

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

22

O.A. No. 328/94  
T.A. No.

199

DATE OF DECISION 11.02.1998

R.C. Sharma Petitioner

Mr.P.V. Calla Advocate for the Petitioner (s)

Versus

Union of India & Ors Respondent

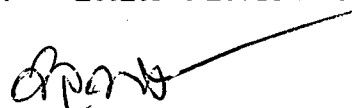
Mr.B.N.Purehit Advocate for the Respondent (s)

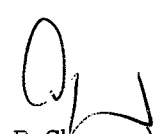
**CORAM :**

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

The Hon'ble Mr. Patan 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 ?

  
(Patan Prakash)  
Judicial Member.

  
(O.P.Sharma)  
Administrative Member.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.328/94

Date of order: 11.2.1998

R.C.Sharma

: Applicant

Vs.

1. Union of India through the Secretary, Department of Forest and Environment, Govt. of India, New Delhi.
2. The State of Rajasthan through the Secretary to the Govt, Department of Forest & Environment, Govt of Rajasthan, Jaipur.
3. The Secretary, Deptt. of Personnel & Administrative Reforms, Govt of Rajasthan, Jaipur.

...Respondents.

Mr.P.V.Calla - Counsel for applicant

Mr.B.N. Purohit - Counsel for respondents

CORAM:

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

Hon'ble Mr.Patan Prakash, Judicial Member

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

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri R.C.Sharma has prayed that the order dated 7.3.1994 (Annx.A1) by which the penalty of with-holding of increments for a period of two years without cumulative effect was imposed on the applicant may be quashed, the inquiry proceedings conducted against the applicant in pursuance of the memorandum Annx.A2 dated 30.5.1984 may also be quashed and the respondents may be directed to accord promotion to the applicant on the post of Conservator of Forests from the date when he become eligible. It has further been prayed that if any order is passed by the respondents during the pendency of the O.A, promoting any person junior to the applicant on the post of Chief Conservator of Forests, such promotion may also be quashed with the direction to the respondents to accord promotion to the applicant on the post of Chief Conservator of Forests.

2. The facts which are essential for disposal of the application may be stated briefly as follows. A charge sheet Annx.A2 dated 30.5.1984 was issued to the applicant who is an officer of the Indian Forest Service when he was functioning as the Deputy Conservator of Forests under the Govt. of Rajasthan. On the applicant's denying the charges, Inquiry Officer was appointed. Both the issue of the charge sheet and the appointment of the Inquiry Officer were stated to be under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969. On conclusion of the inquiry, the Inquiry Officer submitted his inquiry report Annx.A28. After receipt of the inquiry report the disciplinary authority viz the Govt of Rajasthan, examined it. However, vide order Annx.A17 dated 29.3.1989, the Governor directed the Inquiry Officer to reinquire into the matter under Rule 9 of the All India Services (Discipline & Appeal) Rules, 1969 for the reasons

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given below: (reproduced verbatim from Annx.A17)..

- "1. The Enquiry Officer has not conducted the enquiry under All India Services (Disciplines and Appeal) Rules, 1969 but has conducted enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.
2. The Enquiry Officer has after the closer of the evidence of both the parties taken on record the documents of prosecution side which were not produced in evidence. The written objection of deponent officer was rejected by its order dated 29.3.1988. This was not proper.
3. The Enquiry Officer has not passed the orders under Rules 8(12) (1)(2)."
3. The original enquiry report which was not found satisfactory by the disciplinary authority had been furnished by Shri R.K.Agrawal. After the matter was remitted to the Inquiry Officer for fresh enquiry vide Annx.A17 dated 29.3.1989, an enquiry report was submitted by Shri B.L.Mehreda, who was the then Inquiry Officer holding charge as Commissioner for Departmental Enquiries. After receipt of the report of the enquiry from Shri Mehreda, the disciplinary authority issued order Annx.A1 dated 7.3.1994 imposing upon the applicant the penalty of with-holding of two increments without cumulative effect for a period of two years. Subsequently, a communication dated 4.10.94 which is annexed to M.A No.515/94 filed by the applicant, was issued to the applicant pointing out that since the applicant had already been drawing the maximum of the pay in the scale of pay in which he was placed, the penalty imposed on him is not workable. It was, therefore, proposed in the aforesaid communication that it had now been decided to reduce the applicant by one stage below the pay drawn by him for a period of two years. The applicant was asked to submit a representation with regard to the proposal contained in the aforesaid communication. (Since the applicant had approached the Tribunal against the proposed enhancement of the penalty, the Tribunal vide order dated 15.11.94 stayed the operation of the communication dated 4.10.94. Till date no fresh order imposing any penalty has been passed against the applicant).
4. In the light of the above bare facts the applicant has raised a number of grounds in the O.A to challenge the action of the respondents in initiating the proceedings against him, in conducting the enquiry, in imposing the penalty and in proposing to enhance the penalty already imposed. It is not necessary for us to refer to all the grounds which have been raised by the applicant in the O.A as also in the M.A by which the proposed enhancement of penalty was challenged before the Tribunal. One of the main grounds of the applicant for challenging the disciplinary action against him is that the disciplinary authority after perusing the report of the Inquiry Officer found various flaws therein, both procedural and

