

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 22/8/2001

OA 343/99

R.K.Jain s/o Late Shri T.L.Jain r/o C-15/16, Uttam Nagar,
XXXX CFCL Colony, Garepan, Kota.

... Applicant

v/s

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Dr.Dvl.Commercial Manager, Kota Dn., W/Rly, Kota.
3. Asstt. Dvl.Rly.Manager, * Kota Dn., W/Rly, Kota.

... Respondents

CORAM:

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

HON'BLE MR.N.P.NAWANI, MEMBER ADMINISTRATIVE

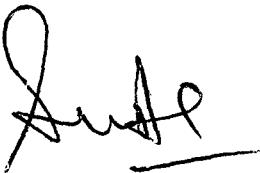
For the Applicant ... Mr.P.P.Mathur

For the Respondents ... Mr.U.D.Sharma

O R D E R

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

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes a prayer to quash and set aside the impugned charge sheet dated 16.1.96 (Annexure A/1), order of disciplinary authority dated 23.3.98 (Annexure A/2) and order ~~dated~~ of appellate authority dated 5.6.98 (Annexure A/3).


2. Brief facts of the case, as stated by the applicant, are that applicant was served with a charge sheet dated 16.1.96, inquiry officer was appointed who conducted the

(10)

inquiry and after inquiry he exonerated the applicant from the charges levelled against him but the disciplinary authority without conveying the reasons for disagreement had inflicted the major penalty vide order dated 23.3.98. The applicant preferred an appeal against the order of the disciplinary authority which was also rejected vide order dated 5.6.98. Therefore, the applicant filed this OA for the relief as mentioned above.

3. Reply was filed. In the reply it is admitted that inquiry officer concluded the inquiry with the finding that the charges levelled against the applicant were not substantiated at all but the disciplinary authority did not agree to the finding of the inquiry officer and did not communicate the reasons for disagreement to the applicant for providing him an opportunity to explain in view of the Hon'ble Supreme Court judgement in State Bank of India v. S.S.Kaushal, reported in 1994 SCC (L&S)1019 and State of Rajasthan v. M.C. Saxena, decided on 24.2.98, and reported in 1998 SCC (L&S) 875. Therefore, it is stated in the reply that action of the respondents imposing penalty upon the applicant was protected by law and appeal filed by the applicant was also dismissed accordingly. Therefore, it is stated that the applicant has no case for interference by this Tribunal and this OA is devoid of any merit and ~~is~~ liable to be dismissed.

S. S. Kaushal

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

5. Learned counsel for the applicant has argued that as per report of the inquiry officer, charges levelled against the applicant could not be proved but the disciplinary authority has dis-agreed with the findings of the inquiry officer and without conveying the reasons of dis-agreement and without affording an opportunity of hearing to the applicant imposed punishment upon the applicant which was not ~~law~~ legal and ~~distinguishable~~ distinguishable and was in violation of the principles of natural justice. On the otherhand, the learned counsel for the respondents has argued that Hon'ble Supreme court has delivered the judgement in State Bank of India v. S.S.Kaushal (cited supra). According to this judgement, it was not necessary for the respondent department while dis-agreeing with the report of inquiry officer to communicate reasons of dis-agreement to the delinquent and to afford him an opportunity of hearing/show cause before imposing the punishment upon him.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. After the decision of the Hon'ble Supreme Court consisting of three Judges (Larger Bench) in the case of Punjab National

(K)

- 4 -

Bank and Others v. Kunj Behari Mishra, 1998 (2) SC 3117,

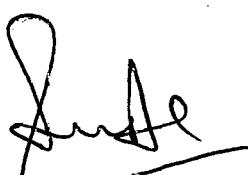
XXXXX this controversy is no longer res-integra in this case.

The inquiry officer had exonerated the delinquent but the disciplinary authority straightway had dis-agreed with the view of the inquiry officer and held that charges were proved and imposed a penalty. The Hon'ble Supreme Court held in para-19 as follows :-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result ~~therefore~~ thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer and opportunity to represent before it records its findings. The report of the ~~the~~ enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the ~~the~~ charges framed against the officer."

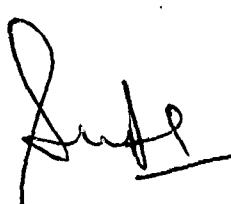
Observations

Therefore, according to the ~~provisions~~ of the Hon'ble Supreme Court in the above judgement, although there is no rule to issue show-cause notice to the delinquent but this should be read into the rules by invoking the principles of natural justice and accordingly the disciplinary authority



in such a case has a duty to record the reasons for disagreement by giving ~~tentative~~ tentative reasons and issue show-cause notice to the delinquent and then on getting reply from the delinquent the disciplinary authority can proceed and pass an appropriate order as it thinks fit. By the judgement, as referred above, the Hon'ble Supreme Court has over-ruled the legal position as settled in the two cases as referred by the learned counsel for the respondents and merely that when the disciplinary authority and appellate authority had passed the order the judgements, as referred above, were not delivered cannot be a ground to reject the prayer of the applicant in view of the judgement of the Hon'ble Supreme Court in Punjab National Bank & Others v. Kunj Behari Mishra (cited supra).

8. The judgement of the Hon'ble Supreme Court, as referred above, has also been affirmed by the Hon'ble Supreme Court in Yogi Nath Bagra v. State of Maharashtra & Others, JT 1999 (6) SC 62. In the instant case, the disciplinary authority has disagreed with the findings of the inquiry officer but reasons of disagreement have not been communicated to the applicant and no opportunity of hearing/show-cause was given to the applicant before imposing the punishment by the disciplinary authority. Therefore, the order imposing the punishment by the disciplinary authority and the order of

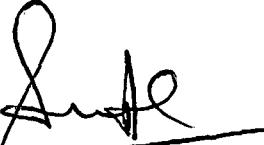


the appellate authority, by which appeal of the applicant was rejected, are liable to be set aside.

9. We, therefore, allow this OA and quash and set aside the order of the disciplinary authority dated ~~23.3.98~~ (Annexure A/2) and the order of the appellate authority dated 5.6.98 (Annexure A/3) and ^{also} ~~/the~~ impugned charge-sheet dated 16.1.96 (Annexure A/1) and direct the respondents that reasons of disagreement must be communicated to the delinquent and thereafter the delinquent must be given an opportunity to show cause/opportunity of hearing before passing any appropriate order by the disciplinary authority. The whole exercise must be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(N.P. NAWANI)

MEMBER (A)


(S.K. AGARWAL)

MEMBER (J)