

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

OA-2246/2013

Reserved on : 22.12.2015.

Pronounced on: 11.01.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Thiyam Kiran Singh,
S/o late Sh. Th. Konungjao Singh,
O/o DIG, SSB, Sector Headquarter,
Gorakhpur, UP,
Presently at New Delhi.

..... Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

Union of India & Ors. through:

1. The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director General,
Sashastra Seema Bal,
East Block-V, Sec-I,
R.K. Puram, New Delhi-110066.
3. The Addl. Director General,
Sashastra Seema Bal,
East Block-V, Sec-I,
R.K. Puram, New Delhi-110066.
4. The Inspector General,
Frontier Hqrs.,
Sashastra Seema Bal,
Sankalp Bhawan, Gomti Nagar,
Lucknow.

.... Respondents

(through Sh. Rajinder Nischal, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as an Accountant with Sashastra Seema Bal (SSB) when on 03.12.2009 he was served with a charge sheet containing the following charge:-

"That the said Shri Thiyam Kiran Singh, Accountant while functioning as accountant at Force Hqrs. SSB, New Delhi has furnished false Medical certificates and false medical fitness certificate to regularize his absence from duty w.e.f. 07.08.2009 to 07.09.2009. Shri Thiyam Kiran Singh, Accountant by the above act, has failed to maintain an absolute integrity and acted in manner of unbecoming of a Government Servant. Thus he has infringed the Rule-3(i)(iii) of CCS Conduct Rules 1964."

2. The applicant denied the charge and an inquiry was held. Inquiry Officer (IO) submitted his report on 07.05.2011. According to the applicant, the Disciplinary Authority (DA) then directed the IO to re-submit his report after taking into account certain extraneous material. The IO re-submitted his report on 08.10.2011 in which he found that the charge was proved only to the extent that Medical Superintendent of G.M. Modi Hospital denied having issued any of the medical certificates under reference by any hospital authority from G.M. Modi Hospital. The DA, however, disagreed with the findings of the IO and supplied a copy of the inquiry report vide letter dated 06.05.2012 to the applicant along with his observations on the same in which he held that the article of charge against the applicant was proved. The applicant then submitted a detailed representation on 07.06.2012. The DA after considering the same passed the impugned order dated 27.08.2012 by which the pay of the applicant was reduced by one stage for a period of one year w.e.f. 01.09.2012. It was further directed that the applicant shall not earn any increment during the period of such reduction and this period will have the effect of postponing his future increments. On 26.10.2012, the respondents passed another order by which the period of unauthorized absence of the applicant from 07.08.2009 to 07.09.2009 was treated as dies non for all purposes. An appeal filed by the applicant was rejected by the Appellate Authority (AA) vide his order dated 23.01.2013. Hence the applicant has filed this O.A. seeking the following relief:-

"(i) To quash and set aside impugned punishment order dated 27.08.2012 (A-1) and appellate authority order dated 23.01.2013 with

direction to the respondents to restore the pay of applicant with all consequential benefits including arrears of pay.

(ii) To declare the action of the respondents in holding departmental action against the applicant on the basis of false allegations as illegal and unjustified and direct the respondents to restore the pay of the applicant as it was before imposition of penalty dated 27.08.2012.

(iii) To set aside the award dated 26.10.2012 and direct the respondents to treat the intervening period as spent on duty.

(iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

3. The respondents have filed their reply in which they have justified their action and have submitted that the enquiry against the applicant was conducted in accordance with the laid down procedure and, therefore, the OA deserves to be dismissed.

4. The applicant has challenged these proceedings on various grounds, one of them being that the observations of the DA supplied along with a copy of the inquiry report to the applicant reveal that the DA had already made up his mind to punish the applicant, thereby reducing the subsequent proceedings to a mere formality.

5. We have considered the aforesaid submission. The observations of the DA on the inquiry report are available at pages-76 to 80 of the paper-book. The relevant part is extracted below:-

"Dr. A.K. Katyal in his statement dated 20.11.2010 stated clearly that the medical certificate dated 31.08.2009 and 07.09.2009 appear be not signed by him.

In view of his statement the authenticity of medical certificate dated 31.08.2009 and 07.09.2009 put up by the delinquent is severely in doubt. In view of erasing & overwriting, it is clearly a false certificate.

6. In fact, the Medical Supdt. Modi Hospital, New Delhi in his letter dated 22nd September 2009 has clearly mentioned that the medical certificates are forged and issued through unfair means.

