

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 408/96 Date: 21.7.2000

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON. SHRI B.N. BAHADUR, MEMBER (A)

Jethanand D. Lalwani
Block No. A-78,
Room No. 463, Pinky Apartments,
Flat No. 105,
Ulhasnagar - 421 001.
Dist. Thane .. Applicant
(By advocate Shri G.K.Masand)

-versus-

1. General Manager,
Canteen Stores Department
'Adelphi' Maharshi KarveRoad,
Mumbai - 400 020.
2. Commodore Khalid Hasan,
Jt. General Manager-I
"Adelphi" M.K. Road,
Mumbai - 400 020. .. Respondents
By counsel Shri R.R.Shetty for
Mr. R.K. Shetty

-: O R D E R :-

(Per Hon. Shri B.S.Jai Parameshwar, Member (J))

Heard Mr. G.K.Masand, learned
counsel for the applicant and Mr. R.R.Shetty for
Mr. R.K.Shetty, learned standing counsel for the
respondents.

2. The applicant has in this application challenged the order dt. 19-3-1996 passed by the respondent no.2, removing him from service on a proved charge of misconduct.

3. A few facts are necessary to be narrated. The applicant was working as LDC Accounts Branch (PN 2310)HQ, Bombay. During 1992 he was absent and stated to be ill. The respondent authorities directed the applicant to appear before INHS Ashwini, a hospital meant for Armed Forces, for a thorough medical check-up. It is stated that he was under treatment with the said hospital.

4. While he was thus absent from duties, it appears, he was involved in a criminal case before the Kurla Police Station authorities. He was arrested and detained by police authorities ^{for a period} exceeding 48 hours.

5. On hearing this the respondent No.1 by his proceedings dt. 3/Admn/PM-2310/557 dt. 21-6-1993 (Exhibit-I page 30) placed the applicant under suspension pending investigation into the criminal case.

6. While the respondents were considering about continuation of the applicant under suspension or for revocation they took a decision to initiate disciplinary proceedings.

7. Accordingly respondent no.2 issued a charge memo dt. 27-5-1994. The applicant denied the charges. An enquiry was conducted into the charges.

The Inquiry Officer held charge No.1 as proved and charge no.2 as not proved.

8. The applicant was given an opportunity to make representation against the findings recorded by the Inquiry Officer.

9. Thereafter considering the representation of the applicant the enquiry records and the findings recorded by the Inquiry Officer the respondent No.2 imposed the penalty of removal from service on the applicant by the impugned order.

10. The applicant has challenged the said order on the following grounds :

(a) The impugned order is arbitrary and malafide exercise of power by respondent no.2;

(b) The impugned order is in violation of Article 311(1) of the Constitution of India;

(c) The Inquiry Officer has not conducted the enquiry in accordance with Rule 14 of the CCS(CCA)Rules;

(d) The Inquiry Officer conducted the enquiry in such a manner as he put the burden on the applicant to prove his innocence without first directing the disciplinary authority to

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substantiate the charges;

(e) After acquittal in the criminal trial he submitted representations to the respondent authorities to reinstate him in service but the respondents initiated disciplinary proceedings; and

(f) Even the respondents had not paid the subsistence allowance for him during the period he was under suspension;

(g) The learned counsel for the applicant during the course of his arguments brought to our notice the irregularities committed by the Inquiry Officer during the conduct of the enquiry and also the impugned order to contend that the same has been passed by the respondent No.2 without application of mind. It is his submission that when the Inquiry Officer had recorded findings on Charge No.2 as not proved the disciplinary authority gave a contrary reason to impose the punishment of removal on charge no.2.

12. The respondents have filed ^{the} 1 reply.

They submit that the applicant remained unauthorisedly absent upto 11-6-93. He was placed under suspension w.e.f. 12-6-93. The applicant had not obtained any permission or leave ^{of} for absence from the competent authority. The alleged sickness put forth by the applicant is not substantiated by the medical evidence.

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That the applicant was in possession of certain materials belonging to the Stores Department and that therefore the impugned order is justified.

