

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 12.02.2013

OA No. 371/2012

Mr. S.K. Jain, counsel for applicant.
Mr. Amit Mathur, proxy counsel for
Mr. Kapil Mathur, counsel for respondents.

This case pertains to Division Bench. Division Bench is not formed today.

At the request of learned proxy counsel for Mr. Kapil Mathur, counsel for respondents, put up the matter on 15.02.2013 for hearing. I.R. to continue till the next date.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

15/02/2013

OA No. 371/2012

Mr. S.K. Jain, Counsel for applicant.
Mr. Amit Mathur, proxy counsel for
Mr. Kapil Mathur, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 371/2012

Jaipur, the 15th day of February, 2013

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Bhanwar Singh Rathore son of Shri B.S. Rathore, aged 44 years, Store Keeper Grade I Regional Institute of Education, Ajmer.

... Applicant

(By Advocate : Mr. S.K. Jain)

Versus

1. National Council of Education Research and Training, Shri Arbindo Marg, New Delhi-16 through its Secretary.
2. Principal, Regional Institute of Education, Ajmer, Shri K.B. Rath.
3. Shri K.C. Kakliwal, Enquiry Officer, through Regional Institute of Education, Ajmer.

... Respondents

(By Advocate : Mr. Amit Mathur proxy to Mr. Kapil Mathur)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) That by an appropriate order or direction the impugned charge sheet be quashed and set aside alongwith the enquiry.
- (ii) That by any appropriate order or direction the order dated 03.01.2012 (Annexure A/22) and dated 24.01.2012 (Annexure A/22A) be quashed and set aside along with the enquiry proceedings taken place after the date of application for the charge of enquiry officer dated 02.01.2012 and 19.01.2012 (Annexure A/21 and Annexure A/23).
- (iii) That the Disciplinary Authority be changed forthwith and direction be given to the competent authority to appoint a new Disciplinary Authority if circumstances so require.

Anil Kumar

- (iv) That the order of appointment of Presiding Officer the respondent No. 3 be also quashed with the direction to the competent authority that a new Presiding Officer be appointed in place of respondent no. 3.
- (v) Any other relief this Hon'ble Tribunal deems fit may so be granted to the applicant."

2. Subsequently, the applicant moved an MA No. 168/2012 seeking amendment in the OA No. 371/2012. In this MA, the applicant besides amending certain portions of the OA also sought to amend the Relief clause (ii). He prayed that the following new clause be added after deleting the previous one:-

"(ii) That by an appropriate order or direction the impugned order dated 03.01.2012 (Annexure A/22) and order dated 24.01.2012 annexed Annexure A/22 A be quashed and set aside along with enquiry proceedings taken place after the date of application for change of enquiry officer date 02.01.2012 and 19.01.2012 Annexure A/21 and Annexure A Annexure A/23."

This MA was allowed by this Tribunal vide order dated 30.05.2012.

3. This Tribunal vide its order dated 31.05.2012 issued notices to the respondents returnable within two weeks. At the same time, it passed the following interim order:-

"Put up the matter on 14.06.2012. In the meantime, the respondents may proceed further pursuant to the Memorandum dated 12th September, 2011 (Annexure A/1) but shall not pass final order."

4. Subsequently, the applicant moved another MA No. 180/2012 in which the applicant prayed the order of penalty dated 29.05.2012 passed by the respondents (Annexure MA/2)

Anil Kumar

be stayed till the decision of the OA. This MA was disposed of by the Tribunal vide order dated 15.06.2012 with the following directions:-

"..... In the meantime, the respondents are directed not to act upon the impugned order dated 29.05.2012 till the next date of hearing, the same has not been acted upon."

The MA No. 180/2012 stands disposed of accordingly."

5. The applicant filed another MA No. 245/2012. Vide this MA, he sought some amendments in the OA including in the Relief Clause (Para 8) of the OA. He prayed that the following clause be added as Clause (v) and the next clause be renumbered as Clause (vi).

"8(v) That by appropriate order or direction the impugned order of punishment be quashed and set aside and the applicant be declared to be in service with all consequential benefits of pay salary, seniority and promotion etc."

