

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.430/96

Date of order: 5/7/2000

Prakash Saxena, S/o Sh;ri R.N.Saxena, R/o Rajendra Hotel, Ex-Sub Inspector, CBN.

...Applicant.

Vs.

1. Union of India through the Narcotics Commissioner of India, 19, Mal Road, Morar, Gwalior (MP).
2. Deputy Narcotics Commissioner, Narcotics House, Station Road, Kota (Rajasthan).

...Respondents.

Mr.Virendra Dangi - Counsel for applicant

Mr.K.N.Shrimai - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

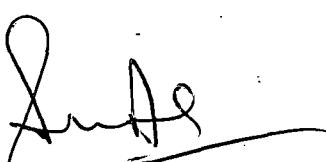
PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer:

- (i) to quash and set aside the order dated 20.12.94 (Annex.A2) passed by respondent No.2 and order dated 25.1.96 (Annex.A3) passed by respondent No.1;
- (ii) to direct the respondents to take back the applicant on duty as if the order of compulsory retirement of the applicant has never been passed with all consequential benefits.

2. In brief facts of the case as stated by the applicant are that a memorandum of charge sheet was issued to the applicant and others under Rule 14 of the CCS (CCA) Rules, 1965 on the following charges:

"That while functioning as S.I in the Prev. and Intelligence Cell, Joāhpur and during the course of preventive checking on 19.6.91, he alongwith sepoy S/Shri Hari Singh, Ranjeet Kumar and Ram Lal stopped a truck bearing No.RJ-19-263 and started checking the contents of the vehicle. They had further demanded a sum of Rs.5000/- as bribe from one Shri Om Prakash Bachhia, driver of the above truck otherwise he would be implicated in smuggling opium case. Further, an amount of Rs.500/- which was with Shri Om Prakash Bachhia was taken away by sepoy Ram Lal and Shri Om Prakash Bachhia was asked to pay the remaining amount of Rs.4500/- within two hours and allowed to go with his truck. Thereafter Shri OM Prakash Bachhia had lodged a complaint with the Superintendent of Police CBI, Joāhpur and the CBI Party had laid trap in the course of which Rs.1000/- handed over by Shri Om Prakash Bachhia as per directions of Shri Ram Lal Sepoy. By the aforesaid act Shri Prakash Saxena, SI, S/Shri Ram Lal, Ranjeet Kumar, Sepoys failed to maintain absolute integrity and devotion to their duties as they had demanded and accepted bribe from Shri Om Prakash Bachhia, thereby contravening the provisions of Rules 3(i) and (ii) of CCA(Conduct) Rules 1964"



3. The applicant denied the charges levelled against him and after enquiry, the Enquiry Officer found the applicant not guilty of the charge dated 4.3.92 but the disciplinary authority did not agree with the findings of the Enquiry Officer and imposed the punishment vide impugned order dated 20.12.94. The applicant filed an appeal against the said order of punishment but the appellate authority was rejected the appeal vide order dated 25.1.96. It is stated that the disciplinary authority while holding the applicant guilty of the charges did not apply its mind and appreciate the evidence in proper prospective. The independent witnesses have not corroborated the story of CBI and have denied the preparation of the memo in their presence on the spot. Not only this, after registering the case, the prosecution did not find any basis to prosecute the applicant. Therefore, the punishment imposed by the disciplinary authority was without any basis. It is also stated that the disciplinary authority before imposing punishment did not communicate the reasons of disagreement so as to give an opportunity to file show cause/hearing to the applicant. Therefore, the order imposing the punishment without giving an opportunity of hearing to the applicant was arbitrary and in violation of the principles of natural justice. It is also stated that the appellate authority has also not applied its mind while rejecting the appeal filed by the applicant. Therefore, the applicant has filed this O.A for the relief as mentioned above.

4. Reply was filed. In the reply, it is stated that the disciplinary authority has a right to differ with the report of an Enquiry Officer and the disciplinary authority after giving detailed reasons in support of his finding passed the order on 20.12.94. It is also stated that the appellate authority had also dismissed the appeal of the applicant after going through the record of the case and upheld the order of the disciplinary authority, therefore, the orders dated 25.1.96 and 20.12.94 are just, proper and legal. Therefore, the applicant has no case for interference by this Tribunal and the O.A is liable to be dismissed with costs. It is further stated that the disciplinary proceedings under Rule 14 of the CCS(CCA) Rules were initiated against the applicant and the procedure contained in the rules was followed and there was no violation of Articles 14 and 16 of the Constitution.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant argued that whenever the disciplinary authority disagrees with the finding of an enquiry report on any article of charges, it is the duty of the

(14)

disciplinary authority to record its own finding and the delinquent officer must be given an opportunity by giving notice regarding reasons for disagreement to the delinquent and thereby the delinquent officer must be given an opportunity to present his case. But in this case, the delinquent was not given the reasons of disagreement by the disciplinary authority and no opportunity of hearing was provided to him before imposing the order of punishment. Therefore, the punishment so imposed upon the applicant is illegal and in violation of Articles 14 and 16 of the Constitution of India so also the order of the appellate authority. On the other hand, the learned counsel for the respondents argued that the disciplinary authority while disagreeing with the report of the Enquiry Officer has recorded detailed reasons and thereafter punishment was imposed upon the applicant. He, therefore, submits that there has not been any violation of the principles of natural justice in this case.

