

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 29/2005

Reserved on : 01.05.2019

Pronounced on : 14.05.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A.Mukhopadhaya, Member (A)**

Alok Kumar S/o Shri Santiswaroop, aged about 34 years, R/o House No.134, JDA Colony, Sirsi Road, Bindayaka, Jaipur.

...Applicant.

(By Advocate: Shri Sunil Samadaria)

Versus

1. Union of India, through the Secretary to the Government, Ministry of Public Grievance & Pension Department, Government of India, New Delhi.
2. The Joint Director, West Zone, Central Bureau of Investigation, Natha Lal Pareek Marg, Kolaba, Mumbai.
3. The Deputy Inspector General of Police, Jaipur Region, Special Police Establishment, Central Bureau of Investigation, 1 Tilak Marg, C-Scheme, Jaipur.
4. The Superintendent of Police, Special Police Establishment, Central Bureau of Investigation, 1 Tilak Marg, C-Scheme, Jaipur.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

ORDER

Per: Suresh Kumar Monga, Member (J):

The factual matrix of the case emanating from the record is that while working on the post of Lower Division Clerk in the Central Bureau of Investigation (CBI) at Jaipur, the applicant

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was subjected to a departmental inquiry on the allegation that he unauthorizedly demanded and accepted a sum of Rs.15000/- from Smt. Japinder Kaur in order to help her husband Darshan Singh, who was working as Superintendent, Customs at Jaisalmer and was facing a complaint before the CBI. It was alleged therein that the amount of Rs.15000/- was demanded on 17.05.2000 from Smt. Japinder Kaur and Shri Manmeet Singh at their residence at Jaipur. Smt. Japinder Kaur issued a cheque under duress and threat in the name of self and sent Shri Manmeet Singh along with the applicant for withdrawal of the amount from a joint account maintained by her with her husband Darshan Singh at State Bank of India, Hawa Sadak Branch, Jaipur. A search at the residential premises of the applicant was also conducted where two FDRs of Rs.35,000/- and Rs.25,000/- were recovered. Alleging violation of Rule 3 (I) (i) (ii) & (iii) of CCS (Conduct) Rules, 1964, an inquiry was ordered against the applicant. An FIR was also registered against the applicant with regard to the same incidence, but after a detailed investigation, the CBI found that the evidence was insufficient to prosecute him. Accordingly, a final report under Rule 173 of the Code of Criminal Procedure was submitted and the prosecution case was closed. In the departmental inquiry case, the applicant, after procuring the copies of related/listed documents, filed reply to charge-sheet on 11.05.2001. A communication was

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given to applicant on the same day by Shri G.Bairwa, Inspector of Police, informing therein that he has been nominated as Inquiry Officer and the date of preliminary inquiry was fixed as 15.05.2001. It has further been pleaded that the Inquiry Officer after conclusion of the inquiry proceedings submitted a report to the Disciplinary Authority and the same was made available to the applicant along with covering letter dated 31.08.2001. The applicant submitted a detailed representation against the inquiry proceedings and pointed out the defects in the said inquiry proceedings and requested the Disciplinary Authority that the same be declared illegal being contrary to the principles of natural justice. After receipt of the applicant's representation, the Disciplinary Authority afforded him an opportunity of personal hearing. The Disciplinary Authority, however, in an arbitrary manner and by way of passing a non-speaking order dated 01.11.2001 imposed a penalty of removal from service. Aggrieved by the said order, the applicant preferred an appeal before the Appellate Authority which was dismissed on 09.04.2002. In order to challenge the orders dated 01.11.2001 and 09.04.2002 passed by the Disciplinary Authority and the Appellate Authority respectively, the applicant preferred an Original Application No.424/2002 before this Tribunal. The said OA was decided by this Tribunal vide order dated 31.05.2004 and while allowing the same in part, the order dated 09.04.2002 passed by the Appellate Authority

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was quashed and set aside. The Appellate Authority was directed to pass a fresh order on the applicant's appeal in accordance with law by ignoring the so-called confessional statement of the applicant. The Appellate Authority was given three months' time to pass a fresh order. Consequent thereto, the Appellate Authority passed an order dated 02.09.2004 whereby the applicant's appeal was again rejected. Aggrieved by the said order, the applicant preferred the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 whereby apart from challenging the order dated 02.09.2004, he also laid a challenge to order dated 01.11.2001 passed by the Disciplinary Authority alleging that the same is contrary to the principles of natural justice and also suffers from the vice of perversity. The present Original Application was finally heard and decided on 23.02.2010 by this Tribunal and the orders dated 01.11.2011 and 02.09.2004 passed by the Disciplinary Authority as well as the Appellate Authority were quashed and set aside. The respondents were directed to reinstate the applicant in service with all consequential benefits.