13. As regards the competency of the respondent no.2 to pass the impugned order they submit that as per the schedule of powers under the CCS(CCA) the respondent no.2 is the disciplinary authority and that he has issued charge memo and therefore he was competent to impose any of the punishments enumerated under Rule 11 of the CCS(CCA) Rules. Thus they rely upon the schedule of power issued in No.70/83 dt. 10-7-1983. Thus they submit that the respondent No.2 was competent to pass the impugned punishment order. Further they submit that since the applicant has not exhausted alternative remedies available under the Rules the application is no premature.

14. As regards the application challenging the order passed by the Respondent No.2, the learned counsel for the applicant submitted that the respondents were given time to state as to who the appellate authority and the Tribunal knowing fully well the contentions raised by the respondents in the reply admitted the application and that, therefore, ground of existence of statutory remedy under the rules or the application being premature or .6/-

otherwise cannot be a ground to throw the application out. He submitted that the application deserves to be allowed as the impugned order is in utter violation of the Article 311 of Constitution of India.

15. Even the learned counsel for the respondents cited decisions to contend that powers of the Tribunal are very much limited in the disciplinary proceedings.

16. It has been held by the Hon. Supreme Court in the case of B.C.Chaturvedi vs. U.O.I. and Ors. (AIR 1996 SC 484 - para 18, page 489) that the judicial review is to consider whether a proper decision has been taken by a competent authority. Therefore at this stage we are required to consider whether the respondent no.2 was competent to pass the impugned order of removal.

17. The contention of the applicant is that he has been appointed by General Manager i.e. Respondent No.1. He has produced letter of appointment dt. 9-1-1982 (Ex. 'B' page 21 to the OA). This has been conveyed by General Manager Canteen Stores Department.

18. The impugned order is passed by Joint General Manager - Respondent No.2.

It is now to be seen whether the respondent No.2 is competent to pass the impugned order of punishment.

19. The respondents have produced the enquiry records. We have perused the same. We feel it proper to reproduce herein Note No.34 dt. 7-1-94.

"Note: 34 Dt. 7-1-94

1. Reference note 31 and 32 ante.
2. A Fair major charge sheet in respect of P.N.2310 Shri J.D. Lalwani is placed opposite for the signature of GM Please.
3. Since appointment letter No.3/A-1 1035/CL-964 dt. 9-1-82 of Shri J.D. Lalwani was signed by J.G.M. I (i.e. J.M.L. Bansal Commodore) for and on behalf GM CSD, disciplinary authority in this case will be G.M. please. "

20. From the above note the respondents were clear that respondent no.1 is the disciplinary authority. In fact the Manager placed the draft charge memo before the Respondent No.1 for his signature. The file has not been placed before General Manager. for his signature. It is stated that the said note reached the GM on 21-2-94 and again on 6-5-1994.

The respondent No.1 has not made any note contrary to what has been stated in Note No. 34.

21. At this stage we may refer to Rule 14(3) of the CCS (CCA)Rules. The phrases appearing thereon "the disciplinary authority shall draw up or cause to be drawn up" clearly demonstrate that charge memo shall be drawn by the disciplinary authority or by the authority to which the disciplinary authority is authorised to draw up the charge memo.

22. The draft charge memo enclosed at Note No.37 could have been verified by the disciplinary authority and subsequently could have authorised his immediate subordinate authority to draw up the charge memo. That has not been done here.

23. However, subsequently the file was placed before the respondent No.2. The respondent No.2 while signing the charge memo had not indicated how he was competent to sign the chargememo. He has not indicated any note contrary to the note No. 34 dt. 7-1-94. Thereafter the file has not been placed before the respondent No.1.

24. On the face of it the delegation of powers relied upon by the respondents cannot be accepted. Those delegation of powers came into

force after 1983 and more over the Manager when he put the said note No.34 dt. 7-1-94 was fully aware of the existence of such instruction as regards the delegation of powers. Despite, the Manager had wrote that since the General Manager had appointed the applicant he would be the disciplinary authority, the Respondent No.2 has signed the charge memo.

