

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 28.01.2019

Reserved on : 18.01.2019

OA No. 060/00904/2017

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

O.P. Bhargawa, resident of House No. 260, Village Khuda Lahora,
Chandigarh.

.....Applicant

BY ADVOCATE: **Sh. Anil Shukla**

Versus

1. Union of India through its Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi – 110 001.
2. The Director General, Govt. of India, Ministry of Labour and Employment, Labour Bureau, SCO 28-31, Sector 17-A, Chandigarh – 160 017.

.....Respondents

BY ADVOCATE: **Sh. B.B. Sharma**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicant was working as an Investigator Grade II in the Labour Bureau. Applicant argues that the respondent department issued an office memorandum levelling allegations that the applicant and one other officer visited factories located at Amravati and asked for registers and documents and also demanded money. Applicant denies the allegations.
2. Applicant submits that one person snatched the briefcase of one Sh. Karam Singh and the applicant and the said person caught the

snatcher. The incident was informed to the police and the applicant and his colleague also met the Police Commissioner. The matter was also reported telephonically to Director SES Division, Labour Bureau, Chandigarh.

3. A charge sheet was issued to the applicant and Sh. Karam Singh and a joint inquiry held. Applicant submitted a reply on 10.01.2012. Applicant submits that the case for which charge sheet has been issued, is based on statement of two persons Sh. Manish S. Teli and Sh. A.V. Teli. These witnesses were never summoned in the inquiry. The inquiry was conducted in Chandigarh. However, in order to record the statement of the witnesses, the Inquiry Officer asked the charged officer to be present in Amravati where he proposed to hold part of the inquiry and where the incident took place. The applicant had also requested the Inquiry Officer to summon the above witnesses.

4. The Inquiry Officer and the Presenting Officer visited Amravati from 11th to 16th March, 2013. Applicant did not attend the inquiry in Amravati. The Inquiry Officer sent the statements recorded at Amravati to the applicants. The Presenting Officer submitted his written arguments on 30.04.2015 to the Inquiry Officer. Following this, the Inquiry Officer submitted the inquiry report and sent a copy to the applicant on 19.08.2015. On 15.09.2015, applicant submitted a detailed reply to the inquiry report. The respondent No. 2 imposed a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of 24 months which would not have effect of postponing future increment. The applicant filed a statutory appeal which was dismissed.

5. The prayer of the applicant is for quashing the dismissal of the appellate order passed by respondent No. 1. He also seeks quashing the order of penalty.
6. The respondents confirmed the imposition of the penalty as stated by the applicant.
7. It is clear from pleadings and arguments that both charged officers visited M/s Jalaram Gruh Udyog, Plot No. W-12, MIDC, Amravati. They asked for register and documents and are also stated to have demanded money to the tune of Rs. 1000 from M/s Jalaram Gruh Udyog. The owner of the unit Shri Manish S. Tele informed Shri Kiran Paturkar, President, MIDC Association, Amravati and Shri Jai Prakash Ladha, Secretary of the Association about the said demand, who informed the Police Station, Raja Peth, Amravati, and handed over the accused to the police authority.
8. It is further submitted by the respondents that the complainants did not lodge any FIR against the charged officers as they preferred to report the matter to the Head of the Department instead, keeping in view the service career of the charged officers and also bearing in mind the apology tendered before the complainants and police officers at Amravati. Both the charged officers were identified by the Amravati SRO Head, Shri A.V. Tele, Supdt. NSSO, at the Police Station and were released after a stern warning. The complainants (owner of the industry and members of the association) including officer of SRO NSSO, Amravati were directed to attend the inquiry and who affirmed the facts reported in the complaint and their signature. They were requested to

depose as Prosecution witnesses before the Inquiry Officer either at Chandigarh or Shimla which they refused, but agreed to depose before the Inquiry Officer at Amravati.

9. The Inquiry Officer fixed a date for prosecution of witnesses and evidence vide letters dated 11.04.2013 for 17th and 18th May, 2013 at Amravati and both the charged officers were informed and summoned accordingly to attend the hearing. But the charge officers failed to appear on the said dates and venue whereby they lost the opportunity for cross examination. The statements of prosecution witnesses Shri Kiran Paturkar, Shri Jai Prakash Laddha, Shri A.V. Tele and Shri Manish S. Teli were recorded on 17th and 18th May, 2013 at the time and venue mentioned. Thereafter, Inquiry Officer vide letters dated 10.06.2013, informed both charged officers to supply the list of witnesses they intend to produce in their defence, but both failed to do so. Hence, applicant failed to use the opportunity to cross examine the defence or produce witnesses to support their plea. The preliminary inquiry in the matter was conducted by Shri Balram, Director, Labour Bureau, Chandigarh, in respect of the incident. He also contacted Shri A.V. Tele, Supdt. NSSO, SRO Amravati, who had identified both the charged officers in Police Station, Rajapeth, Amravati and the complainant Sh. Manish S. Tele, Prop. M/s Jalaram Gruh Udyog, MIDC, Industrial Area, Amravati from whom charged officers have been alleged to have demanded money to the tune of Rs. 1000 and spice products prepared by the said industry, and from whom the said Director had obtained their written versions to this effect.