Since the respondents did not oppose amendment in the OA, the applicant was permitted to carry out necessary amendments and to file Amended OA vide this Tribunal's order dated 12.09.2012.

6. The learned counsel for the applicant submitted that the applicant while serving as a Store Keeper Grade I under the respondents was served with charge sheet dated 12.09.2011 issued by respondent no. 2. That the applicant vide his letter dated 16/22.09.2011 demanded the supply of certain documents for his defense. These documents were denied by the Disciplinary Authority on the ground that the applicant will

Anil Kumar

have the full opportunity to inspect and procure the copy of the documents as per the letter of the Central Vigilance Commission dated 19.09.1973. The applicant thereafter submitted his reply vide letter dated 30.09.2011/03.10.2011. The applicant thereon nominated his defense nominee also. He further stated that the Disciplinary Authority violated the provisions of Rule 14(4) of the CCS (CCA) Rules. He was not given opportunity to be heard in person.

7. That the respondents No. 2 then appointed Inquiry Officer and also the Presenting Officer vide letter dated 24.10.2011. The respondent did not follow the provisions of Rule 14(5)(a) of the CCS (CCA) Rules while appointing the Inquiry Officer. During the course of inquiry, the applicant also raised objection that since the matter of tenders has been dealt with by the Principal/ Disciplinary Authority, he cannot be allowed to act as Disciplinary Authority. The applicant also wrote to remove Presenting Officer as he being associated in the matter of tenders. The respondent no. 2 instead of accepting his request directed the Inquiry officer to proceed with regular inquiry.

8. That the applicant gave an application for the change of Inquiry Officer vide his application dated 12.12.2011. The Inquiry officer then rejected the application without referring it to the competent authority. The Disciplinary Authority also

Anil Kumar

rejected the application of the applicant for change of Inquiry Officer.

9. The applicant also sent an application to the Appellate Authority for decision to change the Inquiry officer.

10. The learned counsel for the applicant further stated that the whole procedure prescribed by Rule 14 of the CCS (CCA) Rules, 1965 has been by-passed by the Inquiry Officer and inquiry was finalized. The Inquiry Officer sent his report which was forwarded to the applicant vide letter dated 01/03.05.2012. Being aggrieved by the action of the respondents, the applicant filed this OA before the Tribunal. The Tribunal vide its order dated 31.05.2012 issued notices to the respondents returnable within a period of two weeks and also issued interim that the respondents may proceed further pursuant to the Memorandum dated 12.09.2011 (Annexure A/1) but shall not pass final order.

11. Learned counsel for the applicant further argued that the respondents having known that the applicant has filed this OA on 25.05.2012, issued order of imposition of penalty dated 29.05.2012 to make the OA of the applicant as infructuous. He further argued that applicant was issued a show cause notice dated 01/03.05.2012/11.05.2012, which was received by the applicant on 18.05.2012 and hence the applicant could avail the written defense on the report of the Inquiry Officer upto

Anil Kumar

02.06.2012. Thus the order of penalty dated 29.05.2012 could not have been passed by the respondent no. 2 before 02.06.2012. The respondents have passed the order of compulsory retirement on 29.05.2012 in haste. Thus, the order of punishment dated 29.05.2012 is wholly illegal and malafide. Therefore, it should be quashed and set aside.

12. He further argued that Rule 15(1)(a) of the CCS (CCA) Rules provides that the Disciplinary Authority will give an opportunity to the Government servant concerned to submit his written representation or submission to the Disciplinary Authority within 15 days. He thus argued that by not providing mandatory requirement of 15 days to the applicant, the respondents have violated the provisions of Rule 15(1)(a) of the CCS (CCA) Rules. Therefore, he requested that the penalty order be quashed and set aside.

13. The learned counsel for the applicant further argued that since he had already filed the OA against the charge sheet and the proceedings before the Inquiry Officer and the Disciplinary Authority passed the penalty order during the pendency of the OA, therefore, it was not necessary for the applicant to avail the alternative remedy of appeal.

