

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH.

J A I P U R .

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O.A. No. 698/92  
( OA No. 581/89)

Date of decision: 3.8.94

N.B. KHANDELWAL

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. J.K. Kaushik

: Counsel for the applicant.

Mr. N.K. Jain

: Counsel for the respondents.

CORAM:

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

Hon'ble Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER:

Shri N.B. Khandelwal has filed this application U/S 19 of the A.T. Act, 1985 praying that the order dated 26.12.84 (Annexure A-1) being charge-sheet, order imposing penalty of reversion for one year dated 2.2.89 (Annexure A-2) and order dated 8.5.89 (Annexure A-3) upholding the penalty imposed by the Appellate Authority may all be quashed with consequential benefits.

2. A charge-sheet dated 26.12.84 (Annexure A-1) was issued to the applicant, then working as Head Clerk in the Office of the Regional Provident Fund Commissioner, Rajasthan Jaipur which contained three charges. These related to unauthorised absence on 18.7.84 and misplacing attendance register on 2.11.84, availing himself of excess casual leave and trying to manipulate the records in the section through wrong absentee statement for April, 84 and deliberately keeping cases pending with him for 2 to 3 weeks in one category and for 5 to 7 days in the second category. With regard to the cases kept pending by him, it was further alleged in the charge-sheet that the applicant remained willfully absent from duty and kept cases pending with him with malafide intention. Thereby the applicant was charged with violation of Rule 3(1) of the Central Civil Service (Conduct) Rules, 1964 which are applicable mutatis-mutandis to the employees of the Office of Central Provident Fund

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Commissioner.

3. The applicant did not submit any written statement of defence. Enquiry was held and the Enquiry Officer vide his report, which is the enclosure to Annexure A-9, held the charges against the applicant as established. Thereafter, a copy of the report was given to the applicant and he was asked to make a representation regarding the penalty proposed to be imposed on him, which was the major penalty of removal from service. Vide Annexure A-10, dated 5.2.87, the applicant submitted his detailed reply to the Disciplinary Authority. Thereafter, the Disciplinary Authority vide order dated 2.2.88 (Annexure A-2) imposed on the applicant the penalty of reversion to the lower post of U.D.C. for a period of one year ~~year~~ which was to operate as a bar for further promotion during the period of penalty. The applicant preferred an appeal to the Appellate Authority who, however, dismissed it. The applicant is aggrieved by the issued of the charge-sheet; the order of the Disciplinary Authority and the order of the Appellate Authority.

4. We have heard the learned counsel for the parties and have perused the records. The learned counsel for the applicant stated during the arguments that the charges were so vague that it was difficult for the applicant to defend himself against these. He read out the statement of imputations to substantiate his point. He added that the Enquiry Officer had travelled beyond the charges, in as much as while the allegation against the applicant was that he had delayed submission of 100 cases, the Enquiry Officer had held that the applicant had delayed submission of about 300 cases. The Enquiry Officer and the Disciplinary Authority moved on the assumption that the applicant had to prove his innocence of the charges against him, whereas under the law, it was for the Disciplinary Authority to prove the charges against the applicant. Further, according to him,

the ~~Appellate~~ Authority had travelled beyond the charge-sheet issued to the applicant, holding the applicant guilty of a charge which had, in fact, not been framed.

5. Coming to the specific instance, the learned counsel for the applicant stated that while the applicant had been charged with delaying submission of files, the respondents had not specified what was the normal procedure for submission of a file and, therefore, how it could be said that submission of a particular file had been delayed. Regarding absence ~~from~~ from 6.4.84 to 12.8.84, which is mentioned in the statement of imputation, the learned counsel for the applicant stated that the applicant had availed himself of compensatory leave during this period. He drew our attention to Annexure A-12 which had been filed alongwith the Misc. Application which had been allowed. Regarding the charge that the applicant had mis-placed the attendance register, he drew our attention to the report of the Enquiry Officer wherein the Enquiry Officer had merely recorded the gist of the evidence of Accounts Officer, Shri B.C. Hiranandani, wherein the Accounts Officer had merely stated that the applicant had been asked to search and deliver the attendance register but he did not give it. This did not show that the applicant had, in fact, misplaced the attendance register. In conclusion, the learned counsel for the applicant stated that this was a case of ~~no~~ evidence and, therefore, the findings of the Enquiry Officer and of the Disciplinary and Appellate Authorities were totally unjustified.

