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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

QuAxxNax

T. A. No.

413/87.

198

DATE OF DECISION 12.4.1991

Shri M.T.Kulthe

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri V.G.Rege.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member(A),

The Hon'ble Mr. J.P.Sharma, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *h/s*
4. Whether it needs to be circulated to other Benches of the Tribunal? *nn*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.413/87.

Shri M.T.Kulthe.

...Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri J.P.Sharma.

Appearances:-

Applicant by Mr.D.V.Gangal,
Respondents by Mr.V.G.Rege.

JUDGMENT :-

(Per Shri J.P.Sharma, Member(J)) Dated: /2.4.91

The applicant was working as a Head Clerk, Warrant Section in the India Security Press, Nasik, under Ministry of Finance, Department of Economic Affairs filed the Writ Petition No.2045/84 before the Hon'ble High Court of Judicature at Bombay assailing the order of the punishment in a departmental inquiry dated 4th April, 1984 (Annexure 'D') and prayed for the following reliefs: a) to quash the proceedings relating to the said order dt. 4th April, 1984 and also to set aside the said order, b) a direction in a writ of mandamus to the respondents to forth with allow the petitioner to cross the Efficiency Bar w.e.f. 1st June, 1980 and promote the petitioner to the post of S.O. w.e.f. the date when his junior was appointed and to pay arrears of salary as admissible to the petitioner after he had crossed the E.B. w.e.f. 1st June, 1980.

2. The facts in short are as stated in the Writ Petition :- that the applicant in the year 1977 was issued with a charge sheet on the basis of an inquiry initiated by Central Bureau of Investigation with regard to alleged irregularity in adopting procedure for certain purchases made on the basis of tenders from private parties for the supply of Bandrol paper, against the petitioner as against the General Manager, Senior Deputy General Manager, Deputy General Manager and Chief Accounts Officer. At the relevant time to which the charge relates i.e. during 1974-76 the applicant was posted as Head Clerk in the pay scale of Rs.425-15-500-EB-20-700.

3. The Article of Charges against the applicant are as follows:

" That the said Shri M.T.Kulthe while functioning as Clerk/Head Clerk, Warrant Section, India Security Press, Nasik Road during 1974-76 failed to maintain absolute devotion to duty inasmuch as -

- i) He failed to get the condition that the concerns submitting their quotation should send the amount equivalent to 2% of the total value of the tender as Earnest Money and also send their current Income-tax Clearance Certificate incorporated in any of the Tender Enquiries dated 28.12.1974, 18.1.1975, 2.6.1975 and 10.3.1975 issued by the India Security Press, Nasik Road for the supply of bandrol paper; and
- ii) he failed to get the letter of acceptance incorporating therein the conditions regarding the amount of Security Deposit required to be paid by M/s. Industrial Agencies, Nagpur as also the penalty clause relating to liquidated damages, issued to M/s. Industrial Agencies, Nagpur whose Tender for the supply of 750 MTs of bandrol paper @ Rs.10300/- per M.T. was accepted by the India Security Press, Nasik Road.

And he thereby contravened Rule 3(i) (ii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE - 2

That the said Shri M.T.Kulthe while functioning in the aforesaid office during the aforesaid period further failed to maintain absolute devotion to duty inasmuch as -

- i) he in his note dated 10.1.1976 suggesting therein for replacement of Repeat Order for 700 MTs of bandrol paper on M/s. Industrial Agencies (IPP) failed to point out that the original order placed on the said concern for the supply of 750 MTs of band roll paper being for emergent requirement, no Repeat Order could be placed on M/s. Industrial Agencies (IPP),
- ii) he failed to point out in the said note that there was sufficient stock on hand and expected to be received and there was also sufficient time for issuing advertisement with a view to obtain competitive rates;
- iii) he failed to point out in the said note that the supplies made by M/s. Industrial Agencies (IPP) against the Original Order were found to be substandard; and
- iv) he failed to suggest for incorporating the conditions regarding Security Deposit and Penalty Clause relating to liquidated damages in the Repeat Order dated 14.1.1976 for the supply of 500 M.Ts. of band roll paper @ Rs.10,300/- per M.T. placed on M/s. Industrial Agencies (IPP).

AND he thereby contravened Rule 3(i) (ii) of the Central Civil Services (Conduct) Rules, 1964."