14. The learned counsel for the applicant in support of his averments referred to the following judgments/orders:-

- (i) State of Punjab vs. Amar Singh Harika
1966 (2) LLJ 188 / 1966 (0) AIR (SC) 1313

Anil Kumar

- (ii) State of Punjab & Others vs. Balbir Singh etc. etc. 1976 (1) SLR 36
- (iii) The Registrar of Co-operative Societies, Madras & Another vs. F.X. Fernando 1994 (2) SLJ (SC) 124
- (iv) Kota Rama Krishna Rao vs. East Coast Railway & Ors. 2006 (2) ATJ 319

15. On the other hand, learned counsel for the respondents submitted that the order of punishment dated 29.05.2012 is a appealable order under the CCS (CCA) Rules, 1965. No appeal has been preferred by the applicant against the order of punishment. Since the applicant has approached the learned Tribunal without referring any appeal before the Appellate Authority, the OA filed by him need to be dismissed on the ground of availability of alternative remedy. He further stated that inquiry against the applicant has been conducted as per rules.

16. With regard to the submission of the learned counsel for the applicant that 15 days time was not given to the applicant to submit his reply, he submitted that a copy of the inquiry report was sent to the applicant for making submissions, if any, to the Disciplinary Authority within a period of 15 days vide letter dated 03.05.2012 but the envelope containing the said inquiry report received back in the Institute on 11.05.2012 undelivered with the remarks of the concerned Postmaster as "Refused". However, in the interest of justice, the said inquiry report was again sent to the applicant through Registered Post

Anil Kumar

on 11.05.2012, which was received by him on 16.05.2012. However, no response was received by the Disciplinary Authority till 29.05.2012. He argued that even if it is accepted for the sake of arguments that 15 days time had expired on 31.05.2012 or on 02.06.2012, even then the applicant did not submit his representation by those dates. The applicant has stated that he received the order on 02.06.2012. This shows that he was not aware of the order passed by the Disciplinary Authority on 29.05.2012 till 02.06.2012. Thus, if he had desired then he would have submitted his representation even by 02.06.2012 but he did not submit any representation on the inquiry report till 02.06.2012 and, therefore, the principles of natural justice have not been violated. To support his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Harendra Arora & Another**, 2001(6) SCC 392.

17. He further argued that the interim order of the Hon'ble Tribunal was passed on 31.05.2012 but the Disciplinary Authority had passed the order of penalty on 29.05.2012. Therefore, the interim order passed by the Tribunal on 31.05.2012 was not in the knowledge of the Disciplinary Authority while passing the order as the interim order of the Tribunal did not exist on 29.05.2012. The applicant was given adequate opportunity to represent his case by the Disciplinary Authority but the applicant did not avail the opportunity.

Anil Kumar

Therefore, the OA has no merit and it should be dismissed with costs.

18. Heard the learned counsel for the parties, perused the relevant documents on record and the case law referred to by the learned counsel for the parties. From the perusal of the record, it is clear that the present OA was filed by the applicant on 25.05.2012. The case was first listed before the Bench on 28.05.2012. It was further listed on 30.05.2012 and subsequently on 31.05.2012. This Tribunal issued notices to the respondents returnable within a period of two weeks and issued interim direction that in the meantime, the respondents may proceed further pursuant to the Memorandum dated 12.09.2011 (Annexure A/1) but shall not pass final order. The respondents passed the penalty order against the applicant on 29.05.2012 imposing the penalty of compulsory retirement. In view of this development, the learned counsel for the applicant prayed for amendment in the OA vide MA No. 245/2012 in which besides other amendments, the relief clause was also prayed to be amended. The learned counsel for the applicant prayed that Clause (v) in Para No. 8 of the OA be added. Clause 8(v) is reproduced below:-

"8(v) That by appropriate order or direction the impugned order of punishment be quashed and set aside and the applicant be declared to be in service with all consequential benefits of pay salary, seniority and promotion etc."

This MA was allowed after hearing the rival submissions of the parties vide order dated 12.09.2012. We are inclined to

Anil Kumar

agree with the averments made by the learned counsel for the applicant that had the order of penalty was passed prior to the filing of the OA before the Tribunal then the question of alternative remedy would have arose but in this case, the applicant has initially challenged the charge sheet and departmental proceedings upto the stage of inquiry. Therefore, the applicant had no opportunity to file appeal against the penalty order. Thus we are of the considered view that the present OA cannot be dismissed on the ground of alternative remedy not being exhausted by the applicant.

