

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

Transferred Application No.180/86

Shri S.C.Anand,
Dy. Director Inspection, D.G.S&D,
32, Gulistan, Carmichael Road,
Bombay.400 026.

... Applicant

V/s.

Union of India, through
The Secretary,
Ministry of Supply,
Nirman Bhavan,
New Delhi-110 011.

... Respondent

Coram: Vice-Chairman B.C.Gadgil,

Member P. Srinivasan.

Present:

Applicant in person and
Mr. M.I.Sethna for the
Respondents.

JUDGMENT:

24.7.1986

(Per Vice-Chairman B.C.Gadgil)

This is a matter which was originally Writ
Petition 1756 of 1984 filed by the applicant in the Delhi
High Court. The said Writ Petition was transferred to the
Delhi Bench of the Tribunal and was numbered as T-No.1039/85.
The Delhi Bench has transferred the said matter to this Bench
and it is in this way that the said case has been numbered
in this Tribunal as Transferred Application No.180/86.

2. The applicant joined service in the Directorate
General, Department of Supplies and Disposals on 3.12.1962.
In due course he was promoted as Deputy Director of
Inspection. It appears that during the period 1965 to 1970
the applicant was posted in London with the India Supply
Mission there. In connection with certain events which are
said to have taken place during this period, a departmental
inquiry was held against the applicant. A charge sheet
was prepared in 1975 and it contained in all 4 charges.
The Inquiry Officer held an inquiry and he submitted his
report dt. 4.10.1978 to the disciplinary authority. The
disciplinary authority passed an order dated. 15.4.1981.

...2.

Charge No.1 was kept pending while charges Nos.2 and 4 were held not proved. However, it was found that charge No.3 was proved and for the misconduct covered by charge No.3 the applicant's increment was withheld for one year. This charge no.3 mainly consists of violation of rule 18(2) of the Central Civil Service (Conduct) Rules 1964. That rule prohibits acquisition of any property without the previous permission of the Government. In the writ petition the main prayer was that the respondents should be directed to furnish a copy of the inquiry report. It appears that such a report was supplied to him later. ^{Therefore} ~~However~~, the above mentioned main prayer in this litigation did not survive.

3. However, after the matter was transferred to this Tribunal, the applicant sought to amend his original application. The main purpose of this amendment is to challenge the 'Inquiry Report' and the consequent punishment imposed upon him. The respondents have filed their reply to the said amendment application, as well.

4. When the matter was called out on 19.6.1986 for admission and for considering the amendment application, the applicant and Mr. Pradhan, for the respondents, stated before us that the matter might be finally heard and decided after allowing the amendment. This transfer application was thereupon admitted. Mr. Pradhan waived service of notice. As suggested by the applicant and Mr. Pradhan we heard the main application straightway.

5. The impugned order is passed by the President and thus obviously there cannot be any appeal against that order though a review application is permissible on certain grounds. The question could have arisen as to whether remedy by way of review can be said to be a remedy which the applicant should have exhausted before approaching this Tribunal. However, Mr. Pradhan submitted that the respondents do not want to raise such a technical point, and that the matter might be heard on merits, even though the review application had not been filed. In view of this statement made by Mr. Pradhan, it is not necessary to consider the decision of the Supreme Court in the case of U.P. V/s. Mohammad Noor, Respondent, reported in A.I.R.1958 S.C.86. In that case it was held that the High Court can (even where remedies by way of an appeal etc. have ...3.

P. B. Chatterjee

not been followed) exercise writ jurisdiction whenever there is an error, irregularity or illegality touching the jurisdiction or procedure. However, this aspect is not now relevant.

6. The main contentions of the applicant are threefold. It appears that during the pendency of the inquiry the applicant had requested that the inquiry should be assigned to a Judge. It was not granted. The applicant, therefore, contends that the inquiry conducted by a person other than a Judge was bad. We are not able to accept this submission. Departmental enquiries are generally entrusted to some official of the concerned department itself. It would be too much to hold that whenever ^{an} the official against whom ^{an} inquiry is to be conducted so desires, the inquiry should be assigned to a Judge. This is more so when in the present case where the nature of the allegations is such they could be gone into by an Inquiry Officer who is not a Judge.

