

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1136/2014

Reserved on : 24.01.2017.

Pronounced on : 08.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

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

Sh. Pradeep Kumar Gupta,
Flat No. 44-C,
Pocket AG-1,
Vikaspuri,
New Delhi-110018.

..... Applicant

(through Sh. Padma Kumar S. With Sh. K.K. Mishra, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Rural Development,
Government of India,
Krishi Bhawan,
New Delhi.
2. Director General,
Council for Advancement of People's
Action and Rural Technology,
India Habitat Centre,
Zone-5A, (Core-C) 2nd Floor,
Lodhi Road, New Delhi-3.

3. Director,
Central Vigilance Commission,
Satarkta Bhawan,
GPO Complex,
Block-A, INA,
New Delhi.

..... Respondents

(through Sh. S.K. Rungta, Sr. Advocate with Sh. Prashat Singh and Sh. Varun Gupta, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The applicant was working as Assistant Director in Council for Advancement of Peoples Action and Rural Technology (CAPART). He was served with a Charge Memo on 21.03.2012 containing the following charge:-

“While functioning as Regional Representative & Member Convenor, in Regional Committee (RC), Bhubaneswar during the period from June 2009 to April 2010, Shri Pradeep Kumar Gupta, Assistant Director (U/S) dealt with the file bearing No. GSM/WBN/12/9/2008 relating to the organization namely Universal Progressive Study and Cultural Forum, Cooch Behar, West Bengal and committed the following lapses:-

ARTICLE OF CHARGE

Sh. Pradeep Kumar Gupta, released Rs. 4,96,500/- as 1st instalment to the organization vide letter No. GSM/WBN/12/9/2008 dated 10/07/2009 towards a total sanctioned amount of Rs.9,93,000/- for organizing Gram Shree Mela and demanded & accepted a sum of Rs.50,000/- from Shri Sukhamay Paul, Secretary & Ex Officio Director of the VO for releasing balance amount of total sanctioned amount for holding Gram Shree Mela.

Shri Gupta has exhibited lack of integrity & devotion to duty and acted in a manner on unbecoming of CAPART employee and thereby, contravened the provisions of Rule 3 (1)(i), (ii) and (iii) of CCS (conduct) Rules, 1964 as extended to CAPART employees.”

2. The Enquiry Officer (EO) submitted his report on 17.07.2013 in which he held that the charge against the applicant was not proved. The Disciplinary Authority (DA), however, disagreed with the findings of the EO and issued a disagreement note, which is

available at pages-62-63 of the paper-book. The applicant submitted his representation against the same and after considering his representation as well as other material, the DA passed an order on 23.09.2013 imposing penalty of dismissal from service on the applicant with immediate effect. An appeal filed against the same was dismissed by Hon'ble Minister for Rural Development vide order dated 13.01.2014. Now, the applicant has approached this Tribunal by filing this O.A. challenging the orders passed by the DA, AA as well as the disagreement note.

3. In their reply, the respondents have stated that a Charge Memorandum was served on the applicant on 21.03.2012. This was a result of showing favour to an organization called Universal Progressive Study and Cultural Forum, Cooch Behar, West Bengal for holding Gram Shree Mela and demanding Rs.50,000/- as bribe. The applicant was arrested as he was caught red handed in a trap laid by the CBI. Further, in their reply, they have generally supported the enquiry conducted by them and the punishment imposed on the applicant by stating that the enquiry has been conducted in accordance with the rules and adequate opportunity has been given to the applicant to defend his case. There has been no violation of principles of natural justice and all norms and procedures have been followed.

4. We have heard both sides and have perused the material placed on record. Learned counsel for the applicant Sh. Padma Kumar pressed the following grounds before us:-

(i) He alleged that the main witnesses, whose deposition would have made considerable difference to the outcome of this enquiry, were not produced in the enquiry even though they were listed as witness in the list of witnesses. He drew our attention to Serial Nos. 1 and 2 of the list of witnesses furnished to the applicant along with the charge sheet (page-72 of the paper-book), which shows the names of Sh. Amitav Ghosh, Inspector, CBI, ACB, Kolkata and Sh. S. Gangopadhyay, Inspector, CBI, ACB, Kolkata. Sh. Padma Kumar argued that this was a case in which CBI, ACB, Kolkata allegedly laid a trap in which the applicant was caught red handed. He further argued that since the trap was allegedly laid by CBI, production of both these witnesses for examination in the enquiry would have made material difference to the case. Relying on the judgment of Hon'ble Supreme Court in the case of **Hardwari Lal Vs. State of UP & Ors.**, ATJ 2000(1) 244 Sh. Padma Kumar, learned counsel submitted that non production of material witnesses has vitiated the enquiry.

