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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.237/90.

Date of Judgement : 2.11.993.

P.V.Rao

.. Applicant

Vs.

1. The Union of India,
Rep. by its Secretary,
Min. of Defence,
Research & Development Orgn.,
'B' Wing, Sena Bhavan,
DHQ P.O., New Delhi-110011.
2. The Scientific Adviser to
The Raksha Mantri &
Director-General,
Research & Development,
Raksha Mantralaya,
Anusandhan Tatha Vikas Sangathan,
'B' Wing, Sena Bhavan,
DHQ P.O., New Delhi-110011.
3. The Director,
Defence Metallurgical Research
Laboratory, Kanchanbagh P.O.,
Hyderabad-500258. .. Respondents

Counsel for the Applicant :: Shri V.Venkateswara Rao

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

I As per Hon'ble Shri A.B.Gorthi : Member(A) I

By means of this application the Applicant challenges the validity of the order dt. 8.1.90 imposing upon him the penalty of compulsory retirement.

2. The undisputed fact in this case is that on 3.11.82 when the Applicant who was then a Stores Officer in the

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Defence Metallurgical Research Laboratory (DMRL for short) was about to leave the DMRL premises, he was stopped and checked at the security gate where it was found that he was carrying 26 Kg. of Cobalt metal on his scooter. The case of the Applicant is that the Cobalt was planted on his scooter and he did not know anything about it till he was stopped and checked at the security gate. On the other hand, it was brought out during the enquiry that Shri Devaraj (P.W.1) saw the Applicant stopping his scooter near the Stores Godown and signalling to Shri Narasinga Rao. Shri Narasinga Rao then handed over a leather bag to the Applicant. The witness became suspicious and rushed to the security gate and informed the Security Officer Shri K.L.Sah. Immediately, the scooter of the Applicant was stopped and searched. Apart from 13 Kg. of Cobalt in the leather bag, another packet containing 13 Kg. of Cobalt was found in the scooter. On the conclusion of the enquiry and after furnishing a copy of the Inquiry Officer's report to the Applicant the disciplinary authority awarded him the major penalty of compulsory retirement.

3. Shri V.Venkateswara Rao, learned counsel for the Applicant challenged the validity of the penalty on several grounds. He first contended that the disciplinary authority vide order dt. 3.4.83 directed that disciplinary action be taken against all the 3 involved in the incident, viz: the Applicant, Shri V.Ravindranathan and Shri V.Narasinga Rao, and that a common enquiry be held in respect of all of them. The Inquiry Officer deviated from the said order and held separate enquiry proceedings in respect of each of the charged officials. According to the Applicant's counsel this is in violation of Rule 18 of the C.C.S.(C.C.A.) Rules, 1965 and consequently the enquiry itself

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is invalid and cannot be the basis for the penalty. In support of his contention he placed reliance on the judgement of the Tribunal in the case of V.Narsing Rao Vs. U.O.I. & Ors. (O.A.No.288 of 1986). The enquiry held in respect of Shri V.Narsing Rao, who was a co-accused in this case, was set aside by the Tribunal for reasons stated in para 5 of the judgement which is reproduced below:-

"5. The short point for consideration is whether the Inquiry Officer's report is liable to be set aside on the ground of infirmities in procedure referred to in the preceding paras. It is clear that the procedure envisaged under the Rules was given a go-by by the Inquiry Officer. There is a specific order directing the joint/common inquiry obviously to facilitate proper cross-examination. By not holding a joint/common inquiry, it cannot be said that no prejudice is caused to the applicant. Admittedly, the evidence of some other witnesses recorded at one inquiry was sought to be marked in the inquiry against the applicant though recorded in his absence. The fact that the copies of the said statements were made available to him could not cure the defect. There is no procedure prescribed under the rules for importing the statements recorded in some other inquiry and treating them same as evidence without getting them marked as evidence. Instructions have been given under Rule 14 that the statement of a witness recorded at a preliminary inquiry/investigation can be read out to him and got admitted as evidence and that thereafter it is not necessary to once again record his statement for purpose of examination-in-Chief vide Official Memorandum No.134/7/75/AVD/I dated 11th June, 1976 of the Dept. of Personnel and Administrative Reforms. This procedure cannot be imported where a joint inquiry has been ordered and it would not be open to the Inquiry Officer to treat the statement of a witness recorded in some other inquiry as examination-in-Chief for the purpose of inquiry against the applicant. Even while doing so, it may be noted that the Inquiry Officer has not read out the statements of Mr. K.L.Sah and Gangaraju recorded in other inquiry and directed cross-examination. It is clear that the procedure adopted by the Inquiry Officer is fraught with violations of the procedure prescribed and it would follow that no reasonable opportunity has been afforded to the applicant. In these circumstances, we hold that the report of the Inquiry Officer is vitiated and it was not open to the Disciplinary Authority to get upon such a report."

From the above it would be evident that in the case of V.Narsing Rao he was not present when the prosecution witnesses were examined-in-Chief. It was mainly on that count that the enquiry proceedings against him were set aside. It was not held by the Tribunal that merely because a joint enquiry was not held that the enquiry proceedings were liable to be set aside.

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4. Rule 18(1) of the C.C.S. (C.C.A.) Rules, 1965 reads as under:-

"18. Common Proceedings

(1) Where two or more Govt. servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Govt. servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE.— If the authorities competent to impose the penalty of dismissal on such Govt. servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others."