7. The charge which has been held proved against the applicant is that he bought a lease-hold property in London without previous knowledge and sanction of the competent authority thereby violating Rule 18(2) of the C.C.S.(Conduct) Rules. The Inquiry Officer has relied upon 3 documents described as S-7, S-8 and S-9 to show that the applicant had bought the lease-hold of a certain property in London in 1969. The applicant examined his own father G.R.Anand as a witness before the Inquiry Officer. The father stated that the owner of the property in question was Subodh Kumar Anand and not the applicant. He added that he had a registered document, which he was prepared to show to the inquiry authority, but would not be able to part with. It was contended by the applicant that in view of the evidence of G.R.Anand, the Inquiry Officer should not have relied upon the 3 documents S-7, S-8 and S-9. The applicant further argued before us that these documents should not have been read in evidence, as they had not been properly proved. Mr. Pradhan submitted that such a contention had not been raised by the applicant at any time, earlier. At the time of hearing of this application, the respondents brought the entire records of the inquiry.

The applicant was not able to show us from that record anything to suggest that he had objected to these three documents being taken in as evidence. Another contention of Mr. Pradhan is that a departmental inquiry could not be treated on ^a par with a judicial proceeding and that the technical aspect about the proof of documents should not be insisted upon. According to him, this is even more so, when the documents consist of correspondence between a ^{firm of} Solicitors in London and the Office of the High Commissioner in London. We do not propose to go into this contention here. Suffice it to say, that in the absence of any objections having been raised at the stage of inquiry, it is too late to contend before us for the first time that the documents should have been proved. ^{As} Mr. Pradhan contended, ~~that~~ the Inquiry Officer could have called necessary witnesses to prove the documents if the applicant had objected to their admission in evidence in the inquiry. Leaving that aside, the applicant has submitted that the Inquiry Officer should have relied upon the evidence of the applicant's father in preference to the evidence offered by the documents S-7, S-8 and S-9. We would like to state in brief the contents of these documents.

- (i) Ex.S-7 is a letter dated 19.8.1969 from M/s. Anthony, Gane & Co, Solicitors to the Borough Treasurer, London Borough of Hounslow. The Solicitors state that they are acting on behalf of R.H. Williams Properties, Limited who had negotiated a sale of the property at 3c Geraldine Road, W.4 to Mr. S. Anand and request the Borough Treasurer to address future demands for rates to Shri Anand.
- (ii) Ex.S-8 is a letter dated 9.7.1970 from the said Borough of Hounslow to the applicant drawing his attention to the accumulation of builder's rubble in the rear garden of the property at 3c Geraldine Road, Chiswick W.A. and requesting him to issue "the necessary instructions for them to be dealt with".

(iii) Ex.S-9 is another letter dt. 7th August,1970 from the same Solicitors as in (i) above to the First Secretary to the High Commission of India in London. We would like to reproduce the text of that letter below :

" 3c Geraldine Road, Chiswick

Thanking you for your letter of the 4th instant, with enclosures, the lease of the above was transferred to Mr. Sudhish Anand on the 29th August, 1969 for a consideration of £ 1750."

The name of the applicant is Sudhish Anand and he does not dispute that the reference is to him only. It was however contended before us that the inquiry officer should have discarded all this evidence, and should have acted upon evidence of the applicant's father.

8. Shri Pradhan contended on behalf of the respondents that it would not be proper for us to appreciate afresh the evidence led before the inquiry officer. What we were expected to do was to find out whether there was any evidence on which the Inquiry Officer and the disciplinary authority could have arrived at the conclusion, which they did. If such evidence existed it would not be for us to hold that the said evidence was not adequate. All this was within the jurisdiction of the inquiry officer and the disciplinary authority. We could interfere with the finding only if there was no evidence at all to support it. So ran Mr. Pradhan's argument. Further Mr. Pradhan submitted that the evidence of the applicant's father does not really contradict the position that emerges in S-7, S-8 & S-9 above. In cross-examination, the applicant's father stated that the lease deed of the premises was in the name of Subodh Kumar Anand and it had been registered on 21st December, 1970 and the price paid was £ 3000; the said lease deed, showed the applicant's mother Smt. Sushila Devi Anand as the previous lease holder from 14th January, 1970. The solicitors informed the High Commissioner in exhibit S-9 that the lease-hold rights had been transferred to the applicant on 29th August, 1969 for a consideration of £ 1750. The father's statement that the applicant's mother and brother became registered lease holders of the property in 1970 is in no way inconsistent with

what the solicitors had stated as it refers to events reported to have happened later. This is what Mr. Pradhan submits before us so far as the evidence of the applicant's father is concerned. After the hearing of this application was concluded on 19-6-1986, the applicant made a miscellaneous petition urging that it was not right to say that this Tribunal cannot interfere on the ground of inadequate evidence and can do so only where there is no evidence. The Tribunal, he contends, has much wider powers than a High Court under Article 226 of the Constitution.

