

A 3
T

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH
JODHPUR.

O R D E R.

Date of order: February 22, 1988.

T.A.No.626 of 1986

SHRI MURARI LAL GUPTA.

... Petitioner.

Mr. M.S. Singhvi

... Advocate for the petitioner.

Versus

THE UNION OF INDIA & OTHERS. Respondents.

Mr. J.P. Joshi

... Advocate for respondent No.1.

Mr. Rajendra Mehta.

... Advocate for respondents No.2
and 3.

CORAM.

The Hon. Mr. B.S. Sekhon, Vice Chairman.

The Hon. Mr. G.C. Singhvi, Adm. Member.

B.S. SEKHON.

Skipping the unnecessary factual matrix pertaining to the activities of the petitioner as a member and office bearer of the Defence Karamchari Union, including his campaign against the alleged irregularities and malpractices in the working of the Ammunition Depot, Bharatpur, and the service of charge-sheet, suspension and the withdrawal of the charges on previous occasions, we would notice only such facts as are germane to the adjudication of this application.

2. Vide Memorandum No.6956638/SK/DC-763/ADM(CIV) dated September, 1980 (Ann.5) a departmental inquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short the Rules) was initiated against the petitioner, who was working as Store Keeper in the Ammunition Depot, Bharatpur. Misconduct for which the departmental inquiry was initiated against the petitioner was in respect of the following article of charge:-

" The petitioner while functioning as Store

22/2/88
Ce
22/2/88

A ³/₂ -

Keeper in AD Bharatpur on May 14, 1975, wilfully furnished incorrect particulars of his wife and in-laws to the depot authorities as under:-

'Smt. Kalpna Devo.
Daughter of Smt. Veena Devi.
133, Fateh Nagar,
PO Tilak Nagar,
New Delhi.'"

The petitioner is alleged to have exhibited lack of absolute integrity and conduct unbecoming of a Government servant in violation of Rule 3 CCS (Conduct) Rules, 1964.

3. No witness was cited in the list of witnesses enclosed to the memorandum, whereby the charge-sheet was served on the petitioner. Instead, the allegation was sought to be sustained by the following documents:-

(a) Application dated May 14, 1975 in respect of the petitioner.

(b) Superintendent of Police (Central Distt) New Delhi's letter No. 31217-Genl. dated December 9, 1975.

(c) District Superintendent of Police Bharatpur's letter No. 9061/CB dated June 27, 1980.

4. After certain objections had been raised by the petitioner against the inquiry, which had been decided against him, he was proceeded against ex.parte. The proceedings for the preliminary inquiry were held on January 28, 1982 on which date the inquiry was also completed.

5. After the Inquiry Officer's report finding the petitioner guilty was received and considered by the Disciplinary Authority, he agreed with the finding of the Inquiry Officer holding the petitioner guilty of misconduct in question and imposed the penalty of removal from service with effect from the date the order dated May 6, 1982, is served on him. The order of removal also stated that the removal from service shall not be a disqualification for future employment in the Government. The petitioner filed an appeal against the order made by the Disciplinary Authority. The same was rejected by the appellate authority

22/2/88
cc

as per his order dated March 12, 1984 (copy Ann. 18).

6. The petitioner has impugned the inquiry proceedings, the orders passed by the Disciplinary Authority and the Appellate Authority in this writ petition filed by him in the High Court of Rajasthan at Jaipur. The same has come to us by transfer by virtue of operation of section 29(1) of the Administrative Tribunals Act, 1985.

7. The salient grounds on which the inquiry has been assailed are; the same has been conducted in violation of rules 14 and 15(4) of the Rules, the decision to initiate ex parte proceedings is vitiated as the notice had not been served on him in the mode laid down in rule 30 of the Rules, the Inquiry Officer was biased or acting under the influence of Shri K.C. Aneja, who was pulling the strings against the petitioner, he was not justified in recording any oral evidence and that too on January 28, 1982, when the inquiry was fixed for a preliminary hearing, and he did not record any finding nor gave any reason in respect of the findings. The orders made by the Disciplinary Authority and the Appellate Authority are stated to be unreasoned, without any application of mind and violative of the principles of natural justice. The appellate Authority's order is also stated to have been made in violation of rule 27 of the Rules.

