

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 16-3-95.

OA 110/95

VIMAL NARAIN

... APPLICANT.

V/s.

UNION OF INDIA AND OTHERS

... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

HON'BLE MR. G.P. SHARMA, MEMBER (A).

For the Applicant

... SHRI R.N. MATHUR.

For the Respondents

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PER HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

Applicant Vimal Narain has filed this application u/s 19 of the Administrative Tribunal's Act, 1985, praying therein that the enquiry proceedings conducted against the applicant may be held as unreasonable, unjustified, void and contrary to the principles of natural justice. He has also prayed for setting aside the order of the disciplinary authority dated 28.2.95 (Annexure A-1), by which the penalty of reduction in rank to the lower post of Inspector in the grade of Rs.1640-2900 w.e.f. 6.3.95 was imposed upon the applicant.

2. We have heard the learned counsel for the applicant and have carefully perused the records.

3. The applicant while functioning as Superintendent, Customs, Sriganaganagar, in the year 1990, was served with a charge-sheet, for which an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965 (for short the Rules) was held. The charges framed against the applicant read as follows :-

"Shri Vimal Narain while functioning as Superintendent, Customs, Sriganaganagar, in the year 1990 failed to maintain devotion to duty and acted in a manner which was unbecoming of a Government servant.

Sriganaganagar Customs staff in a joint operation with BSF apprehended a person namely Shri Ratan Kumar Arora alongwith 168.853 kg. silver on 27.1.90 near Indo-Pak border. The accused was brought to Jaipur on 28.1.90 for obtaining remand in the supervision of Shri Vimal Narain, Superintendent. The accused was produced before the Chief Judicial

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Magistrate (Economic Offence Court), Jaipur and was taken on remand for 5 days. Whereas Asstt. Collector (Prev.) Jaipur directed him on phone at 8.00 P.M. not to take the accused on remand. Despite his clear directions Shri Vimal Narain Superintendent amended the application dated 28.1.90 written by Shri Davender Singh Dutt, Inspector and intentionally taken the accused on remand. While keeping the accused on remand, Shri Vimal Narain being a supervisory officer negligently did not make proper arrangements for guarding and keeping the accused under custody and also did not give necessary directions to the staff for safe guarding the accused.

Shri Vimal Narain, Superintendent, also consumed liquor in the guest room of the office premises which reflected on his performance and devotion to duty.

Thus Shri Vimal Narain, Superintendent, failed to maintain devotion to duty and acted in a manner which was unbecoming of a Government servant in violation of rule 3 (1) (ii), (iii) and rule 22 (b) of CCS (Conduct) Rules, 1964."

The Enquiry Officer after concluding the enquiry submitted his report to the disciplinary authority. The disciplinary authority held that the applicant through his gross negligence, as established above, which made the escape of the accused possible, has failed to maintain absolute integrity and devotion to duty and has thus violated the provisions of Rules 3(1) (i) & (ii) of the CCS (Conduct) Rules, 1964, and he, therefore, imposed the penalty aforesaid upon the applicant. It is an admitted fact that the applicant did not prefer an appeal to the appropriate appellate authority before invoking the jurisdiction of this Tribunal. The contentions of the applicant's counsel are that the enquiry proceedings against the applicant were conducted against the provisions of Rules inasmuch as sufficient chance was not given to him to rebut the allegations levelled against him and that the applicant was not furnished with copies of documents, in spite of his demand, to counter the allegations made against him. It is also contended that the applicant was not given an effective chance to adduce evidence in defence and the provisions contained in Rule 14(12), (13) and (14) of the

Rules have been violated. It is further contended that the enquiry conducted against the applicant was contrary to the principles of natural justice and hence the provisions contained in Articles 14 and 21 of the Constitution were violated. On the basis of these contentions it was urged by the learned counsel for the applicant that before approaching this Tribunal, by way of filing this application, it was not imperative <sup>on the part of the applicant</sup> to exhaust the alternative remedies available to him under the Rules governing him. The learned counsel for the applicant has relied on 1988 (2) RLR 428, Vivek Prakash Mathur v. State of Rajasthan and others, in which, at page 444, it was laid down, as follows :-