The above rule enables the competent authority to order a joint enquiry. Unless so ordered by the competent authority common proceedings in respect of two or more charged officials cannot be held. But where common proceedings are directed, and the proceedings held in consequence thereof, though purporting to be common proceedings but are in effect separate proceedings the question of validity of the proceedings will have to be examined keeping in view the resultant prejudice, if any, caused to the Applicant. In the instant case, the enquiry commenced on 11.5.83 in the shape of a joint enquiry, where all the 3 charged officials were present. After ^{the} recording of their pleas of not guilty, the enquiry was adjourned to 6.6.83. Thereafter, the Inquiry Officer held the proceedings in respect of the Applicant only postponing the enquiry in respect of the other charged officials to subsequent dates. So far as the enquiry in respect of the Applicant is concerned all the prosecution witnesses were examined in the presence of the Applicant who was allowed to cross-examine them. He was also allowed to lead his defence and he did so by calling Shri K. Gangaraju as a defence witness. Thereafter, the enquiry in respect of the other two individuals was taken up. Explaining the procedure adopted, the Inquiry Officer

in his report (para 1.3) had clarified as under:-

"Though a common proceedings order was published by the disciplinary authority, it was found during the preliminary inquiry stage that the charges against CGS-I, CGS-II and CGS-III had specific items to be proved. The Inquiry Officer decided that the inquiry in respect of the ~~three~~ charged Govt. servants will be carried out individually. However, it was decided that the proceedings of one CGS will be made available to the other for enabling them to put forward their defence without any difficulty and prevent re-examination of witnesses on the points already covered by one CGS. This view was concurred by the three CGSs, two Defence Assistants and the P.O. In view of the above, the reports in respect of CGS-I, CGS-II and CGS-III will be dealt with individually in Chapters 2, 3 and 4 respectively of this document."

5. Obviously, the Inquiry Officer adopted a novel procedure and thereby deviated from the clear direction given by the disciplinary authority for holding common proceedings in respect of all the 3 charged officials. The question for consideration is whether the procedure followed by the Inquiry Officer is such as would vitiate the enquiry proceedings. As already noticed by us, we find that the Applicant cannot complain that he has been prejudiced in any manner as a result of the procedure followed by the Inquiry Officer. So far as ~~other~~ charged officials are concerned, they could have alleged prejudice because the witnesses were not examined-in-Chief in their presence. The Applicant herein cannot, however, take the said plea because the record clearly indicates that he was present throughout the enquiry and was allowed to cross-examine witnesses and also lead the common defence. Keeping in view the circumstances of the case, we are of the considered view that the enquiry conducted in respect of the Applicant is sufficiently in order notwithstanding the fact that the Inquiry Officer failed to conduct common proceedings as ordered by the disciplinary authority.

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6. The case of the Applicant is that he was innocent and that the Cobalt metal pieces were planted on his scooter without his knowledge. A careful perusal of the enquiry proceedings would sufficiently support the allegation made in the charge memo that the Applicant was attempting to remove the Cobalt metal from the premises of the DMRL without any authority or supporting document. The evidence of Shri Devaraj (P.W.1) negatives that this is a case of no evidence.

7. The learned counsel for the Applicant contended that as per extant instructions, enquiries in disciplinary proceedings against gazetted officers involving lack of integrity are to be entrusted to the Commissioner for Departmental Enquiries under the Central Vigilance Commission. He, therefore, challenged the validity of the enquiry held in this case by a departmental officer. The instructions laying down that departmental enquiries in vigilance cases are normally to be entrusted to the Commissioner for Departmental Enquiries, are only meant to be guidelines and cannot be held to be mandatory. That being so, the enquiry held in this case by a departmental officer cannot be said to be irregular. The learned couns for the Applicant finally assailed the validity of the impugned order of the disciplinary authority on the ground that it was a non-speaking order. A perusal of the order would show that the disciplinary authority "after taking into consideration the report of the Inquiry Officer and the representation submitted by Shri P.V.Rao" was satisfied that the charge of exhibiting lack of integrity and conduct unbecoming of a Govt. servant against Shri P.V.Rao was established. The disciplinary authority has not given

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any reasons in support of his order. It is settled law that where the disciplinary authority accepts the findings of the Inquiry Officer he need not make a reasoned order. In this connection we may refer to Ram Kumar Vs. State of Haryana, 1988 SCC L&S 246.

8. In view of what is aforesaid we find that there is no justification to interfere with the penalty imposed upon the Applicant. The application is, therefore, dismissed without any order as to costs.

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member(J).

A.B.Gorthi
(A.B.Gorthi)
Member(A).

Dated: 2. Nov., 1993.

br.

Deputy Registrar(J)

To

1. The Secretary, Union of India,
Ministry of Defence, Research & Development Organisation,
'B' Wing, Sena Bhavan, DHQ P.O.New Delhi-11.
2. The Scientific Adviser to the Raksha Mantri &
Director-General, Research & Development,
Raksha Mantralaya, Anusandhan Tatha Vikas Sangathan,
'B' Wing, Sena Bhavan, DHQ P.O.New Delhi-11.
3. The Director, Defence Metallurgical Research
Laboratory, Kanchanbagh P.O.Hyd-258.
4. One copy to Mr.V.Venkateswar Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
6. One copy to Deputy Registrar(J)CAT.Hyd.
7. Copy to All Benches and Reporters as per standard list of CAT.Hyd.
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A. G. G. P.
A. G. G. P.
31/11/93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 2-11-1993

ORDER/JUDGMENT:

Typing.

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

in

O.A.No. 237/90

T.A.No. (W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

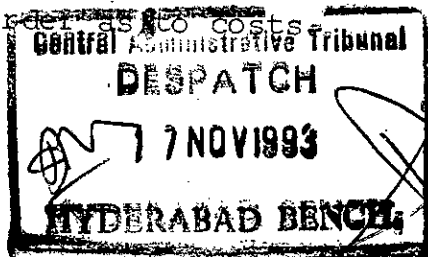
Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs



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Jantyal