

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.73/2013

**Pronounced On:20.07.2016
Reserved On:13.07.2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)**

Shri Vijay Prakash
Age 33 years,
S/o Late Shri Raj Singh
R/o Village & Post Office Sankhol,
Bahadurgarh, Distt. (Jhajjar).Applicant

(Argued by: Shri S.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Department of Post,
Ministry of Communication & IT,
Dak Bhawan, Ashoka Road,
New Delhi.
2. Member (P),
Ministry of Communication & IT,
Dak Bhawan, Ashoka Road,
New Delhi.
3. Chief Post Master General,
Department of Posts,
Ministry of Communication & IT,
Delhi Circle, New Delhi-01.
4. Director,
Foreign Post,
Department of Posts (India),
New Delhi-110002.
5. Inquiry Officer
C/o Director,
Foreign Post,
Department of Posts (India),
New Delhi-110002.Respondents

(By Advocate : Mr. Rajinder Nischal)

ORDER**Justice M. S. Sullar, Member (J)**

The challenge in this Original Application (OA), filed by applicant, Vijay Prakash, Male Peon, Foreign Post, New Delhi, is to the impugned enquiry report dated Nil (Annexure A-1) and impugned Order dated 27.04.2011 (Annexure A-2), whereby a penalty of dismissal from service was imposed on him by the Disciplinary Authority (DA). The applicant has also assailed the impugned orders dated 10.10.2011 (Annexure A-3), vide which his appeal was dismissed by the Appellate Authority (AA) and order dated 28.06.2012 (Annexure A-4) whereby his revision was dismissed by the Revisional Authority (RA) as well.

2. The compectus of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant OA, and emanating from the record is that, applicant, while functioning as Male Peon, Foreign Post, New Delhi, has committed gravest misconduct, during the course of his employment.

3. As a consequence thereof, applicant was served with the impugned Memorandum dated 18.03.2009/06.04.2009 (Annexure A-5), Statement of Imputation of Misconduct & Misbehaviour and following Article of Charge:-

“Article I

That while functioning as Mail Peon, Foreign Post, New Delhi-110002, Shri Vijay Prakash was allegedly found to have been lying along with an outsider woman in altogether naked condition and indulging in sex with each other in a compromising position on 06.01.2009 at about 17.30 hours in the recreation club hall

situated adjacent to the departmental canteen at the 3rd floor of Foreign (sic) Post building, New Delhi-110002.

Thus by the above act, the said Shri Vijay Prakash is alleged to have committed a grossly immoral act which is subversive of discipline and office decorum and amounts to an act of misconduct listed in Govt. of India Decision No.23 below Rule 3 of CCS (Conduct) Rules, 1964 (Swamy's Compilation of CCS (Conduct) Rules. Thirty Seven Edition).

By doing so, the said Shri Vijay Prakash is further alleged to have acted in a manner which is unbecoming of a Government servant thereby contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964"

4. Although applicant has categorically admitted, that he committed sexual intercourse with his female friend Mrs. Nirmala, at the relevant time and place, in his statement dated 07.01.2009 (Annexure R-4), but on his subsequent denial of allegations, the regular Departmental Enquiry (DE) was initiated against him as per the provisions of Central Civil Services (Control, Classification and Appeal) Rules, 1965 [hereinafter to be referred as "CCS(CCA) Rules"]. Consequently, Enquiry Officer (EO) was appointed, he recorded, appreciated the entire evidence and completed the Departmental Enquiry (DE). EO came to the definite conclusion that the charges assigned to the applicant stand proved vide his detailed enquiry report dated Nil (Annexure A-1).

5. Agreeing with the findings of the enquiry report, taking into consideration evidence on record and after following the due procedure, the DA awarded the indicated penalty to the applicant vide impugned order dated 27.04.2011 (Annexure A-2). The appeal and revision filed by him were also dismissed vide impugned orders dated 10.10.2011 (Annexure A-3) and

28.06.2012 (Annexure A-4) by the Appellate/Revisional Authorities respectively.

6. Aggrieved thereby, the applicant has preferred the present OA, challenging the enquiry proceedings and the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred as "Act").