The Enquiry Officer has held the petitioner partly guilty on the charges levelled against him, but he had held that the charge, that he contravened Rule 3(i) (ii) of the CCS (Conduct) Rules, 1964 inasmuch as he failed to maintain absolute devotion to duty, was not proved. The inquiry officials report has been made separately with respect to the other charged officers. The report of the Enquiry Officer dt. 6.4.1983 is (Ex. 'C' to the Petition).

The Disciplinary Authority did not agree with the findings of the Enquiry Officer and by Memo dt. 4th April, 1984 (Ex. 'D') the Disciplinary Authority gave reasons for disagreement in para 3 onwards and passed the penalty as follows:-

" Now, therefore, after careful consideration of all the pros and cons of the case as stated above, and taking a lenient view in the matter, the undersigned has come to the conclusion that the penalty of stoppage of his next increment for a period of one year (from 4.4.1984 to 3.4.1985) at Rs.500/- is imposed on Shri M. T. Kul-the for his failure to observe the prescribed procedure in the purchase of bandroll paper, as mentioned in the charge sheet. The postponement of one increment shall not have the effect of postponing his future increments."

The applicant did not file any appeal against this order but filed the writ petition before the Hon'ble High Court, Bombay on 26.4.1984. This writ petition was stood transferred under section 29 of the Administrative Tribunals Act, 1985 to the Tribunal for disposal.

4. The main contention raised by the learned counsel that the principles of natural justice have not been followed inasmuch as the most important document viz. the Circular sheet which must have accompanied the alleged Circular dt. 28.6.1974 was not produced at any time before the Enquiry Proceedings and was not given for inspection to the petitioner inspite of his repeated demands nor the important witnesses in the record were examined. Against this the petitioner according to the learned counsel had proved beyond doubt that the said circular was not in existence. The evidence of Shri Lalchandani the then Works Manager has also been assailed alleging that the same have been wrongly believed and relied upon by the

Enquiry Officer as well as the Disciplinary Authority. It is further said that the finding of the Enquiry Officer go to show that the applicant has not committed mis-conduct and in fact no punishment could have been imposed by the Disciplinary Authority. The order of punishment against the Petitioner, according to the learned Counsel is passed on presumption and suppositions and are not based on either any evidence on record or on any material whatsoever. It is further said that the Disciplinary Authority in respect of Senior Deputy General Manager and Deputy General Manager have been exonerated and no punishment was passed against them and in their cases the Disciplinary Authority is the Secretary, Ministry of Finance, Government of India. It is further stated that the U.P.S.C. has also considered the case of Dy. General Manager Shri N.P.Sarnaik who was also similarly charged and exonerated him by the memo dt.16.2.84 which is enclosure III to the above record. It is further stated by the learned counsel that the applicant has not been allowed to cross EB and further promotions in view of the aforesaid orders.

5. The respondents contested the writ petition and filed their reply before the Tribunal stating therein that the applicant has not preferred statutory appeal against the impugned order dt. 4.4.1984 (Ex. 'G') and as such the present writ petition is not maintainable as the alternative remedy available to the applicant was not exhausted. It is stated in the reply that the applicant was duly served with a charge sheet and the Enquiry Officer conducted the enquiry observing rules and regulations and followed the principles of natural justice and gave his report this inquiry was conducted by Central Vigilance Commission and

Shri Jyotsna Dinshe, Commissioner for Departmental inquiries conducted inquiry and submitted the Enquiry Report dt. 6.3.1983 (Ex.'C'). It is further said that the Disciplinary Authority General Manager did not agree with the findings of the Enquiry Officer and by the order dt. 4.4.1984 held the applicant guilty for misconduct and the penalty of withholding one increment was imposed without any consequential loss. It is stated that the inquiry officer based his report on the basis of the evidence recorded during the enquiry proceedings. It is further stated that there is no violation of principles of natural justice in the manner as alleged by the applicant. As regards the non-production of the defence witnesses S/Shri T.N.Sinha and A.K.Biswas the letters were issued to them to appear before the Enquiry Officer, but they did not appear. It was for the applicant himself to further move for procuring their attendance before the Enquiry Officer. It is further stated that the Circular was in existence and was circulated to the applicant. It is further said that common inquiry was not commenced against the applicant and Senior Deputy General Manager, Deputy General Manager but similar inquiry was ordered to be conducted against them. The inquiries were held separately and there were no common proceedings or simultaneous proceedings. It is further stated that it is wrong to say that the superior Officers have been saved and the applicant only has been held guilty. The order is not discriminatory at all.

