

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 9/4/2002

OA 533/97

Ravi Kant Sharma, Mazdoor, Ammunition Depot,
Bharatpur.

... Applicant

V/s.

1. Union of India through Secretary, Ministry
of Defence, Govt. of India, New Delhi.
2. Col. A.K.S. Chandele, Commandant, Ammunition
Depot, Bharatpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant ... Mr.S.K.Jain

For the Respondents ... Mr.R.L.Agarwal, brief
holder for Mr.Bhanwar
Bagri

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER.

Disciplinary proceedings under Rule-14 of
the CCS (CCA) Rules, 1965 were initiated against
the applicant and a charge-sheet dated 21.4.97
(Ann.A/1) was issued to him. A departmental inquiry
was ordered. Earlier, the applicant was placed
under suspension vide order dated 28.3.97 (Ann.A/2).
The applicant filed this OA with a prayer for



quashing of the charge-sheet as also of the suspension order. During preliminary proceedings, the applicant made a prayer for an interim relief on the ground that he was not being paid subsistence allowance and because of that he was not in a position to defend himself during the departmental inquiry. He sought direction to the respondents to stay the departmental inquiry till all the payments of subsistence allowance had been made to him. This Bench passed an order on 12.1.98 staying the inquiry proceedings till the payment of subsistence allowance had been made. This order has continued to operate since then.

2. The two articles of charge against the applicant read as under :

"ARTICLE OF CHARGE-I

GROSS MISCONDUCT

That the said Shri Ravi Kant Sharma while functioning as Mazdoor in Ammunition Depot Bharatpur illegally had in possession official letters and carried the same out of depot premises without any permission from the depot administration and handed over the same to unauthorised person as is evident from the OA No.59/97 filed by Maz Shri Ravi Kant Sharma before CAT Jaipur Bench Jaipur against the UOI & Comdt AD Bharatpur. Thus committed an act of Gross Misconduct.

ARTICLE OF CHARGE-II


DISOBEDIENCE OF ORDERS

That the said Shri Ravi Kant Sharma & while functioning as mazdoor in Ammunition Depot Bharatpur on 14 Mar 97 was asked vide letter No.OA 57/97/x/EST(IND) dated 14 Mar 97 that



from which sources you have obtained the copies of letters attached in OA 59/97 and handed over to an unauthorised person whereas the above letters are restricted and cannot be carried outside the depot premises and submitted unsatisfactory reply to mislead the depot authorities. Thus committed an act of disobedience of orders."


3. According to the applicant, the genesis of this charge-sheet is an Original Application No.59/97 filed before this Bench of the Tribunal by the applicant. In that OA, he ~~is~~ said to have enclosed certain documents which could not have been in his legal possession under the rules of the department. It has been alleged that he carried ~~xxx~~ the documents out of the Depot premises without permission of the Depot administration and handed these over to the unauthorised person. This unauthorised person, as the applicant pointed out, is his counsel who filed OA 59/97 on his behalf. He was asked to submit an explanation by letter dated 14.3.97 as to how he came to possess the copies of these letters which he handed over to an unauthorised person as these letters are restricted and cannot be carried outside the Depot premises. It has been stated that he had not been given adequate time to respond and he sought some time to reply to the notice dated 14.3.97, which he had received only on 20.3.97. He was again asked on 25.3.97 to give reply on the same day by closing hours of the day. According to the applicant, he




received this letter only on 27.3.97 and once again he sought time for filing reply. Instead of granting time to him, he was placed under suspension vide impugned order dated 28.3.97 (Ann.A/2). The applicant has alleged that ever since his suspension he is not being paid his subsistence allowance in a regular manner and he is being harassed for payment.

4. The respondents have filed reply and have denied that their action arises out of vindictive attitude because of the applicant's having filed OA 59/97. It is stand of the respondents that the applicant was placed under suspension on account of disobedience of orders and for submission of misleading reply to the depot administration. The applicant had carried outside the depot premises copies of certain documents which he was not legally expected to possess. He was asked to disclose the source from which he obtained these copies but he submitted a misleading reply. In this background only, he was placed under suspension and a charge-sheet under Rule-14 of the CCS (CCA) Rules, 1965 was issued to him.