2. The aforesaid order dated 23.02.2010 passed by this Tribunal in the present Original Application became the subject matter of challenge before the Hon'ble High Court of Rajasthan at the instance of respondents in D.B. Civil Writ Petition

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No.16043/2010. The Hon'ble High Court of Rajasthan, while keeping in view the guidelines laid down by the Hon'ble Supreme Court in the cases of **Union of India and Ors. vs. Upendra Singh** (1994) 3 SCC 357 and **Central Industrial Security Force and Ors. vs. Abrar Ali**, (2017) 4 SCC 507 remitted the matter back to this Tribunal with a direction to rehear the same on merits. Consequent thereto, the applicant filed a Miscellaneous Application No.470/2018 in order to place on record the order dated 19.07.2018 passed by the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No.16043/2010. Accordingly, the Original Application was ordered to be restored at its original number on 28.09.2018.

3. Heard learned counsels for the parties.

4. Shri Sunil Samadaria, learned counsel for the applicant, at the very outset, submitted that the order passed by the Disciplinary Authority is a non-speaking and unreasoned order and, therefore, the same cannot be sustained. While referring to a judgment of the Hon'ble Supreme Court in the matter of **S.N.Mukherjee vs. Union of India**, AIR 1990 SC 1984, learned counsel argued that the Disciplinary Authority while passing the order dated 01.11.2001 ought to have recorded the detailed reasons. He further submitted that the order passed by the Disciplinary Authority is a result of total non-application of mind

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as the applicant never made a confession to have taken the bribe of Rs.15,000/-. Enlarging the scope of his argument, learned counsel further submitted that during the inquiry proceedings such a confession was never made by the applicant before the Inquiry Officer. Learned further submitted that this Tribunal while deciding the applicant's earlier Original Application No.424/2002 in its order dated 31.05.2004 recorded the findings that the said confession was uncalled for besides extravagant and while remitting the matter back to the Appellate Authority vide order dated 09.04.2002 a direction was issued to ignore the so-called confessional statement *in toto*. Learned counsel while referring to an Office Memorandum No.003/DSP/3 dated 15.09.2003 issued by the Government of India argued that the disciplinary proceedings against the employees conducted under the provisions of CCS (CCA) Rules, 1965 are quasi judicial in nature and, therefore, it is necessary that the orders issued by such authorities should have the attributes of a judicial order. He thus submitted that the impugned order dated 01.11.2001 cannot be sustained as it is sans reasons by the Disciplinary Authority. Shri Samadaria further argued that the Office Memorandum dated 15.09.2003 was issued by the Government of India in order to reiterate its earlier Office Memorandums dated 13.07.1981 and 05.11.1985 on the subject. He still further argued that an amendment was brought about in Rule 15 of the CCS (CCA) Rules, 1965 by the rule making authority on

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03.05.1995 and in terms of the said amendment, the Disciplinary Authority was required to consider the applicant's representation submitted by him after receipt of enquiry report and ought to have passed a reasoned and speaking order. To buttress his arguments, learned counsel relied upon the following three judgments:

- i) Roop Singh Negi vs. Punjab National Bank and Others, (2009) 2 SCC 570.
- ii) Central Industrial Security Force and Others vs. Abrar Ali, (2017) 4 SCC 507.
- iii) Union of India vs. H.C.Goel, AIR 1964 SC 364

5. Shri Samadaria further argued that the Inquiry Officer while submitting his report himself observed that there is no independent witness to prove the demand and acceptance of bribe, but still he proved the charges against the applicant. Thus, the order passed by the Disciplinary Authority is perverse. The applicant was not even allowed to have the assistance of an advocate during the inquiry proceedings and his request for the same was declined contrary to the provisions of Rule 14 (8) (a) of the CCS (CCA) Rules, 1965. With all these arguments, learned counsel submitted that the order dated 01.11.2001 passed by the Disciplinary Authority cannot be sustained. Since the Appellate Authority has failed to address all the aforesaid aspects of the

matter, therefore, the order passed by the Appellate Authority also cannot be sustained.

