

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A.No. 774 of 1989

DATE OF DECISION: 16-5-90

~~To be filled~~

Between:-

N. Rama Rao

Petitioner(s)

Shri G. Mohan Rao

Advocate for the
petitioner(s)

Versus

CSIR

Respondent.

Shri Channabasappa Desai, SC for
CSIR

Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER(JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(B.N.J.)

(D.S.R.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 774 of 1989

Date of Order: 16.5.1990

Between:-

N.Rama Rao

..

Applicant

and

The Council of Scientific and
Industrial Research, represented
by its President, Rafi Marg,
New Delhi-110002.

..

Respondent

Appearance:

For the Applicant : Shri G.Mohan Rao, Advocate.

For the Respondent : Shri Channabasappa Desai, Standing
Counsel for CSIR

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDICIAL).)

1. The applicant herein is an Assistant Executive Engineer working in the Regional Research Laboratory, Hyderabad, a unit of the Council of Scientific and Industrial Research, who is the respondent herein. In this application he seeks to question the Order No.38(9)/79-Vig., dated 7th September 1989 issued by the respondent imposing upon him the penalty of reduction to a lower stage in the time scale of pay for a period of six years. The facts giving rise to this order of punishment can be briefly summarised as follows:-

2. Charges were framed against the applicant while he was working as Civil Engineer under CSIR at Madras, alleging that

P

contd...

he has received a sum of Rs.300/- as illegal gratification from one Shankaralingam of M/s.Venkateswara Engineering Constructions, Madras. An inquiry was conducted, but the Inquiry Officer in his report dated 17-8-1981 held that the charge was not proved. This report was accepted by the disciplinary authority who passed an order dated 22-3-1982 exonerating the applicant, but with a warning that he should be more careful in future. This order was passed on 22-3-1982. On 24-4-1985 the respondent herein, who purported to have reviewed the matter in exercise of the powers under rule 29(1) of the CCS (CCA) Rules, 1965, issued a show cause notice informing the applicant that he disagrees with the findings of the Inquiry Officer and the disciplinary authority and he has come to the conclusion that the applicant is guilty of the charge levelled against him. By this order it was proposed to impose upon him a penalty of dismissal from service.

3. The applicant made several representations ~~questioning~~ the show cause notice issued. Thereafter an order of removal dated 31-1-1986 was passed by the President of CSIR holding that it would be apt to hold him guilty and remove him from service.. ^{On the basis of his order 2/31-1-1986} ~~Thereafter~~ an order dated 7-2-1986 was passed by the Director, Regional Research Laboratory, Hyderabad (the authority under whom the applicant was working) removing the applicant from service w.e.f. 7-2-1986. This order of removal was questioned in Writ Petition No.1361 of 1986 preferred to the High Court of A.P. The said Writ Petition was transferred to this Tribunal and numbered as T.A.12/1987. The ~~said~~ T.A. was allowed by an order dated 24-9-1987. Two main reasons were given by the Tribunal for setting aside the order of punishment:-
(1) That the show cause notice was not a speaking order and no reasons have been given as to why the President proposed to ~~defer~~ with the orders of the Inquiry Officer/Disciplinary

contd...

: 3 :