8. The respondents have contested the writ petition, stating that the allegations against the officers of the Depot have been made by the petitioner to malign them. The petitioner is stated to have claimed false medical bills in the name of his alleged wife in 1972 and it was found on enquiry by the police and the CBI that he never got married and his alleged wife and in-laws were not in existence. According to the respondents, the inquiry had been held in accordance with the Rules after giving adequate opportunity to the petitioner. The service was duly effected on him through the S.H.O. Sewar Police Station, Bharatpur as he was

62288/15
Ce
22/2/88

A-3
4 -

avoiding and declining to receive the notice. The initiation of ex parte proceedings is justified on the ground that the petitioner did not appear before the Inquiry Officer and he avoided the inquiry deliberately and wilfully. Refuting the allegation of bias on the part of the inquiry officer, the respondents have averred that the inquiry officer was justified in recording the statement of Shri G.S. Bisht, as the Rules permit such a course, that there has been no violation of rules 14 and 15(4) of the Rules as also of the principles of natural justice. The inquiry officer is stated to have given his assessment on the basis of oral and documentary evidence and the report is stated to be well reasoned. The respondents have further stated that the orders made by the disciplinary authority as also by the appellate authority were made after proper application of mind, rule 15(4) of the Rules has dispensed with the requirement of notice by the disciplinary authority and the order made by the appellate authority is not violative of rule 27. In the additional pleas the respondents have also referred to several criminal cases against the petitioner and about his undesirable activities like provocation, threat, intimidation, etc. which are prejudicial to the interest of security and discipline of the sensitive installation holding secret/graded ammunition/equipment.

9. During the course of arguments, ^afour pronged attack was launched by the learned counsel for the petitioner against the holding of the inquiry proceedings. It was contended, in the first instance, that the basis of initiating ex parte proceedings is wholly unsupportable. Elaborating this point, the learned counsel submitted that the service has not been effected in accordance with the mode prescribed by rule 30 of the Rules and that it is also a case of fake service. Rule 30 lays down that every order, notice and other process made or issued under these Rules shall be served in person

22-2-88

CC
22/2/88

on the Government servant concerned or communicated to him by registered post. As is borne out by para 2 of the minutes of the proceedings of the inquiry held in the forenoon of January 28, 1982, and by Appendix 'C' at page 70 of the paper book the service on the petitioner was effected by pasting the notice at the gate of the petitioner's house, and were also sent under UPC.. It is rather surprising as to how either of the aforesaid course for effecting service had been adopted by the concerned authorities.

10. The learned counsel for the respondents tried to justify the adoption of the aforesaid courses on the reasoning that the concerned authorities had to perforce take recourse to these modes of service as the petitioner was evading and refusing service. The learned counsel for the petitioner countered by saying that the petitioner had never evaded service, he had been coming to collect subsistence allowance during the first week of every month at the main-gate of the Depot and had also been attending whenever he was asked telegraphically or otherwise and that in view thereof there is little justification in adopting impermissible mode of service. The submission by the learned counsel for the petitioner appears to be well founded. We find little justification in the adoption of a mode of service which is not permissible under rule 30. This view draws sustenance from the authority A.K.Roy/v. State of Punjab and others (1). & another

11. In support of the submission that it is a case of fake service, the learned counsel for the petitioner urged the following points:-

- (i) No registered notice or notice under postal certificate had been sent to the petitioner.

See
22/2/88

- (ii) The house of the petitioner is located in the jurisdiction of Police Station Kotwali and the Police Station Sear is at a distance of 8 K.M. from his house.
- (iii) The attesting witness does not belong to the locality where the petitioner resides.

12. There would appear to be good deal of substance in the aforesaid submission. It may be difficult to relish the use of the expression "fake". All the same, we are of the view that in view of the aforesaid circumstances, we find that the alleged notice alleged to have been effected through police appears to be a suspect. That being the position of matters, the decision of the inquiry officer to proceed ex parte on the basis of such a witness, the initiation of ex parte proceedings against the petitioner and so also the subsequent proceedings would seem to lack justification.

13. It was next asserted by the learned counsel for the petitioner that the inquiry officer has not given reasons to support his findings and that mere ipse dixit of the inquiry officer is legally unsustainable. The assessment of the evidence, which is so to say the finding of the inquiry officer runs thus -

" From the evidence produced and documentary evidence brought before the court and the brief of the presenting officer, the under-mentioned assessment is made:-

(a) (i) Gross Misconduct

That Shri Murarilal Gupta deliberately gave incorrect particulars of his wife and in-laws to the Ammunition Depot, Bharatpur, authority and thus committed an act of Gross Misconduct

(ii) Statement of Imputation of Misconduct or Misbehaviour in support of Article of charge (i) -

In that said Shri Murari Lal Gupta gave incorrect particulars of his wife initially in the oral enquiry ordered vide AOC(R) charge sheet No.266 bearing case No.6956638/SK/ADM (CIV) Dt 25 Jun 1974. And subsequently confirmed the correctness and completeness of

SSS-11/12
Co
12/2/88

the above particulars vide his letter dated 14 May 1975 (Appx 'G' referred) The said particulars of his wife and in-laws have been proved incorrect and incomplete beyond any doubt by various investigating agencies. (Appx 'F', 'H', 'J', 'K' and 'L' refers). "

14. The foregoing assessment cannot be deemed to be a reasoned one. It is well settled that the inquiry officer being a Quasi-judicial authority has to give reasoned finding. This is also a fairly serious infirmity in the impugned inquiry.

