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CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR.

O.A.NO. 699/92

: Date of Decision. 27/7/93

Bhagwan Swaroop

: Applicant.

Mr. J.K. Kaushik

: Counsel for the applicant.

VERSUS

Union of India & Ors. : Respondents.
Mr. K.N. Shrimal : Counsel for the respsds, with
Mr. Ramesh Chandra, Chief Clerk, Departmental
representative on behalf of the respondents.

COURT:

HON'BLE MR. GOPAL KRISHNA, JUDL MEMBER

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

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

Applicant Bhagwan Swaroop in this application under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

"(i) That the impugned order S E-5 dated 11.6.87 Annexure A-1 issued by ASTE (c) Microwave Kota be declared illegal and without jurisdiction and the same may be quashed.

(ii) That the impugned order dated 31.5.88 Annexure A-2 inflicting the penalty of expulsion from service on the

applicant and order dated 27.3.82 Annexure A-B upholding the penalty issued by 2nd respondent may be declared illegal and the same may be quashed.

- (iii) That the respondents may be directed to reinstate the applicant in service with consequential benefits.
- (iv) Any other order/ direction/relief may be passed in favour of applicant which may be deemed just fit and proper under the facts and circumstances of this case.
- (v) The cost of this application may be awarded."

2. The applicant was initially appointed as a casual khallasi at Nagda on 27.6.79. He worked there till 1983 and the relevant entries about his work were made in his service card. Thereafter he was appointed as casual khallasi on 9.6.83 on production of his previous service card and was placed to work under C.T.I. Microwave Construction Kota where he served till 31.5.88. The applicant was served with a charge sheet issued vide Annexure A-1 dated 11.6.87 for grave misconduct of securing employment on the basis of the Railway Service Card which was forged and the same has not been certified by the Assistant Engineer, Sangrur. The

The applicant submitted his reply vide his letter dated 13.7.87 (Annexure A-3). He denied the charge. Before the Enquiry Officer, the applicant made an admission of his guilt vide Annexure A-5 dated 13.8.87. According to the applicant, this admission of guilt was secured from him on a false representation by the enquiry officer that if he admitted the charge, his job could be saved. Thereafter, vide order dated 31.5.88 the applicant was removed from service (Annexure A-2). According to the applicant's counsel, the ASTE (C) M.V. Kota was neither the appointing authority nor the disciplinary authority for issuing charge sheet for major penalty and the disciplinary proceedings are unauthorised and that the admission of guilt was obtained under duress for extraneous reasons. It is also urged that the applicant was not given adequate opportunity to defend his case.

3. The learned counsel for the applicant stated during the arguments that no detailed enquiry was conducted into the charges against the applicant, as provided in the rules. He stated that the respondents are required to maintain a register showing the names of the casual labour employees and if this register had been maintained/ produced, the applicant's name would find place therein. But there is no averment in the petition regarding such a

register. He has assailed the Appellate Order
not
as/being in conformity with the rules under which
the Appellate Authority is required to give a
finding whether the procedure of enquiry had been
complied with, whether the findings of the Inquiry
Officer were warranted by the evidence on record
and whether the penalty was adequate or excessive
in view of the gravity of misconduct. Further,
according to him, in view of the decision of the
Hon'ble Supreme Court in the case of Biren Chander
Vs. UOI (ATR 1936 (2) SC 252), the Appellate
Authority should have granted a hearing to the
applicant before disposing of the appeal. He
has also cited a judgment dated 5.11.97 of
Full Bench of the Tribunal in the case of
Premnath K Sharma Vs. UOI (Full Bench Judgments
Volume-I Page 245) in support of the view that a
copy of the enquiry report should have been given
to the applicant before imposing the penalty.
He has further invited our attention to the
judgment of the Tribunal, Ahmedabad Bench, reported
at (ATR 1991 (2) CAT 44), according to which,
the failure of the Enquiry Officer to furnish
the relevant documents to the applicant to enable
him to prepare his defence amounts to violation
of principles of natural justice and, therefore,

such proceedings are liable to be quashed. He has, therefore, prayed that the order of the Disciplinary Authority and the Appellate Authority should be set aside.

