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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1180/92

Transfer Application No.

Date of Decision 31.10.95

Shri P.U.Khanja

Petitioner/s

Shri G.S.Walia

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri P.M.Pradhan

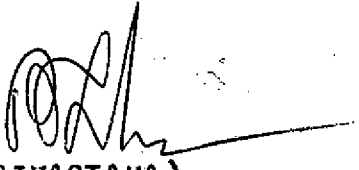
Advocate for  
the Respondents


CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. P.P.Srivastava, Member (A)

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

  
(P.P.SRIVASTAVA)  
MEMBER (A)

  
(B.S.HEGDE)  
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

OA.NO. 1180/92

Shri P.U.Khania

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (J) Shri B.S.Hegde  
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.S.Walia  
Advocate  
for the Applicant

Shri P.M.Pradhan  
Advocate  
for the Respondents

JUDGEMENT

Dated: 31.10.95

(PER: P.P.Srivastava, Member (A))

The applicant was working as a Security Assistant in the office of Subsidiary Intelligence Bureau. He was issued a charge-sheet on 6.7.1989 which reads as under :-

"Article I

That the said Shri P.U.Khania, SA/G while working as such has engaged himself in part-time work. This act of Shri Khania constitutes breach of Rule 15 and Rule 3 (i) (iii) of the C.C.S. (Conduct) Rules, 1964.

Statement of imputation of misconduct or misbehaviour in support of each articles of charge framed against Shri P.U.Khania, SA/G, Bombay.

In his application dated 16.1.88 for the post of Sub-Inspector(Tech)-Discipline-Photo, Shri P.U.Khania, SA/G had stated that he was working with M/s Canon Click, Bombay-3 as a photographer for the period from 1.1.1984 to 31.12.88. A certified copy of the certificate dated 5.1.89 issued by Shri Tito Benz, Proprietor of the firm was submitted by Shri Kania in support of his claim.

(9)

2. Preliminary enquiries reveal that Shri Khania had engaged himself in part-time work with M/s Canon Click, Bombay-3 from 1.1.84 and received a payment ranging from Rs.600/- to Rs.1200/- p.m. He continued his part-time employment even after his joining this SIB on 24.3.86 till 31.12.88. He did not intimate to the department. He had also not mentioned anything about this employment in the attestation forms submitted by him on 21.2.85 before his employment in this S.I.B.

3. This act of Shri P.U.Khania of suppression of material information from the department and engaging himself in part-time work constitutes breach of Rule 15 and Rule 3 (i)(iii) of the C.C.S.(Conduct) Rules, 1964.

A List of Documents by which the articles of charge are proposed to be sustained in R/O Shri P.U.Khania, SA/G, SIB, Bombay.

- (1) Application dated 16.1.89 from Shri P.U.Khania for the post of Sub-Inspector (Tech)-Discipline-Photo.
- (2) Certificate dated 5.1.89 issued by Shri Tito Benz, Proprietor, M/s. Canon Click, Bombay-3.
- (3) Attestation form (Special) dated 21.2.85 submitted by Shri P.U.Khania before his employment in the Bureau.
- (4) Enquiry Report dated 20.3.89 of DCIO/SF.
- (5) DCIO/SF Enquiry Report dated 26.6.89 alongwith certificate dated 22.6.89 from Tito Benz, Proprietor, M/s Canon Click, Bombay-3."

An enquiry was conducted on 21.3.1990 which is placed at Annexure-'D' at page 54 of the OA. The disciplinary authority after considering the enquiry report removed the applicant from service vide its order dated 26.6.1990. The applicant submitted an appeal to the appellate authority dated 12.7.1990 and 24.7.1990. The respondent No. 2 being the appellate authority rejected the appeal of the applicant by its order dated 29.1.1991 (Ex.'A-1'). The applicant thereafter filed a revision petition which was disposed of by the revising authority by its order dated 23.11.1992 during the pendency of the OA.



