

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

T.A.No.583/86

Dt. of order: 27.4.94

Gulab Singh Hada

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. M.S.Gupta,

: Counsel for applicant

Mr. U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Gulab Singh Hada filed a writ petition before the Hon'ble High Court of Rajasthan, Jaipur Bench, praying that the enquiry proceedings and the orders dated 22.6.81, 5.8.82 and 15.9.83 may be quashed and the petitioner(hereinafter referred to as 'the applicant') may be reinstated in service with all consequential benefits. The writ petition was transferred to this Tribunal and registered as T.A.No.583/86.

2. While the applicant was working as Inspector, Central Excise under the Assistant Collector of Central Excise & Customs, Ajmer, a charge sheet dated 15.2.77 under Rule 14 of the CCS(CCA) Rules (hereinafter referred to as 'the Rules') was issued to him mentioning 3 articles of charge. The charges against the applicant related to accepting movement of 242 bags of tobacco from Datia in Madhya Pradesh to Sheopuri in Rajasthan between December 1973 - February 1974. On the applicant's denying the charges an enquiry was held. The Inquiry Officer vide his report dated 17.11.80 held that all the 3 charges against the applicant have been established. The Disciplinary Authority, vide order dated 22.6.81, imposed the penalty of Compulsory Retirement on the applicant. The applicant's appeal to the Appellate Authority and revision to the President were also dismissed. Thereafter, the applicant filed the writ petition referred to above.

3. In this writ petition the applicant has raised various pleas such as certain documents referred to in the enquiry proceedings were actually not produced during the enquiry and certain important witnesses were not examined during the enquiry. Also, the Disciplinary Authority had recorded a further finding that XT 1 diary had been tampered by the applicant and this factor was also taken into account while imposing the penalty of compulsory retirement on the applicant. The XT 1 diary was not exhibited during the enquiry. Copies of statements of witnesses referred to in the charge sheet were not supplied to him before the commencement of the enquiry. A copy of the preliminary report of enquiry was also not supplied to the applicant to enable him to defend himself properly. The authorities concerned had passed cryptic and ~~as~~ non-speaking orders while rejecting his appeal and revision petition. The ~~Appellate~~ Authority had also not been given specific findings in respect of the requirements contained in sub-rule (2) of Rule 27 of the CCS(CCA) Rules while disposing of the appeal filed by the applicant. The report of the Inquiry Officer was also not given to the applicant before the penalty was imposed on him.

4. The respondents in their reply have denied the averments of the applicant. They have added that the Disciplinary Authority had gone through the XT 1 diary on the specific request of the applicant even though this document had not been exhibited during the enquiry. They have denied that there/any requirement of law that the report of the preliminary enquiry/made available to a charged official. Regarding examination of certain witnesses, during the enquiry, they have stated that the applicant could very well have requested the Inquiry Officer to this effect during the enquiry itself. The Disciplinary Authority had passed the order after going through the records and/evidence as well as the report of the Inquiry Officer. The Appellate Authority had applied its mind to the facts of the case before disposing of the appeal. All the orders passed by the authorities concerned were in accordance with the provisions of the CCS(CCA) Rules.

The Revisionary Authority had also dealt with the case on merit. After going through the records including the enquiry report, the Disciplinary Authority had come to the conclusion that the applicant has caused a pecuniary loss of Rs.32,855/- and had imposed the penalty as aforesaid. The order passed by the Disciplinary Authority does not call for any interference.

5. We have heard the learned counsel for the parties and have gone through the records. Since it was proposed by the Disciplinary Authority to prove the charges framed against the applicant on the basis of the documents and witnesses listed in the charge sheet, it was not necessary to provide a copy of the preliminary enquiry report to the applicant. Supply of the copy of the preliminary report would have been necessary only if the report as such would have been relied upon for proving the charges against the applicant. If some material contained in the preliminary enquiry report or some documents mentioned ~~therein were~~ proposed to be relied upon for proving the charges against the applicant and the specific documents/witnesses in this regard were listed in the charge sheet, no prejudice was caused to the applicant by non-supply of the preliminary enquiry report.

6. It was not necessary to supply a copy of the report of the enquiry to the charged official before imposing penalty on him. The Hon'ble Supreme Court have now held in the judgment in Mohd. Ramzan Khan's case, that copy of the report of the Inquiry Officer should be supplied to the charged official before imposing penalty, but the application of the ratio of this judgment is prospective in nature. In other words this requirement ~~is~~ operates from 20.11.1990.

7. We find that the orders of the Disciplinary Authority, Appellate Authority and the Revisionary Authority, are not cryptic in nature as alleged by the applicant but these are fairly ~~desik~~ detailed and deal with the substance of the points raised by the applicant.