4. The learned counsel for the respondents has drawn our attention to the unequivocal admission on the part of the applicant before the Inquiry Officer (Annexure, A-5), wherein he has admitted that his service card was fake. With the reply of the respondents there is an Annexure R-2, which shows that the applicant was not engaged by IOC (C) Nagda as shown in the casual labour card. Reliance was placed by the respondents on Annexure R-3 dated 21.9.37 whereby the applicant was given an additional opportunity to submit written arguments in the light of the evidence tendered. There is force in the contention of the respondents, that the penalty was imposed by an authority who was competent to impose it irrespective of the fact that the charge sheet was served by the disciplinary authority or by an authority lower in rank. No prejudice has been caused to the applicant. It has been denied by the respondents that the Inquiry Officer gave any assurance to the applicant that if he admitted his guilt, his job would be saved. According to him, the admission of guilt by the applicant was of his own free will. He has, therefore, prayed for the dismissal of the D.A.

5. We have carefully considered the arguments of the counsel for the parties, have perused the records and have gone through the judgments cited by the learned counsel for the applicant. The admission of guilt was made by the applicant voluntarily. No evidence has been produced to suggest that the applicant made admission of guilt on account of any inducement by the Inquiry Office. Once a charged official admits his guilt before the Inquiry Officer, he is not required to hold a full-fledged enquiry, He could return a verdict of guilty on the basis of such admission and could submit his report to the Disciplinary Authority. The only document relevant in this case was the Service Card, which has been alleged by the authorities to be fake and false. Even if there is some infirmity in the procedure of enquiry, it does not go to ^{the} root of the matter and does not vitiate the enquiry because basically the verdict of guilt against the applicant is based on his admission before the Inquiry Officer. Therefore, findings of the Inquiry Officer are justified.

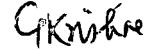
6. We may now advert to the cases cited by the learned counsel for the applicant. It is true that the Full Bench of the Tribunal in Premnath K Sharma's case had held in Nov. 1937, that a copy of the enquiry report should be given to the applicant before a penalty is imposed on him. However, subsequently, there was a judgment of three members

Bench of the Hon'ble Supreme Court in the case of U.O.I. Vs. Mohd. Ramzan Khan (A.I.R. 1991 SC 471). In this judgment also the Hon'ble Supreme Court held that copy of the inquiry report must be supplied to the charged official before imposing penalty on him. They further added that the application of the principle laid down in this judgment would have prospective effect. Although the penalty on the applicant was imposed in April, 1983, while the Tribunal's judgment in Premnath K. Sharma was delivered on 6.11.87, we hold that the matter was clinched by the judgment of the Hon'ble Supreme Court in Mohd. Ramzan Khan's case only because earlier there was another judgment of the Hon'ble Supreme Court, wherein they had held that a copy of the enquiry report need not be supplied to the charged official before imposing penalty on him. This judgment of the Hon'ble Supreme Court was delivered in the case of Kalish Chander Asthana Vs. State of Uttar Pradesh (1983 (3) SCC 500). We, therefore, hold that it was necessary to supply a copy of the enquiry report to the charged official only in cases where penalty had not been imposed by the time the Hon'ble Supreme Court delivered their judgment in Mohd. Ramzan Khan's case in November, 1990.

7. Regarding non-supply of document, mentioned in the charge-sheet, to the applicant, the Tribunal's judgment reported at (AIR 1991) (2) CAT 44) would not be of much help to the applicant because there was only **one** material document which has been produced by the applicant himself for securing employment, as regard the judgment of the Hon'ble Supreme Court in the case of Ram Chander, requiring that opportunity of being heard should be given before disposing of an appeal, it may be stated that there are two significant aspects to be noted in connection with the applicant's case. One is that he made an unequivocal admission of guilt before his Inquiry Officer and also did not specifically ask for hearing by the Appellate Authority before disposal of his appeal. In these circumstances we hold that there was nothing wrong if the Appellate Authority did not on its own grant an opportunity of being heard to the applicant. We have gone through the order of the appellate authority. We find that although the order does not contain separate findings on each of the three requirements mentioned in Rule 22 (2) of the AS (D&A) Rules, yet in substance the order of the Appellate Authority meets the requirement of Rule 22 (2).

3. In conclusion, we hold that the orders of the Disciplinary Authority and the appellate Authority do not suffer from any basic infirmity and the findings of both the authorities are consistent with the evidence against the applicant and in view of the gravity of the misconduct the penalty imposed was justified. We, therefore, dismiss the D.A. There shall be no order as to costs.


(O.P. SINGH)
Adm. Member


(G. KRISHNA)
Jud. Member


Anil