

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(19)

O.A. No. 1148/92

199

T.A. No.

DATE OF DECISION 19.1.1998

Brijpal Chawla

Petitioner

E.K. Kulshrestha

Advocate for the Petitioner (s)

Versus

Union of India & Ors

Respondent

Mr. V.S. Gurjar


Advocate for the Respondent (s)


CORAM :

The Hon'ble Mr. O.P. SHARMA, ADMINISTRATIVE MEMBER

The Hon'ble Mr. RATAN PRAKASH, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗


(Ratan Prakash)
Judicial Member


(O.P. Sharma)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No. 1113/92

Date of order: 19.1.1993

Brijpal Chawla

: Applicant

Vs.

1. Union of India through the Secretary to the Govt of India, Ministry of Home Affairs, New Delhi - 110 001.
2. Director, Police Telecommunications Directorate of Coordination (Police Wireless) Block No.9, CGO Complex, Lodi Road, New Delhi - 110 003.
3. Joint Director, Director of Coordination (Police Wireless) Block No.9, CGO Complex, Lodi Road, New Delhi - 110 003.
4. Station Suptt, Inter State Police Wireless Station, Near Rajasthan Secretariat, Jaipur - 302 005.

...Respondents.

Mr.B.K.Kulshrestha - Counsel for applicant

Mr.V.S.Gurjar - Counsel for respondents

CORAM:

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

Hon'ble Mr.Ratan Prakash, Judicial Member

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Brijpal Chawla has prayed that the order Annx.A1 dated 18.2.92 by which the penalty of removal from service was imposed on the applicant may be set aside as being violative of the provisions of Articles 14, 16 and 311(2) of the Constitution of India and the principles of natural justice. He has also sought quashing of the order Annx.A20 dated 19.4.1993 being the order of the appellate authority upholding the penalty imposed on the applicant. The applicant has further prayed that the respondents may be directed to reinstate him on the post which he was holding immediately prior to his being removed from service.

2. The facts of the case as stated by the applicant are that a charge sheet dated 6.12.91 (Annx.A9) was issued to the applicant whereby two charges were framed against him. In the charge sheet five documents were listed on the basis of which the charges were proposed to be established and two persons were listed as witnesses whose evidence was required for sustaining the charges framed. The charges against the applicant related to his failure to join duty at the place where he was transferred, corresponding directly with the Head of the Department and making a false statement as to the blindness of his mother to gain sympathy of the competent authority to further his interests in service matters. The Inquiry Officer vide his report which is at pages 37-41 of the OA, held the charges against the applicant as established. An opportunity was given to the applicant to make a representation against the Inquiry Officer's report. Thereafter penalty of removal from service was imposed on the

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applicant vide Annx.A1 dated 18.2.92. His appeal dated 16.3.92 (Annx.A15) was rejected by the appellate authority vide order dated 19.4.1993 (Annx.A20). The applicant is aggrieved by the procedure adopted by the Inquiry Officer whereby according to him there has been violation of the provisions of CCS (CCA) Rules relating to holding of enquiry and consequently violation of the principles of natural justice. The applicant has listed various infirmities in the procedure adopted by the Inquiry Officer at pages 10-13 of the O.A. He has also challenged the power of the disciplinary authority to impose penalty of removal from service on the applicant. He has also assailed the orders of the disciplinary authority and the appellate authority as not being speaking in nature. In these circumstances, he has prayed that the orders of the disciplinary authority and the appellate authority should be quashed with all consequential benefits.

3. In the reply, the respondents have by and large denied the averments of the applicant and have stated that the enquiry was conducted in a proper manner, full opportunity of hearing was granted to the applicant and the action taken against the applicant was strictly legal and in accordance with the rules.

4. We have heard the learned counsel for the parties. We had directed the respondents to produce the record relating to the disciplinary proceedings including the enquiry proceedings to enable the Tribunal to satisfy itself about the point whether a proper opportunity of being heard was given to the applicant in accordance with the procedure laid down in the CCS(CCA) Rules and in accordance with the principles of natural justice. The records relating to the disciplinary proceedings commencing from the receipt of the report of the Inquiry Officer have been produced although the records relating to the conducting of the enquiry have not been produced. However, during the hearing the position that has emerged is discussed in the following paragraphs.

5. It is apparent from the position which has emerged during the hearing that the applicant was not given an opportunity to inspect the listed documents, nor were copies thereof made available to the applicant before the enquiry commenced. The contention of the respondents is that the listed documents were nothing but the applications made by the applicant himself or the copies of correspondence entered into between him and the authorities. This is a vague defence. There is a specific requirement under the rules that a charged official has to be allowed the inspection of the listed documents or copies thereof have to be made available to him to enable him to defend himself. In our view, therefore, there has been a clear violation of sub-rule (11) of Rule 14 of the CCS(CCA) Rules regarding grant of opportunity to inspect the listed documents.

6. In the charge sheet, two officials were listed as witnesses on behalf

of the disciplinary authority. From paragraph (ix) of the Inquiry Officer's report it appears that in fact three witnesses produced by the Presenting Officer, on behalf of the disciplinary authority were actually examined during the enquiry. It is not clear how a third witness came to be examined on behalf of the disciplinary authority. It has not been shown that an opportunity to cross examine this witness was granted to the applicant.

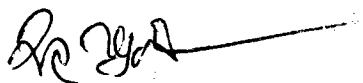
7. It is one of the averments of the applicant that in fact no statements of witnesses were at all recorded and therefore, no opportunity of cross examination thereof was made available to the applicant. It has not been shown to us by the respondents that in any case the applicant was given an opportunity to cross examine all the witnesses.

8. It is also seen that the Presenting Officer was also one of the witnesses on behalf of the disciplinary authority. This is a very unusual and rather strange approach adopted by the Inquiry Officer. The presenting Officer is supposed to present evidence on behalf of the disciplinary authority and not be part of the evidence. It also emerges from the Inquiry Officer's report that the Inquiry Officer himself conducted part of the investigation in the case to determine whether the applicant's mother was in fact blind. This is also something extremely unusual. An Inquiry Officer is supposed to be a Judge of the evidence. Once he himself conducted part of the investigation, he would naturally be biased in favour of that piece of evidence which was collected by him and he would be interested in holding it as true and correct. Thus, the Inquiry Officer failed to act as an independent and impartial judge of the evidence produced before him on behalf of the disciplinary authority and by the applicant.

9. The above violations of procedure and infirmities in the enquiry cumulatively show that the enquiry has not been conducted in accordance with the procedure laid down and there has been serious violation of the principles of natural justice. Of course if there is violation of any particular rule or procedure we have to see whether this has also resulted in any prejudice being caused to the applicant and no enquiry can be set aside merely on the ground that there has been just any violation of the rules or the procedure. However, in the present case there has been gross violation of the rules and procedure resulting in violation of the principles of natural justice. Findings from such an enquiry cannot be sustained. In these circumstances the orders of the disciplinary authority and the appellate authority which are merely based on the findings of the Inquiry Officer cannot be sustained. In the result, the orders Annx.A1 dated 18.2.92 and Annx.A20 dated 19.4.93, being the orders of the disciplinary authority and the appellate authority respectively are quashed with all consequential benefits to the applicant, including reinstatement of the applicant. The respondents are however free to take action in accordance with law if they so choose. The respondents shall comply with

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this order within four months from the date of the receipt of a copy of this order. The O.A is allowed. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P.Sharma)

Administrative Member.