

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

TR.NO. 5/86

Mr. Raghunath Dass Gupta,
Jawahar Colony, Pulgaon,
Dist. Wardha,
Maharashtra

APPLICANT

V/S.

Union of India
through
Secretary,
Ministry of Defence
New Delhi.

2. Director of Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters, DHQ.P.O.
New Delhi.

RESPONDENTS

CORAM : Hon'ble Member (A) J G Rajadhyaksha
Hon'ble Member (J) M B Mujumdar

APPEARANCE :

Applicant in person

Shri S.R. Atre
(for Shri P.M. Pradhan)
Advocate
for the Respondents

JUDGMENT

Dated: 5.2.1988

(PER: J.G. RAJADHYAKSHA, MEMBER (A))

Regular Civil Suit No. 407/84 of the file of the Civil Judge, Sr. Division, Wardha has been transferred to this Tribunal in pursuance of Section 29 of the Administrative Tribunals Act, 1985. This suit filed on 12th November, 1984 was directed against an order of dismissal dated 23.3.1984 passed by the President of India and prayed that the dismissal be quashed and the applicant reinstated in service with all consequential benefits.

2. The facts as stated by the applicant (original plaintiff) are that he was selected by the UPSC and appointed as an Assistant Security Officer in the Organisation known as the Ordnance Services under the Director of Ordnance Services. He was posted at Pulgaon in the Central Ammunition Depot w.e.f. 25.10.1977. There was some alleged incident on 23rd August, 1980 in which the applicant made some enquiries from a ~~cattle herdsman~~ and learnt that some illegal gratification had been paid to some Army Officers. The written permission granted to the ~~cattle herdsman~~ by military officers was seized by the applicant who recorded the ~~cattle herdsman's~~ statement. In order to forestall any further enquiries and get these documents out of the custody of the applicant, some attempts were made by the Army Officers. He was given a charge sheet 8.10.1980, received by him on 10.10.1980. The applicant replied to it. A regular departmental enquiry was commenced on 31st March, 1982. It was concluded on 23rd September, 1982. The Enquiry Officer found the applicant guilty and thereupon an order of dismissal was passed by the President of India. The applicant had been placed under suspension by an order dated 17th September, 1980 i.e. prior to the service of the first memorandum of charges and he had continued under suspension until the date of dismissal. It must also be noted that in the application (plaint), there was no prayer regarding the suspension order or subsistence allowance and allied issues.

3. The respondents had levelled the following charges against the applicant. Article I was (1) improper removal of official letter dated 19.8.1980 on 25.8.1980 from the office records of ISO, CAD, Pulgaon, in contra-

vention of section 5 of Indian Official Secrets Act, 1923 (the equivalent of CCS (Conduct) Rules, 1964; (b) pushing his superior for making a forceful exit from the ISO Office; (c) using abusive language against military officers; (d) making false allegations against superior military officers of assault (e) using abusive language against the civilian ~~settler~~ ^{herdsman} in the presence of superior officer. The second article of charge was of wilfull disobedience of the lawful orders given by the administrative officer as well as the officiating commandant. This article is mentioned in three parts; thus there were in all eight allegations of misconduct. There are several averments in the plaint but they boil down to allegations of false charges, wrong procedure in holding the departmental enquiry, rejection of review applications filed by the applicant, and serious discrepancies in the evidence recorded and relied upon by the Inquiry Officer; and, therefore by the disciplinary authority in passing the final order.

4. The respondents (original defendants) No. 1 to 3 had filed their written statement in the Civil Court at Wardha denying in general as well as specifically all allegations of mala fides and failure to observe proper procedure. The procedure in enquiry was scrupulously followed including granting applicant's requests for change in the Inquiry Officer. There was no attempt on the part of the Inquiry Officer to "fill in the gaps" in the evidence by his own questions. The President had passed the ultimate disciplinary order accepting the enquiry report. The written statement also refutes any allegations that the applicant was beaten up and there are witnesses to prove this allegation. The statement .. 4

further denies that there was any non application of mind either by the Inquiry Officer or by the Disciplinary Authority.

5. Copies of the entire enquiry proceedings have been produced before us and contain the entire evidence as recorded by the Inquiry Officer.

6. The applicant appeared in person and argued his case, Briefly, his contentions are that the departmental enquiry should have been entrusted to the Commissioner for Departmental Enquiries. Shri Atre appearing for Shri P.M.Pradhan Counsel argues that there is no such mandatory provision. The applicant then argues that if there was an allegation of violation of the Official Secrets Act, prosecution should have been launched instead of holding a departmental enquiry. Shri Atre replies that everything depends upon the gravity of the situation, and in any case there is no bar to holding a departmental enquiry. The applicant then argues that one Captain Gurung who was witness No. 10 of the prosecution had expired and yet his evidence was used and was relied upon. Applicant draws our attention to page 117 of the compilation containing the enquiry papers. He also states that the Inquiry Officer wrongly observed that the evidence of Gurung could be used by both the parties. Shri Atre points out that Captain Gurung's statement was recorded in the preliminary enquiry. A copy thereof was given to the applicant. Though there was no opportunity for cross examination of the deceased witness by applicant the Inquiry Officer decided that the statement could be used by both sides for ^Qcorroboration or rebuttal as may be necessary. Therefore there is nothing wrong and he does ..5