Authority; (2) that there was inordinate delay in exercising the power of review/revision by the President, CSIR, which was not validly explained. In regard to the plea of the Respondent/CSIR seeking a direction that it is open to the department to take action against the applicant after giving reasons as to why the revising authority proposes to revise the order of the disciplinary authority, this Tribunal declined to do so in view of the long lapse of time. The matter was carried in an appeal to the Supreme Court. The Supreme Court by an order dated 7-3-1988 in Civil Appeal No.792 of 1988 modified the order of the Tribunal and clarified that it will be open to the reviewing authority to issue a fresh notice mentioning the reasons for disagreeing with the report made by the Inquiry Officer within 4 months and pass an appropriate order in accordance with Law thereafter without undue delay. Thereupon, the respondent herein issued a show cause notice dated 4-7-1988 calling upon the applicant to show cause why the penalty of removal from service should not be imposed upon him. The applicant submitted his explanation thereto on 3-8-1988. After giving the applicant personal hearing, the impugned order dated 7-9-1989 bearing No.38(9)/79-Vig., was issued by the respondent imposing upon the applicant the penalty of reduction to a lower stage in the time scale of pay for a period of six years. This was followed by an office Memo No.EST-EG-602/Vig, dated 15-9-1989 issued by the Controller of Administration, Indian Institute of Chemical Technology (previously known as Regional Research Laboratory), Hyderabad, imposing upon the applicant the said penalty. ~~It is contended that~~ Various reasons and grounds have been raised questioning the order dated 7-9-1989. The main reasons are that no speaking order is made in the show cause notice as to why the competent authority disagreed with the findings of the Inquiry Officer. It is contended that the directions of the Supreme Court have not been carried out. The second ground raised is that the

contd...

charge was held to be deemed to have been proved on the basis of certain frivolous conclusions drawn by the respondent. The contention raised by the applicant in reply to the show cause notice viz., the applicant was sought to be found guilty on the basis of suspicions was not dealt with. In addition to the grounds raised in the application, it was contended in the course of argument by Shri G.Mohan Rao, learned counsel for the applicant, that as is clear from the order of punishment, the revising authority took into consideration the report of the CBI which constitutes extraneous material and should not have been taken into consideration.

4. On behalf of the respondent a written statement/counter has been filed denying the various contentions raised by the applicant. It is contended that they do not merit consideration. It is further contended that the order of the revising authority is a duly speaking order and reasons were given for imposing penalty. In this connection it is necessary to extract the relevant portions of the show cause notice dated 4-7-1988 and the impugned order dated 27-9-1989:

Extract from show cause notice dated 4-7-1988:

" NOW THEREFORE, the President, CSIR in exercise of his powers under Rule 29 of the CCS(CCA) rules as adopted by the CSIR called for the entire record in both these cases for revision and passed the following order:-

"I have carefully gone through the inquiry report in the common departmental proceedings against S/Shri N.Rama Rao and S.Venkatachari, and connected documents. The Inquiry Officer had held that the charges framed against both of them were not proved. However, they should have acted in a more intelligent way and should have shown greater presence of mind. The Disciplinary Authority had accepted the findings of the Inquiry Officer and both of them were cautioned to be careful in future and conduct themselves in a way becoming of their position.

As a result of a trap laid by CBI, marked currency notes worth Rs.300/- each were recovered from the persons of Shri Rama Rao and Shri Venkatachari. This fact has not been disputed. The two officers have not been able to come out with any plausible explanation as to why they pocketed this money if it had not been demanded as bribe and accepted as

bribe except that they wanted to inform their superiors about the incident. As such the charges will be deemed to have been proved against them. I, therefore, disagree with the findings of the Inquiry Officer that the charges have not been proved and I hold both of them guilty of the articles of charge. Further I hold that the penalty of removal from service may be imposed upon both the officers on review of the case. Both the officers shall be given show cause notice as to why the said penalty should not be imposed on them."

"

Extract from impugned order dated 7-9-1989 bearing No.38(9)/79-VIG:

" AND WHEREAS after affording an opportunity of personal hearing, the President, CSIR has carefully considered the report of the Central Bureau of Investigation and the Inquiry Officer and the representation made by the said Sri N.Rama Rao in person;

NOW THEREFORE the President, CSIR, has ordered as follows:-

"CBI in their report have made the following two charges:-

- (i) That both S/Shri S.Venkatachari and N.Rama Rao had accepted Rs.300/- each as bribe from Shri Shankaralingam;
- (ii) The officers had shown favours to the contractor by granting extension of time for completion of the job assigned to him and recommending release of 25 per cent of the earnest money directly to the contractor.

