

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 424/2002

Date of decision: 31.5.2004

Alok Kumar Petitioner

Mr. P.V. Calla Advocate for the Petitioner

Versus

Union of India and Others Respondents.

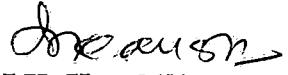
Mr. Vijay Singh for
Mr. Bhanwar Bagri Advocate for Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik Judicial Member.
Hon'ble Mr. M.K. Misra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *no*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*


M K Misra)
Administrative Member


(J.K. Kaushik)
Judicial Member.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH JAIPUR**

Original Application No. 424/2002

Date of Decision: 31, 5. 2004

CORAM:

**Hon'ble Mr. J.K.Kaushik, Judicial Member
Hon'ble Mr. M.K.Misra, Administrative Member**

Alok Kumar S/o Shri Santiswaroop, aged about 32 years, R/o House No. 134, JDA Colony, Sirsi Road, Bindayaka, Jaipur.

[By Mr. P.V. Calla, Advocate, for the applicant]

.....Applicant.

Vs.

1. Union of India, through the Secretary to the Government, Ministry of Public Grievance & Pension Department, Government of India, New Delhi.
2. The Joint Director, West Zone, Central Bureau of Investigation, Natha Lal Pareek Marg, Kolaba, Mumbai.
3. The Deputy Inspector General of Police, Jaipur Region, Special Police Establishment, Central Bureau of Investigation, 1 Tilak Marg, C-Scheme, Jaipur.
4. The Superintendent of Police, Special Police Establishment, Central Bureau of Investigation, 1 Tilak Marg, C-Scheme, Jaipur.

.....Respondents.

[By Mr. Vijay Singh, proxy counsel for
Mr. Bhanwar Bagri, for respondents]

**Order
[By J.K.Kaushik, Judicial Member]**

Shri Alok Kumar has filed this Original Application under
Section 19 of the Administrative Tribunals Act 1985, for



espousing his grievances arising out of orders dated 1.11.2001 (A/1) and 9.4.2002 (A/2) passed by Disciplinary and Appellate authority, respectively and has prayed for setting aside these orders with further directions to reinstate the applicant with all consequential benefits.

2. The material facts necessary for adjudication of the controversy involved in this case may be put in nutshell as follows. The applicant was initially appointed to the post of Lower Division Clerk (LDC) on dated 30.10.96. He was posted at Ahmedabad/Gandhinagar. In the year 1997, he was allowed on request transfer to CBI Jaipur office where he joined on 16.6.97. He was placed under suspension on dated 24.5.2000, on the ground that a criminal case has been registered against him. An FIR was lodged against him on the basis of a complaint made by one Shri Darashan Singh alleging to have committed offences under Section 7 & 13 (i)(d) of Prevention of Corruption Act, 1988. He was also taken into custody by SPE/CBI and subsequently enlarged on bail on 25.5.2000. The police stating that sufficient evidence was not forthcoming during the investigation to prove the offence submitted the FR. The same was accepted and the applicant was discharged from the court on dated 11.7.2001.

3. Simultaneously, the applicant was also issued with a charge sheet vide memo dated 31.1.2002, alleging violation of Rule

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3(1)(i)(ii) and (iii) of CCS (Conduct) Rules 1964. The applicant procured the true copies of the relied/listed document and went to submit his final reply to charge sheet on 11.5.2001 to 4th respondent, he was handed over with a communicated dated 11.5.2001 by Shri G Bairwa Inspector Police, informing that he has been nominated as inquiry officer (for brevity IO) and the date for preliminary hearing was fixed on 15.5.2001. It has been averred that the IO and Presenting officer (for brevity PO) were already nominated on 1.3.2001 itself i.e. without considering the statement of defence reply to the charge sheet.

4. The IO conducted inquiry. The previous statements taken during the investigation were shown to the witnesses who accepted the contents of the same and were subjected to cross-examination by the applicant. The statement of applicant was not recorded. He had submitted his own statement to the investigating officer who prepared his own statement and did not supply a copy of the same to applicant. The charges except a the charge relating to giving of information regarding FD issued on 23.5.2000, against him were held as proved by IO and a copy of inquiry report was supplied to him, against which he made a detailed representation commenting on the finding of IO. The then Addl. SP called the applicant for personal hearing on 12.10.2001. He was told that if he accepted the allegations as true, he could be exonerated with a minor penalty. But his proposal was not acceptable to him and he was threatened for

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dire consequences. And subjected to humiliation and taken to then 4th respondent who asked him some questions.

5. The further facts of the case are that the DA inflicted the penalty of removal from service on the applicant vide order-dated 1.11.2001. An exhaustive appeal was preferred to the appellate authority, narrating the various infirmities in the disciplinary proceedings and the same came to be turned down vide letter-dated 9.4.2002. The Original Application has been filed on diverse grounds narrated in para 5 and its sub-paras, which we shall deal a little later in this order.