15. It was next urged by the learned counsel for the petitioner that the inquiry officer contravened rule 14(15) of the Rules in examining Shri G.S. Bhist, whose name was not included in the list of witnesses enclosed with the charge-sheet, on January 28, 1982. The learned counsel for the respondents, however, contended that the inquiry officer has ^{the} competence to call for ^{additional} the evidence as envisaged by sub-rule (15) of rule 14 of the Rules. It is no doubt true that the inquiry officer has such a power, but there can also be no doubt on the point that this power has to be exercised in the manner laid down in the ~~above said~~ said rule. The procedure laid down in this sub-rule has, admittedly, not been followed. This is another serious infirmity.

16. The next contention of the learned counsel for the petitioner was that the inquiry officer also misdirected himself in relying upon several documents in addition to 3 documents specified in the list of documents enclosed to the memorandum pertaining to the charge-sheet. This contention has also substance.

17. In view of the foregoing, the inquiry ^{stands} ~~has~~ vitiated. If the inquiry is vitiated, the orders of the disciplinary authority as also of the appellate authority have also to go. It may, however, incidentally be mentioned that the order

92288/12
Ce
22/2/88

A-3
8 -

made by the appellate authority is also hit by the dictum of the Supreme Court in Ram Chander v. Union of India and others (4). The observations made by the Supreme Court in paras 9 and 25 of the judgment are pertinent in this behalf. It would appear to be profitable to reproduce the same. These run as under:

" Para 9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

Para 25. " Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel case that the Appellate Authority must not only give a hearing to the Government Servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by the tribunals, such as the Railway Board in the

case, will promote confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given

18. It was lastly submitted by the learned counsel for the petitioner that the articles of charge being vague the inquiry stands vitiated. As the inquiry is held to have been vitiated in view of the grounds referred to herein above, we do not feel it necessary or expedient to pronounce on the validity or otherwise of this submission

19. The upshot of the above discussion is that the inquiry proceedings and the impugned orders passed by the disciplinary authority and the appellate authority, annexures 11 and 18 respectively are hereby struck down, with consequential benefits. This will not, however, preclude the authority concerned from holding a fresh inquiry. ~~in accordance with law~~ The quantum of consequential benefits shall be decided by the competent authority in the light of the ^{they} decision which may take in the matter of holding a de novo inquiry, and in accordance with law.

20. In regard to the question of consequential benefits, the learned counsel for the petitioner invited our attention to the decision of the Supreme Court in Tekraj Vasandi alias Shri K.L. Basandhi v. Union of India and others (3) and urged that the question of consequential benefits should not be left to the departmental authorities. Paragraph 21 of the aforesaid authority, which is relevant, reads thus:

" Before we part with this case, we must indicate what reliefs the appellant would be entitled to. Now that the order of the dismissal is set aside and the proceedings have been restored to the stage of enquiry,

the appellant shall be deemed to have been restored to service. The appellant would have become entitled to the normal relief available in such a situation. He should be deemed to be in service and we do not agree with Dr. Anand Prakash that his suspension should continue. His suspension which had merged into dismissal has been vacated. It shall, however, be open for the employer to make any direction as is deemed appropriate in that behalf in future. The appellant, therefore, becomes entitled to the salary for the past period subject to his satisfying the authorities that he has not earned any other income during the period."

21. The aforesaid directions given by the Supreme Court would also support the directions which we have given i.e. the quantum of consequential benefits shall be decided by the competent authority in accordance with law. In case the competent authority decides to hold a fresh inquiry, the same be completed within a period of 6 months from today. While making an order for fresh inquiry, the competent authority shall also give due consideration to the contention of the petitioner regarding the charge being vague.

22. In the circumstances of the case, we make no order as to costs.

G.C. Singhvi

(G.C. Singhvi)

Adm. Member.

22-2-88

B.S. Sekhon
(B.S. Sekhon)

Vice Chairman.

22-2-88

R. Acharya
24/2
C. for applicant

Received
27/2/88

Received
for JP
29/2