10. The Bench notes that the matter before us starts with an office memorandum issued by the Director (Vigilance) note wherein the applicant's explanation was called on the ground that the applicant was caught red-handed and detained by the police on 15.10.2010 while accepting bribe from factories/commercial units during his visit to collect the UFS blocks at the Sub-Regional NSSO Office in Amravati. Based on the applicant's explanation submitted, the respondents proceeded with the inquiry into the incident and the applicant's role in the same. The applicant did not cooperate with the Inquiry Officer and remained absent during a major PART of inquiry. Hence, the inquiry was conducted ex-parte. This is supported by the fact that the applicant was issued 16 communications on 08.11.2012, 30.11.2012, 31.12.2012, 04.04.2013, 11.04.2013, 15.04.2013, 07.05.2013, 31.05.2013, 10.06.2013, 01.07.2013, 04.09.2013, 05.02.2015, 20.02.2015, 24.02.2015, 21.04.2015 and 06.05.2015 to attend the inquiry. Thus, ample opportunity to participate in the inquiry was given by the Inquiry Officer through the sixteen communications.

11. Based on the evidence adduced during the inquiry, the assessment of the evidence, the documentary evidence on record, and attendant facts and circumstances, the Inquiry Officer drew a rational inference and concluded that article 1 of the charge was proved against the applicant. Copy of the inquiry report was provided to the applicant vide letter dated 19.08.2015 to give him an opportunity to make a representation on the report. Applicant submitted his representation on 15.09.2015 which was considered by the Disciplinary Authority along with

the inquiry report, and the penalty indicated above was imposed on the applicant.

12. A statutory appeal was preferred on the grounds that the inquiry had been concluded ex-parte without giving the applicant adequate opportunity. It was also contended by the applicant that the Inquiry Officer had relied on the preliminary inquiry report and the applicant was also not provided an opportunity to cross-examine the prosecution witness whose statement was recorded by the Inquiry Officer during his visit to Amravati. However, this appears to be a case where the applicant deliberately chose to, and also failed to participate in the inquiry and now puts down an argument that the inquiry was ex parte.

13. It is evident from the pleadings that the applicant did not participate in the inquiry proceedings except on the first date of hearing on 16.01.2013. He was given 16 opportunities by way of notices for hearing and participating in the inquiry, which he chose to ignore by not attending the inquiry proceedings. The Inquiry Officer was left with no option but to conduct the inquiry ex-parte and finalise his report. The applicant does not appear to give plausible justification for his non-cooperation and non-participation in the inquiry proceedings. Hence, it is apparent that the applicant consciously chose not to participate in the inquiry proceedings and therefore, his contention that he was not provided a reasonable opportunity to defend the charges levied, are not acceptable or tenable. Since the applicant was attempting to procrastinate the inquiry, the inquiry per se had to proceed ex-parte. We

find that no other arguments have been raised contesting the inquiry proceedings except the fact that it was held ex-parte.

14. In view of the fact noted above, we find that the ex-parte hearing was a foregone conclusion in view of non-participation of the applicant. Merely submitting applications or representations against inquiry dates would not be sufficient reason to condone the non-participation by the applicant. Once an inquiry has been instituted, it is necessary for both the Inquiry Officer and the charged officer and witnesses to smoothly conduct the inquiry so that the evidence and findings recorded can be concluded.

15. As regards the applicant's contention that the Inquiry Officer had heavily relied upon the preliminary inquiry, respondents argue that the Inquiry Officer has only made a passing reference to the preliminary inquiry under the heading "Brief of the case". The findings of the Inquiry Officer did not rely strongly on the preliminary inquiry report. The case was examined on merits and the inquiry report was based on evidence adduced during the inquiry and inferences drawn from the facts and circumstances of the case.

16. As against the applicant's argument that he could not cross-examine the witnesses, we would like to add that the opportunity to cross-examine the witnesses was made available to the applicant, but the applicant failed to use it on account of his non-participation in the inquiry proceedings. We also note that the Inquiry Officer had visited Amravati where the incident had taken place and applicant was also requested to attend the said leg of inquiry. Hence, ample opportunity was available to

the applicant not only in Chandigarh but also in Amravati, the place of the incident.

17. We find no lacuna in the way the inquiry proceedings were conducted and we also appreciate the fact that since the alleged incident had happened at Amravati, the Inquiry Officer visited Amravati for examination of witnesses. The applicant was also directed to attend the hearing in Amravati on 17.05.2013 and 18.05.2013. The applicant, however, did not avail this opportunity. The penalty imposed is also not one which is disproportionate to the gravity of the misconduct for which the inquiry was held.

18. The Tribunal cannot act like an Appellate Authority and re-appreciate or re-assess the evidence. We find that the charged officer not having cooperated and participated in the inquiry, now, turns around and argues about the ex-parte proceedings. Our finding is that the ex-parte proceedings were forced on the Inquiry Officer on account of the fact that the applicant had ignored 16 notices for participating in the inquiry. The OA, thus, being devoid of merit, is dismissed. There shall be no order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
ND*