6. The respondents have contested the case and have filed a detailed counter reply to the Original Application. It has been averred that as there was no independent witness to prove the charge of bribe transaction, it was decided to file closure report. But there were sufficient evidence to initiate the disciplinary case for the gross misconduct, as the principle of proof is of preponderance of probabilities in disciplinary proceeding unlike that of 'beyond reasonable doubt' in criminal proceedings. The cheque is of dated 16.5.2000 and encashed on 17.5.2000. The applicant denied the charges vide letter-dated 23.2.2001 and the DA took decision to conduct the inquiry and nominated the IO & PO. The DA gave personal hearing to applicant and the Addl SP was not present at that time. No threat was exerted on him. He confessed his guilt of all the charges. The Appellate authority

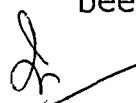
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gave due consideration to the points raised in the appeal. The grounds have been generally denied.

7. We have heard the elaborate arguments advanced by the learned counsel for both the parties and have carefully considered the pleadings and records of this case. The respondents have been fair enough to make available the relevant disciplinary case file.

8. The learned counsel for the applicant has contended that the applicant was discharged from the criminal case and the disciplinary proceedings which is grounded on the same set of facts, evidence and relating to same incidence, can not be sustained. He has also submitted that the DA was preoccupied in as much as he nominated the IO even without considering the statement of defence. He has next contended the statement recorded at the back of applicant have been used against him. The inquiry officer disallowed Kamwali Bai, as a witness despite she was the only eyewitness in this case. He also contended that there was no direct evidence in regard to bribe transaction and the applicant has been held guilty on the basis of conjecture and surmises.

9. The learned counsel for the applicant further argued that the statement of witnesses were contradictory and could not have been relied upon. He has heavily emphasised that the IO has

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not followed the procedure established by law. The applicant was neither as a witness nor he was asked the questions having general bearing on the charges as per the mandate of Rule 14(18) of CCS (CCA Rules 1965. The Rules do not contemplate any personal hearing by the DA and the applicant was threatened as pleaded in this case. The Appellate authority has also not considered all the points raised in the appeal. The so-called confession has prevailed in the mind of these authorities while imposing the penalty.

10. The learned counsel for the applicant has endeavoured to show that it was actually Sh. Suresh Chand Sharma Daftri who misplaced the complaint of Sh. Darashan Singh and was charge sheeted but left some minor penalty. The applicant has been made scapegoat for whole episode. He has stressed the relevancy of date of cheque, which was 16.5.2000, but the alleged incidence is of dated 17.5.2000. Thus a false case has been foisted against him and it is a case of no evidence.

11. Per contra, equally elaborate have been the arguments of learned counsel for the respondents who has submitted that the scope of judicial review in disciplinary cases is very limited. It has been submitted that the applicant was discharged from the criminal case and no trial was held, therefore the question of same evidence etc. is not there. The disciplinary and criminal proceedings can be conducted even simultaneously in the same



incident for the reason that the scope of both of them is different. He next submitted that the IO was appointed after the applicant denied the charges and no illegality on this count has been committed. The next ground of the defence was that regarding the date of cheque, the applicant could have asked to the maker of it instead of asking Shri Darshan Singh. The IO has clearly held that there was no direct evidence to prove the charge of demanding, taking and accepting bribe and the significance of non-calling of Safaiwali Bai gets diluted.

12. It was next contended that the applicant has never offered himself as a defence witness. He also did not complain regarding the non-compliance of rule 14(18) of CCS (CCA Rules 1965 in appeal or even in this OA, thus such ground can not be entertained at this stage and the respondents can not be taken by surprise. By giving personal hearing, the DA has only extended the principles of natural justice and nothing else. No threat was exerted on him and even his signatures have not been taken on the confessional statement.

13. The learned counsel has further submitted that the appellate authority has applied its mind and passed a speaking order in accordance with rules in force. He has agreed with the version and findings of IO and DA and it was not even incumbent upon him to pass such a detailed order, as has been done in this



case. The appellate authority has confirmed from the DA that no intimidation was done to the applicant.

14. We have considered the rival submission made on behalf of both the parties. Before proceeding further in the matter we would like to ascertain the scope of judicial review by this Tribunal. It is settled legal position that strict rules of evidences are not applicable to the departmental inquiries and every violation of procedure does not vitiate the inquiry. See R.S.Saini vs. State of Punjab [1999 SCC (L&S) 1424] K.L. Shinde vs. State of Mysore [AIR 1976 SC 1080]; Rae Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and others [AIR 1997 SC 1908]; Bank of India and another vs. Degala Suryanarayana [1999 SCC (L&S) 1036]; Inspector General of Police vs. Thavasiappan [JT 1996 (6) SC 450].

Normally this Tribunal would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

A broad distinction has, therefore, to be maintained between the decisions, which are perverse, and those, which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied



upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.

