

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH.**

O.A.No.514 OF 2003

Decided on : August 11, 2005

CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN

P.T.Raghvan, aged about 35 years S/o Shri Thiruvan P.T. By Caste Christian Ex - Majdoor C.S.D. Depot, Jaipur now serving in C.S.D. Depot, Jalandhar (Punjab), 11, Prem Nagar, Shiv Colony, Behind Senapati House, Jhotwara, Jaipur.

..... Applicant

By : Mr. R.S.Bhaduria,Advocate.

Versus

1. The Union of India through its Secretary to the Govt. of India, Ministry of Defence, New Delhi-110011.
2. The Chairman, Canteen Store Department, Govt. of India, Ministry of Defence, 'ADELPHI', 119, MK Road, Mumbai-400020.
3. The Area C.S.D.Depot, Jaipur through its Manager, Peru Lines, Behind Military Hospital, Jaipur Cantt.

....

Respondents

By : Mr.Bhanwar Bagri, Advocate.

OR D E R (oral)

KULDIP SINGH,VC

The applicant in this case has assailed the order dated 23.1.2003 (Annexure A-8) by which the penalty of withholding of increment for two years with cumulative effect has been imposed upon him and order dated 11.7.2003 (Annexure A-1) vide which the appellate authority has rejected the appeal of the applicant against the order dated 23.1.2003. He has also prayed for reversing his transfer from Jaipur to Jalandhar and has prayed for grant of selection grade due on completion of 12 and 24 years service from the due date and payment of arrears with 12% interest thereon.

The facts as pleaded by the applicant are that he was



appointed as Mazdoor on 28.3.1977 in Canteen Stores Department (CSD), Government of India, Ministry of Defence. He has by now rendered 26 years of clean, distinguished and satisfactory service. In 1999 when the applicant was working in the office CSD Depot, Jaipur, he along with 36 other employees was asked to explain about unauthorized absence from duty on 1.3.1999 after 3.00 P.M., with intention to hamper government work. It was suggested as to why the absence of second half of 1.3.1999 be not treated as 'dies-non' and salary deducted from the pay bill of the applicant. The applicant, Branch Secretary of CSD Employees, was allowed to meet the Manager against the show cause notices. He informed the Manager that the letter has created resentment among the employees and they want to meet him in person. However, the Manager informed that he knew as to who was responsible for all this, obviously the finger was towards applicant and it was threatened that applicant will pay for mass absenteeism on 1.3.1999.

It is further submitted that applicant was again issued a letter dated 4.3.1999 seeking his explanation that he, as a measure of protest with regard to letter date 3.3.1999 entered the Cabin of the Depot Manager and threatened him that asking for explanation shall prove expensive and he used unparliamentary language to the effect that- "Many Managers have come and gone but he never bothered for them". This alleged conduct of the applicant was treated incompatible to relation of master and servant and subversive of discipline. He was further cautioned that being a Union Leader, he has no privilege to violate conduct rules (Annexures A-2 and A-3).

It is further stated that the applicant submitted a representation dated 6.3.1999 (Annexure A-3) explaining the



circumstances leading to his absence to the effect that since Group-1 where the applicant was employed was sealed at 3.00 P.M., under the order of Group-in-charge and he left the site of work considering that half day has been allowed on account of Holi festival and there was no intention to evade the duty. This representation was returned unactioned by letter dated 6.3.1999 (Annexure A-4) and the matter was reported to RM (West), CSD, Delhi Cantt, vide letter dated 20.3.1999 (Annexure A-5).

The applicant submits that he was charge sheeted by memo dated 29.2.2000 (Annexure A-6) with the allegations that applicant had misbehaved with the Manager, CSD Depot, Jaipur on 4.3.1999 and used unparliamentary language in a threatening manner to pressurize him to accept his demand for withdrawal of letters of explanation called from staff including applicant for their unauthorized absence from duty on 1.3.1999. Shri N.Chandra Shekhar, Manager, CSD, Depot, Secunderabad was appointed as I.O. On 12.5.2000. He held the preliminary hearing and found that inquiry is targeted to silence the applicant and he made an assessment that on such a trivial matter, the whole exercise will result in futility. He was replaced by another E.O. Mr. L.K.Klare, Manager, CSD, Depot, Bhatinda.