6. *Per contra*, Shri Rajendra Vaish, learned counsel for the respondents submitted that the applicant had accepted a sum of Rs.15000/- as bribe from Smt. Japinder Kaur in order to help her husband Darshan Singh, Superintendent, Customs, who was facing a complaint before the CBI. Smt. Japinder Kaur while appearing as witness before the Inquiry Officer made a statement in this regard and she was not cross-examined by the applicant. He further submitted that there is no violation of principles of natural justice as a copy of the inquiry report was supplied to him by the Disciplinary Authority and the applicant's representation was duly considered. Since the Disciplinary Authority concurred with report of the Inquiry Officer, therefore, no detailed reasons were required to be recorded while passing the order dated 01.11.2001. Learned counsel further submitted that the applicant is estopped from filing the Original Application as this Tribunal while deciding his earlier OA No.424/2002 did not set aside the Disciplinary Authority's order and the said order passed by this Tribunal was accepted as no challenge to the same was laid down by the applicant. In order to support his argument, learned counsel relied upon the cases of **The Management of State Bank of India vs. Smita Sharad Deshmukh and Another** 2017 (2) SCT 70 SC and **Rajasthan Tourism Development**

Corporation Limited and Another vs. Jai Raj Singh Chauhan, (2011) 13 SCC 541.

7. Considered the rival contentions of learned counsels for the parties and perused the record.

8. The facts of the present case are not much in dispute. This Tribunal while deciding the applicant's Original Application No.424/2002 recorded a categorical finding that the confession, which was made the basis of Disciplinary Authority's order dated 01.11.2001, was uncalled for besides extravagant. While remitting back the matter vide order dated 31.05.2004, the Appellate Authority was directed to pass a fresh order and the so-called confessional statement was ordered to be ignored. The said confessional statement was recorded by the Disciplinary Authority. It was not even signed by the applicant. There was no witness in support of the same. In those circumstances, the Disciplinary Authority while passing the order dated 01.11.2001 could not have relied upon the said confessional statement. However, the Disciplinary Authority placed reliance upon the said confessional statement. This shows that the Disciplinary Authority did not apply its mind while passing the order dated 01.11.2001 inflicting the penalty of removal from service upon the applicant. In the facts and circumstances of the case, we are of the firm

view that the order dated 01.11.2001 suffers from the vice of perversity.

9. Apart from the above, in terms of amendment made on 03.05.1995 in Rule 15 of the CCS (CCA) Rules, 1965, the Disciplinary Authority was required to follow the procedure as stipulated in sub rules (2) to (4) of Rule 15 after receipt of a representation against the inquiry report. The amendment as brought about by the rule making Authority with effect from 03.05.1995 in the CCS (CCA) Rules, 1965 is reproduced here as under:

"2. In the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

(a) in rule 15, after sub-rule (1), the following sub-rules shall be inserted, namely:-

"(1A) 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 of where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority 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."

"(1B) The disciplinary authority shall consider the representation, if any, submitted by the Government servant before proceeding further in the manner specified in sub-rules (2) to (4)."

In view of the aforesaid amendment in Rule 15 of the CCS (CCA) Rules, 1965, the Disciplinary Authority is required to

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supply a copy of the report of the Inquiry Officer to a delinquent official and if the delinquent official wishes to submit a representation against the report of the Inquiry Officer, irrespective of the fact as to whether the report is favourable or not, said representation is required to be considered by the Disciplinary Authority as per procedure contained in sub rules (2) to (4) of Rule 15 of the CCS (CCA) Rules, 1965. The Government of India also came out with an Office Memorandum No.134/1/-AVD I, dated 13.07.1981 stating therein that the disciplinary proceedings against the employees conducted under the provisions of CCS (CCA) Rules, 1965 are quasi judicial in nature and, therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that recording of reasons in support of a decision by a quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whims or fancies. The OM dated 13.07.1981 has further been reiterated by way of subsequent OMs dated 05.11.1985 and 15.09.2003. The OM dated 15.09.2003, which is produced by learned counsel for the applicant during the course of arguments and ordered to be taken on record with the consent of learned counsel for the respondents, further states that the Disciplinary Authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions. In the case in hand, we find that the order dated 01.11.2001 is

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contrary to the said Office Memorandum issued by the Government of India. Though, the Disciplinary Authority has concurred with the report of the Inquiry Officer but when the applicant chose to submit a representation, the same ought to have been dealt with by the Disciplinary Authority in accordance with the procedure contained in Sub Rules (2) to (4) of Rule 15 of the CCS (CCA) Rules, 1965.

