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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: O A No. 11/91

~~Transfer Application No.:~~

DATE OF DECISION 9.3.93

A V Joshi

Petitioner

Mr. S P Saxena

Advocate for the Petitioners

Versus

U.O.I. & 4 ors.

Respondent

Mr. R K Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M S Deshpande, Vice Chairman

The Hon'ble Shri M Y Priolkar, Member (A)

1. whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, BOMBAY 1

OA NO. 11/91

A.V.Joshi
Superintendent B/R Gr.I

Applicant

v/s

Union of India
through Secretary
Ministry of Defence
(South Block), New Delhi-11 & 4 ors. Respondents

Coram: Hon.Shri M S Deshpande, Vice Chairman
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. S P Saxena
Counsel
for applicant

Mr. R K Shetty
Counsel
for the respondents

ORAL JUDGMENT:
(Per: M S Deshpande, Vice Chairman)

DATE: 9.3.93

The applicant who was working as Superintendent B/R Gr.I in the office of the Chief Engineer, Pune Zone, was given charge sheet under Rule 14 of CCS(CCA) Rules. Two articles of charge were framed against the applicant, the first being that he failed to exercise proper control in the execution of the work and the second being that he failed in proper preparation of RAR for payment to the contractor. The Inquiry Officer by the order dated 27.1.89 drew the inference that he was not guilty of either of the charges, but while concluding observed that the applicant obviously had not exercised proper control on execution of the work. The Disciplinary Authority in its order dated 8.1.90 after considering

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the report of the Inquiry Officer and the representation made by the applicant came to the conclusion that the inquiry had been held in accordance with the provisions of the relevant rules and concurred with the finding of the ~~the~~ Inquiry Officer and imposed the penalty of withholding one increment with cumulative effect for a period of one year. The appeal filed by the applicant against this order was dismissed.

2. The submission of Shri Saxena, learned counsel for the applicant, was that the applicant had been not found guilty of the articles of charge by the Inquiry Officer and therefore he could not ~~not~~ have been held guilty by the Disciplinary Authority without affording the opportunity to the applicant to show cause or without being heard. It is apparent that the Inquiry Officer had recorded that the applicant had not exercised proper supervision, though ostensibly the finding was recorded that he was not guilty of either of the articles of charges. We do not think that the ^{in contradictory observations} ~~contributory reasoning~~ of the Inquiry Officer will be of any assistance to the applicant because it was ultimately for the Disciplinary Authority to reach the findings on the fact on the basis of material before him. No exception can, therefore, be taken to the finding recorded by the Disciplinary Authority holding the applicant guilty under article one of the charge merely on the basis of the order passed by the Inquiry Officer. The applicant raised the ground before the Appellate Authority that it was really Mr. M K Jain, who was official supervisor, who was responsible for recording the measurements and certifying that the work was carried out according to the specification. However, under rule 53(a) it is the responsibility of the Superintendent B/R Gr.I. That rule reads - Supdt.B/R Gde.I is responsible for the supervision of works in his charge for the execution of those works in accordance with the prescribed specifications and for the inspection of Government property and execution of repairs where necessary. He may also be called upon to perform technical duties in an office. E/M and B/S duties and those of a cashier. The Appellate Authority has referred to this rule while fixing the responsibility for the defective work of the applicant. The position in the present case is not that the work

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was not defective and the only question raised was about the responsibility for allowing the defective work to be executed. According to the learned counsel for the applicant, it was not possible for the applicant to step in when his official supervisor was engaged in handling work and taking the measurements. It is difficult, however, to see how the applicant could have been absolved of all the responsibility when under the rules it was his duty to exercise proper supervision. He could not be allowed to abdicate his function under the guise of the presence of the official supervisor. We are not impressed by the submission of the learned counsel for the applicant. It was then urged that the disciplinary action was not taken by the authority competent to initiate. However the appeal has been heard by the properly designated authority. We ~~have~~ referred to a table in Swamy's Compilation of CCS(CCA) rules. But apparently that compilation is not exhaustive in view of the delegation of the duties to be found in the order NO.5(14)/79/D(Lab) dated 16.8.79 of Government of India, Ministry of Defence, where the authority competent to impose penalty on all Group C posts including Office Superintendent Gr.2 and 1 is Chief Engineer, Zone; Chief Engineer Project/DCE(P). This is in respect of all the penalties that could be imposed. It is not, therefore, possible to accept the submission that the disciplinary action has been initiated and the penalty came to be imposed by the authority who had no jurisdiction to initiate the action and impose penalties.

3. Considerable ~~contention~~ ^{criticism} was leveled also against the procedure followed by the Inquiry Officer and the Disciplinary Authority. It was urged that there was undue haste in appointing the Inquiry Officer, though it was a step to be taken after the written statement of defence was filed and similarly the statement of the applicant came to be recorded and the Presenting Officer had been allowed to question him upon the material brought ^{see} on record against him in evidence. We cannot find ^{see} how the applicant ~~could~~ have been prejudiced by the mere fact of the appointment of an



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Inquiry Officer prior to the filing of the written statement or permitting the presenting officer to question him. It does not appear to us that the applicant was cross examined by the presenting officer. It does not appear that the applicant had protested during the inquiry proceedings against the procedure observed by the Inquiry Officer. Unless prejudice\$ were shown and a direct violation of rules is pointed out, it is not possible to interfere with the manner in which the departmental proceedings came to be initiated and concluded.

4. In the result we see no merit in the application. It is dismissed, but there would be no order as to costs.


(M Y Priolkar)
Member(A)


(M S Deshpande)
Vice Chairman