The preliminary hearing was held on 3.12.2001 and regular and effective proceedings were held on 18-19th January, 2002 and on further dates also. The prosecution presented two witnesses namely Shri A.K.Verma, Manager, CSD Depot, Jaipur and Shri B.P.Parik, LDC, CSD, Jaipur for examination whereas the applicant examined S/Shri Prahlad Singh, Phool Chand, Karan Chand, Bhanwar Singh, Jabbar Singh and applicant himself.



The applicant further submits that written briefs were submitted by the Presenting Officer and Defence Assistant. The Inquiry officer concluded the inquiry holding the applicant guilty of the misconduct. The inquiry report dated 26.8.2002 (Annexure A-7) was served on the applicant during October, 2002. The applicant submitted his representation to the same. However, the disciplinary authority passed the order dated 23.1.2003 (Annexure A-8) inflicting the punishment on the applicant and appeal filed there against resulted into rejection.

The applicant pleads that there has been improvement in the charge levelled against the applicant inasmuch as earlier the charge was that applicant had uttered that "many managers have come and gone and you never bothered for them" and the threatened that " asking explanation from you will be proved expensive for undersigned", whereas the charge now is that "H.O. ke officers bhee mera kuch nahin bigar sakte, tu mera kya bigar lega. "Agar letter withdraw nahi kiya to main tujhe dekhlunga". Thus, he claims that the charge is fabricated.

He submits that charge is not tenable. As per practice, the Groups are normally given half day rest on the occasion of Holi. Thus, Group I was sealed by the In-charge Group I, how could it be said that the applicant left the work place intentionally to evade the government duties. The applicant was not alone, 37 persons had left the work. However, the Manager doubted the role of the applicant in all this under the notion that it was applicant who prevailed to seal the Group thereby undermining the authority of the then Manager. He pleads that he was very courteous and respectful and wanted the Manager to see reason and not to deduct the pay of half day of the employees and not to declare the period as 'dies-non' which way affect the career of

JK

the low paid employees. He hails from southern state and his dialect in Hindi as alleged cannot be spoken by him. There were no witnesses at the time of conversation with the Manager. The entire episode has been concocted as during Annual Inspection of the Depot, it was reported to R.M that junior LDCs favourable to Mr. A.K.Verma were given charge of the Store instead of Senior LDC and there was simmering discontent amongst senior LDCs which was not to the liking of the Manager and, thus he seized this opportunity to take revenge. The period of absence on 1.3.1999 against 36 employees has been regularized by grant of leave but the period of absence against the applicant has not been regularized which further shows hostile discrimination and arbitrariness on the part of the respondents. The statements of witnesses recorded in preliminary investigation were not made available to applicant by Inquiry officer on the ground that it was not a relied upon document. The punishment awarded is alleged to be shockingly disproportionate and is not commensurate with the gravity of offence. The impugned orders have been passed without application of mind. The applicant has co-operated with the inquiry and was amenable to discipline. In regard to B.P.Parik, witness it has come on record that he was busy with issuing stores to the URC and his presence at the same time in the office of Manager is wholly misleading. The entire case has been made with a view to take revenge for filing of complaint by applicant against placing Junior LDCs on Store Duties as compared to Senior LDCs and in this process Shri B.P.Parik was also favoured with store duties even though he was junior. The copy of brief written arguments submitted by the Presenting officer was not given to the delinquent or his DA before

JK

arguments and thus, the proceedings stand vitiated.

The respondents are contesting the Original Application by filing a detailed written statement. They submit that applicant had left the Depot premises on 1.3.1999 along with several other staff members, without prior permission of Manager, CSD Depot, Jaipur. A check of attendance was carried out on the same day by a Board of officers constituted for the purpose who had taken the attendance of staff between 14.45 to 15.05 Hours. The board had prepared a list of persons who were found to be present and those absent during the said period. The applicant along with others was asked to explain about their absent from duty unauthorized on 1.3.1999. The applicant without submitting any reply, approached office of Manager, CSD, Jaipur at 11.090 AM on 4.3.1999 and tried to pressurize him in a threatening and indecent manner to withdraw the letter seeking explanation issued to him and other staff. When the Manager refused to concede to his demand, the applicant lost his temper and used derogatory and un-parliamentary language against him in presence of Shri Hanuman Yadav. It was also heard by Shri B.P.Parik, LDC. When the applicant was asked to submit his explanation by letter dated 4.3.1999 regarding his misbehavior, he submitted an application dated 6.3.1999 seeking half day's C.L for 1.3.1999 which was rejected by letter dated 16.3.1999. The applicant appears to have instigated other staff members and disturbed the functioning of the Depot by mass absenteeism and exhibited misbehaviour being a Government servant governed by CCS (Conduct) Rules. The applicant has been charge sheeted earlier also. Many service personnel had come for collection of stores on 1.3.1999 and despite heavy rush of work, the applicant along with other 36

