

Central Administrative Tribunal
Mumbai Bench

OA No.328/98

Mumbai this the 28th day of June, 2002.

Hon'ble Mrs. Shanta Shastri, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

K.N. Adholekar,
R/o 405/5,
Sarwatra Vihar,
Khadki,
Pune-411 003.

-Applicant

(By Advocate Shri S.P. Saxena)

-Versus-

1. The Union of India,
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi-110 011.
3. The Chief Engineer,
Southern Command,
Pune-411 001.
4. The Chief Engineer,
Poona Zone,
Pune-411 001.
5. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi-110 011.

-Respondents

(By Advocate Shri R.K. Shetty)

O R D E R

Mr. Shanker Raju, Member (J):

Applicant impugns the Presidential Order dated 6.2.97 where he has been imposed upon a penalty of withholding of one increment of pay in the pay scale of Rs.3000-4500 for a period of one year, without cumulative effect.

2. While working as a civilian, i.e., Executive Engineer in Defence the respondents through the findings of Technical Board of Officers to go into investigating the nature and

extent of defects and pinpoint responsibility in respect of plinthe and furniture items of GI charpoys and sofasets found involvement of the applicant.

3. On the basis of the inquiry report of the Technical Board a memorandum under Rule 14 of the CCS (CCA) Rules was served upon the applicant basically for violating Rule 3 (i) (ii) of the CCS (Conduct) Rules in so far as he was negligent in performing the duties during the period 1989-90 and having found responsible for certain lapses in the execution work and also for published articles of charge and lapses prescribed in Article I alongwith imputation and the same was to be proved on the basis of the proceedings of Technical Board of Officers, which was served upon the applicant alongwith memorandum.

4. Applicant submitted his defence statement and thereafter the Inquiry Officer (IO) has held him guilty of negligence and absolute integrity as well as devotion to duty and further proved the charge in Article II at serial Nos. (d) (e), (g), (h), (m) and (o) but has not proved violation of Rule 3 of the CCS (Conduct) Rules.

5. Applicant submitted his representation and thereupon the disciplinary authority imposed a minor penalty, giving rise to the present OA.

6. Learned counsel for the applicant Sh. Saxena tool the following legal pleas to assail the impugned orders:

i) that the respondents have not followed the correct procedure under CCS (CCA) Rules.

ii) The inquiry report of the Technical Board though formed part of the listed documents but the contents of the same have not been proved by calling any witness but proved the same and this resulted in prejudice to the applicant as he has been deprived of an opportunity to rebut that document, which is in violation of Rule 14 (6) of the CCS (CCA) Rules, 1965. IO violated Rule 14 (14) of the rules by not directing the Presenting officer to lead his evidence first, but compelled the applicant to produce his defence.

iii) IO assumed the role of a prosecutor by putting searching question to the applicant.

iv) Presenting Officer though not made any request for additional documents but yet the IO allowed him to collect documents and utilised it without giving any inspection to the applicant, which deprives him of a reasonable opportunity. This shows bias of the enquiry officer and his acting in lieu and hand glove with the Presenting Officer. It is stated that the Presenting Officer has not given any evidence for the lapse on the charge in Annexure-II to conclude the charge as proved.

v) It is stated that in para 140 of the inquiry report applicant has been held guilty of violation of absolute integrity but no charge to this effect has been specified in the memorandum and he has been alleged for violation of conduct Rule 3 (i) (a). This shows casual approach of the IO and non-application of mind.

vi) Findings of the IO is perverse based on irrational and illogical conclusions.

vii) Inquiry has been delayed considerably without any reasonable explanation.

viii) Lastly, it is contended that the applicant's promotion has been adversely affected by the aforesaid punishment and the inquiry is also vitiated, as Presenting Officer was also cross examined by the IO on 20.12.94.

7. The case is also argued on factual matrix by stating that bills of contractor were prayed after three years but rectification could not be done by the respondents and the orders passed by the disciplinary authority is non-speaking. Learned counsel relied upon the decision in S.B.S. Ramesh v. Union of India, 1998 (2) SCSLJ 117.

8. Respondents on the other hand, represented through, R.K. Shetty stated that the Technical Board inquiry report was well in advance furnished to the applicant and it is not incumbent upon them to prove the same after examination of the witnesses. Applicant has also not cited any witness in defence nor demanded the examination of the PWS. No application for either demand of additional documents or calling of the witnesses to prove this Technical Board report was made. Once the report is accepted the contents are also deemed to be accepted by the applicant as a documentary evidence. In a disciplinary proceeding a documentary evidence can sustain the charge and there is no mandate to record oral evidence if the charge itself is proved on the basis of the documentary evidence. Apart from it, no prejudice has been caused to the applicant by not examining any witness and to state that even violation of substantive procedure if not followed would not materially alter the findings in the disciplinary proceedings, if no prejudice is caused and for this learned counsel of the

