

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1134/96.

Date of Decision : 31. 3. 97

Dr. R. P. Rai Petitioner.

Shri S. P. Saxena Advocate for the Petitioner.

VERSUS

Union Of India & Others Respondents.

Shri R. K. Shetty, Advocate for the Respondents.

CORAM :

HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
, MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1134/96.

Dated this 31/12, the Wednesday of March, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Dr. R.P. Rai,
Senior Lecturer,
Department of Mathematics,
National Defence Academy,
Khadakwasla,
PUNE - 411 023.

... Applicant

(By Advocate Shri S.P. Saxena)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
D.H.Q. P.O.,
New Delhi.

2. The Commandant,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

3. Shri J.C. Maurya,
Reader,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

... Respondents.

(By Advocate Shri R. K. Shetty.

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

Heard Shri S.P. Saxena for the applicant
and Shri R. K. Shetty for the respondents.

2. The Tribunal vide its order dated 19.11.1996
passed an interim order stating that in the facts and
circumstances of the case, further enquiry against the
applicant is stayed. Shri R.K. Shetty appeared on behalf
of the respondents and sought time to file reply.

The respondents filed their reply on 06.01.1997. The applicant filed a rejoinder and the respondents also filed a sur-rejoinder. The pleadings are complete.

3. The only prayer made in this O.A. is to quash and set aside the impugned order dated 10.10.1996 which reads as below :

" WHEREAS, disciplinary proceedings under Rule 14 of CCS (CC&A) Rules, 1965 were initiated against Dr. R.P. Rai, Senior Lecturer, in NDA, Khadakwasla vide Memorandum No. 5(25)/95/D(Lab) dated 16th Feb., 1996 for certain lapses, while functioning as Senior Lecturer in the Department of Mathematics of NDA, Khadakwasla.

AND WHEREAS, Dr. R.P. Rai, submitted his defence statement dated 18th March, 1996, denying the charges levelled against him. Consequently, an Oral Inquiry was instituted vide Memorandum of even number dated 30th April, 1996.

AND WHEREAS, Dr. R.P. Rai submitted a representation dated 15th June, 1996, requesting to change the Inquiry Officer, Shri J.C. Maurya, on the grounds of bias.

AND WHEREAS, the President, after carefully considering the representation of Dr. R.P. Rai in the light of relevant facts and circumstances of the case, is of the opinion that the reasons furthered by Dr. R.P. Rai, for change of the Inquiry Officer, are very trivial and lack conviction and cannot be accepted as the basis for change of Inquiry Officer.

NOW THEREFORE, the President, in exercise of the powers conferred upon him under Rule 29 of CCS(CC&A) Rules, 1965, hereby rejects the said representation of Dr. R.P. Rai.

(By order and in the name of the President)."

The applicant also seeks direction to the Respondent No. 1 to change the Inquiry Officer, Shri J.C. Maurya and appoint another Inquiry Officer from any other Central Government Establishment at Pune.

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4. The Tribunal vide its order dated 20.01.1997 directed the respondents to file reply stating whether they can appoint any other Enquiry Officer within the organisation belonging to departments like Languages or Social Sciences, etc. Though the respondents vide para 18 of the reply contended that the respondent no. 2 had clearly suggested that while the perceptions of the applicant were wrong and aimed at delaying the inquiry, however, if required, any other officer from any institution may be detailed for the same. At the same time, vide para 32 of the reply the respondents submit that nowhere in the O.A. the applicant has clearly set out the reasons why he suspects the bonafides of Respondent No. 3, i.e. the Inquiry Officer and hence his demand is totally unjustified and frivolous. Again in the sur-rejoinder at para 6 the respondents submit that on the basis of the representation made by the applicant for change of Inquiry Officer to Respondent No. 1 was examined and the Respondent No. 2 while forwarding comments on the representation to Respondent No. 1 made it clear that if Respondent No. 1 considers it fit to change the Inquiry Officer, Respondent No. 2 will have no objection to appoint any other officer from this organisation, etc. The stand taken by the respondents in the written statement and the sur-rejoinder is contradictory in terms. The respondents initiated the departmental enquiry against the applicant and the charges levelled against him reads as follows :

" ARTICLE - I

That Dr. R.P. Rai, while functioning in the Department of Mathematics, NDA Khadakwa-sla, has used intermperate/abusive language in his communication addressed to his senior officers in NDA and has thus exhibited an act of insubordination.