19. We have carefully perused the penalty order dated 29.05.2012 (Annexure MA/2) passed by the Disciplinary Authority. In this order, the Disciplinary Authority has clearly stated that the copy of the inquiry report against the applicant was sent to the applicant vide letter dated 03.05.2012. That the envelope containing the said inquiry report was received back in the Institute on 11.05.2012 undelivered with the remarks of the concerned Postmaster as "Refused". In the interest of justice, the said inquiry report was again sent to the applicant, Shri Bhanwar Singh Rathore, on 11.05.2012, which was received by him on 16.05.2012. However, no response was received from the applicant till the date of the order dated 29.05.2012. Thus the perusal of this order itself shows that the Disciplinary Authority sent the copy of the inquiry report to the applicant for making his submissions, if any, to the Disciplinary Authority within a period of 15 days. Hence it is not disputed

Anil Kumar

that the Disciplinary Authority mentioned the period of 15 days in the letter sent to the applicant for making his submissions. The date of receipt by the applicant of the letter dated 11.05.2012 has been stated as 16.05.2012 by the Disciplinary Authority in his order whereas the learned counsel for the applicant stated that the applicant received it on 18.05.2012. The 15 days for making representation is counted from the date of receipt of the notice/letter and not from the date of dispatch by the Disciplinary Authority. We have also carefully perused the Rule 15 (1)(A) of the CCS (CCA) Rules, which is quoted below:-

"15. Action on the inquiry report

1(A) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government Servant."

A bare perusal of this Rule makes it clear that 15 days time is to be given to the Government servant to submit his representation, if any, to the Disciplinary Authority. In this case, even if we go by the statement of the Disciplinary Authority as per his order dated 29.05.2012 that the notice was received by the applicant on 16.05.2012, even then the period of 15 days would have expired on 31.05.2012. Thus in our opinion the requirement of 15 days time to be given to the

Anil Kumar

applicant according to Rule 15 (1) (A) of the CCS (CCA) Rules, 1965 has not been followed by the respondents.

20. The respondents' stand that the applicant did not give his reply even upto 02.06.2012 cannot be accepted. It was the duty of the Disciplinary Authority under Rule 15 (1) (A) of the CCS (CCA) Rules, 1965 to wait for the 15 days after receipt of notice by the applicant and then pass a final order. However, it appears that respondents have passed the penalty order dated 29.05.2012 in haste. We have carefully gone through the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Harendra Arora & Another**, 2001(6) SCC 392 (supra), as referred to by the learned counsel for the respondents. In Para No. 24 of the judgment, the Hon'ble Supreme Court has held that delinquent officer had submitted his reply pursuant to the show cause notice and after considering the reply of the show cause notice given by the delinquent officer, the Disciplinary Officer passed the orders. The delinquent officer had not taken the stand that he could not avail the effective show cause reply in the absence of the inquiry report nor it was stated in the show cause reply that the delinquent officer had not been served with the copy of the inquiry report. From these facts, it was not possible to hold that the respondents had been prejudiced by non-furnishing of the inquiry report. But in the present OA, the applicant has not been given statutory time of 15 days time limit prescribed under the Rules to furnish his representation to the Disciplinary

Anil Kumar

Authority. Therefore, in our opinion, the ratio decided by the Hon'ble Supreme Court in the case of **State of U.P. vs. Harendra Arora & Another**, 2001(6) SCC 392 (supra) would not be applicable under the facts & circumstances of the present OA.

21. Thus we are of the opinion that the respondents have not followed the statutory requirement under Rule 15 (1) (A) of the CCS (CCA) Rules, 1965 of providing 15 days time to the applicant to file his reply to the Disciplinary Authority. Therefore, we quash and set aside the penalty order dated 29.05.2012 (Annexure MA/2) filed alongwith MA No.245/2012. However, the respondents are at liberty to issue a fresh show cause to the applicant and proceed further in the matter from that stage of inquiry.

22. The interim stay granted by this Tribunal vide its order dated 31.05.2012 stands vacated.

23. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

J. S. Rathore
(Justice K.S.Rathore)
Member (J)

AHQ