

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.995/2014

MA No.889/2014

Order Reserved on: 01.02.2016

Pronounced on: 05.04.2016.

Hon'ble Mr. Raj Vir Sharma, Member (J)

Hon'ble Mr. K.N. Shrivastava, Member (A)

Ajay Y. Sirsikar, (aged about 50 years)

S/o late Sh. Yogeshwar Sirsikar,

Presently working as:

Account Assistant in

Central Pollution Control Board,

Delhi, R/o Flat No.B-501,

Jayanti Mansion, VII, Besa

Nagpur-440034 (Maharashtra).

- Applicant

(By Advocate Shri T.D. Yadav)

Versus

1. Union of India through,
Secretary, Govt. of India,
Ministry of Environment & Forest,
CGO Complex, Lodhi Road, New Delhi.
2. The Chairman,
Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032.
3. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032.

-Respondents

(By Advocates Shri S.M. Arif (R-1) & Shri P.N. Puri (R-2&3))

ORDER

Hon'ble Shri K.N.Shrivastava, Member (A):

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA, read as under:

- “(i) to set aside and quash the impugned order dt. 25.2.2014 and 29.5.2013 (Annexure-A).
- (ii) to set aside and quash the charge sheet and finding of Inquiry Officer.
- (iii) to direct the respondents to restore all the position/status of the applicant prior imposing the penalty by the Disciplinary Authority against applicant.
- (iv) to direct the respondents to grant all the consequential benefits like seniority, promotion, pay and allowances, arrears and benefit of ACP and MACP.
- (v) to pass any other order/orders as deemed fit and proper in the facts and circumstances of the case.
- (vi) Award costs to the applicant.”

2. Brief facts of this case are as under:

2.1 The applicant was appointed as an Account Assistant on 08.01.1993 in the Central Pollution Control Board (CPCB) and posted at New Delhi. On 17.04.1995 he was transferred to the Zonal Office of CPCB, Bhopal. A lease accommodation, i.e., a flat at B-23, Lake Pearl Residency E-8, Extension Area Colony, Bhopal belonging to Mrs. Shashikala Paunikar, was hired for the applicant by the CPCB for a period of three years

on a monthly rent of Rs.4,000/-. The lease deed was signed between CPCB and the landlady on 06.05.2005. The Zonal Office of CPCB at Bhopal used to pay monthly lease rent to the landlady. The landlady was none other than the mother-in-law of the applicant. The landlady sold the said flat to Smt. Sudha Srivastava and Shri Vinay Srivastava on 31.05.2007. This development was not brought to the notice of the respondents by the applicant, as a result of which the CPCB continued to pay lease rentals to the landlady (Smt. Shashikala Paunikar) right up to 05.05.2008, i.e., till the expiry of the lease period of three years.

2.2 When the respondents came to know of sale of the aforementioned lease property by the landlady, they felt that the applicant has failed to maintain absolute integrity and devotion to duty by not informing the CPCB about the ibid sale transaction. Consequently, they issued charge sheet No.C-22013/12/93-Admn.(P)/460 dated 11.06.2012 to the applicant (Annexure 'F'). The charge-sheet contained the following article of charge:-

“ARTICLE I

That Shri Ajay Y. Sirsikar, while functioning as Accounts Assistant in the Zonal Office of Central Pollution Control Board at Bhopal has taken Flat No.B-23, Lake Pearl Residency, E-8 Extension, Area Colony, Bhopal from Smt. Shashikala Paunikar on lease w.e.f. 06.05.2005 to 05.05.2008 on a monthly rent of Rs.4,000/-.

Smt. Shashikala Paunikar sold the above Flat on 31.05.2007 by executing sale deed in favour of Smt. Sudha Srivastava & Shri Vinay Srivastava. Shri Ajay Y. Sirsikar who was aware of the sale of the flat occupied by him on lease basis, had intentionally not intimated the office regarding handing-over the possession of that flat. He fraudulently and unauthorizedly issued rent cheques in favour of Smt. Shashikala Paunikar @Rs.4,000/- p.m. with effect from 1st June, 2007 to 5th May, 2008.

Thus Shri Ajay Y. Sirsikar by his above acts of omission and commission has failed to maintain absolute integrity and devotion to duty, thereby violating Rule 3 (1)(i)&(ii) of the Central Civil Services (Conduct) Rules, 1964.”

2.3 Pursuant to the said charge sheet, an inquiry was conducted in which the applicant had participated. The Inquiry Officer (IO) in his report dated 25.10.2012 held that the charge against the applicant **is proved**.

2.4 The Disciplinary Authority (DA), namely, Chairman, CPCB vide impugned order No.C-22013/12/93-Admn.(P)/20 dated 29.05.2013 (Annexure A-1 colly.), imposed the penalty of *“reduction to minimum of the pay structure of Grade Pay of Rs.4800/- in PB-2; Rs.9300-34800/- i.e. Rs.13,350/- which will remain at this level for next 02 years and will also have the effect of postponing the future increments of his pay”* on the applicant.

2.5 Aggrieved by the said order of DA, the applicant filed the statutory appeal before the Appellate Authority (AA), namely, CPCB, who vide its impugned order No.C-22013/01/1993-

Admn.(P)/48 dated 25.02.2014 (Annexure A-1 colly.) rejected the appeal.