7. In view of the details relating to OPD cards and Medical Certificates as above it is clear that Shri Thiyam Kiran Singh, Accountant has furnished false medical certificates for regularization of his absence from duty w.e.f. 07.08.2009 to 07.09.2009. Hence I find the article of charge proved."

6. A mere reading of these observations would make it clear that the DA had already made up his mind to disagree with the findings of the IO. This disagreement was not tentative but a firm one. This would imply that the subsequent action taken by the DA of providing a copy of the inquiry report and his observations thereon to the applicant and giving him an opportunity to represent against the same was reduced to a mere formality and became an exercise in futility. Thus, the applicant was deprived of fair consideration of his representation made against the inquiry report and the observations of the DA. In this regard, we find that Rule-15(2) of CCS CCA Rules reads as follows:-

"15. Action on the inquiry report

(2) 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 together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge 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."

6.1 Clearly, it is mentioned in the above Rule that the DA shall communicate the report of the inquiry authority together with his own "tentative" reasons for disagreement. Again in Para-3 of DOPT O.M. No. 11012/22/94-Estt.(A) dated 27.11.1995 is laid down as follows:-

"Supply of copy of inquiry report to the accused Government servant before final orders are passed by the Disciplinary Authority:-

A question has been raised in this connection whether the Disciplinary Authority, when he decided to disagree with the inquiry report should also communicate the reasons for such disagreement to the charged officer. The issue has been considered in consultation with the Ministry of Law and it has been decided that where the Inquiring Authority holds a charge as not proved and the Disciplinary Authority takes a contrary view, the

reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the report of inquiry to the charged officer."

Again the requirement is that the DA should examine the inquiry report and formulate his own tentative views only on the same before forwarding it to the charged officer.

6.2 Thus, there has been violation of principles of natural justice in this case inasmuch as the applicant has been deprived of consideration of his representation against the inquiry report and the observations of DA with an open mind.

7. Another ground taken by the applicant is that the respondents have proved the documents without even calling the author of the same in the inquiry proceedings as none of the doctors who issued the certificate was cited as witness. Even without this the genuineness of the certificates has been doubted by the DA.

8. We have considered the aforesaid submission. We find from the charge sheet issued to the applicant (pages-48 to 53 of the paper-book) that no witnesses have been cited in the same. This is evident from Annexure-IV of the charge sheet (page-53 of the paper-book) where under the caption list of witnesses "nil" has been stated. In our opinion, disciplinary proceedings are quasi judicial proceedings and the inquiry officer is required to arrive at a finding after taking into consideration the material brought on record by the parties in the inquiry proceedings. Since no witnesses were examined, the documents relied upon by the applicant cannot be said to have been proved. In this

regard, we rely on the judgment of Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank & Ors.**, (2009) 2 SCC 570, in Para-14 of which the following has been held:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

9. Further, a Co-ordinate Bench of this Tribunal in the case of **Sh. Rajnish Kumar Vs. UOI & Ors. (OA-1327/2014)** on 01.09.2014 held as follows:-

"9. We have heard the learned counsel for the applicant Shri S.K. Gupta and the learned counsel for the respondents Shri Tanvir Ahmed Ansari. As observed earlier, this is the third round of litigation by the applicant. The alleged incidents mentioned in the Statement of Articles of Charge relates to the period March 1992 to March 1994. Admittedly, it was issued initially by the respondents without the approval of the Competent Authority. Therefore, this Tribunal had quashed the charge Memorandum but with liberty to the respondents to initiate fresh proceedings after obtaining the approval of the Competent Authority. Even though fresh charge sheet has been issued to the applicant after obtaining the approval of the Competent Authority, it is seen that the same has been issued in violation of the CCS (CCA) Rules, 1965 as well as the principles of natural justice. According to Sub Rules 3 & 4 of Rule-14 of the CCS (CCA) Rules, the Disciplinary Authority is required to furnish the Statement of Articles of Charge along with the list of documents and the list of witnesses to sustain those charges. The said Sub Rules are reproduced as under:-

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

However, in the present case, though there were 10 listed documents to prove the first Article of Charge yet there was not even one document to prove the second Article of Charge. There was also not a single witness to prove any of those two Articles of Charge. The documents to prove the [Article-I](#) were the Assessment Records of the 10 individuals. It has not been indicated as to what evidence was forth-coming from those documents. Further, according to the respondents own file notings as reproduced earlier, even the confessional statement of Shri Dipesh Chandak which was the only listed document to prove the second charge, was not even available with the respondents.

