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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: OA 172/91.

Transfer Application No:

DATE OF DECISION: 1st Dec, 94.

HAZARILAL GUPTA Petitioner

S.R.ATRE Advocate for the Petitioners

Versus

UNION OF INDIA & ORS. Respondent

P.M.PRADHAN Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.KOLHATKAR, MEMBER(A).

The Hon'ble Shri D.C.VERMA, MEMBER(J).

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

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

abp

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

O.A.172/91

HAZARILAL GUPTA

... APPLICANT.

V/s.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

Hon'ble SShri M.R.Kolhatkar, Member(A).

Hon'ble Shri D.C.Verma, Member(J).

APPEARANCES:

Shri S.R.Atre - Counsel for
Applicants.

Shri P.M.Pradhan - Counsel for
Respondents.

ORAL JUDGEMENT:

DATED : 1st Dec. 94.

1: Per Shri M.R.Kolhatkar, Member(A).

1: In this OA filed under Section 19 of the Administrative Tribunals Act, 1985 the Applicant has challenged the order of punishment dt. 1/12/89 imposing on the applicant penalty of reduction of pay by three stages with cumulative effect for a period of three years the delinquent not to earn increments during the period reduction (at Annexure A-8, page-57). He has also challenged the Appellate Order dt. 26/7/90 (at Ex.A-10, page-63) confirming the penalty.

2: The main contention of the applicant is that the enquiry has violated statutory provisions of the CCS(OMA) Rules 1965 and there has also been a failure to comply with the principles of Natural Justice. ~~He~~ have pointed out that the Charge-sheet was issued on 15/12/87(vide page-15, Annexure A-1) and immediately thereafter on 26/12/87 ~~at~~ ^{at} page-17, Ex.A-2) the applicant had pointed out that the enquiry was not justified because the matter is already under investigation in the Police Station of Varangaon,

on a complaint filed by wife of Shri L.C.Sharma, his neighbour against the Delinquent official and this would amount to a parallel enquiry. Additionally, he had asked for copies of Annexure-II to the Memorandum containing list of documents namely S.O's report dt. 26/10/87 and 28/10/87 and statement in respect of S/Shri L.C.Sharma, Chargeman., V.P.Otari, R.Henry, N.K.Vishwakarma, D.D.Taide, A.W.Patil and P.G.Pol. He was informed by letter dt. 9/1/88 (Ex.A-3,page-18) that the copies of the documents are not necessary at this stage and he should specifically deny or admit the charges therein. By letter dt. 12/2/88(at page-19,Ex.A-4) the applicant denied the charges.

3. Thereafter the order dt. 22/2/88(at page-20,Ex.A-5) was issued appointing an Enquiry Officer and Presenting Officer. The Applicant states that even after the enquiry was initiated, the documents were not supplied to him.

4. It is brought to our notice that the list of documents was supplied to the applicant only after he specifically asked for them vide letter dt. 16/8/89(page-30, Ex.A-7) Various documents were furnished to him by letter dt. 23/9/89 (at page-31, Ex.A-7). It is noted that in the list of documents which has been furnished to the applicant, the copy of the statement of Shri L.C.Sharma was not sent. The applicant therefore, vide letter dt. 25/10/89 (vide page-56) prayed that the statement of Shri L.C.Sharma although it is part of the list of documents, has still not been supplied to him. The Counsel for applicant points out that supply of statement of Shri L.C.Sharma was material because not only was it included in the list of documents but from the Written

Statement of the respondents vide para-5, it appears that the whole enquiry was initiated on the basis of the complaint filed by Shri L.C.Sharma. The Counsel for the respondent has confirmed this position and has produced before us a copy of the noting leading to the initiation of the enquiry. His stand is that the material could not be supplied to the applicant because it was confidential.

5. The Learned Counsel for the applicant has taken us through the enquiry proceedings and ~~through~~ the enquiry report. The report of enquiry dt. 14/8/89 is at page-24 to 26. It is contended by the applicant that rule 14(23) of CCS CCA deals with the contents of the enquiry report and the same reads as below:-

23. (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain -
(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
(b) the defence of the Government servant in respect of each article of charge;
(c) an assessment of the evidence in respect of each article of charge;
(d) the findings on each article of charge and reasons therefor."

6. It is pointed out by the Counsel for the Applicant that the report has to deal with defense of the Government servant in respect of each article of charge and give the finding on each article of charge and reasons thereof. Infact, the Delinquent Officer had filed a statement of defense vide exhibit A-7 (page-29). The enquiry report does not however refer at all to the defense statement of the Applicant. After summarising the testimony of

each of the witnesses but without relating it to the specific charge, he has concluded by saying that after seeing the brief of the Presenting Officer, he has enough reasons/data to believe that the delinquent ^{was} officer/involved in various charges brought against him.

7. An appeal was filed by the applicant to the Appellate Authority vide letter dt. 19/1/90 at page 58. He has taken several grounds in the appeal but the Appellate Authority's order dt. 26/7/90 (at page-63) does not deal with the ground^s beyond the statement that/witnesses were examined and cross-examined in the departmental enquiry.

8. Lastly, the Counsel for the applicant has stated that the whole enquiry was motivated and was launched at the instance of Shri L.C.Sharma who was on inimical terms with him and that the complaint launched by Shri Sharma's wife under sections 452, 323, 504, 506 r/w³⁴ of IPC has resulted in acquittal in the Court of 2nd Lt. Civil Judge (30) & J.M.F.C., at Bhusaval vide order dt. 11/8/92.

9. The Learned Counsel for the respondent has pointed out that the enquiry was launched on receipt of complaint from Shri Sharma, but arrangements were also made to examine certain other persons. The report filed by the Officer was examined by the Disciplinary Authority and the decision was taken to launch the disciplinary proceedings against the applicant. The Conduct of the enquiry has been quite proper and the penalty has been imposed and the appeal rightly rejected and there is no justification for interference with the proceedings.

10. In our view the copies of documents on which the respondents relied are required to be furnished to the Delinquent Officer before the start of the enquiry. They

have also not been properly exhibited and proved as provided in rule 14(14) of the CCS(CCA) rules. Some documents were furnished to the applicant at a later stage but the material document, the statement of Shri L.C.Sharma which was the basis for launching the enquiry was not furnished to the Delinquent Official even till the end. Thus there is violation of statutory rules and violation of principle of Natural Justice.

11. The Counsel for the applicant has also taken us through the detailed instructions of Government of India regarding Conduct of enquiry and the witnesses and has pointed out that these were not complied with. In our view, it is not necessary for us to go into this aspect because we find that prejudice was caused to the Delinquent Official because of the failure of the respondents to furnish to the Delinquent Official copies of the documents which were relied upon by the respondents at the start of the enquiry. We are also of the view that the Enquiry Officer has not conducted the enquiry properly and the Enquiry Officer's Report was not in accordance with Statutory provisions of Rule 14(23) pf CCS CCA rules. We have therefore no hesitation in holding that the enquiry was vitiated and the order of penalty and order of Appellate Authority are liable to be quashed.

12. The next question is whether we should give liberty to the respondents to conduct a fresh enquiry against the applicant in a proper manner as per rules. Considering the material on record, lapse of time and the nature of the charges, we are of the view that the applicant should be spared the agony of a fresh enquiry. We therefore dispose of this OA by passing the following order.

ORDER.

OA is allowed. Disciplinary proceedings, order of penalty and Appellate Order are hereby quashed. Respondents are restrained from proceedings against the applicant by way of a fresh enquiry on identical charges. No orders as to costs.


(D.C.VERMA)
M(J)


(M. R. KOLHATKAR)
M(A)

abp.