7. The case set up by the applicant, in brief, in so far as relevant is that the authorities have not supplied the copies of relevant documents, including additional documents asked for, by the applicant. It has prejudiced his case. It was pleaded that, the EO has not properly examined the applicant, so there is clear violation of Rule 14 (18) of the CCS(CCA) Rules. The Disciplinary, Appellate and Revisional Authorities have not considered the evidence on record, in the right perspective and have just ignored the statements of 5 defence witnesses produced by the applicant. Thus, the enquiry was stated to have been conducted by EO in violation of statutory rules & principles of natural justice and as such, the enquiry report and orders are illegal, arbitrary and whimsical. On the basis of the aforesaid grounds, the applicant sought to quash the impugned departmental proceedings and orders in the manner indicated herein above.

8. Sequelly, the contesting respondents have filed the reply, wherein it was pleaded as under:-

"That on 06.01.2009, a raid was conducted at Recreating Club in the evening, by officers of the respondents. The Inspector (Foreign Post) and

the accompanying officials found that Shri Vijay Prakash, the applicant (Main Peon, Foregin Post) and Smt. Nirmala (an outside woman) were altogether lying entirely naked and busy indulging in sex with each other in a compromising position. All the staff members who were present there to witness the scene turned around to wait for both of them having dressed up. They took the advantage of the situation and fled from the spot after putting on the clothes through the back door of the canteen. The applicant was caught red handed on the spot within the duty hours, he was placed under suspension on the very next day of the incident, i.e., w.e.f. 07.01.2009 vide Memo No.FP/Inv./Misc.-01/2009 dated 07.01.2009".

9. The case of the respondents further proceeds that even the applicant has admitted his guilt of having sexual intercourse with his female friend Mrs. Nirmala in his written statement dated 7.1.2009 (Annexure R-4).

10. According to the respondents, the disciplinary proceedings were rightly initiated against the applicant under CCS (CCA) Rules. It was pleaded that the EO has provided copies of all the relevant documents, asked for, except documents at Sl.No. 8 to 11, for want of availability of record, which is clear from the proceedings dated 05.11.2009 (Annexure R-3).

11. As regards the violation of Rule 14(18) of the CCS(CCA) Rules is concerned, it has been specifically pleaded that IO has duly examined the applicant on 03.08.2010 on the circumstances appearing against him in the evidence, which is clear from the proceeding/order sheet dated 03.08.2010 (Annexure R-5). The EO has recorded the findings based on record. The DA, after considering the representation of the applicant, enquiry report and following the due procedure, awarded the pointed penalty. The Appellate and Revisional

Authorities have duly considered all the points raised before them by the applicant and rightly dismissed his appeal/revision.

12. Virtually acknowledging the factual matrix, and reiterating the validity of the departmental proceedings & impugned orders, it is pleaded by the respondents that the Disciplinary, Appellate and Revisional Authorities, have passed speaking orders, after following the due procedure of law. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

13. Controverting the pleadings in the reply filed by the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how we are seized of the matter.

14. Thus, it would been that the facts of the case are neither intricate nor much disputed. The applicant has assailed the impugned enquiry proceedings and orders mainly on 2 grounds, i.e. (i) non-supply of documents asked for and (ii) violation of Rule 14 (18) of the CCS (CCA) Rules. The learned counsel has also confined his arguments only on the two issues.

15. After hearing the learned counsel for the parties, after going through the record with their valuable assistance and after considering the entire matter on record, we are of the firm view that the present OA deserves to be rejected, for the reasons mentioned hereinbelow.

16. As is evident from the record that, the EO has already supplied all the relevant documents asked for by the applicant, except the non-available documents, which is clear from the proceedings (Annexure R-3). Moreover, learned counsel for applicant has acknowledged the receipts of the documents but utterly failed to project that how and in what manner those non-available documents were relevant and their non-supply has caused prejudice to the defence of the applicant, particularly when the applicant has categorically admitted his guilt immediately on the next day of the occurrence, in his written statement (Annexure R-4). Faced with this situation, learned counsel has fairly acknowledged that, in the presence of admission of the applicant and indicated material, he would not be able to further substantiate his argument of non-supply of documents.