9. For the present we do not propose to go into the controversy as to whether we are expected to reappraise evidence and to pronounce on its adequacy when dealing with applications like the present one. It may have to be done in an appropriate ^{case} time. As we have mentioned earlier, there is nothing on the record to show that the applicant had disputed the admission of the London Solicitors' letter dtd. 7-8-1970 in evidence before the Inquiry Officer. That letter was quite specific in its content as it said that the leasehold rights of the property in question had been transferred to the applicant on 29-8-1969 for a consideration of £ 1750. This was a part of the correspondence maintained regularly in the High Commission of India, London. We are unable to hold that the Inquiry Officer or the disciplinary authority went wrong in accepting the evidence of this letter, particularly when it was so specific and unequivocal in its import. The evidence of the applicant's father, dealing as it did with an event that was reported to have happened later was not inconsistent with the Solicitors' letter. The Inquiry Officer had no other evidence before him to contradict the Solicitors' letter. We would therefore uphold his finding.

10. It was next urged by the applicant that the inquiry and the punishment were mala fide. Our attention was drawn to certain earlier litigation. It appears that the applicant had filed a writ petition in 1971 in the Delhi High Court challenging his delayed promotion to the higher grade. That petition was finally decided by the Appellate Court on 26th August, 1977 in favour of the applicant. The applicant filed

By S.

another writ petition No.262 in 1979 in the Delhi High Court praying for a particular date for deemed promotion and fixing ~~the~~ his seniority. On 6th of August,1979, the High Court granted a deemed date of promotion to the applicant namely 16th of September,1971. The Government's appeal was partly allowed on 14th May,1981. The Government was directed to re-fix the deemed date of promotion. The High Court granted 6 months' time for re-fixing the seniority. This was not done. The applicant, therefore, filed contempt proceedings in the Delhi High Court. On 13th July,1984 the proceedings were dropped after the concerned officers tendered their apology. On 23.9.1982 the applicant who was then posted at Bombay was transferred to Calcutta. He challenged this transfer by filing writ petition No. 2726 of 1982 in the High Court of Bombay. The Appellate Bench of the High Court in Appeal No. 479 of 1985 quashed the said transfer order. The applicant has produced a copy of that judgment which set out the facts relating to the earlier litigation in detail and accepted the applicant's plea of mala fides. The applicant, therefore, submits that this previous history of litigation would be an indication to show that the departmental inquiry was nothing but a malafide action taken against him. In our opinion, it would be difficult to connect the earlier proceedings with the present departmental inquiry. Writ Petitions claiming promotion and seniority by a Government servant are not un-common. It is well known that such matters arise very often in a number of departments and it would be too risky to suggest the Government would entertain a grievance against an official simply because he went to the Court. It is true that the applicant had filed a contempt application in 1981, but, what is important is that the charge sheet was prepared against the applicant earlier on 4.10.1978. The Inquiry Officer was appointed in 1978 and in that very year he completed the inquiry and submitted his report on 4th October,1978. The UPSC gave its opinion and, thereafter, the impugned order was passed by the President on 15th April,1981. Thus the tendering of apology by certain officials in the contempt proceedings on 13th July,1982 as also the transfer order of the applicant in September, 1982 would not be relevant. We do not find anything to suggest that the proceedings are vitiated on account of any mala fides.

11. It was lastly urged that the order of punishment should be read in a manner different from the assumption made by the Government Officials. The penalty was inflicted on the applicant by order dated 15th of April, 1981 and the relevant portion reads as follows :-

" a penalty of withholding of increment for one year without cumulative effect shall be imposed on the said Shri Anand ".

The applicant contends that this order took effect immediately on 15th of April, 1981 even though the next increment was to fall due only on a later date. The grievance of the applicant is that the penalty order should have been more explicit. In our opinion, the order is very clear and it has to take effect only from the date on which the increment would fall due.

12. The net result, therefore, is that this application fails. It is dismissed with no orders as to costs.

B.C. Gadgil
24.7.1986
(B.C.GADGIL)
VICE - CHAIRMAN

P. Srinivasan
(P.SRINIVASAN)
MEMBER