As for (i) above both S/Shri S.Venkatachari and N.Rama Rao have not been able to give any satisfactory explanation for having the marked currency-notes in their pockets, though they say that the contractor having put them on the table they were taking them to hand over to their superior officers. We do not know exactly what happened when the money was handed over. The contractor himself in his deposition says that he did not recollect what exactly happened when he met the two officers on 27-4-1979. There are also certain other attendant circumstances like (a) the role of decoy witness Shri S.Kulathu Iyer, who did not actually over hear the conversation or see money being passed on to the two officers in question, although he was specifically assigned this job; (b) the antecedents of the contractor who was compulsorily retired in 1975 from the Highways Department of Tamil Nadu and whose reputation for integrity was not apparently very high.

As regards (ii) above, the CBI report is mainly based on presumptions. The record clearly shows that the officers have issued many letters to the contractor pointing out the slow progress, poor material used, etc.. They had, in fact recommended that liquidated damages

contd...

be taken from the contractor. It was also decided at the higher level that 25 percent earnest money should go to the bank against the bank guarantee. Thus the records do not show that they always favoured the contractor.

Taking all these factors into account and the facts that the previous records of officers have been quite good and the officers have undergone considerable mental strain and have been the object of social obloquy for all these years, I am inclined to take a lenient view. I believe that the ends of justice will be met if instead of removal from service the penalty of reduction to a lower stage in the time scale of pay for a period of six years is imposed upon them. The pay of both the officers should be brought down by five increments. They will draw the reduced pay for a period of six years and during this period they will not earn any increment. After six years they will start drawing their usual increments.

BY ORDER AND IN THE NAME OF
PRESIDENT, CSIR.

"

Relying on the show cause notice dated 4-7-1989 and the order dated 7-9-1989, it is contended for the respondents that there is no infirmity in the procedure followed, that the final order of the revising authority is a speaking order and that it is supported by reasons.

5. We have heard Shri G.Mohan Rao, learned Counsel for the applicant, and Shri Channabasappa Desai, learned Standing Counsel for the respondent. We will now take up the contentions raised on behalf of the applicant. The first contention raised is that neither in the show cause notice nor in the final order passed on behalf of the President, CSIR, are reasons given for differing with the findings of the Inquiry Officer, ^{viz} that the charge of demand and acceptance of bribe by the applicant, is not proved. It is contended by the learned Counsel for the applicant that the applicant admitted that the alleged money had been kept on his table, though he never demanded the same, and he had put the money in his pocket and was proceeding to report the matter when he was apprehended by the CBI authorities. It is contended that these aspects adverted to by the Inquiry

contd...

: 7 :

Officer namely that there was no demand for the money by the applicant, that there was no evidence of such demand or acceptance of bribe has been impliedly accepted by the revising authority, which observed "we do not know what exactly happened when this money was handed over. The contractor himself in his deposition states that he did not recollect what exactly happened when he met the two officers on 27-4-1987". It is contended further that the applicant had explained as to how he came into possession of the money viz., that the contractor had suo moto left the currency notes on the applicant's table and that Inquiry Officer had accepted this version taking into account that there was neither any demand nor acceptance. He contends that the revising authority did not give any reason to reject this defence of the applicant but had merely stated that the applicant had not given satisfactory explanation for the currency notes in their pockets. Shri Mohan^{Rao} contends that unless the demand and acceptance ~~were~~^{are} proved and unless the Inquiry Officer's findings that there was no demand or acceptance are set aside, the applicant cannot be found guilty merely on the ground that he was in possession of the said notes. We are inclined to accept this contention. Mere possession of the tainted notes does not amount to demand and acceptance of the bribe amount. As extracted above, the reviewing authority's order does not state how the charge is held to be proved except to state that the applicant and the other officer have not given any satisfactory explanation for being in possession of the marked currency notes. In a disciplinary enquiry it is not the lack of explanation of an employee which should determine the guilt~~y~~ of the employee, but the evidence against him. The revising authority did not disagree with the findings of the Inquiry Officer that the complainant contractor had a grudge against the applicant and his colleague, that there was never any demand for the bribe

contd...