(ii) Sh. Padma Kumar, learned counsel argued that this was a case of no evidence since as mentioned above the main witnesses could not be produced in the enquiry. In support of his contention he relied on the judgment of Hon'ble High Court of Delhi in the case of **The Secretary-cum-Chairman, Standing Committee, ESIC & Anr. Vs. G.C. Jatav**, WP(C) No. 561-62/2005 dated 24.02.2011.

(iii) He argued that the disagreement note issued by the respondents shows that respondents had already made up their mind to punish the applicant. This is evident from the fact that the disagreement note states in the last line as follows:-

“Therefore, the Article of Charge against the CO is treated as proved with a view of imposition of Major Penalty as per Rule 11 of CCS (CCA) Rules, 1965.”

Sh. Padma Kumar, learned counsel argued that had the respondents been functioning with an open mind, the disagreement would have been tentative. However, this was not the case. The respondents had already decided to punish the applicant reducing the subsequent proceedings of giving an opportunity to the applicant to represent against the disagreement note a mere formality. To support his case the applicant has relied on the judgments of Hon'ble Supreme Court in the case of **Yoginath D. Bagde Vs. State of Maharashtra**

& Anr., JT 1999(6)SC 62, **Punjab National Bank & Ors. Vs. Kunj Behari Misra**, 1998(7)SCC 84.

(iv) Sh. Padma Kumar, learned counsel stated that the orders of DA & AA were cryptic and non speaking. These orders do not disclose the reasons for awarding the punishment. In support of his contention, Sh. Padma Kumar relied on the judgments of Apex Court in the case of **R.P. Bhatt Vs. UOI & Ors.**, AIR 1986 SC 1040 and in the case of **Ram Chander Vs. UOI & Ors.**, 1986 SCC(L&S) 383.

5. In reply, learned Senior Counsel for the respondents Sh. S.K. Rungta argued that the two witnesses, both of whom, were Inspectors of CBI, were dropped as despite several opportunities being granted, they did not appear before the EO. He further submitted that while it is true that the disagreement note is not happily worded, yet the DA has given full opportunity to the applicant to represent against the same. Thus, there has been no denial of natural justice to the applicant. Refuting the charge of the applicant that this was a case of no evidence Sh. Rungta stated that the main complainant in this case Sh. Sukhamay Paul, Secretary and ex-officio Director of Universal Progressive Study and Cultural Forum had appeared and deposed before the EO. In his

deposition, he confirmed that the applicant had demanded as well as accepted bribe of Rs. 50,000/- from him for releasing the balance amount of total sanctioned amount for holding Gram Shree Mela. The other witnesses have also deposed against the applicant. Thus, there is no merit in applicant's contention that this enquiry was vitiated due to non production of CBI Inspectors during enquiry.

6. We have heard both sides and perused the material placed on record. We deal with each of the grounds taken by the applicant.

6.1 One of the grounds taken by the applicant is that the disagreement note issued to him was not tentative as is evident from the language of the same extracted above. The respondents' counsel, on the other hand, argued that even though the disagreement was not happily worded, full opportunity had been given to the applicant and the procedure prescribed by the Hon'ble Supreme Court in the judgments relied upon by the applicant has been followed.

From the facts of the case narrated above, it is evident that a disagreement note giving reasons for disagreement was issued to the applicant along with the enquiry report and the applicant was given an opportunity to represent against the

same. The punishment order was passed by the DA after considering the representation of the applicant. Thus, the procedure prescribed by the Hon'ble Supreme Court in the judgments relied upon by the applicant, namely, **Yoginath D. Bagde** (supra) and **Kunj Behari Misa** (supra) has been followed. The applicant has not mentioned as to what issue raised by him in his representation against disagreement note has not been considered by the respondents at all or has not been considered with an open mind. Merely because the word "tentative" has not been used in the disagreement note, it cannot be held that the subsequent proceedings were only an empty formality and that the respondents had already made up their mind. As is not disputed by both sides after issuance of disagreement note, the applicant was given full opportunity to represent against the same. The representation of the applicant did not contain any argument or submission, which could have made the DA to change his mind. The applicant himself has not stated even now as to what has not been considered by the DA. Thus, we do not see any violation of principles of natural justice in this case and do not see as to what prejudice has been caused to the applicant's defence merely because the word "tentative" was not mentioned in the

disagreement note. The applicant is merely relying on a technicality to find fault with the disciplinary proceedings.