8. There are however certain other matters relating to the findings of the Inquiry Officer and the order of the Disciplinary Authority which merit attention. We need not go into the question regarding all the witnesses and documents, essential according to the applicant, not being examined or produced during the enquiry. However, non-production of certain documents has in our view prejudiced the case of the applicant and has in all probability led to imposition of a serious penalty like compulsory retirement. The learned counsel for the applicant argued that non-supply of statements of witnesses at the commencement of the enquiry as per the requirements of the Note below sub-rule (II) of Rule 14 had seriously prejudiced the case of the applicant. The reply of the learned counsel for the respondents to this argument was that the applicant had inspected the statements and had cross examined the witnesses on the basis of these statements. Therefore, in fact no prejudice was caused to the case of the applicant because of ~~mere~~ non-supply of these documents before the commencement of the enquiry. However, the applicant had repeatedly asked for supply of XT 1 diary dated as 26.2.74. This was asked for a defence document. This diary was not exhibited during the enquiry and this fact is clear from the report of the Inquiry Officer. The circumstances under <sup>which</sup> the plea of the applicant to produce this diary during the enquiry was rejected by the Inquiry Officer are not known. But it is undisputed that this diary was available. It was referred to by the Disciplinary Authority in his order. The Disciplinary Authority held, after a perusal of the diary, that the applicant was guilty of an additional charge of having tampered with the evidence by making some additional entries in this diary. The argument of the learned counsel for the respondents during the hearing was that it was at the specific request of the applicant that the Disciplinary Authority had examined this diary. The applicant would have requested the Disciplinary Authority <sup>defending</sup> to examine the diary with a view to ~~defend~~ himself against the action proposed against him. If however, after going through the diary, the Disciplinary Authority came to the conclusion that

an additional charge could be made against the applicant and this charge was not already the subject matter of the charge sheet dated 15.2.77 issued to him, it was incumbent upon the Disciplinary Authority either to remit the case to the Inquiry Officer to enquire into ~~specifying~~ this particular additional charge or to hold some enquiry in respect of the additional charge himself. He has held ~~that~~ the additional charge of tampering with the evidence, in the form of making additional entries in XT 1 diary, as established without confronting the applicant with his tentative findings or without allowing him an opportunity to defend himself against this additional charge.

9. If the Disciplinary Authority had confined himself to the 3 charges framed ~~xxi~~ <sup>vide</sup> by the charge sheet dated 15.2.77 was held as established by the Inquiry Officer, the position would have been different. However, in the instant case what has happened is that the Disciplinary Authority has taken the additional charge <sup>treated</sup> as having been proved, into account while imposing the major penalty of compulsory retirement on the applicant. Taking such a grave charge into account while imposing an equally grave penalty, without affording any opportunity to the applicant to defend himself against this charge is <sup>a</sup> serious violation of the rules as also the principles of natural justice.

10. Another point which emerges from the order of the Disciplinary Authority is that he has also taken into account the fact that the applicant has caused a loss of Rs.30,855/- while imposing penalty of compulsory retirement on the applicant. Now in the charge sheet dated 15.2.77 issued to the applicant, there is no quantification of the loss. There is also no indication in the order of the Disciplinary Authority, how this particular amount of loss had been determined. This factor has been taken into ~~some~~ consideration by the Disciplinary Authority while imposing penalty of compulsory retirement regarding which the applicant had no opportunity to express any view, much less defend himself against the finding of having caused loss of this much quantum. Even assuming that the 3 charges framed against ~~the~~

the applicant were proved but the quantum of loss had been a comparatively much smaller amount, may be the applicant would have visited with a less severe punishment.

11. Thus, the Disciplinary Authority has taken into account 2 factors namely the charge of tampering with documents and causing loss of Rs.30,855/- to the government with which the applicant was never specifically confronted. It is obvious that these 2 charges have weighed heavily with the Disciplinary Authority in imposing penalty of compulsory retirement on the applicant. This is quite evident from the concluding paragraph of the order of the Disciplinary Authority. Thus the order of the Disciplinary Authority is vitiated and it cannot be sustained.

12. We are conscious of the fact that while dealing with matters of this nature, we exercise jurisdiction of the nature which is conferred on the High Court under Article 226 of the Constitution. We do not sit as an Appellate Authority on the orders of the Disciplinary Authority. However, in a case in which the prescribed rules have been flouted and such flouting has led to serious miscarriage of justice in the form of imposition of a major penalty of compulsory retirement which was heavily influenced by charges with which the applicant was not confronted, the order of the Disciplinary Authority has necessarily to be quashed. It is not a case in which there has been some technical ~~or~~ ~~or~~ failure on the part of the Disciplinary Authority which however does not affect the correctness of the conclusions of the Disciplinary Authority. This is a case in which the order of the Disciplinary Authority is heavily influenced by extraneous charges.

13. In the circumstances, we quash the orders of the Disciplinary Authority, Appellate Authority and the Revisionary Authority. Benefits consequential to the quashing of these orders shall follow. However, we make it clear that the respondents are free to hold a fresh proceedings against the applicant from an appropriate stage, if they so choose.

14. The O.A. is disposed of accordingly with no order as to