h

7-

staff, members left the place of work and disturbed functioning of depot by mass absenteeism. The change of inquiry officer was on account of administrative convenience. There is no provision to close the Depot for half day on the working day due to Holi. The penalty imposed is quite appropriate considering the misconduct of the applicant. Written brief submitted by Presenting Officer was sent to the applicant only along with inquiry Report through his defence assistant to prepare representation to be made to the Disciplinary Authority. Question of sending written brief of presenting officer before arguments to applicant or his defence assistant is contrary to the Rules. The applicant having been granted in situ promotion vide letter dated 31.10.1994 is not eligible for 1st ACP up-gradation as per rules. He was eligible 2nd ACP in November, 2001 subject to passing the trade test. His case was put up to DPC in August, 2000 but he was not recommended for 2nd ACP up-gradation as he had been charge-sheeted by then and is under penalty. The applicant has filed a rejoinder.

I have heard the learned counsel for the parties and gone through the record on the file.

Respondents have filed written arguments in which they rely upon number of decisions of the Hon'ble Supreme Court of India to contend that this Tribunal cannot sit in appeal over findings of the inquiry officer and it cannot substitute its own conclusion for that of the inquiry officer etc. etc. However, they have forgotten that it is equally well settled that if there is procedural irregularities, the Tribunals/Courts are not debarred from interfering in disciplinary matters. Learned counsel for the applicant submitted that there is a specific averment in para No.5(10) of the O.A. that copy of brief written arguments

kr

submitted by Presenting Officer was not given to the applicant or his D.A before arguments and thus proceedings stands vitiated on this count. In reply to this, learned counsel for the respondents submitted that question of sending written brief of presenting officer before arguments to applicant or his defence assistant is contrary to CCS (CCA) Rules. On being asked to show the provision of the rules which bars serving of written brief before starting argument to delinquent employee, learned counsel for the respondents was unable to quote any such rule. On the contrary, learned counsel for the applicant brought to our notice, instructions issued by G.I. M.H.A. (D.P & A.R.) O.M.No.11012/18/77-/Estt.(A), dated 2nd September, 1978, as printed under Rule 14 of the CCS (CCA) Rules which being relevant are reproduced as under :-

“....It will be seen from the phraseology of Rule 15 (19) that the inquiring authority has to hear arguments that may be advanced by the parties after their evidence has been closed. But he can, on his own or on the desire of the parties, take written briefs. In case he exercises the discretion of taking written briefs, it will be but fair that he should first take the brief from the Presenting Officer, supply a copy of the same to the Government servant and take the reply brief from the Government servant. In case the copy of the brief of the Presenting Officer is not given to the government servant, it will be like hearing arguments of the Presenting Officer at the back of the Government servant. In this connection attention is also invited to the judgment of the Calcutta High Court in the case of Collector of Customs V. Mohd. Habibul (1973) 1 SLR 321 (Cal), in which it is laid down that the requirements of Rule 14 (19) of the CCS (CCA) Rules, 1965, and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief.”

kr

In this case also I find that the inquiry officer has exercised the discretion of taking written briefs but there is serious violation of instructions quoted above inasmuch as no copy of written arguments submitted by the Presenting Officer was given to the applicant or his defence assistant which fact stands admitted by the respondents. In view thereof, the proceedings from the stage of submission of written arguments by Presenting Officer stands vitiated.

Accordingly, the O.A. is allowed. The impugned orders are quashed and set aside. The applicant is held entitled to all the consequential benefits, as if no punishment was imposed upon him. However, the inquiry officer will be at liberty to proceed in the matter from the stage of submission of the written arguments of Presenting Officer to the applicant or his defense assistant, as per law. No costs.



(KULDIP SINGH)
VICE CHAIRMAN

August 11, 2005.

HC*