6.2 Next, the applicant had argued that CBI Inspectors, who were listed at Serial Nos. 1 & 2 in the list of witnesses provided to the applicant, were not produced in the enquiry. The applicant argued that non production of two witnesses vitiates the enquiry as has been held by Hon'ble Supreme Court in the case of **Hardwari Lal** (supra). The respondents, on the other hand, mentioned that these witnesses did not appear before the EO despite being summoned several times. Consequently, they were dropped. Nevertheless, the charge against the applicant has been proved by the statement of the complainant Sh. Sukhamay Paul, who very clearly stated that the applicant had demanded as well as accepted a bribe of Rs. 50,000/- for releasing the balance amount out of the sanctioned amount for organizing the Gram Shree Mela. The respondents further submitted that other witnesses had also deposed against the applicant. Hence, neither this was a case of no evidence nor it can be held that the enquiry got vitiated by non production of CBI Inspectors as witnesses.

We have considered the aforesaid submission. We find that the respondents have relied on the statements of PW-3

Shri Sukhamay Paul and PW-4 Sh. Khageswar Jena, Senior Accountant and PW-5 Sh. M.P. Singh, Research Officer, RC, CAPART. In the disagreement note itself it has been mentioned that Sh. Paul in his deposition stated that the applicant had demanded Rs. 50,000/- from him on 11.04.2010 for giving a positive report about the Gram Shree Mela, failing which the second instalment of the grant would not be released. Further, Sh. Paul stated that on 23.04.2010 the applicant accepted the said amount by stretching his right hand and counting money one by one following which CBI trapped him. The deposition of PW-3 has not been denied by the applicant.

From the above, it is evident that this witness in the deposition has confirmed both demand and acceptance of the bribe. Further PW-4 and PW-5 in their statements had stated that the applicant had kept this file with himself from 06.10.2009 to 13.04.2010 without involvement of anyone else with an ulterior motive.

In view of the aforesaid, we are of the opinion that respondents cannot be faulted for finding the applicant guilty of the charge made out against him even in absence of deposition of CBI Inspectors. These statements also do not support the contention of the applicant that this was a case of

no evidence. As far as the judgment of Supreme Court in the case of **Hardwari Lal** (supra) relied upon by the applicant is concerned, we have gone through the aforesaid judgment and we find that in this case no law has been laid down by the Hon'ble Supreme Court. It was only considering the facts and circumstances of **Hardwari Lal's** case that the Hon'ble Supreme Court had come to the conclusion that the enquiry was not proper as important witnesses to prove the case or state had not been produced in the enquiry. In our opinion, this judgment cannot straight away be applied to the instant case to hold that the enquiry got vitiated.

6.3 Lastly, the applicant had submitted that the orders passed by both DA & AA do not disclose any reasons as to why they have reached to the conclusion that the applicant was guilty. Hence, these orders deserve to be quashed. In this regard, the applicant has relied on two judgments of Apex Court, namely **Sh. R.P. Bhatt** (supra) and **Sh. Ram Chander** (supra).

On going through the material placed before us, we find that detailed reasons for coming to the conclusion as to why the applicant was guilty were given by the DA in the disagreement note itself. Thereafter, the applicant was given an opportunity to represent against the same. Since, nothing

important was found in the representation of the applicant by the DA, it was stated in the impugned order that the representations have no substance and hence rejected.

In our opinion since detailed reasons had already been given in the disagreement note, it would not have served any purpose by repeating the same in the order of the DA. Even the AA did not find anything new in the appeal filed by the applicant and consequently the AA agreed with the DA. Under these circumstances, it was not necessary for the AA while agreeing with DA to give detailed reasons again.

7. Thus, we do not find any merit in any of the grounds raised by the applicant. No other ground was pressed before us. We are of the opinion that this O.A. is devoid of merit and is, therefore, dismissed as such. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/