10. In our considered view, a simple line recorded in the order dated 01.11.2001 by the Disciplinary Authority that the applicant's representation was considered and not found creditworthy cannot be construed to be in consonance with the principles of natural justice, which required the reasons with application of mind like a quasi judicial authority.

11. So far as the argument of Shri Rajendra Vaish, learned counsel for the respondents is concerned that the applicant failed to cross examine Ms.Japinder Kaur and, therefore, the Disciplinary Authority has not committed any error while concurring with the report of the Inquiry Officer, and the order dated 01.11.2001 cannot be termed to be contrary to the principles of natural justice, we do not accept the said argument as the Inquiry Officer himself in his report stated that there is no independent witness to the alleged demand and acceptance of bribe. We also do not find any substance in the

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argument of learned counsel for the respondents, when he argued that the applicant was served with a copy of the inquiry report and the representation submitted against the said report was duly considered by the Disciplinary Authority, as the order dated 01.11.2001, which is also influenced by the so-called confessional statement of the applicant, does not even find a single reason dealing with the applicant's representation. The said order has even been found to be contrary to the amended provisions of Rule 15 of the CCS (CCA) Rules, 1965 as well as the Office Memorandum dated 15.09.2003 issued by the Government of India.

12. We also do not find any substance in the argument of Shri Rajendra Vaish, learned counsel for the applicant that the applicant is estopped from challenging the order dated 01.11.2001 passed by the Disciplinary Authority as the said order was not set aside by this Tribunal in the applicant's earlier OA No.424/2002 whereby only the Appellate Authority's order was set aside and the matter was remitted back to the Appellate Authority for a fresh decision. Admittedly, the order passed by the Appellate Authority was held to be illegal in earlier OA No.424/2002 and the matter was remitted back to re-appraise the order passed by the Disciplinary Authority. However, the Appellate Authority failed to find out that the order passed by the Disciplinary Authority is contrary to principles of natural justice

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and also the amended provisions of Rule 15 of the CCS (CCA) Rules, 1965 and the O.M. dated 15.09.2003 again upheld the said order vide its order dated 02.09.2004. In our opinion, while re-hearing the appeal, the Appellate Authority ought to have gone into all these aspects of the matter, which in any case, he has failed and probably this might have been the reason, when the Hon'ble High Court while remitting back the matter to this Tribunal issued a direction to re-hear the matter on merits and the parties were given liberty to argue the matter afresh on all points. In this view of the matter, we are not inclined to accept the argument of Shri Vaish and the same is considered and hereby rejected.

13. However, the argument of Shri Sunil Samadaria, learned counsel for the applicant that the whole inquiry proceedings are vitiated because the applicant's request for assistance of legal practitioner was arbitrarily declined, does not find favour with us. Rule 14 (8) (a) of the CCS (CCA) Rules, 1965 envisages that the Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the said purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner. Since in the case in hand, the Presenting Officer appointed by the Disciplinary

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Authority was not a legal practitioner, therefore, we do not find any infirmity in the order of the Inquiry Officer whereby he declined the applicant's request for assistance of a legal practitioner.

14. In the conspectus of discussions made in the foregoing paragraphs, we find that the order dated 01.11.2001 passed by the Disciplinary Authority is contrary to the principles of natural justice as well as Rule 15 of the CCS(CCA) Rules, 1965 and the Office Memorandum dated 15.09.2003 issued by the Government of India. We also hold that the said order suffers from the vice of perversity as it takes note of a confessional statement, which was never made by the applicant nor signed by him, nor even witnessed by anybody. Since the basic order dated 01.11.2001 passed by the Disciplinary Authority has been held to be illegal, therefore, the order dated 02.09.2004 passed by the Appellate Authority also cannot be sustained and the same is also liable to be set aside. Thus, the present OA deserves to be allowed.

15. Accordingly, the Original Application is allowed. The order dated 01.11.2001 passed by the Disciplinary Authority and the order dated 02.09.2004 passed by the Appellate Authority are hereby quashed and set aside. However, the Disciplinary Authority shall be at liberty to pass a fresh order in accordance with the principles of natural justice as well as Rule 15 of CCS

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(CCA) Rules, 1965 and the OM dated 15.09.2003 issued by the Government of India. If the Disciplinary Authority forms an opinion to do so, an order in this regard shall be passed within a period of three months from the date of receipt of a certified copy of this order.

16. There shall be no order as to costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/