6. We have heard the learned counsel of the parties at length and have gone through the record of the case. The first objection raised by the respondents is regarding the maintainability of the present writ petition. It is conceded by the learned counsel for the applicant that he has not preferred any statutory appeal under CCS (CCA) Rules, 1965 against the impugned order dt. 4.4.1984 (Ex. 'D'). In fact the applicant should have exhausted his remedy as it was only a minor punishment of withholding increment for ^{filed} one year and he directly filed the present writ petition under Article 226 before the Bombay High Court. The Writ Petition was not admitted. The learned counsel for the applicant pointed out that it was not necessary to file the appeal, as the order is not within the jurisdiction of the disciplinary authority and as such is a void order. It cannot be said that the order dt. 4.4.1988 suffers from any such defect as has been pointed out by the learned counsel so as to amount to inherent lack of jurisdiction in the authority who passed the order. The Disciplinary Authority under Rule 15 of CCS(CCA) Rules, 1965 has got the right to disagree with the report of the Enquiry Officer and passing punishment order if the disciplinary authority finds that the charges against the delinquent official are proved. The applicant had to prefer the appeal to the higher authorities and has not assailed the order. The purpose behind is that the Court cannot sit in appeal over the order passed by the Disciplinary Authority but can only confine itself to go through the procedure adopted in the course of the departmental proceedings where the applicant has been given

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due opportunity of defending himself and further whether the principles of natural justice has been followed. From the various contentions raised before us we find that there is no flaw in the departmental proceedings drawn against the applicant. The applicant was duly served with the memo of charges and was duly informed the evidence required to prove those charges and also given due opportunity^{to} place his defence. Thus by not filing statutory appeal the applicant himself has reduced the scope of judging the impugned order through judicial review only. The writ petition therefore, was premature. The transferred application therefore, could be dismissed outright but since it has been received on transfer under section 29, it is also being considered on merits.

7. The learned counsel relying on the judgment of Union of India V/s. J.Ahmed reported in AIR 1979 S.C. page 1022 argued the emphasis that the Article of charges which were served on the applicant do not establish any misconduct. The concluding remark of the Enquiry Officer in the report dated August, 1983 (Annexure 'C') also it is mentioned that the charge that the applicant contravened 3(i)(ii) of the Central Civil Services (Conduct) Rules, 1964 inasmuch as he failed to maintain absolute devotion to duty has not been established. The learned counsel has also referred to by filing of record a Judgment of the Allahabad High Court in Vishwanath Mishra v. U.P. Public Services Tribunal and others reported in 1985 (2) SLR page 708. The facts of the case are materially different. In that reported case there was negligent act attributed to the applicant and no charge of fraud was framed against the delinquent official.

The facts in the present case are different. Here the question is not remissness or negligence, but in fact the tenders were not called for bedroll paper but a rapid order was given against the Circular in force. The circular dt. 28.6.1974 prescribed the procedure to be followed in the matter of purchase. As Head Clerk, Warrant Section the applicant was expected to point out in his said note that in view of the said circular no rapid order can be placed on M/s. Industrial Agencies. Further at the relevant time there was sufficient staff on hand and expected to be received and there was also sufficient time for issuing advertisement with a view to obtain competitive rates. The disciplinary authority also while disagreeing with the report of the Enquiry Officer has observed that the roll of the applicant was to process the case thoroughly and to give the recommendation which were finally to be proved/disapproved by the then General Manager. Shri B.S. Lalchandani, Works Manager (SW.III) has stated in the departmental inquiry that he had seen the circular and have been following instructions as laid down in that Circular since June, 1974. Thus it was a case whether it appears that in the note to be put up by the Head Clerk the proper and relevant facts were not pointed out which caused loss to the Government. In view of this the authority filed by the applicant do not apply.

