

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.81/93

Dt. of order: 21.9.1995

Udai Singh : Applicant

-Vs.

Union of India & Ors. : Respondents

Mr.Rajendra Soni : Counsel for the applicant

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Udai Singh has prayed that the order Annx.A1 dated 15.1.90 imposing the penalty of removal from service of the applicant be quashed, the order dated 8.6.'90 (Annx.A3) passed by the appellate authority dismissing the appeal of the applicant may be quashed and the applicant may be reinstated in service with all consequential benefits.

2. The case as set out by the applicant is that he was served with the charge sheet dated 10.8.'89 under Rule 14 of the CCS(CCA) Rules wherein the charges framed against him were that on 26.7.1989 he appeared in the office at about 12 noon in a drunken condition, used abusive language against his senior officers and brandshed knife and axe. Further, assistance of Police was sought to control him and he was arrested under Sec.34 of the Police Act. Thereafter he was put up before the Court on 27.7.1989 where he confessed his guilt and was fined Rs.50/-. He was alleged to have violated provisions of Rule 22(b) of the CCS(Conduct) Rules, 1964. The applicant denied the charges and alleged that the disciplinary authority had initiated the proceedings against him, a driver, because of his not allowing the wife of the disciplinary authority to drive the government Jeep. He was

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placed under suspension vide order dated 1.8.1989. In spite of the imposition of fine of Rs.50/- on him after his being found guilty under Sec.34 of the Police Act, charge sheet was issued to the applicant in respect of which an enquiry was held. No report of the Inquiry Officer was given to the applicant prior to the impugned order. Vide order dated 15.1.1990 (Annx.A1), the charges were held as proved against the applicant. On the basis of the enquiry report a penalty of removal from service was imposed on him. The applicant's appeal against the penalty order was dismissed vide order dated 8.6.1990 (Annx.A3). The applicant has assailed the orders passed against him on various grounds such as that the penalty order has been passed in complete violation of the provisions of the CCS(CCA) Rules, the principles of natural justice and Articles 14, 16 and 21 of the Constitution. Further, the charges framed against the applicant in the charge sheet have no connection with Sec.34 of the Police Act which relates to offences committed on any road or in any open space or street, etc. The charge that the applicant violated Rule 22(b) of the CCS(Conduct) Rules is also untenable because although the applicant had consumed liquor, he was not held to be intoxicated as per the medical report. Further, order dated 15.1.1990 passed by the disciplinary authority is a nonspeaking order and the disciplinary authority has mechanically relied upon the report of the Inquiry Officer without independent application of mind. The penalty imposed is also disproportionately severe. The appellate authority has also not applied its mind while passing the appellate order, in violation of the provisions of Rule 27 of the CCS(CCA) Rules. In the appeal, the applicant had stated that there were lacunae in conducting the enquiry and the penalty order passed against him but the appellate authority disregarded these contentions.

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3. The respondents in their reply have taken a preliminary objection as to the maintainability of the application on the ground of limitation. They have stated that the appellate authority passed its order on 8.6.1990, whereas the application was filed on 13.4.1993. We may at this very stage dispose of this objection by stating that the O.A was in fact filed on 21.10.1990 and therefore, it is within the limitation period. Hence, the preliminary objection of the respondents is rejected.

4. Other averments of the respondents in the reply are that the applicant's trial by the Judicial Magistrate under the Police Act did not by itself bar the initiation of disciplinary proceedings against him. Copy of the report of the Inquiry Officer was supplied to the applicant on 21.2.1990 though after passing the order by the disciplinary authority. The enquiry was conducted strictly in accordance with the prescribed procedure. Provisions of Rule 22(b) of the CCS(Conduct) Rules are attracted because anybody consuming liquor is bound to be under the influence of intoxicating drink. The disciplinary authority has taken into consideration the entire record including the defence taken by the applicant in the reply to the charge sheet. The conduct of the applicant was so grave that he deserved the penalty of dismissal rather than removal from service. Since the order passed by the appellate authority is one of affirmation, it need not be a detailed speaking order. In spite of that however the appellate authority has passed an order which is fairly detailed and reasonable. The applicant has not clarified what were the lacunae in conducting the enquiry and passing the impugned order.

5. The applicant has filed a rejoinder in which he has stated, inter alia, that during the suspension the head-

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quarters of the applicant were at Jaipur and the Inquiry Officer conducted the enquiry at Ajmer, in the absence of the applicant, so he could not participate in the enquiry. It has further stated that the Inquiry Officer did not call upon him to participate in the enquiry in order to produce any defence evidence.

6. We have heard the learned counsel for the parties and have gone through the pleadings. On 31.3.'94, the Tribunal had directed the respondents to produce the relevant records relating to the disciplinary proceedings. These records were produced by the learned counsel for the respondents today during the hearing. These have been perused by us.


7. On a perusal of the records of the disciplinary proceedings produced before us, we find that there is no reference in the report of the Inquiry Officer to the applicant having been given any opportunity to appear before the Inquiry Officer in connection with the enquiry being conducted against him. In the enquiry report there is a reference to statements of witnesses which have been relied upon by the Inquiry Officer for coming to the conclusion that the charges against the applicant are proved. Obviously no opportunity to cross examine these witnesses was given to the applicant. The learned counsel for the respondents was requested to show us any communication from the file regarding the applicant having been asked by the Inquiry Officer to appear before him in connection with the enquiry. He was not in a position to locate any such communication or a copy thereof. In these circumstances, the only conclusion that can be drawn in this case that not only was the procedure laid down in Rule 14 of the CCS(CCA) Rules not followed while conducting the enquiry but even the minimum principles of natural justice in the form of giving an opportunity of being

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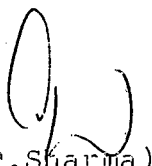
heard to the applicant were not followed. The enquiry proceedings are, therefore, vitiated on this ground. Since the order of the disciplinary authority and the appellate authority are based essentially on the findings of the Inquiry Officer, these orders cannot be sustained. Therefore, orders Annx.A1 dated 15.1.1990 and order Annx.A3 dated 8.6.1990 are set aside.

8. The charges against the applicant are however, ^{grave} ~~grave~~ and he was functioning in a highly sensitive department of the Govt. of India. We are of the view that a proper enquiry must be held into the charges against the applicant. The respondents are, therefore, directed to hold a fresh enquiry into the charges against the applicant from the stage after submission of a written statement of defence by the applicant to the charge sheet issued to him. Such an enquiry must be completed and a final order of the disciplinary authority be passed within a period of one year from the date of the order. The enquiry must be held after observing the procedure laid down in the CCS(CCA) Rules. Thereafter, appropriate orders may be passed by the disciplinary authority. In view of the provisions of Sub-rule (4) of Rule 10 of the CCS(CCA) Rules, the applicant shall be deemed to be under suspension. He will, however, be entitled to subsistence allowance, as per rules.

9. The O.A is disposed of accordingly with no order as to costs.


(Ratan Prakash)

Member(Judl).


(O.P.Sharma)

Member(Adm.).