not agree with the applicant that Gurung's evidence should have been treated as inadmissible. Applicant finds fault with the Inquiry Officer's assessment and evaluation of the evidence. He points out that while the Inquiry Officer holds applicant's guilt as proved relying upon Gurung's evidence recorded in preliminary enquiry., his evaluation of the defence is, however, absolutely wrong. Applicant then refers to introduction of new evidence of Ram Munneswar Singh. He says that this evidence was introduced after a lapse of $2\frac{1}{2}$ years. This witness had not been examined in preliminary enquiry. No other witness for the prosecution had referred to him. Thus this evidence was not for filling the gaps only but in fact for remedying an inherent lacuna. Shri Atre states that indeed a new eyewitness was called as permitted by Rule 14 (15) of CCA (CCS) Rules for induction of fresh evidence before the closure of enquiry. Since the applicant had an opportunity to cross examine him, there is no violation of principles of natural justice. The applicant then argues that statements recorded in preliminary enquiry were not made available to him for purposes of cross examination. He cites AIR 1971, Delhi 133. All the same, he admits that the witnesses were examined in his presence and he was given an opportunity of cross examination. Shri Atre points out the daily order sheet of the departmental enquiry proceedings, and contends that statements in preliminary enquiry had been made available to the applicant in the shape of copies before the examination in chief as well as cross examination. Therefore, he states that the applicant's arguments are not well-founded. Applicant then argues that the first information report (F.I.R.) of misconduct sent to the superiors, the letter about this incident and what is termed as "unusual" .. 6

occurrence" report were not made available to him. Shri Atre points out from the written statement that there can be no "first information report" (FIR) in departmental proceedings. The daily order sheets show# that except for privileged documents all requests of applicant had been complied with. The applicant then argues that whereas the charge was framed about removal of an official communication by him, that communication was not produced in enquiry. There was also supposed to be a secret report by the District Magistrate about this incident. It is relied upon by the respondents. Privilege is, however, claimed and access to this documents denied to the applicant. The applicant then argues that privilege was unnecessarily claimed in respect of certain documents and they were not made available to him. Therefore, the enquiry is vitiated; and if the enquiry is vitiated, both the findings of the Inquiry Officer and the penalty order must be quashed. He reiterates that the evidence lacks corroboration and is, therefore, unreliable. He then goes on to pointout what he describes as discrepancies in the evidence and contradictions in the statements of the witnesses. Even the timings mentioned are wrong. Shri Atre argues in reply that since the occurrence itself of an incident has not been denied, minor discrepancies in the timing and typographical or grammatical errors are not material. Similarly, he argues that it is for the Inquiry Officer to assess the evidence and record his findings. It is not for this Tribunal to reassess the evidence. It is also not for this Tribunal to interfere unless it concludes that the Inquiry Officer's findings are perverse. There is nothing in the record of enquiry nor in the contentions of the applicant to lead this Tribunal to the .. 7

conclusion that the Inquiry Officer's finding were perverse. In the circumstances, he argues that there is nothing wrong either with the Inquiry or with the findings of the Inquiry Officer, as well as the Disciplinary Authority's order dismissing the applicant from service. He, therefore, prays that ~~that~~ the application be dismissed with costs.

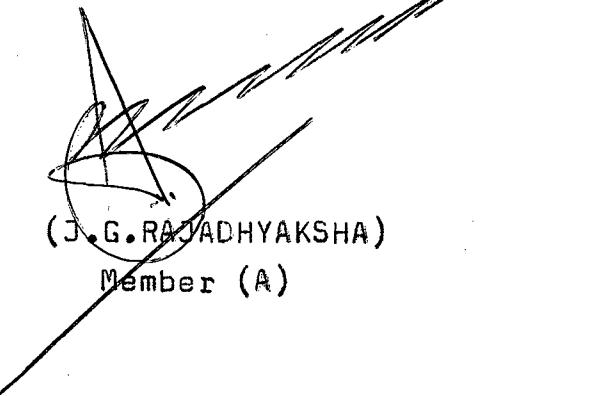
7. We have patiently heard the applicant, as he was not represented by an advocate. We have also perused the entire record and we have come to the conclusion that the applicant has not made out any case for interference at the hands of this Tribunal. We have found that the procedure followed by the respondents is correct, according to the rules. The evidence has been recorded with due opportunity to the applicant to cross examine witnesses. We feel that the so called discrepancies in the evidence argued by the applicant are not so serious as to warrant a finding that there is complete lack of evidence. This is not, therefore, a case of "no evidence". The Inquiry Officer's assessment of evidence and his findings are in no way perverse or improper. We agree with the learned advocate for the respondents that we are not required to reassess the evidence when we agree that the Inquiry Officer's findings are not perverse. It is difficult to accept applicant's contention that Military Officers of the ranks mentioned by him would be swayed by malice towards him, and extraneous considerations, or that the District Magistrate would collude with them for the sake of bringing applicant into trouble and carrying him to the stage of getting dismissed from service. We, therefore, do not

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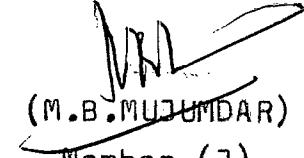
see any reason to interfere with the dismissal order passed against the applicant by the President of India. The application is, therefore, liable to be dismissed.

ORDER

The application is dismissed. Parties to bear their own costs.


(J.G. RAJADHYAKSHA)

Member (A)


(M.B. MUJUMDAR)

Member (J)