25. The delegation of powers enclosed to the reply states that Deputy General Manager is the competent authority to impose all the punishment enumerated in Rule 11 of the Rules with respect to Group 'C' employees. The respondents have not placed any material on record to show that under the delegation of powers a Joint General Manager has been vested with powers to impose any of the penalties enumerated in Rule 11 of the CCS(CCA)Rules. In the absence of any such materials it is not possible to accept that Joint General Manager is equivalent to Dy.General Manager, may be he is lower in rank or higher in rank. But the delegation of powers do not state that Joint General Manager is competent.

26. In the instant case letter of appointment has been issued by the General Manager i.e. Respondent No.1. When that is so, the Respondent No.1 alone should act as the Disciplinary

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Authority. No other authority can act as such unless the delegation of powers specifically provide.

27. In the case of State of Punjab & Ors. vs. Dr. Harbhajan Singh Gresy reported in JT 1996(5) SC 403 the Hon. Supreme Court has observed as follows :

"It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. "

28. Though both the counsels submitted various contentions we feel it proper not to **advert** to the same as we have satisfied that the respondent No.2 was not competent to issue the impugned order dt. 19-3-96.

29. The respondent No.1 shall consider all the grounds raised by the applicant

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in his representation against the findings recorded by the Inquiry Officer and also consider whether the rules permitted the respondent No.2 to sign and issue the charge memo and take a decision.

30. In view of the above discussion the impugned order dt. 19-3-96 is not sustainable in law and is liable to be set aside.

31. Hence the following order is passed :

- (a) The application is allowed.
- (b) The impugned order No.3/Pers/A-3/PN-2310/460 dt.19-3-96 is hereby set aside;
- (c) The respondent No.2 shall place the entire enquiry records before the Respondent No.1 forthwith;
- (d) The respondent No.1 shall pass final order on the charge memo dt. 27-5-1994 in accordance with the rules bearing in mind the observations made by us in the body of this order.
- (e) The period of absence of the applicant from 19-3-96 to this date shall be regularised

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in accordance with the rules
depending upon the decision
to be taken by the Respondent
No.1 as directed above.

(f) The respondent No.1 shall
pass the final order within
one month from the date of
receipt of a copy of this
order.

32. No order as to costs.

B.N.Bahadur

(B.N.BAHADUR)
Member(A)

B.S.Jai

(B.S.JAI PARAMESHWAR)
Member(J)

21.7.2003

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

R.P. No.58/2000
&
M.P.No.699/2000
in
O.A.No.408/1996

Date of decision: 4th April, 2001.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

Shri J.D.Lalvani Applicant
(By Shri G.K.Masand, Advocate)

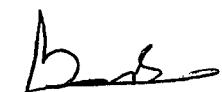
vs.

Union of India & Ors. Respondents
(By Shri R.R.Shetty, Advocate)

O R D E R [ORAL]

[Per: B.N.Bahadur, Member (A)]

We have heard both Counsels on R.P.No. 58/2000 for some length. An error apparent as purportedly pointed out by Shri Shetty is with reference to para 25, where he states that the delegation Order has been annexed. We have gone through this aspect with reference to the judgement in totality. In fact at para 13 this point has been noted. Even if this limited position in para 25 is not factually true, we find that this is not the sole or even the major reason for arriving at the conclusion in the O.A. The conclusion is arrived at, as is evident in the operative part of the judgement, on the basis that only the General Manager in this case is competent to impose penalty, as imposed. The legal point as to whether a (lower) competent authority can make and issue orders of penalty, even if a higher authority made the appointment was discussed. Even here, there is no case for the review



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D.A. 408/1996

petitioner apart from the fact that this is really a point of law that is being agitated. It cannot be agitated in an R.P., even if it carries weight, which it does not. Apart from the matter failing on this count, the R.P. is hit by limitation, which is also an infirmity and R.P. stands dismissed along with M.P. filed for condonation of delay. No orders as to costs.

SLJ
(S.L.Jain)
Member (J)

sj*

B.N.Bahadur
(B.N.Bahadur)
Member (A)