order dated 22.8.86 passed by the Financial Adviser, Defence Services- respondent no.2 dismissing his appeal.

2. It is alleged that the applicant had joined the Defence Service, Govt. of India as Upper Division Clerk and had also worked as an Auditor in the office of the Joint Controller Defence Accounts (Funds) Meerut- respondent no.4 from 2.2.1972 to 3.9.1984. The applicant has further alleged that on account of this harasssment in the said office he had moved an application on 28.4.1985 to the respondent no.4 for his transfer to another group which annoyed the officers of his department and he was falsely implicated in a disciplinary case in respect

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of an alleged incident of abusing the Prime Minister and the senior officers of the Pay and Accounts Office and assaulting his senior officers Sri S.M.Ali on 10.5.1984. The applicant was served with a charge sheet dated 10.7.1984 in respect of the said incident which according to him had not occurred at all. In the enquiry, the applicant was found guilty of some charges and the respondent no.3 by way of punishment reduced him to a lower post of Clerk from 24.12.85 for 2 years. The appeal filed by him was rejected by the respondent no.2. He has challenged the validity of the punishment order as well as the appellate order on the ground that the copy of the complaint dated 10.5.1984 was not given and the names of the witnesses were also not disclosed to him and the inquiry was conducted by a subordinate Accounts Officer while it should have been entrusted to some higher authority of the Indian Defence Service rank. The applicant had already submitted his reply to the charge sheet on 21.7.84 and on being directed by the inquiry officer he had submitted his defence statement in writing on 15.7.1985. The guilt of the applicant was not established before the inquiry officer by independent witness and the inquiry officer had wrongly placed his reliance on the testimony of the interested witnesses and the applicant was wrongly found guilty on account of prejudice and his appeal was not properly considered by the appellate authority and the impugned orders are liable to be quashed and he is entitled to be restored to his original status.

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3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Accounts Officer in the office of Civil Defence Accounts (F) Meerut, it was stated that on 10.5.1984 at 1 p.m. the applicant entered the office of the Joint Controller Defence Accounts and started abusing the then Prime Minister and the officers of the said office and when the Section Officer (A) Sri S.M.Ali objected, he was beaten with a sandal and his shirt was torn in the incident. The incident was reported to the respondent no.4 orally and in writing the same day and on his having prima-facie satisfaction, the charge sheet was issued to the applicant on 4.6.1984. Besides the incident of hurling abuses and making the assault, the applicant was also charged for accumulating arrears on his seat and for non-submission of daily report of his work as well as for remaining absent during office hours and the inquiry was entrusted to an Accounts officer who was competent to do so under the rules. The necessary papers were given to the applicant and he was also allowed the inspection of the original record and adequate opportunity of ^{making} his defence and on the basis of the report submitted by the inquiry officer, the disciplinary authority found the charges established against the applicant only in part as the applicant was not found guilty of abusing the Prime Minister and other officers and he was also exonerated of the charge regarding accumulation of work on his seat and the applicant was awarded suitable punishment considering the seriousness of his guilt and the appellate authority had given due consideration to his appeal and the allegations made by the applicant to the contrary are not correct. It

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was also stated that it was not necessary to transfer the disciplinary ~~enquiry~~ ^{against} ~~enquiry~~ with regard to the applicant to any other group as the officers of the group in which the applicant was posted were duly competent to deal with the matter and he having not filed a revision against the appellate order his petition is premature.

4. In the rejoinder filed by the applicant it has been stated that the case against him was cooked up with personal considerations and the punishment awarded to him is severe. He reiterated that the names of the four witnesses stated to be present at the time of incident were not disclosed to him and the charge sheet was vague in this respect. Even on the inspection of the record, the applicant could not know ~~about~~ the names of the prosecution witnesses and he was thus deprived of making his proper defence. An impartial inquiry could be possible only by an officer of Indian Defence Accounts Service and not by a promoted Accounts Officer and his request for the change of inquiry officer was wrongly rejected by the disciplinary authority. It was further stated that the applicant was initially appointed as Upper Division Clerk (for short UDC) and his reversion to the post of Lower Division Clerk (for short LDC) is bad in law and the appellate order is not a speaking order.