5. Heard the learned counsel for the parties. The learned counsel for the applicant, Shri S.K.Jain, vehemently argued that the applicant had never



taken any original document in his possession and he merely had copies of two innocuous documents, out of the four listed in the charge-sheet. He said, one was a copy of the Recruitment Rules and the another a photo-stat copy of a daily order sheet. None of these were any secret or confidential documents. Recruitment Rules in any case are meant for general circulation and cannot be stated to be a secret, confidential or privilege document. Similarly, the daily order-sheet which only describes the constitution of Recruitment Committee, cannot be said to be a document in possession of which would be prejudicial to the interest of the organisation or the administration. About the other two documents dated 16.6.95, the learned counsel submitted that the applicant had no knowledge and was not in possession of these. He said, in this background the very charge-sheet has no legs to stand upon. It does not make out any charge of misconduct even vaguely. The applicant was not even allowed adequate time to reply to the notice dated 14.3.97 or 25.3.97. Since he was not given any time to reply, this act cannot be construed as an act of disobedience. On the point whether the charge-sheet is legally sustainable, the learned counsel relied on the decisions in Harphool Singh v. UOI & Ors., (1987) 4 ATC 753, Bejoy Gopal Mukerjee v. UOI & Ors., (1989) 9 ATC 369, & C.Rama Rao v. Divisional Commercial Superintendent, South Eastern




Railway, Waltair & Ors., (1990) 12 ATC 99.

6. The learned counsel for the respondents while reiterating the position of the respondents, as stated in the reply to the OA, submitted that non-receipt of subsistence allowance for certain periods was because of the wrong on the part of the applicant himself, inasmuch as he failed to produce the non-employment certificate for the period of suspension. In so far as the articles of charge are concerned, the learned counsel emphasised that these documents were restricted and there could have been no occasion for the applicant to have come in possession of these in normal course of his work. He is only a Mazdoor and as per the duties assigned to him he could not have had access to these documents. For these reasons only he was asked to explain his conduct but he gave no satisfactory explanation. The learned counsel stressed that the action of the respondents suspending the applicant and proceeding against him under Rule-14 of the CCS (CCA) Rules is fully justified.

7. We have given our anxious consideration to the rival contentions. No rule has been brought before us by the learned counsel for the respondents that possession of any document, which is not

marked 'secret' or 'confidential', can be construed to be an offence under the departmental rules. In our clear understanding, if a copy of any official document has been obtained by some person not dealing with the files or from which the copies have been obtained, the onus to explain would lie on the custodian of the file and not on the person possessing these copies. If an employee, who is contesting some case in a court of law, seeks to attach certain documents which he needs ^{and} ~~which~~ are not 'confidential' or 'secret' and which he is able to obtain by requesting the concerned agency, ^{the part of} there can be no fault on ~~such~~ a person. If the concerned authorities of the department felt that the documents were secret or confidential which could not have been given to any agency other than those handling the file in ~~kk~~ which the original documents are available, the responsibility would squarely lie on the departmental functionaries and most specifically on the custodian of the relevant file. It has not been stated before us by the respondents that they have taken any departmental action against the custodian of that file. Even otherwise, contents of these two documents ~~of which, as has been alleged,~~ were taken possession of by the applicant illegally, we do not find any sensitive contents in these. The ^{leading} sequence of events ~~to~~ this case does give a feeling

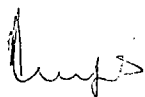


of vendetta inasmuch as the entire action itself ~~a~~ has arisen after the applicant filed OA 59/97. A notice was issued to him on 14.3.97 to explain the source from which he obtained the copies of the documents and he was required to reply on the same day. According to the applicant, he received this notice only on 20.3.97. He was again asked to submit his explanation by another letter dated 25.3.97 and ~~a~~ was asked to reply by the closing hours of the day. This attitude of the senior officers^{is} clearly indicative of vindictiveness. Heavens were not going to fall if he had been given reasonable time to explain. In any case, we are not convinced that possession of the copies of these documents by the applicant could be prejudicial to the interest of the department. We find this charge-sheet is ill-founded and is liable to be quashed. The suspension itself has been ordered because of non-receipt of explanation to the notice dated 14.3.97. In the facts and circumstances of this case, even the suspension order is not sustainable.

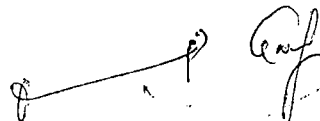
8. We, therefore, allow this OA and quash and set aside the order of suspension dated 28.3.97 (Ann.A/2) and the memorandum of charge-sheet dated 21.4.97 (Ann.A/1). The applicant is entitled to receive full pay and allowances for the period he remained under suspension and he shall be paid accordingly. The respondents shall comply with



these orders within two months from the date of communication of this order. No order as to costs.



(A.P. NAGRATH)
MEMBER (A)



(JUSTICE O.P. GARG)
VICE CHAIRMAN