5. Preliminary inquiries reveal that Shri Kharia had engaged himself in part-time work with the Canon Clinic, Bombay-3 from 1.1.34 and received a payment ranging from Rs. 500/- to Rs. 1200/- p.m. He continued his part-time employment even after his joining the IAS on 24.7.36 till 31.12.33. He did not intimate to the department. He had also not mentioned anything about this employment in the declaration form submitted by him on 21.2.36 before his employment in this IAS.

6. This act of Shri P. U. Kharia of suppression of material information from the department and engaging himself in part-time work constitutes breach of Rule 12 and Rule 3 (1)(iii) of the C.S. (Conduct) Rules, 1954.

7. List of documents by which the charges are proposed to be sustained in R/U Shri P. U. Kharia, IAS, Bombay.

(1) Application dated 16.1.39 from Shri P. U. Kharia for the post of Sub-Inspector (Tech)-Discipline-Photo.

(2) Certificate dated 2.1.39 issued by Shri Tito, Genl. Proprietor, W's. Canon Clinic, Bombay-3.

(3) At station form (Special) dated 21.2.36 submitted by Shri P. U. Kharia before his employment in the Bureau.

(4) Enquiry Report dated 20.2.37 of CCIS/57.

(5) CCIS/57 Enquiry Report dated 22.2.37 along with Certificate dated 22.2.37 from Tito Genl. Proprietor, W's. Canon Clinic, Bombay-3.

An enquiry was conducted on 21.2.1939 which is placed

at Annexure 'D' at page 24 of the O.A. The disciplinary

authority after considering the enquiry report removed

the applicant from service vide its order dated 22.2.1939.

The applicant submitted an appeal to the appellate authority

order 12.7.1939 and 24.7.1939. The respondent No. 2 being

the appellate authority rejected the appeal of the applicant

by its order dated 29.1.1941 (Ex. 1-1). The applicant

thereafter filed a revision petition which was dismissed

by the revising authority by its order dated 22.11.1942

during the pendency of the O.A.

2. The counsel for the applicant has brought out that the applicant was not supplied with the documents which were relied upon by the disciplinary authority to prove the charges. Out of the 5 documents listed in para above in the list of documents by which the Articles of Charges proposed to be sustained, only documents listed at (1) and (2) were available with the applicant while documents listed at item (3), (4) and (5) i.e. Attestation form (Special) dated 21.2.85, Enquiry Report dated 20.3.89 of DCIO/SF which is the preliminary enquiry report and DCIO/SF Enquiry Report dated 26.6.89 alongwith certificate dated 22.6.89 from Tito Benz, Proprietor, M/s. Canon Click, Bombay-3 were not supplied to him. The counsel for the applicant has also submitted that these documents were also not produced during the course of enquiry. However, the disciplinary authority has relied on all these documents and has made use of the documents while recording his finding. The counsel for the applicant has also submitted that the enquiry proceedings were in the form of preliminary examination wherein certain questions were asked from the applicant and no witness was examined nor any documents were produced during the course of enquiry. The counsel for the applicant has, therefore, argued that the whole enquiry is ab-initio vitiated as principles of natural justice have not been followed and therefore the enquiry and further proceedings, i.e. the order of disciplinary authority and appellate authority are liable to be quashed.

3. The counsel for the respondents has argued that the applicant was given sufficient opportunity during the disciplinary proceedings and if the applicant wanted to produce the proprietor of the photographic firm as witness, he could have done so as his defence witness. The counsel for the respondents has also argued that the applicant has




2. The counsel for the applicant has brought out that the applicant was not supplied with the documents which were relied upon by the disciplinary authority to prove the charges. Out of the 2 documents listed in para above in the list of documents by which the articles of charges proposed to be sustained, only documents listed at (1) and (2) were available with the applicant while documents listed at item (3), (4) and (5) i.e. affidavit form (Special) dated 21.2.82, Enquiry Report dated 20.2.82 of DCIO/27 which is the preliminary enquiry report and DCIO/27 Enquiry Report dated 20.2.82 alongwith certificate dated 22.2.82 from Lito Bano, Proprietor, M. Cannon-Click, Bombay-3 were not supplied to him. The counsel for the applicant has also submitted that these documents were also not produced during the course of enquiry. However, the disciplinary authority has relied on all these documents and has made use of the documents while recording his finding. The counsel for the applicant has also submitted that the enquiry proceedings were in the form of preliminary examination wherein certain questions were asked from the applicant and no witness was examined. Not any documents were produced during the course of enquiry. The counsel for the applicant has, therefore, argued that the while enquiry is so-initiated as principles of natural justice have not been followed and therefore the enquiry and further proceedings, i.e. the order of disciplinary authority and appellate authority are liable to be quashed.