R.P.Rai

2. Thus by his above act, the said Dr. R.P. Rai exhibited conduct unbecoming of a Government servant and made himself liable for disciplinary action in terms of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE - II

That Dr. R.P. Rai, while functioning as lecturer in the Department of Mathematics, NDA Khadakwasla was not present in the department as per working hour timings on 15 & 16 Jul., 94, 03 & 11 Aug., 94 and on 05 Nov., 94. Further, he was absent from Academy functions on 07 Sept., 94, 20 & 22 Oct., 94 and on 13 Nov., 94.

2. Thus by his above act, the said Dr. Rai exhibited conduct unbecoming of a Government Servant and made himself liable for disciplinary action in terms of Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE - III

That Dr. R.P. Rai, while functioning as lecturer in the Department of Mathematics, NDA Khadakwasla has not cleared monthly Mess Bills for 15 months w.e.f. 16 Aug., 93 to Oct., 94 which resulted in financial loss to the Institution. Despite reminders, he continues to disobey the orders of higher authorities of this Academy.

2. Thus by his above act, the said Dr. R.P. Rai exhibited conduct unbecoming of a Government Servant and made himself liable for disciplinary action in terms of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. "

The contention of the applicant is that, the cause for issuing the charge-memo is his discontinuation from the membership of the Officers' Mess vide his letter dated 15.09.1993 which reads as below :

" After necessary contemplation, I have decided to discontinue with the membership of the Officers' Mess forthwith.

My dues may kindly be adjusted against my deposit with the Mess.

I do not wish to receive any memento."

Further, again vide his letter dated 06.10.1993 addressed to the Principal, National Defence Academy, he stated his decision to discontinue with the Membership of the Officers' Mess, N.D.A. forthwith i.e. with effect from 15.09.1993 and also stopped availing of Mess facilities since then. However, the Officers' Mess, NDA, continued to bill him for the functions held after the date. Therefore, he requested the Officers' Mess not to bill him for activities held after 15.09.1993 and prepare a final bill adjusting his deposit with them and excluding memento charges, so that he could pay off his dues, if any. Despite the same, the officiating Principal, vide his letter dated 05.11.1993 directed the applicant to clear the pending mess bill and informed that necessary action will be taken on his application for withdrawing the membership from the mess after arrival of Dy. Comdt. & CI from Delhi. It is also stated that he may give reasons why disciplinary action should not be initiated against him for his conduct. The applicant again on 12.01.1994 made a detailed representation to the Officiating Principal reiterating the same and also requested that if any payment after adjusting his deposit, is to be made, he shall make the payment and also stated that the Membership of the Mess is not a mandatory one but it is optional, and as far as a Civilian officer of the N.D.A. is concerned, it is not mandatory for them to become a member of the mess. Since he had taken a house beyond 10 Kms. of the Academy, he discontinued the Membership of the Mess and thereby, the respondents issued the charge-memo for discontinuation from the membership of the mess and he defied the order of the higher authorities. That is the starting point. Nowhere it is mentioned by

the respondents till the applicant's discontinuation from the membership of the Mess, that the applicant has not paid the bill for the last 15 months w.e.f. August 1993 till October 1994. Nowhere it is mentioned that the applicant was availing the services of the Mess after he discontinued the membership of the mess w.e.f. 15.09.1993. On perusal of the letter dated 06.01.1994 it looks as though the respondents are demanding the money from the applicant on the basis of mandatory membership with the Mess, for which no concrete evidence has been adduced by the respondents in this behalf.