amount made upon him or that payment was made pursuant to such a demand. These factors which weighed with the Inquiry Officer in coming to the conclusion that the applicant is not guilty of the charge is not rejected by the revising authority. Further the revising authority does not state in regard to what aspect of the inquiry report it is differing and on what legal evidence it comes to the conclusion that the charge is proved. The revising authority's order dated 7-9-1989 nowhere states that the charge is established. It follows that the charge is not established and there is no basis to hold that the charge is established. In the circumstances it is clear that the order of the revising authority is a perfunctory order and passed without giving any valid reasons as to how the charge against the applicant of having accepted a bribe of Rs.300/- from Sri Shankaralingam is established.

6. Shri G.Mohan Rao, counsel for the applicant next contends that the revising authority has held that the CBI in their report have alleged that the applicant and his colleague had accepted Rs.300/- each as bribe and that this report of the CBI is the sole basis for imposing the punishment on the applicant. He contends that the CBI report, which is relied upon by the revising authority, was never marked as evidence in the enquiry or made a part of the enquiry proceedings. It is contended by the counsel for the applicant that the respondent could not have relied upon this report and held that the applicant guilty of charges. We see considerable force in this argument. It is not denied that the CBI report referred to in the order of the revising authority has not been marked in evidence and as such it could not have been looked into for any purpose whatsoever. Reliance placed on the said



contd...

report by the revising authority in coming to the conclusion that the applicant had accepted the sum of Rs.300/- as bribe from Sri Shankaralingam cannot be the basis or ground for holding that the applicant is guilty of the charge. It was not open to the disciplinary authority to either look into or rely upon the report of the CBI, ^{not brought on record in the enquiry proceedings} in coming to the conclusion that the applicant is guilty of the charge. On this ground also the impugned orders of the revising authority and of the disciplinary authority imposing a punishment of reduction in pay to a lower stage for 6 years are liable to be set aside.

7. In the result the application is allowed and the impugned order bearing No.38(9)/79-VIG, dated 7-9-1989 passed in the name of President, CSIR, and the consequent order of punishment bearing No.EST-EG-602/Vig., dated 15th September 1989 issued by the Controller of Administration, Indian Institute of Chemical Technology, Hyderabad, are set aside. In the circumstances of the case, there will be no order as to costs.

B.N. Jayasimha
(B.N.JAYASIMHA)
VICE-CHAIRMAN

D. Surya Rao
(D.SURYA RAO)
MEMBER (JUDICIAL)

Date: 16th May 1990

For Dy. Registrar

nsr

TO:

1. The President, Council of Scientific and Industrial Research, Rafi Marg, New Delhi-110 002.
2. One copy to Mr.G.Mohan Rao, Advocate, 3-5-703, Opp. Old. M.L.A. Quarters, Himayatnagar, Hyderabad-500 029.
3. One copy to Mr.Chennabasappa Desai, standing counsel for CSIR, CAT, Hyderabad.
4. One spare copy.

...

kj.

For Dy. Registrar

CHECKED BY

TYPED BY:

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBU-
NAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C. ✓

HON'BLE MR.D.SURYA RAO:MEMBER:(JUDL) ✓

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: 16-5-90

~~ORDER/JUDGMENT:~~ ✓

M.A./R.A./C.A./No.

in

T.A.No.

W.P.No.

O.A.No.

774/89

~~Admitted and Interim directions
issued.~~

Allowed. ✓

Dismissed for default.

~~Dismissed.~~

~~Disposed of with direction.~~

M.A. ordered.

No order as to costs. ✓

Sent to Xerox on:

Central Administrative Tribunal

DESPATCH

18 MAY 1990

HYDERABAD BENCH.