5. The learned counsel for the parties were heard and the original file of the disciplinary proceedings against the applicant produced by the respondents has also been perused in the light of the ~~submissions made before us~~ ^{records}. The main question to be considered

in this case is whether the applicant was afforded adequate opportunity to defend himself and the inquiry was conducted impartially against him. The applicant has alleged in his petition and the rejoinder that the copy of the complaint dated 10.5.84 made against him by the victim Section Officer S.M.Ali and the names of the witnesses on whom the prosecution was placing its reliance were not furnished to him and he was thus deprived of an opportunity of making proper defence. The applicant has stated in para 6(xi) of the petition that he had sent his reply (statement of defence) to the charge sheet on 21.7.84 and he filed its copy as annexure 4. Annexure 4 to the charge sheet is the list containing the names of 4 witnesses in support of the incident of beating. The applicant is supposed to have received the charge sheet along with its annexures and enclosures. This inference finds support from the reply to the charge sheet (annexure 4) filed by the applicant on 21.7.84. Para 2 of this statement of defence speaks about the complaint of Sri S.M.Ali and mentions that it has been alleged by Sri S.M.Ali S.O.(A) that the applicant assaulted him on 10.5.84. He further stated that though there was some argument~~s~~ between him and Sri Ali on some topic but there was no scuffle or attack by him as alleged by Sri Ali. This reply pre-supposes the ^{knowledge about} contents of the complaint dated 10.5.84 made by Sri Ali to the respondent no.4 and without getting the copy of the complaint or knowing its contents otherwise, the applicant could not make these allegations in his statement of defence. It is further noteworthy that in this statement of defence, the applicant did not make any complaint about his not receiving any document or annexures of the charge sheet

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and his stand taken in this connection afterwards is simply an afterthought and concocted for making a legal ground for interference by the Tribunal. After going through this statement of the applicant, we are clearly of the view that the applicant had full knowledge of the case and the witnesses against him and his contention to the contrary is not correct.

6. In the defence statement filed by the applicant on 15.7.1985, copy annexure 5, in the end, the applicant did state that the names of the witnesses were not disclosed ⁱⁿ the charge sheet and simply a number of witnesses ~~were~~ quoted. He, however, did not ~~state~~ thereafter that the names were not supplied to him even afterwards when required by him. It is, therefore, not correct to say that the applicant could not know the names of the prosecution witnesses going to be produced against him timely and on that ground he was in any way prejudiced.

7. At the time of incident, the applicant was posted at Meerut and after some time he was transferred to Lucknow. From Lucknow, he sent an application dated 7.12.1984 to the respondent no.4 for getting the enquiry against him conducted in the office of Civil Defence Accounts (Ors) and not in his office where he was posted from 2.2.1972 to 3.9.84 and he did not expect an impartial enquiry from the officers of the office of respondent no.4. The office of the respondent no.4 is a big one and the request of the applicant for transferring his enquiry from that office to another office could hardly be justified on the vague allegation made by him. Usually a long duration gives a chance of making friendship ^{not} if the person is gentle or is otherwise ^{also} inconvenient to anybody. He may have some hostile element against him

due to long stay ^{and personal reasons} at one station. The fact that despite his posting in the office of the respondent no.4 for 12 years, he did not expect an impartial inquiry from the officers of that office, can hardly be considered a circumstance in his favour and on this general allegation the inquiry against the applicant could hardly be transfeerrd to any other office by respondent no.4. Except the fact that the inquiry officer had disallowed ~~the~~ ^{some} other question put to ^{the} complainant S.M.Ali in his cross-examination by the defence assistant of the applicant, there is nothing on record to show that the inquiry officer was prejudiced against the applicant or he did not conduct the inquiry as an impartial person against the applicant. In this way, all the allegations of the applicant about his not having a fair deal in the disciplinary case are devoid of any force.