7. We have given anxious consideration of the rival contentions of both the parties and also perused the whole case file.

8. In Sir Edward Coke in a famous case Cooper Vs. Wordworth, has held that even God did not pass a sentence upon Adam before he was called upon to make his defence.

9. From the very beginning Courts in India are of the view that if punishing authority differed the finding of the Enquiry Officer, notice of opportunity of hearing must be given to the delinquent before passing an order of punishment.

10. In Narain Mishra Vs. State of Orissa, 1969 SLR (3) SC 657, Hon'ble Supreme Court held that if the punishing authority differ of the findings of Enquiry Officer and held the official guilty of the charge from which he was acquitted by the Enquiry Officer and no notice or opportunity was given to the delinquent official about the attitude of the punishing authority the order will be against all the principles of fair play, natural justice and liable to be set aside.

11. In K.K.Sashidharan Vs. Sub Divisional Inspector of Post Offices, (1991) 1 ATR (CAT) 304, the Ernakulam Bench of the Tribunal held that there would be violation of the rules of natural justice and fair play if the disciplinary authority's reasons for disagreement with enquiry report are not furnished to the delinquent. This view also gets support in Prakash San Mukhlal Vs. UOI, (1993) 23 ATC 726

12. In R.R.Gabhe Vs. State of MP & Ors, 1998 SCC(L&S) 1712, it was held by Hon'ble Supreme Court that it is obligatory for the disciplinary authority to communicate reasons for disagreeing with the report. It is unfair to proceed against the delinquent without

supplying him a copy.

13. In a recent judgment Punjab National Bank & Ors Vs. Shri Kunj Behari Misra, 1998(3) ATJ (SC) 537, the Hon'ble Supreme Court held that whenever a disciplinary authority disagrees with the findings of enquiry authority on any articles of charge and record its own findings the reasons of such disagreement must be recorded and the delinquent must be given an opportunity to represent his case.

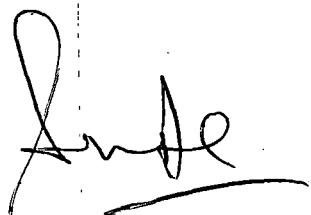
14. In Yogi Nath D Bagde Vs. State of Maharashtra & Ors, JT 1999 (6) SC 62, the Hon'ble Supreme Court has reiterated the same view as followed earlier in Punjab National Bank (supra).

14. In the instant case, no doubt the disciplinary authority has a right to disagree with the findings of Enquiry Officer, but the disciplinary authority was required to record the reasons of disagreement and it was the mandatory duty of the disciplinary authority to communicate the reasons of disagreement to the delinquent for giving an opportunity to represent his case before imposing any punishment upon the delinquent. In this case, admittedly the applicant was not communicated the reasons of disagreement, therefore, the applicant did not have an opportunity to show cause before imposing any punishment upon him. Therefore, the order of the disciplinary authority imposing punishment of compulsory retirement upon the applicant and the order of the appellate authority rejecting the appeal of the applicant are liable to be quashed on the ground of violation of the principles of natural justice.

15. The learned counsel for the applicant during the course of arguments has also argued that in this case there is no evidence against the applicant to corroborate the charge levelled against him, therefore, the order of the disciplinary authority imposing the order of compulsory retirement is perverse and on this count also the impugned order of punishment and the order passed by the appellate authority are liable to be quashed and set aside.

16. As this Tribunal has already taken a view that the order passed by the disciplinary authority and the order passed by the appellate authority rejecting the appeal of the applicant are liable to be quashed. We are, therefore, of the opinion that it will not be proper to give an opinion at this stage whether the impugned orders are perverse or not on the ground of no evidence.

17. We, therefore, allow the O.A and quash the impugned orders dated 20.12.94 (Annex.A2) and 25.1.96 (Annex.A3) and direct the disciplinary authority to communicate the reasons of disagreement and thereby to give an opportunity to the applicant to represent his case before imposing any punishment upon the applicant. The

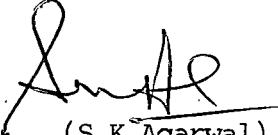


whole exercise must be completed within a period of 3 months from the date of receipt of a copy of this order.

18. No order as to costs.

  
(N.P.Nawani)

Member (A).

  
(S.K.Agarwal)

Member (J).