"The question of violation of principles of natural justice is seriously in issue in these writ petitions. The case of Richpalsingh is also a connected matter as his changes of future promotion rests upon the validity or invalidity of the subsequent orders of the Government dated November 24, 1987. In such circumstances, the second exception to the exhaustion of alternative remedies is applicable to the facts and circumstances of these writ petitions and they are entertainable by this Court despite the availability of Rajasthan Civil Services Appellate Tribunal. The preliminary objection raised on behalf of the respondents has no merit in it and is over-ruled."

The learned counsel for the applicant further relied on 1992 (2) SLJ (CAT) 1, B.M. Gupta v. Union of India and others, in which the Allahabad Bench of the Tribunal observed, as under :-

"Before we proceed further it may be said that ordinarily a petition is not admitted by the Tribunal until the departmental remedies are exhausted. In the instant case Shri B.M. Gupta (petitioner) submitted a representation on 15.10.1990 and filed the present petition on 7.11.90 as mentioned above. It is not difficult to conclude that the department did not want to confer the benefit for the judgement of Shri Vidya Bhusan's case on the petitioner otherwise after the submission of the representation of the petitioner on 15.10.90, review DFC dated 29.11.90 should not have taken place. Therefore we admit the petition and proceed to decide the same without compliance of the provisions of Section 20."

Reliance has also been placed on 1993 (2) SLJ (CAT) 524, Mubashir Hussain v. The Deputy Collector (P&V) and Anr., in which the Hyderabad Bench of the Tribunal made the following observations:-

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"So, in view of the above position we do not have any doubt to come to a conclusion that the order of the disciplinary authority is liable to be set aside. Of course the applicant had approached this Tribunal without exhausting the alternative remedy under the service rules that is without approaching the appellate authority. But this is a case where the principles of natural justice are violated. If a delinquent officer satisfies the Tribunal that the disciplinary proceedings are vitiated by violation of the Principles of natural justice it will be open to this Tribunal to interfere and if deemed fit quash the disciplinary proceedings even before it is concluded. The said disciplinary proceeding may also be quashed after its completion also. The fact that the applicant had not appealed according to the rules by itself be no bar to approach this Tribunal in case of violation of principles of natural justice. Whether the principles of natural justice are violated or not will of course be a question of fact. But in the instant case we are satisfied that the principles of natural justice have been violated. So, though the applicant has not exhausted the alternative remedy certainly this O.A. is maintainable."

All these rulings have been duly considered. Each case has to be judged on the basis of its own facts and circumstances. The rulings relied upon by the learned counsel for the applicant, in our opinion, do not help the applicant as the facts of the present case are quite different from the facts of the cases cited supra in so far as the applicant has not been able to show any exceptional circumstances dispensing with the requirements of Section 20 of the Administrative Tribunals Act. Reliance is placed on 1994 (27) ATC 534, State Bank of India, Bhopal v. S.S. Koshal, in which their lordship of the Hon'ble Supreme Court held, as follows :-

"So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by

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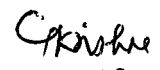
him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India. The second contention accordingly stands rejected."

In view of this decision of the Hon'ble Supreme Court, the contention of applicant's counsel that non-affording of an opportunity of hearing to the applicant before dis-agreeing with some of the findings of the enquiry officer violated the principles of natural justice does not hold good.

4. Since the applicant did not prefer any appeal to the appropriate appellate authority before approaching this Tribunal, we hold that the present application is premature. It is, however, open to the applicant to file an appeal to the appropriate appellate authority in regard to his grievances and if any such appeal is filed within 30 days of the date of this order, the same should be disposed of meeting all the points raised therein through a speaking order on merits as expeditiously as possible in accordance with the prescribed procedure and rules by the concerned appellate authority.

5. The present application as such is not maintainable and is dismissed at the stage of admission.

  
( O.P. SHARMA )  
MEMBER (A)

  
( GOPAL KRISHNA )  
MEMBER (J)

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