8. The learned counsel for the applicant also pointed out that the Deputy General Manager and the General Manager were honourably acquitted in the departmental inquiry, while the applicant have been held guilty. In this connection the applicant has placed reliance on

Sengara Singh v. State of Punjab & Ors. reported in 1983(3) SLR page 685. In the case of Sengara Singh and 1100 dismissed members of the Police Force were guilty of same mis-conduct viz. indiscipline to the same extent and decree as, the applicants Sengara Singh and others. The indiscipline of a large number of persons amongst dismissed persons was condoned or overlooked and after withdrawing the criminal case against them they were reinstated, Sengara Singh & Ors. were not reinstated. The Hon'ble Supreme Court held that the appellants of the reported case must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. However, in the present case the Article of charges framed against the Deputy General Manager and Senior General Manager were not the same as against the applicant. The charges framed against them are reproduced below:

" That the said Shri N.P.Sarnaik while functioning as Dy. General Manager, India Security Press, Nasik Road, during 1974-75 failed to maintain absolute devotion to duty inasmuch as

i) he failed to get the conditions that the concerns submitting their quotations should send the amount equivalent to 2% of the total value of the Tender as Earnest Money and also send their current income-tax clearance certificate incorporated in any of the Tender Enquiries dated 28.12.1974, 18.1.1975, 2.6.1975 and 10.3.1975 issued by the India Security Press, Nasik Road for the supply of band-roll paper;

ii) he failed to get the letter of acceptance incorporating therein the condition regarding the amount of security deposit required to be paid as also the condition regarding payment of penalty as liquidated damages, issued to M/s. Industrial Agencies, Nagpur whose Tender for the supply of 750 MTs. of band-roll paper @ Rs.10,300/- per M.T. to the ISP, Nasik Road was accepted; and

iii) he failed to get the condition such as the amount of Security Deposit required to be paid by M/s. Industrial Agencies, Nagpur as also the penalty clause relating to liquidated damages incorporated in the supply order dt. 22.4.75 placed by India Security Press, Nasik Road on M/s. Industrial Agencies, Nagpur for the supply of 750 M.Ts. of band-roll paper @ Rs.10,300/- per MT.

and be thereby contravened Rule 3(1) (ii) of the Central Civil Services Conduct) Rules, 1964."

9. Now comparing them with the charges quoted elsewhere against the applicant in the judgment it appears that the charges against the applicant were additional charges under Article 2 (i)(ii) and (iii). Thus the applicant cannot take the plea of discrimination against him. Moreover, the UPSC in its note dt. 16.2.1984 had come to the conclusion that there appears to be substance in the contention of Shri Sarnaik that he was not aware of the existence of the circular and that he carried on work according to the prevalent practice. It was further observed by the Commission that in the absence ^{not} any knowledge about the Circular Shri Sarnaik could/have pointed out the irregularities mentioned in the Article of charges. The Commission in the case of Shri Sarnaik did not refer in detail to the evidence which has been discussed by the disciplinary authority in the note of disagreement dt. April, 1984 (Annexure 'D'). The disciplinary authority has in para 3 has come out with the reasons of disagreeing with the findings of the Enquiry Officer and also observed that the said circular of 1974 was actually being observed. The statement of Shri B.S. Lalchandani, Works Manager S.W. III have not been discussed by the Commission, while the disciplinary authority has referred to the statement of Shri Lalchandani who had deposed before the Commission in the presence of the

applicant that the circular was being followed since June, 1974. The finding of the disciplinary authority is therefore, a finding of fact and this Tribunal cannot sit as an Appellate Court on the appreciation of the evidence done by the disciplinary authority. The applicant himself is to be blamed that he did not prefer any statutory appeal against the said finding of the disciplinary authority. Thus this point of the learned counsel that there had been discrimination has no force.

10. It has been further argued by the learned counsel that in the circumstances of the case the punishment order passed by the disciplinary authority is not justified. There is nothing on record nor anything has been pointed out to justify this contention. There is a detailed inquiry and the witnesses were duly examined and cross examined in the inquiry and the defence of the applicant was also considered, so it cannot be said that the order passed by the disciplinary authority suffers from any defect or otherwise bad.

11. Having given a careful consideration the whole of the matter we are of the opinion that the present application is devoid of merit and is dismissed, leaving the parties to bear their own costs.

J. P. SHARMA.

(J. P. SHARMA) 12/4/91
MEMBER (J)

by me
(M. Y. PRIOLKAR)
MEMBER (A).