4. Prima-facie, the membership of the Mess is an option for civilian staff. The Officers' Mess is a Welfare unit of the National Defence Academy Establishment for the officers, who desire to join its membership. The Mess is run by the Respondent No. 2 and its membership is not compulsory for the civilian officers. Those who do not want to be the member, the respondents cannot compel them to become the member of the Mess. Neither any statutory rules nor any binding orders are shown by the respondents during the course of hearing. Admittedly, the applicant is governed by the C.C.S. Rules and an Army Officer is governed by the Defence Service Regulations. On perusal of the charge-memo it is noticed that Article No. I and III are based on his discontinuation from the membership of the mess. Unless the respondents are able to establish the membership of the Mess as mandatory for the civilian employees, it is rather surprising to note how they could initiate disciplinary action against the applicant, who is ⁱⁿ a teaching staff.

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So far as the second article of charges is concerned, though the applicant was not present on a particular time, it is for him to give a satisfactory answer to the enquiry officer and establish his case before the enquiry. At this stage, we are not inclined to go into the merit of the case, however, we have to consider the allegation of the applicant that the Inquiry Officer should be changed. The applicant has expressed an apprehension that the Inquiry Officer is bias ^{against} against him. The representation of the applicant for change of the Inquiry Officer was summarily rejected by the respondents. Infact, the order dated 10.10.1996 passed by the respondents, which is challenged, was partly in response to the representation of the applicant dated 15.06.1996 requesting for change of the Inquiry Officer. In this representation (page 48 of the O.A.) the applicant has made the following points :

- (i) Shri J.C. Maurya, is subordinate to the officers who are instrumental in issuing the charge-sheet against him.
- (ii) Shri J.C. Maurya is in adversary on many occasions. He is not a member of separate department ~~but~~ he shares with him common headquarter, seniority list and pay roll. He is superior in rank only because the departmental promotions were not taken place for considerable period of time
- (iii) During September 1995, while invigilating an examination at the NDA, two cadets were caught copying by him. On the basis of his report, the N.D.A. authorities appointed a Court of Inquiry to investigate the circumstances under which the copying took place and said Mr. J.C. Maurya was a

was a member of the Court of Inquiry. He went beyond the frame of reference of the inquiry to get me warned and counselled for not observing a part of the faulty SOP (Standard Operating Procedure) laid down for the examinations by the NDA) which does not require invigilators to catch cadets using unfair means during examinations.

(iv) On the above grounds, the said Shri J.C. Maurya cannot be considered to be disinterested and unbiased. It is therefore most humbly prayed that another civilian inquiry officer of appropriate rank, from an organisation other than N.D.A. - for example CWPRS, IAT, NCL, ARDE, ERDL, IITM, NIC, etc. may kindly be appointed to conduct the inquiry.

The allegations against the Inquiry Officer may or may not be true but they make a reasonable basis for apprehension in the ~~mind~~ of the applicant that justice will not be done. It is a cardinal principle of judicial administration that justice should not only be done but should also appear to be done. It was in this context that this Tribunal passed the order dated 20.01.1997 asking the respondents to file reply stating whether they can appoint any other Enquiry Officer within the organisation belonging to departments like Languages or Social Science, etc. and the respondents have agreed to do so. Accordingly, we hereby direct the respondents to change the Inquiry Officer and to appoint an Inquiry Officer of an appropriate rank, who is in no way connected with the department in which the applicant is working and about

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whom the applicant cannot have any reasonable basis for apprehending that he is biased. We make it clear that we reject the contention of the applicant that any officer subordinate to the disciplinary authority would be inherently biased. It is in this context that we are not able to accept the request of the applicant to direct appointment of an Inquiry Officer outside the organisation.

5. Accordingly, we hereby direct the respondents to appoint a fresh Inquiry Officer. The Inquiry Officer may proceed with the inquiry and complete the inquiry within a period of two months from the date of his appointment. However, while considering the charges, the Inquiry Officer may consider the observations made by the Tribunal in so far as Charge No. I and III is concerned and any order passed by the respondents in this behalf will be under the scrutiny of the Tribunal. If the applicant is aggrieved by the order passed by the respondents, liberty is given to him to agitate the matter, if he is so advised.

6. The O.A. is disposed of with the above directions. There will be no order as to costs.

M. R. Kolhatkar
(M. R. KOLHATKAR)

MEMBER (A).

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).