respondents has relied upon a Constitutional Bench decision in Managing Director, ECIL v. B. Karunakar, JT 1993 (6) SC 1 as well as State Bank of Patiala v. S.K. Sharma, JT 1996 (3) SC 722. It is also stated that procuring of DW is not the responsibility of the prosecution and the IO can ask clarificatory question to remove the ambiguities. The charges have been proved by a detailed finding and merely the integrity sufficient evidence brought in the inquiry and the charges for integrity has been levelled which is apparent from Rule 3 (i) of the CCS (Conduct) Rules which talks of absolute integrity. It is also stated by referring to the daily ordersheet of 23.8.94 that the copy of the Technical Board was handed over to the applicant and he has not put any resistance and admitted it without making any request for examination of any witnesses. While referring to the ordersheet of 23.9.94 it is contended that on a query from the IO it had not been stated that complete document including the Technical Board proceedings have been gone into and the applicant has categorically stated not to present any defence witnesses for defending their cases to this record. Applicant has also not filed any defence witness and has also admitted the contents of report in the inquiry proceedings on 20.12.94. It is stated that in the inquiry the rule is pre-ponderance of probabilities and accordingly the applicant has been found guilty and rightly punished. Relying upon the decision of the Apex Court in Kuldeep Singh v. Commissioner of Police, 1998 (8) SC 603 it is stated that unless the finding is perverse or based on no evidence and does not pass the test of a common prudent man the same would not be interfered with by the Tribunal if there is some evidence in the inquiry to establish the charge. No procedural illegality has been cropped up in the inquiry to warrant any interference by this Tribunal. Lastly, it is stated that in a decision by the coordinate Bench in OA-821/93,

Brij Nath Prasad v. Ministry of Defence, decided on 23.11.2001, though it is held that CCS (CCA) Rules, 1965 have no application in the case of civilians in defence but even if they are followed in a disciplinary proceeding against a civilian in defence being the codified principles of natural justice, more elaborate and in case of no prejudice caused to the applicant the same would not be interfered with.

9. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view the issue regarding applicability of CCS (CCA) Rules, to a civilian in defence is no more res-integra. Having decided the issue in Baij Nath's case (supra) the coordinate Bench has held that in the event the CCS (CCA) Rules are not applicable to the civilians in defence they are to be governed by the principles of natural justice, which include fair and impartial hearing and reasonable opportunity to defend without any bias. The CCS (CCA) Rules though codified principles of natural justice laying down elaborate methodology to deal with the government servant in a disciplinary proceeding, observed those rules, if not caused any prejudice, in view of the decision of the Apex Court in ECIL's case would not make the action of the respondents as legally unsustainable.

10. In the conspectus of the aforesaid ratio we now proceed to examine whether the applicant has been prejudiced in any manner by violating the CCS (CCA) Rules, 1965 or any legal infirmity has cropped in which is not in consonance with the principles of natural justice or the procedure adopted is contrary to the rules or not.

11. The contention of the applicant that Inspection Board report should have been proved by examination of witnesses giving a reasonable opportunity to the applicant to rebut the same effectively, cannot be countenanced. Applicant having received the copy of the report was accorded sufficient opportunity to defend in the course of the proceedings. He was aware of the contents of the report, which in the daily proceedings of the inquiry he had admitted by not raising any objection as to its admissibility and nothing has been brought on record by the applicant to indicate that the aforesaid report and objection regarding its proof by non-examination of witnesses was taken by them. In view of the decision of the Apex Court in ECIL's case (supra) as well as State Bank of Patiala (supra) where it has been held that the irregularities and technicalities which do not occasion failure of justice are not allowed to defeat the ends of justice. Any procedural illegality or irregularity will not suo moto vitate the inquiry unless the prejudice is established.

12. In the conspectus of the above, as the report was served upon the applicant who has not ~~not~~ objected during the proceedings, his contention taken herein is certainly an after thought. In our considered view, after having furnished the copies of the Board Report he had^k ample opportunity to effectively defend the same and was accorded a reasonable opportunity by the respondents.

13. As regards non-examination of any evidence to prove the aforesaid report now, the principles of natural justice and the codified principles as in the CCS (CCA) Rules it is not incumbent upon the authority to prove the charge in the inquiry on oral evidence if sufficient documentary evidence is available to sustain the charge. As by admitting the report

the contents are also admitted by the applicant without putting any objection, merely because the report has not been proved through a witness would not vitiate the inquiry. In our considered view applicant has not been prejudiced at all.

14. In so far as the contention that the inquiry is sham and the IO examined the applicant as well as PO before the PO puts up his case cannot vitiate the inquiry, as the applicant has been accorded a fair hearing and reasonable opportunity the questions asked were clarificatory and do not amount to cross-examination. The aforesaid statement of the applicant has not been used to hold him guilty of the charge, which has been proved on the basis of the material in the inquiry. In our considered view inquiry officer has not assumed the role of a prosecutor.

15. In so far as the contention that in para ^k40 applicant has been held guilty of article 3 (1) (i) and the inquiry officer has proved the lack of absolute integrity which has not been levelled against him in the memorandum and against which no opportunity to rebut has been accorded to him, cannot be countenanced. From the perusal of the memorandum it is seen that applicant has been held to have violated Rule 3 (i) of the CCS (Conduct) Rules, which, inter alia, provides maintenance of absolute integrity by the government servant at all times. From the misconduct the applicant was found negligent and also in respect of absolute integrity for which he has a proper notice in the memorandum it cannot be said that he has been taken aback, no prejudice has been caused to him.

16. In so far as appreciation of the evidence recorded in the inquiry, we find that the conclusion arrived at by the IO is founded on some evidence, we cannot reappraise the evidence in view of the Apex Court in Kuldeep Singh's case (supra) in a judicial review.

17. As the findings of the IO is detailed, the order passed by the DA, agreeing with the findings of the IO conforms to the requirements of the rules and cannot be said to be a non-speaking order.

18. Moreover, we find that a very lenient view has been taken by the respondents by imposing a minor punishment on the basis of his misconduct and default and if promotion is withheld on that basis it cannot be held that the same is withheld on unjustified grounds.

19. In the result and having regard to the reasons recorded above, we do not find any legal infirmity in the disciplinary proceedings, which are conducted in consonance with the principles of natural justice. The OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

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(Smt. Shanta Shastri)
Member (A)