2.6 Aggrieved by the orders of the DA and AA, the instant OA has been filed.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing of arguments on 01.02.2016. Shri T.D. Yadav, learned counsel for the applicant, Shri S.M. Arif, learned counsel for respondent No.1 and Shri P.N. Puri, learned counsel for respondents No.2&3 argued the case.

4. The learned counsel for the applicant, besides highlighting the points raised by the applicant in the OA and rejoinder, submitted that the applicant was entitled for the lease accommodation as per the CPCB policy. He drew our attention to Annexure 'P' office order dated 06.09.2000 of CPCB to say that only those officials who have availed HBA and having own or dependant's house within the Municipal area or 25 kms. distance from the place of posting shall not be entitled to the lease accommodation of CPCB and they will only be entitled for HRA. The landlady Smt. Shashikala Paunikar is not a dependant of the applicant, albeit she is his mother-in-law. The learned counsel further submitted that the IO has erred in assuming that the applicant has

knowledge of the sale of the lease property by the landlady; as a matter of fact any occupant of a lease accommodated would not be having knowledge with regard to any sale transaction done by the landlady. It was also submitted that the Presenting Officer failed to produce any documentary evidence to substantiate that the applicant was indeed aware of the sale of the said property. In this connection, the learned counsel drew our attention to the judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank & Ors.**, [2009 (2) SCC (L&S) 570], in which it has been clearly held that in a departmental inquiry, mere production of document is not enough. The contents of the documentary evidence have to be proved by examining the witnesses. The learned counsel specifically drew our attention to paras 15 & 23 of the judgment, which are reproduced below:-

“15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence

was committed in such a manner that no evidence was left.”

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“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

The learned counsel stated that the lease deed was executed between the landlady and CPCB and the applicant cannot be held responsible for any fallout from the said agreement. It was further submitted that the applicant had submitted an application to the respondents on 21.04.2008 stating that he would be vacating the lease accommodation on 05.05.2008, i.e., on expiry of the lease period of three years and that he has already searched a rental accommodation, which he shall

be occupying on 06.05.2008. Concluding his arguments, the learned counsel submitted that the applicant has not committed any misconduct for which he could have been punished and hence the impugned charge sheet and the IO's report, DA's order and AA's order deserve to be quashed and set aside and the prayers made in the OA be granted to the applicant.

5. Per contra, the learned counsel for the respondents No.2&3 submitted that the landlady was the mother-in-law of the applicant and the applicant's wife had signed as a witness on the lease agreement signed between the landlady and the CPCB. Such being the close relationship of the applicant with the landlady, it cannot be believed that the applicant was not aware of the sale of the said property by the landlady on 31.05.2007. The learned counsel drew our attention to para-28 of the IO's report in which it is stated that the applicant had admitted that he knew that the lease property in which he was residing was sold by its owner on 31.05.2007. In view of such a categorical admission, it is quite clear that the applicant was fully aware of the sale transaction and as such, it was his duty to bring the said sale transaction to the notice of the respondents. As he failed in his duty, the applicant has been rightly punished vide the impugned orders of DA and AA; the learned counsel argued.

Concluding his arguments, the learned counsel stated that the OA is bereft of any substance and as such deserves to be dismissed.

6. The learned counsel for respondent No.1 submitted that respondent No.1 is just a proforma party. Nevertheless, he adopts the arguments put-forth by the learned counsel for the respondents No.2&3.

7. We have considered the arguments put-forth by the learned counsel for the parties carefully and have also perused the pleadings and the documents annexed thereto. Admittedly, the owner of the lease accommodation is mother-in-law of the applicant and his wife was a witness to the lease agreement signed between the CPCB and the landlady. The IO's report clearly states that the applicant, during the course of inquiry has admitted that he was aware of the sale transaction dated 31.05.2007 when the property in question was sold by the landlady to Smt. Sudha Srivastava and Shri Vinay Srivastava. Such being the stark reality, it is natural to infer that the applicant was in know of the sale deed and hence was duty bound to inform about this development to the respondents. It is settled law that in a departmental inquiry the preponderance of probabilities is adequate to punish the delinquent Government servant and that proving the charge beyond reasonable doubt is not essential. The

learned counsel for the applicant has tried to draw support from the decision of the Hon'ble Supreme Court in the case of **Roop Singh Negi** (supra). We have gone through the said judgment of the Hon'ble Supreme Court. The principle laid down in the said judgment is that the report of the IO should not be based on mere *ipsi dixit* or on surmises and conjectures and that the materials brought on record, pointing out the guilt, are required to be proved. In the instant case the applicant himself has admitted in the inquiry that he had knowledge of the sale transaction. Further, the lease accommodation belonged to his mother-in-law and, therefore, preponderance of probabilities would also indicate that in view of his close relationship with the landlady, he must have been aware of the sale transaction.

8. The scope of judicial intervention in a departmental inquiry is highly limited. Judicial intervention can be done only in the following situations:

- i) If the inquiry has not been conducted as per the laid down procedures.
- ii) If the principles of natural justice have not been followed in the conduct of the inquiry.

iii) If the punishment awarded is disproportionate to the offence committed.

9. In the instant case, we find that the respondents have conducted the disciplinary inquiry against the applicant as per the laid down procedures and that the principles of natural justice have been followed by the respondents in the conduct of the inquiry.

10. In view of the foregoing, we do not find any merit in the OA. Accordingly, the OA is dismissed.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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