15. Now adverting to the facts of this case, the contention of the learned counsel for the applicant that once the applicant was discharged from the criminal case, the disciplinary proceedings were not warranted. By now the law is very well settled on this point. Firstly, it is not a case where the applicant was subjected to any criminal trial in which the prosecution witnesses are examined. Secondly, the standard of proof required in criminal cases is that of proof beyond doubt whereas in case of disciplinary cases it is based on preponderance of probabilities. Even if one is acquitted in criminal case, the departmental proceedings can still go on and there is no straightjacket formulae barring the disciplinary proceedings altogether in such cases and each case would depend upon its facts and circumstances. Thus, this ground is groundless and no interference on this count can be justified.

16. As regards the procedure adopted by the IO for recording the evidence is concerned, no fault can be fastened with the same. Besides their being specific instructions in this regards for adopting such procedure (i.e. showing the recorded statements taken in investigation/preliminary inquiry to the witnesses and getting the same confirmed as true and then proceed with cross-

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examination etc.), no prejudice has been shown to have been caused to the defence of the applicant. The basic requirement in such cases is that a copy of such statements should be supplied to the delinquent employee for effective cross-examination and the prosecution has very fairly discharged this duty in this case. Thus this ground also falls on the ground and cannot be sustained.

17. The ground relating non-examination of the applicant as a defence witness or under rule 14 (18) of CCS (CCA) Rules 1965 is concerned, the same has not been taken in the appeal or in the pleadings. Perhaps it is only during the arguments the same has been put forward. We unable to persuade us that we can afford to take the respondents at surprise and entertain a ground raised for the first time at the time of hearing of the case; rather we are bound to accept the contention of the learned counsel for the respondents and abstain from dealing with such new ground. Thus the same can also not be sustained.

18. Now we shall examine the most important ground stressed in this case by the learned counsel for the applicant is that it is said to be a case of no evidence. We make it clear that we are conscious about the scope of judicial review in disciplinary proceedings and we are not intending to appreciate or re-appreciate the evidences. Our analysis is limited to ascertain as to whether there is any legal evidence to sustain the charge of

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bribe. We find from the observations of the IO in penultimate para as under:

" 6.1. The presenting officer could not produce any witness who can prove that Sh Alok Kumar had intercepted the complaint received against Shri Darshan Singh from the relevant file.

6.4. during the proceedings no evidence has come on record proving the recovery of bribe amount demanded and accepted by Sh Ashok Kumar."

Similarly, the appellate authority has said, " It is fact there is no independent witness of corroborate the demand and acceptance of bribe." The charges have been said to be proved on the basis of other available evidences.

We would outright reject the contention of the respondents that the applicant has confessed and accepted the charges as indicated in the order passed by the DA. We have also seen the so-called confessional statement written by the DA. It is not signed by the delinquent employee. There was admittedly no witness in support of the same. There are also no rules prescribing the DA to give personal hearing before passing penalty order. The said confession is uncalled for besides extravagant. If that has weighed in the mind of DA or Appellate authority, the impugned orders cannot be sustained.

19. We have carried a close analysis of the mystery regarding the date of cheque, which is admittedly of dated 16.5.2000 but the alleged incident is of 17.5.2000. However, no satisfactory reply was forthcoming except that the defence should have clarified the same from writer of the cheque. This has a close



relevancy to this case since in case the cheque was written on 16.5.2000, the story of the prosecution case may get shacked and belied. Further the appellate authority in para (v) of its order, has mentioned that the point that cheque was of previous date is not material as it was encashed on 17.5.2000 and this has been discussed in para 6.1 of IO's report (whereas there is no such discussion). The vital point has been dealt with in a slipshod manner; rather totally ignored.

20. We are not in a position to trace out as to what was the other material on which the charge relating to bribe was sustained except that the so-called confession that was to be ignored as discussed above. In our considered opinion, the charge of not-informing the acquiring the FDR would not itself justify the penalty of removal from service. We instead of delving ourselves in adjudicating the controversy involved, feel it emergent and expedient to remand the matter to the appellate authority for deciding the appeal afresh objectively strictly in accordance with rule 27(2) of CCS (CCA) Rules 1965 wherein it is incumbent on the said authority to give specific finding on the following three mandatory points:

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider –

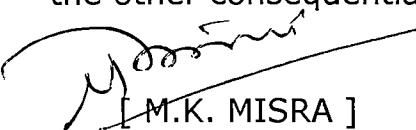
- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and



(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;”

21. It is scarcely necessary to mention here that the appellate authority that should also give personal hearing in the matter to the applicant and also deal with the other grounds adduced in this OA. It is made clear that the appellate authority shall ignore the so-called confessional statement in toto.

22. In view of what has been said and discussed above, we allow this original application in part. The impugned order dated 9.4.2002 (Annexure A/2), passed by the appellate authority is hereby quashed and set aside. The appellate authority is directed to pass fresh order on the appeal of the applicant in accordance with law and keeping in view our above observations, within a period of three months from the communication of this order. The result of appeal shall regulate the other consequential benefits. No costs.



[M.K. MISRA]
ADMINISTRATIVE MEMBER



[J.K. KAUSHIK]
JUDICIAL MEMBER