6. The learned counsel for the respondents stated that the charges against the applicant have been properly framed and these have been held as established by the Enquiry Officer on the basis of evidence.

7. We have considered the matter carefully. It is true that both the Enquiry Officer and the Appellate Authority have brought in some extraneous matters which were not the subject-matter of the charge-sheet, while holding that the charges against the applicant were proved. The question before us, however, is whether in view of reliance on some extraneous materials which did not find form of the charge-sheet, the entire proceedings including the penalty levelled on the applicant are liable to be set aside. Our answer is in the negative. If it is possible to separate the extraneous and the relevant materials and if the charges are sustainable on the basis of the evidence which is relevant, it would not be proper to set aside the entire proceedings only on the ground that some irrelevant or extraneous materials have been taken by the authorities concerned. For this view, we place reliance on the Judgments of Hon'ble Supreme Court in State of Maharashtra Vs. B.K. Takkamore, (1967) 2 SCR 503 and Union of India Vs. Sardar Bahadur, (1972) 2 SCR 218.

8. Coming to the specific aspects of the case, we do not find that the charge-sheet is so vague that the applicant is unable to defend himself against it. If the Charge-sheet, even if somewhat loosely drafted, is such as is capable of being understood by the applicant and he can get a proper idea of the charges against him, he can very well defend himself against the charges. We do not find anything in this case which suggests that the case on behalf of the Disciplinary Authority proceeded on the assumption that the applicant had to disprove the charges against him. Regarding the charge of causing delay in submission of files, even if we accept that only some 100 files were delayed by the applicant, the charge is serious one. As to the yard-stick for judging the extent of delay caused in submission of the files, it is pertinent to know that the respondents had issued a show-cause notice (Annexure

A-4) to the applicant spelling out the delay caused in submission of various files and had also mentioned broadly the period during which the files should have been submitted. Thus, even before the charge-sheet was framed against the applicant, he was confronted with the delay caused in submitting the files. The applicant's reply, if any, to Annexure A-4 has not been placed before us as part of the application. Therefore, there was a reasonable basis for the Enquiry Officer to hold that the applicant had caused delay in submission of several files.

9. Regarding grant of compensatory leave to the applicant during April, 84, the document A-12 was produced along with Misc. Application filed on 23.3.94. Although the respondents in their reply to the Misc. Application had not categorically said anything about the genuineness of this documents, we find that the word 'sanctioned' in a manner on it rather illegible/had been scribbled/and it is also not clear who has sanctioned the leave. It is also not clear how the applicant came into possession of this document which would ultimately find part of the records of the department. This document would have had more relevance if the applicant had requisitioned it during the inquiry so that the Enquiry Officer could have had the opportunity to evaluate it and consider its evidential value. Regarding the attendance register, which the applicant was alleged to have misplaced, the Accounts Officer had indeed asked the applicant to trace it out. The argument of the learned counsel for the applicant was that this did not prove that the applicant had misplaced <sup>it</sup>. However, the applicant was Head Clerk and in his supervisory capacity, he must be keeping the muster roll in his custody and if it was misplaced, it was a reasonable assumption

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on the part of the respondents that it must have been lost when it was in his custody.

10. We are of the view that even after excluding the extraneous materials, the charges against the applicant were properly established during the inquiry in which he was given a due opportunity to defend himself. We are not expected to re-appraise the evidence and come to our own conclusion, if the conclusions of the Enquiry Officer, the Disciplinary Authority and the Appellate Authority are such as can be supported by the relevant material and evidence on record.

11. In the circumstances, we do not find merit in the application and the same is rejected, with no order as to costs.

( O.P. SHARMA )  
Administrative Member

Ckrishna  
( GOPAL KRISHNA )  
Member(Judicial)