17. Thereafter, the learned counsel for applicant has contended with some amount of vehemence that since the EO has not properly questioned the applicant, after conclusion of the evidence, so there is clear violation of Rule 14(18) *ibid*. In this regard, he has placed reliance on a judgment of Hon'ble Supreme Court in the case of ***Ministry of Finance and Another Vs. S.B. Ramesh JT 1998 (1) SC 319.***

18. On the contrary, learned counsel for respondents has urged that since the inquiring officer has duly examined the applicant, as per proceedings (Annexure R-5), so question of violation of Rule 14(18) did not arise at all.

19. Such being the position on record, now the sole question that requires determination in this case is, as to whether there is a violation of Rule 14 (18) of Rule ibid, which has caused any prejudice to the case of the applicant or not?

20. Having regard to the rival contentions of the learned counsel for the parties, the answer must obviously be in the negative.

21. What cannot possibly be disputed here is that the applicant has pleaded in this regard in para 5 (G) of OA as under:-

“ Because there was no compliance of Rule 14(18) of CCS (CCA) Rules, 1965 which can be established after summoning the records. Though, the inquiry officer has mentioned in the enquiry report about the compliance of the aforesaid provision, namely, 14 (18) of CCS (CCA) Rules, but, in fact, in true sense, the aforesaid provision was not complied with”.

In response thereto, the respondents have replied in the following manner:-

“ The IO has examined the applicant on 03.08.2010 on the circumstances appearing against him in the evidence as prescribed under Rule 14(18) of CCS (CCA) Rules, 1965. Copy of daily order sheet dated 3.8.2010 issued by IO and duly signed by the applicant and his Defence Assistant without (sic) raising any objection, may kindly be seen as Annexure R-5. This has been written in para 8 of the enquiry report”.

22. In this context, Rule 14 (18) of CCS (CCA) Rules, postulates that the inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to

explain any circumstances appearing in the evidence against him.

23. In **S.B. Ramesh's case** (supra), after the departmental proceedings were conducted on 18-6-91, the Enquiry Officer has only received the brief from the Presenting Officer (not from CO) and then finalised the report. So on the peculiar facts and in the special circumstances of that case, it was observed by Hon'ble Apex Court that, it shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-91, as is required under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, and it was incumbent on the Enquiry authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness.

24. Possibly, no one can dispute with regard to the aforesaid observation, but same would not come to the rescue of the applicant, in the present controversy. It is not a matter of dispute that in the instant case, the enquiring officer has duly put general questions to the applicant on the circumstances appearing against him in the evidence, for the purpose of enabling him to explain any circumstances appearing in the evidence against him, which is very much clear from the departmental proceedings (Annexure R-5), wherein it has been specifically depicted that CO (applicant) was duly examined after completion of the evidence. Moreover, the EO was not legally

required to repeat/rewrite the evidence again and again while putting the general questions to the applicant, as contemplated under sub-rule (18) of Rule 14 *ibid*, and as contrary urged on behalf of the applicant clear from the enquiry.

25. Not only that it is amply clear from the enquiry proceeding (Annexure R-5) that, having examined the Charged Official (CO) under sub-rule (18) of Rule 14 *ibid*, the EO has directed the PO to file written brief on or before 17.08.2010. Thereafter the CO was directed to submit his written brief within 15 days i.e., on or before 31.08.2010, as envisaged under sub-rule (19) of Rule 14 *ibid*. In this manner, if the indicated sequence of events are put together then it is apparent that in the present case, there is a substantial compliance of sub-rule (18) of Rule 14 of CCS (CCA) Rules, and the contrary arguments of learned counsel for the applicant "*stricto-sensu*" deserve to be and are hereby repelled, under the present set of circumstances.

26. Therefore, we are of the considered opinion that the EO has followed the due procedure, proper opportunity was granted to the applicant at all the stages by the appropriate authorities. The Disciplinary, Appellate and Revisional Authorities have duly examined the matter in the right perspective and negated the plea of the applicant. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted by this Tribunal in the obtaining facts and special circumstances of the case.

27. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

28. In the light of the aforesaid reasons, instant OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh