

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No. 3196/2014

Reserved on :23.02.2016
Pronounced on: 26.02.2016

Hon'ble Ms. Chameli Majumdar, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)

Sri Ram Phal, Aged about 60 years
S/o. Sh. Ganga Dutt
T.I. T. No. 19426,
R/o. 49A, Exten.2C,
Nangloi, Delhi-110 041.Applicant

(By Advocate: Mr. R. S. Lathwal)

Versus

1. Chairman-Cum-Managing Director,
DTC Head Quarter,
I.P. Estate New Delhi.

2. Depot Manager
Delhi Transport Corporation,
Shadipur Depot,
New Delhi.Respondents

(By Advocate : Mr. Ajesh Luthra)

O R D E R

Chameli Majumdar, Member (J)

The applicant a retired employee of Delhi Transport Corporation filed this Original Application challenging the order dated 30.05.2014 passed by the disciplinary authority being the Depot Manager imposing the punishment of Censure. The applicant has also challenged the order passed by the appellate authority dated 21.08.2014 upholding the said punishment.

2. The facts of this case, as stated by the applicant in this Original Application is that the applicant served the Organisation for 35 years. He was posted at Shadipur Depot under the Depot Manager, DTC, Shadipur Depot.

2(a). The Manager (M & T) filed a complaint against the applicant alleging loss of attendance register of the temporary employees which resulted delay of payment of salary of temporary Safai employees. The applicant was suspended on 27.06.2013 vide order of the Depot Manager and a charge sheet was issued to the applicant dated 11.07.2013. The following charges were levelled against him:-

“1. The temporary Safai Employees salary could not be prepared for the month of May, 2013. Being an Incharge you have intentionally did not provide the register on 18.06.2014 in the General Office, hence their salary could not be prepared on time and there was a delay in their salary.

2. On enquiry it was found that Sh. Bharat Ram, Conductor, Billa No. 21257 gave you a new attendance register in June, 13 for the entering of name of employees, their designation and to enter time in the said register. You have been asked to submit the old attendance register in the Schedule Section but you were enable to do the same.

3. You tried to put obstruction in the administrative work of corporation in relation to distribution of salary.

4. The temporary Safai Employees were made to suffer economically and mentally.

So it shows negligence towards your duty towards corporation and it also shows your disrespect to the rule and instructions or corporation.

Your above act amounts to indiscipline in respect of D.S. Pra.Ni. instructions para 19 F, H & M.”

2(b). The applicant replied to the charge sheet. The respondents were not satisfied with the reply hence a regular inquiry was held. The

inquiry officer after holding the inquiry submitted his report. The translated copy of the inquiry report has been enclosed to the Original Application as Annexure A/3. The inquiry officer held that on inquiry from one Shri Bharat Ram, Conductor, it appeared that Shri Bharat Ram was asked on 18.06.2014 as to whether the old Register was submitted to him. He replied that the same should be submitted in the Schedule Section. Despite repeated request by him to the Schedule Section Employees they did not submit the same. On 30.05.2013 a new Register was given to the applicant. In reply to the question of the charged employee, Shri Bharat Ram Conductor replied that the duty officers of every shift had the responsibility in this regard. Shri Bharat Ram further replied to the question of the charged employee that the attendance register was not to be entrusted to the charged employee and the responsibility of the custody of the Attendance Register was with the duty official of three shifts.

2(c). The inquiry officer in the concluding paragraphs held that witnesses affirmed their statements and submitted that their statements before the Depot Manager may be treated as statements before the enquiry officer. The inquiry officer also repeated the submission of Shri Bharat Ram Conductor that it was the duty of the duty officers of the Control Room of three shifts to forward the register in time.

2(d). After a detailed discussion the inquiry officer held that the fact was proved that the register was available on 31.05.2013 in the Control Room when the duty officer handed over the charge to another duty officer. The complainant Shri Praveen Banjare, Manager (M&T) also stated that

he submitted his report only on the basis of the statement of the employees. In reply to the question of charged employee, he simply stated in his report that he had nothing to say about the register except the statement of the employees. The inquiry officer also recorded in his finding that the charged employee in the statement stated that none of the shift duty officer ever raised any question of missing register for 18 days and did not enter any remarks in it despite the fact that matter was also not reported to the security guard or the Police. The inquiry officer accepted the logic of the fact that none of the duty officers ever raised any question about the register being missing and did not report to the D.O or the security guard or to any superior official. The inquiry officer finally came to the finding that the charges levelled against the applicant were not proved.

3. The applicant has stated that he received this inquiry report along with the show cause notice dated 25.04.2014 i.e., just four days before his retirement, although the inquiry report was submitted on 22.10.2013. In the show cause notice the disciplinary authority stated that the disciplinary authority was of the opinion that the punishment of censure should be imposed on the applicant. It was further mentioned in the said show cause notice that the applicant may make his representation to this show cause notice in writing within 24 hours of the receipt of the memorandum, failing which, it would be assumed that he had no representation to make and final order would be passed. The applicant stood retired with effect from 30.04.2014. He submitted his reply to the show cause notice on 01.05.2014. In the said reply he had clearly mentioned that he received the show cause notice dated

25.04.2014 on 30.04.2014 i.e., the date of his retirement. He further stated that the inquiry officer found him not guilty. In spite of that the disciplinary authority disagreed with the finding of the Enquiry Officer. However, even after retirement to obey the order of the superior he was replying to the said show cause notice. The disciplinary authority passed punishment order dated 30.05.2014 imposing the penalty of censure upon the applicant. The applicant preferred an appeal and the said appeal was rejected by order dated 21.08.2014.

4. The respondents had entered appearance and filed their reply. In the reply the respondents have annexed one disagreement note. The Depot Manager in the disciplinary authority had disagreed with the finding of the inquiry on seven counts which are as follows:-

- “1. Failure by the Enquiry Officer to cross examine the prosecution witnesses/defence witness regarding point raised by DE in his reply to Charge-Sheet.*
- 2. Failure on the part of Enquiry Officer to highlight that Sh. Ram Phal, T.I. has discharged his duty as Duty Officer on 31.05.2013 Morning.*
- 3. It appears that Enquiry Officer has ignore the facts knowingly & unknowingly or the Enquiry Officer is not aware of the working of this Organisation.*
- 4. It is not understood as to why Enquiry Officer has been inclined to accused/DE as the points taken by the Enquiry Officer in line off DE statement itself goes against the DE as Sh. Ram Phal, T.I. has been working as T.I.Sch. who is overall Incharge of operation.*
- 5. Further it not understood how the Enquiry Officer has failed to examine the gravity of the case.*
- 6. This issue was related to non disbursement of salary to Part Time Sweeper which led to initiation of case against Sh. Ram Phal, T.I. who was the overall Incharge & have failed to forward the attendance register timely to the General Office.*
- 7. Two witnesses Sh. Bharat Ram, Conductor & Sh. Anil Kumar, Conductor have been hostile during the enquiry proceedings.”*

5. In the disagreement note itself the disciplinary authority mentioned that he was of the opinion that punishment of censure to the DE would be justified. Hence, the show cause notice was issued to the applicant.

6. We have heard the learned counsel for the parties and perused the documents.

7. It is apparent from the reply of the respondents as well as from the show cause notice that no copy of the disagreement note was served on the applicant, which is in violation of natural justice as well as in violation of the relevant CCS (CCA) Rules. It is further apparent from the said show cause notice that the said show cause notice was issued enclosing only copy of the finding of the inquiry officer in five pages. It does not appear from the copy of the show cause notice annexed to the Original Application that disagreement note was enclosed with the said show cause notice. By not serving the said show cause notice to the applicant there has been gross irregularity in the inquiry proceeding in as much as the whole object of serving of copy of the disagreement note is to enable the applicant to submit his representation on the points raised in the disagreement note. The applicant has to deal with the reasons or points of disagreement with the findings of the inquiry officer, which are in favour of the applicant.

8. It further appears that in the show cause notice dated 25.04.2014 the respondents asked the applicant to submit his representation within 24 hours, which is also in violation of the relevant rules. The applicant was due for retirement on 30.04.2014. The show cause notice was issued on 25.04.2014 and the date of the disagreement note annexed to

the reply is also dated 25.04.2014, although the inquiry officer submitted his report on 22.10.2013. We find from the records that the applicant has submitted in his reply to the show cause notice dated 25.04.2014 that he received the same on the date of his retirement i.e., 30.04.2014 and the date of his reply is 01.05.2014.

9. After going through the disagreement note of the disciplinary authority it appears that disciplinary authority has raised allegations against the inquiry officer appointed by the disciplinary authority only. Under the relevant rules, if the disciplinary authority is of the opinion that the disciplinary authority was not satisfied with the proceeding of the inquiry, the disciplinary authority is required to remit the case back to the inquiry authority for further inquiry. Without doing so, the disciplinary authority simply disagreed with the finding of the inquiry officer without assigning any cogent reason for that and issued the disagreement note with a pre-judged mind.