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substantive in nature and remitted the matter for re-enquiry to the Inquiry Officer. The procedural flaws pointed out in the order Annx.A17 were that the Inquiry Officer had not conducted the enquiry under the All India Services (Discipline & Appeal) Rules but had conducted it under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The substantive flaw pointed out by the disciplinary authority in the order Annx.A17 was that the Inquiry Officer had, after closure of the evidence led on behalf of both the parties, taken on record the documents presented by the prosecution side which were not produced in evidence and the written objections of the delinquent officer as to there being taken on record were rejected by the Inquiry Officer vide order dated 29.8.1988. The disciplinary authority had further observed that the Inquiry Officer had not passed orders under Rule 8(12)(1)(2). Thereafter, a fresh report on enquiry was submitted by the subsequent Inquiry Officer Shri Meherda. The applicant's grievance is that the enquiry report submitted by Shri Meherda is the same as was prepared by the earlier Inquiry Officer, Shri P.K.Agrawal. It was in Shri P.K.Agrawal's report that the flaws mentioned in the order Annx.A17 were pointed out, and therefore resubmission of the same report by Shri Meherda did not amount to re-enquiring the matter as per the directions issued by the disciplinary authority vide Annx.A17. Signatures of Shri P.K. Agrawal appeared on almost all pages of the report enquiry report submitted by Shri Meherda. The earlier report was stated to have been furnished on the basis of the inquiry conducted under the Rajasthan Civil Services (Classification Control & Appeal) Rules. As far as the fresh report was concerned, it was required to be submitted after conducting an enquiry under the All India Services (Discipline & Appeal) Rules. However, all that was done while submitting the report by Shri Meherda was that in the inquiry report prepared by Shri P.K.Agrawal the reference to the Rajasthan Civil Services (Classification, Control & Appeal) Rules was changed to All India Services (Discipline & Appeal) Rules. Thus, according to the applicant not only was no re-enquiry made as directed by the disciplinary authority vide Annx.A17 but the verbatim report in the same format submitted by the earlier Inquiry Officer was resubmitted by Shri Meherda. Further, while remitting the matter for re-enquiry, the disciplinary authority had pointed out a flaw in the enquiry to the effect that the Inquiry Officer had after closure of the evidence on behalf of both the parties taken on record the documents presented by the prosecution side which not not been produced in evidence and the objections of the delinquent officer with regard to their admissibility had been overruled. The fresh enquiry report has been submitted without dealing with this aspect either. In another words the documents which had been taken on record on behalf of the prosecution after the closure of the evidence remained on record despite objections by the delinquent officer, because

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the enquiry report submitted by the subsequent Inquiry Officer was the same as submitted by the earlier Inquiry Officer on the basis of which order of re-enquiry was issued by the disciplinary authority. Thus in spite of order Annx.A17 having been passed by the disciplinary authority, no action as directed to be taken vide Annx.A17 was in fact taken by the Inquiry Officer. This resulted in both procedural and substantive irregularities in the matter of conducting the enquiry and finalisation of the disciplinary proceedings.

5. The respondents Nos.283 in their reply have stated, inter alia, that after the issue of the order dated 29.3.89, the applicant had requested several times that no de novo enquiry may be held against him. Further, it had been pointed out to the applicant that due to typing error it was wrongly mentioned that the proceedings were under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 though these were under the All India Services (Discipline & Appeal) Rules 1969. It was further pointed out that all the notices, summons, etc. were sent under Rule 2 of the All India Services (Discipline & Appeal) Rules, 1969 and not under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958. It was a case of mere wrong mention of a rule. Since the applicant did not want that a fresh enquiry may be held the Inquiry Officer had sent the earlier enquiry report, vide his letter dated 8.2.1992 after correcting the typographical error regarding the mention of the rule, etc. According to the respondents, this action was taken in order to avoid causing of any delay in finalising the disciplinary enquiry.