8. The impugned order of punishment dated 24.12.85 annexure 6 shows that the inquiry officer did not hold the applicant guilty of abusing the Prime Minister and other officers of his office. This shows that the inquiry officer had acted as an impartial officer and did not blindly hold the applicant guilty of all the charges framed against him. This order further shows that though the inquiry officer had found the applicant guilty of a part of charge no.2 regarding showing bogus progress of work in March/April 1984, non submission of work book daily and habitual in remaining absent, the applicant was not found guilty of the habit of accumulating arrears. The disciplinary authority did not agree even with this finding and exonerated the applicant completely of charge no.2. This shows that the inquiry officer as well as the disciplinary authority had acted with open mind while dealing with the case of the applicant.

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9. The impugned appellate order, copy annexure 10, passed by the respondent no.2 also shows that the appellate authority had applied his mind while considering the appeal of the applicant against the punishment imposed on him by the disciplinary authority. The order passed by the appellate authority is a speaking order and the allegation of the applicant to the contrary is not correct

10. It was also contended on behalf of the applicant that the evidence produced against him before the inquiry officer was not sufficient to establish the guilt against him and no independent witness supported the complaint made by Sri S.M.Ali. It was also contended that a part of the complaint of Sri S.M.Ali was found to be incorrect by the inquiry officer and the disciplinary authority as such, no reliance should have been placed on his testimony at all and the findings of the inquiry officer are ~~as~~ perverse. We have very carefully examined this contention of the applicant but find ourselves unable to agree with the same. In the cases of disciplinary proceedings, the Tribunal has not to sit as an appellate Court over the disciplinary authorities and is not expected to re-appraise the evidence. Placing reliance ^{in the} ~~on~~ case law laid down by the Hon. Supreme Court, it was held by a Bench of this Tribunal in Ashok Kumar Vs. State of U.P. (1987(3) A.T.C-581) that the evidence on record can be examined by the Tribunal to see whether there was some evidence before the inquiry authority to accept the case of the prosecution and reject the defence of the applicant and not with a view to reconstruct a new case. We have examined the record of the disciplinary proceedings keeping this limited scope in view and we are of the view that there ^{is} ~~are~~ some evidence in support of the charge against

the applicant and the finding recorded against him is not perverse. This contention of the applicant is, therefore, also turned down.

11. Lastly it was contended on behalf of the applicant that he having joined the service as UDC could not be reverted to a lower post, i.e. LDC, by way of punishment and the punishment awarded to him is, thus, illegal. There is no dispute in this case that the applicant was initially appointed as UDC and by way of punishment he was reduced to the lower post of LDC and he had to get the pay admissible to an LDC on his appointment. This view finds support from the latest pronouncement of the Hon'ble Supreme Court in Nyadar Singh Vs. Union of India and others (1988)8 ATC-226). It was observed in that case that the power of reduction should, of course, be available to reduce a civil servant to any lower time scale, grade, service or post from which he had subsequently earned his promotion. Thus an overall view of the balance of the relevant criteria indicates that it is reasonable to assume that the rule making authority did not intend to clothe the Disciplinary Authority with the power which would produce such anomalous and unreasonable situations. The Hon. Supreme Court accordingly refused to sustain the reduction of the Govt. servant to a post lower than the post on which he was originally appointed. In view of these clear observations of the Hon. Supreme Court, we are unable to uphold the contentions raised on behalf of the respondents in support of the punishment awarded to the applicant and hold that the punishment awarded to him is not in accordance with law and his reversion to the post of LDC cannot be sustained.

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12. The petition is accordingly allowed in part and the punishment awarded to the applicant is hereby modified and instead of reducing him to the post of Lower Division Clerk, he shall now stand reduced to the post of Upper Division Clerk and will get the pay to which he would have been entitled had he continued as Upper Division Clerk from the very beginning~~s~~ of his appointment. The other conditions regarding duration and further promotion etc., contained in the punishment order are hereby maintained. The petition is disposed of accordingly without any order as to costs.

Sharma

MEMBER(J)

3/12/88

MEMBER(A)

Dated: 5-12-1988
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