3. The counsel for the respondents has argued that the applicant was given sufficient opportunity during the disciplinary proceedings and if the applicant wanted to produce the property of the photographic film as witness, he could have done so as his direct witness. The counsel for the respondents has also argued that the applicant has

(5)

not claimed anywhere that non-supply of the documents has resulted in any hardship to bring out his defence.

4. We have considered the records as well as the arguments of the counsel. It is a fact that the documents listed at Sr.No. 3,4,5 in the list of documents as brought out in Para 1 above were not produced during the course of enquiry nor these were supplied to the applicant. A perusal of the order of the disciplinary authority reveals that he has made use of these documents while arriving at this conclusion. It is also a fact that the copy of the enquiry report has also not been supplied to the applicant even along with the order of the disciplinary authority. We are, therefore, of the view that there has been a serious breach of principles of natural justice in conducting the enquiry. Material which has not been made available during the course of enquiry has been used by the disciplinary authority for basing his conclusion while deciding that the charges against the applicant has been proved. We are, therefore, of the opinion that the whole disciplinary proceedings have been vitiated because of the violation of the principles of natural justice during the conduct of the enquiry and the order of the disciplinary authority is liable to be set aside. As far as the appellate authority's order is concerned, the applicant has been given a personal hearing and a speaking order has been passed by the appellate authority, however, the faults in the conduct of the enquiry proceedings cannot be compensated by a speaking order at the stage of appellate proceedings. Similarly, the order passed by the revising authority <sup>after filing of DA.</sup> is also liable to be quashed on the same grounds which hold good for the appellate orders.



not claimed anywhere that non-supply of the documents  
has resulted in any hardship to him and his defence.

4. We have considered the records as well as the  
arguments of the counsel. It is a fact that the documents  
listed at Sr. No. 3, 4, 5 in the list of documents brought  
out in para 1 above were not produced during the course of  
enquiry nor those were referred to the Magistrate. A counsel  
of the order of the disciplinary authority reveals that he  
has made use of these documents while arriving at this  
conclusion. It is also a fact that the copy of the enquiry  
report has also been supplied to the applicant even  
along with the order of the disciplinary authority. It  
is, therefore, of the view that there has been a serious  
breach of principle of natural justice in conducting the  
enquiry on the material which has not been made available  
during the course of enquiry has been used by the disciplinary  
authority for basing his conclusion while deciding that the  
charges against the applicant has been proved. It is, therefore,  
of the opinion that the whole disciplinary  
proceedings have been vitiated because of the violation  
of the principle of natural justice during the conduct  
of the enquiry and the order of the disciplinary authority  
is liable to be set aside. As far as the appellate authority's  
order is concerned, the applicant has been given a personal  
hearing and a speaking order has been passed by the appellate  
authority, however, the finding in the conduct of the enquiry  
proceedings cannot be compensated by a speaking order at  
the stage of disciplinary proceedings. Similarly, the  
order passed by the revising authority is also liable  
to be quashed on the same grounds which hold good for  
the appellate orders.



5. In the result, we quash the order of punishment dated 26.6.1990 by which the applicant was removed from service as well as the appellate authority's order dated 29.1.1991 by which the punishment of removal from service was confirmed as well as the order of the revising authority dated 23.11.1992. We further direct the respondents to reinstate the applicant within one month from the date of receipt of this order. The applicant will be entitled to payment of the wages for the period from the date of his removal to the date of his reinstatement for which the competent authority is directed to pass suitable orders under the rules within a period of two months from the date of receipt of the same and the applicant should be paid all the dues within one month thereafter. There would be no order as to costs.



(P.P. SRIVASTAVA)  
MEMBER (A)



(B.S. HEGDE)  
MEMBER (J)

mrj.