10. Sub Rule (1) of Rule 15 of the CCS CCA (Conduct) Rules, clearly says that the disciplinary authority for reasons to be recorded in writing may remit the case to the inquiry officer for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14.

11. Sub-Rule 2 of Rule 15 envisages that disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry if any, held by the disciplinary authority, a copy of the report of the inquiry authority together with its own tentative reasons for disagreement, if any, with the findings of the inquiry authority on any article of charge to the

Government servant who shall be required to submit, if he so desires, his written statement or submissions to the disciplinary authority within 15 days, irrespective of whether the report is favourable or not to the Government servant.

12. In the instant case we have already stated that the disagreement note was never served on the applicant during his service tenure to enable him to submit his representation challenging the said disagreement note. The disciplinary authority instead of giving 15 days time provided only 24 hours, which is wholly arbitrary and exposes the bias of the disciplinary authority to impose punishment on the applicant.

13. The relevant parts of the Rule 15 (1) and (2) of CCS CCA Rules are set out here in below :-

“(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(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.”

14. It is well settled that before imposing any punishment whether major or minor real and reasonable opportunity has to be afforded to the delinquent employee to put forward his defence. In the instant case, we find that there has been gross irregularity in the inquiry proceedings which has caused prejudice to the applicant. The penalty order passed by the disciplinary authority is vitiated for violation of natural justice.

15. In Karunakar's case (Managing Director ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727], the Hon'ble Supreme Court held that it is mandatory to serve a copy of the inquiry report on the delinquent employee to enable him to submit his representation challenging the said inquiry report. Applying the principles laid down in Karunakar's case a three Judges Bench of the Hon'ble Supreme Court in the case of Punjab National Bank Vs. Kunj Bihari Mishra reported in **AIR 1998 SC 2713**, held that if a delinquent officer is entitled to a representation to the disciplinary authority where the findings in the inquiry were against him, it would be unreasonable to say that when the findings are in favour of the delinquent which are overturned by the disciplinary authority, no opportunity should be granted. Even if, rules are silent the delinquent would have to be given an opportunity of being heard. This opportunity is to be given by communicating to the delinquent the tentative reason of the proposed disagreement to enable him to make a representation. The Hon'ble Supreme Court held in a recent decision in Ranjit Singh's case (Ranjit Singh Vs. Union of India reported in **2006 (Vol. IV SCC 153)**) that the principles of natural justice are required to be complied with by the disciplinary authority if he intends to differ from the finding of the

inquiry officer and in such cases the prejudice doctrine would not be applicable.

16. The Hon'ble Supreme Court in the case of Yoginath D. Vagde Vs. State of Maharashtra reported in **AIR 1999 SC 3734** had gone further to hold that when the disciplinary authority decided to disagree with the finding of the inquiry report, which are favourable to the delinquent he has to give an opportunity of hearing to the delinquent after forwarding to him the tentative reason for his proposed disagreement. This will be the position even if the rules do not provides for giving such an opportunity.

17. In the present case in hand, we find that the CCS CCA Rules provide for supplying a copy of the tentative reasons for disagreement. Therefore, it was all the more incumbent upon the disciplinary authority to serve a copy of the disagreement note to the applicant. That apart, the orders passed by the disciplinary authority and the appellate authority are not at all speaking orders.

18. Although it has been held by the Hon'ble Supreme Court that when any disciplinary proceeding is vitiated for violation of natural justice, the proceeding has to be started from the stage wherfrom the violation has accrued. Such a proposition of law was made by the Hon'ble Supreme Court ordinarily in situations where the delinquent employee was still in service. The Hon'ble Supreme Court on a number of occasions held that unless the misconduct is grave and some peculiar loss has been caused to the Government, the proceeding may not be started from the stage wherfrom the natural justice has been violated. In the instant case, we

find that the disciplinary authority imposed the punishment of Censure upon the applicant, who has since retired from service in 2014. Therefore, it can be presumed that the misconduct was not that grave. As such, we do not find that any purpose will be served by directing the respondents to start the proceedings from the stage of serving a copy of the disagreement note of the disciplinary authority on the applicant. Accordingly, the impugned order being the penalty order passed by the disciplinary authority dated 30.05.2014 and the appellate authority's order dated 21.08.2014 are hereby set aside and quashed.

19. The O.A stands allowed. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Chameli Majumdar)
Member (J)

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