6. During his arguments the learned counsel for the applicant stated that even if it was accepted for the sake of argument that the mention of the provisions of the Rajasthan Civil Service (Classification, Control and Appeal) Rules in place of the provisions of All India Services (Discipline & Appeal) Rules which were in fact applicable to the applicant was a mere procedural irregularity or even a typographical error, the matter had not been remitted to the Inquiry Officer for re-enquiry only on this ground. The other, substantive ground on which the matter had been remitted to the Inquiry Officer was the irregularity on the part of the Inquiry Officer to have taken on record certain documents presented by the prosecution side after the closure of presentation of evidence on behalf of both the sides, and despite written objections by the delinquent officer. This evidence was also required to be excluded for the purpose of evaluating the evidence led before the Inquiry Officer and it was thereafter that the Inquiry Officer was expected to draw his conclusion as to the guilt or innocence of the delinquent officer. Since the earlier report of enquiry submitted by Shri Agrawal had been resubmitted by the subsequent Inquiry Officer Shri Meherda without any change therein, the Inquiry Officer had flouted the directions of the disciplinary authority to re-enquire into the matter vide Annx.A17.

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Therefore, on this ground alone the enquiry proceedings were liable to be set aside and quashed as a serious prejudice had been caused to the applicant by taking into account the evidence which had been presented on behalf of the prosecution after closure of evidence on behalf of both the sides.

7. The learned counsel for the respondents Nos. 2 & 3 stated during his oral arguments that after the matter was remitted to the Inquiry Officer and he proceeded to hold a fresh enquiry as per the directions contained in Annx.A17, the Presenting Officer urged before the Inquiry Officer that the whole matter should be enquired into afresh in the light of the directions contained in Annx.A17. However, the delinquent officer himself wrote a letter dated 25.10.89 to the Inquiry Officer (the Commissioner for Departmental Enquiries) stating that the entire proceedings have already been considerably delayed, the evidence already led before the Inquiry Officer who had enquired into the matter earlier may be taken as evidence led during the de novo enquiry and that no fresh enquiry may be held. He added that the applicant had himself waived his right to have a fresh enquiry held and once he had done so he could not turn around and say that a prejudice has been caused to him because the matter had not been re-enquired in terms of Annx.A17. To support this view he cited the judgment of the Hon'ble Supreme Court in State Bank of Patiala & Ors Vs. S.K.Sharma, AIR 1996 SC 1669, wherein the Hon'ble Supreme Court has held that in a case of violation of a procedural provision which is of a mandatory character it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement either expressly or by his conduct. If he is found to have waived it then the order of punishment cannot be set aside on the ground of the said violation. Therefore, according to him since it was the applicant himself who had insisted that no de novo enquiry may be held, it cannot be held by the Tribunal that the applicant is in any way prejudiced by the failure of the respondents to re-enquire the matter in terms of Annx.A17. Further according to him, the earlier enquiry was actually held under the provisions of All India Services (Discipline & Appeal) Rules but merely an erroneous reference was made in the enquiry report to the provisions of the Rajasthan Civil Services (CCA) Rules. He also defended the action of the respondents in issuing a fresh show cause notice to the applicant to impose penalty of reduction by one stage in the existing pay for the period of 2 years on the ground that earlier penalty was unenforceable and therefore it amounted to nonimposition of any penalty.

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8. With regard to the documents which were taken on record after the presentation of evidence on behalf of both the sides had concluded, the learned counsel for respondents Nos.2&3 stated that there was a mere reference to these documents in the report of the inquiry but the Inquiry Officer had not taken these into account while discussing the evidence and drawing his conclusion for the reason that these had not in fact been "exhibited".

9. We have heard the learned counsel for the parties and have perused the material on record, the records of disciplinary proceedings including the enquiry proceedings and the judgment cited before us.