10. The learned counsel for the respondents Shri Tanvir Ahmed Ansari rightly argued that the Courts and Tribunals should be reluctant to interfere with the disciplinary proceedings at the interlocutory stage. But violation of the principles of natural justice is one of the reasons for the Court to interfere with the Memorandum of Charge and one of the basic principles of natural justice is that the delinquent employee has to be afforded reasonable opportunity to cross examine the prosecution witnesses. It is only after cross examination, the Enquiry Officer himself can come to the conclusion that the charges have been proved or not. Therefore, in the absence of any witnesses, if the Enquiry officer comes to the conclusion that the charges have been proved, such findings can only be termed as perverse and the same cannot be accepted. In this regard, the judgment of the Apex Court in the case of Roop Singh Negi (*supra*) is relevant. The Apex Court has held in the said judgment that the documentary evidence are required to be proved not by mere production of the documents before the Inquiry Officer but by examining the witnesses. It is for the aforesaid reason that it has been stipulated in Sub-Rule 3 & 4 of Rule-14 of the CCS (CCA) Rules, 1965 that statement of all relevant facts including any admission or confession made by the Government servant and a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained, and the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained.

11. This Tribunal has considered the same issue in OA No.1011/[2013- Ritu Chaudhary vs. Union of India & Others](#) in its order dated 06.01.2014 and held as under:-

It is a well settled law and one of the basic principles of natural justice is that the delinquent employee should have the reasonable opportunity to cross examine the prosecution witnesses. It is only after due cross examination, the Enquiry Officer himself can come to the conclusion whether the charges have been proved or not. Therefore, in the absence of any witnesses, if the Enquiry Officer comes to the conclusion that the charges have been proved, such findings can only be termed as perverse report and the same cannot be accepted. In this regard, judgment of the Apex Court in the case of Roop Singh Negi Vs. Punjab National Bank & Others 2009 (2) SCC 570 is relevant. It has been held by the Apex Court that documentary evidence are required to be proved not by mere production of the documents before the Inquiry Officer but it has to be proved by examining the witnesses. The relevant part of the said judgment reads as under:-

14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

21. In the above facts and circumstances of the case, we are of the considered view that at this belated stage, particularly in the absence of relevant documents and the witnesses, if any enquiry is held, the Applicant will be greatly prejudiced and it will amount to denial of justice to her. We, therefore, consider that it will be a futile exercise on the part of the Enquiry Officer to conduct the enquiry as proposed in the impugned memorandum. Accordingly, we allow this OA and quash and set aside the impugned memorandum dated 04.12.2012. Consequently, the Applicant shall not be visited by any adverse action on the part of the Respondents or she shall not be denied any benefit which she was otherwise entitled to, due to the issuance and pendency of the aforesaid Memorandum. The Respondents shall comply with the aforesaid directions by passing an appropriate order within a period of 2 months from the date of receipt of a copy of this order.

12. In the above facts and circumstances of the case, we are of the considered view that in the absence of the relevant documents and witnesses, if any enquiry is held, the applicant will be greatly prejudiced and it will amount to denial of natural justice to him. We, therefore, consider that it will be a futile exercise on the part of the Enquiry Officer to conduct the enquiry as proposed in the impugned Memorandum dated 13.02.2003. Accordingly, we allow this Original Application and quash and set aside the aforesaid Memorandum. Consequently, we also order that the applicant shall not be visited by any adverse action on the part of the respondents or he shall not be denied any benefit, which he was

otherwise entitled to, due to the issuance of impugned Memorandum. The respondents shall comply with the aforesaid directions by passing appropriate order within a period of 2 months from the date of receipt of a copy of this order."

10. Thus, we are of the opinion that in absence of any witnesses cited in the above proceedings if an inquiry is permitted to be held, it will amount to denial of justice to the applicant. In view of these findings, it is not necessary to go into other grounds taken by the applicant.

11. We, therefore, allow the O.A. and quash the charge sheet dated 03.12.2009 along with punishment order dated 27.08.2012, Appellate Authority order dated 23.01.2013 and the order of DA dated 26.10.2012. We further direct that the respondents shall restore the pay of the applicant as it was before the imposition of the aforesaid penalty. The respondents shall pass appropriate orders regarding the period of absence of the applicant. The entire exercise shall be completed within eight weeks from the date of receipt of a certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/