10. Once the Inquiry Officer had submitted his report to the disciplinary authority and the disciplinary authority after examining it come to the conclusion that there were certain flaws therein, some of which could be described as procedural in nature and some substantive in nature, it chose to remit the matter to the Inquiry Officer for re-enquiry. We are not very much concerned about the wrong mention of the provisions of the rule under which the enquiry was conducted. The contents of the two sets of rules i.e. the Rajasthan Civil Services (Classification, Control & Appeal) Rules and the All India Services (Discipline & Appeal) rules are not very much dissimilar and both are designed to grant an opportunity of proper hearing to the delinquent officer and are intended to ensure that the principles of natural justice are followed. However, the other ground on which the matter was remitted to the Inquiry Officer is more serious in nature. It is that the Inquiry Officer had taken on record documentary evidence presented on behalf of the prosecution, after the closure of evidence by both the sides and he had done so despite objection in writing by the applicant. The learned counsel for respondents Nos.2&3 argued that even though the Inquiry Officer may have taken such documentary evidence on record, he had not considered and used it for the purpose of drawing his conclusions as to the guilt or innocence of the applicant, because in fact these documents had not been "exhibited". In the first place if the disciplinary authority himself chose to treat this violation of the procedure as a serious matter and sent the matter for re-enquiry to the Inquiry Officer, it follows that the disciplinary authority was aware that the documents taken on record after the evidence on behalf of both the sides had been presented caused prejudice to the case of the applicant. If the disciplinary authority itself considered it a serious violation of the prescribed procedure, it was incumbent on the Inquiry Officer to hold re-enquiry strictly in terms of the order Annx.A17. In such a situation it would perhaps not be necessary for the court step in to judge whether this violation prejudiced the case/defence of the applicant. Not only that, a cursory perusal of the report of the Inquiry Officer which was resubmitted after order Annx.A17 was passed also shows that the Inquiry Officer took this evidence on record

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and considered it while preparing his report, in spite of it not having been "exhibited". Therefore to say that this evidence was not considered and it did not influence the judgment of the Inquiry Officer is not a conclusion which can flow from the facts of the case.

11. The learned counsel for respondents Nos. 2 & 3 made a mention about the waiver granted by the applicant and its implications in view of the judgment of the Hon'ble Supreme Court relied upon by him. In so far as taking on record of these documents is concerned, the applicant while praying vide his letter dated 25.10.1989 that no de novo enquiry may be held had specifically requested the Inquiry Officer that the papers which were taken as documents and exhibits after completion of the departmental enquiry may be excluded. Thus, there was no waiver granted by the applicant with regard to taking on record the documents after the closure of evidence on behalf of both the sides. Thus apparently the failure of the Inquiry Officer to re-enquire into the matter in terms of Annx.A17 particularly after excluding the documents taken on record after closure of evidence on behalf of both the sides has caused serious prejudice to the applicant, has resulted in denial of an opportunity of being heard to him and has amounted to violation of principles of natural justice. Thus the enquiry proceedings are vitiated.

12. Question arises whether even after the Enquiry Officer took into consideration the evidence which should not have been admitted by him the disciplinary authority would still be justified in passing the impugned order of penalty. A similar situation was dealt with by the Hon'ble Supreme Court in Union of India Vs. Parma Nanda, AIR 1989 SC 1185. The Hon'ble Supreme Court in this judgment referred amongst others, to two of its earlier judgments, State of Maharashtra Vs. B.U. Takhamore, AIR 1967 SC 1353 and Zora Singh Vs. J.M. Tandon, AIR 1971 SC 1537. In Takhamore's case, the Hon'ble Supreme Court observed as follows:

".... An administrative or quasijudicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant can be sustained if the Court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision."

In Zora Singh's case, the Hon'ble Supreme Court observed as follows:

".... The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise

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unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari, the superior court does not sit in appeal, but exercises only supervising jurisdiction, and therefore, does not enter into the question of sufficiency of evidence...."

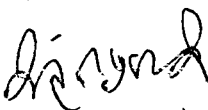
In the case before us not only has the Enquiry Officer relied upon the evidence which ought not to have been admitted, but even the disciplinary authority has observed in its order Annx.A1 that this evidence has been considered in the interest of justice. It is not possible for us in the present case to decide whether in the absence of the inadmissible evidence, still the charges against the applicant can be held to be proved, wholly or partly. In these circumstances the disciplinary action against the applicant including the Enquiry Proceedings cannot be sustained.


13. We have not considered it necessary to refer to and deal with the other grounds raised and reliefs claimed by the applicant.

14. As regards his prayer for grant of promotion, etc, the applicant has already been filed a separate O.A in the matter.

15. In the circumstances, the O.A is allowed. Order Annx.A1 dated 7.3.1994 shall be quashed. The show cause notice dated 4.10.94 annexed to M.A No.595/94 calling upon the applicant to show cause why the penalty should not be enhanced shall also stand quashed. No order as to costs.

16. M.A No.595/94 is also disposed of accordingly.

  
(Ratan Prakash)  
Judicial Member.

  
(O.P.Sharma)  
Administrative Member.