

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A./100/1528/2014

New Delhi, this the 22nd day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Harish Chand Khulbe, Age – 58 yrs.,
Ex. Kanungo
S/o Shri G.D. Khulbe,
R/o E-5/23, Krishan Nagar,
Delhi-51Applicant

(Through Shri Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through
The Hon'ble Lt. Governor,
Raj Niwas, Delhi
2. The Chief Secretary,
Govt. of N.C.T.D.,
5th Level, A-Wing
Delhi Secretariat,
New Delhi-110002
3. The Secretary (Revenue)/
Divisional Commissioner
Govt. of National Capital Territory of Delhi
Revenue Department
(Vigilance Branch)
5, Sham Nath Marg,
Delhi

(Through Shri Amit Yadav for Shri Ankur Chhibber,
Advocate)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicant was appointed as Patwari in the Government of National Capital Territory of Delhi (GNCTD) in the year 1980. He was promoted as Kanungo in 1999. He attained the age of superannuation on 30.04.2016.

2. In the year 2008, an FIR was registered against the applicant, alleging that he was caught red handed on 17.02.2004, demanding and accepting bribe of Rs.2100/- . He was also arrested on 17.02.2014 and in the light of that, he was placed under suspension. He was tried in Criminal Case No.144/2008 by the concerned Criminal Court. Through judgment dated 24.02.2012, the Criminal Court convicted the applicant for the offences punishable under Sections 7 & 13 of the Prevention of Corruption (PoC) Act and sentenced him to undergo rigorous imprisonment for a period of two years. Fine of Rs.5000/- was also imposed.

3. In the light of conviction of the applicant, the Disciplinary Authority (DA) issued a Show Cause Notice (SCN) dated 25.04.2013, requiring him to explain as to why, the punishment as provided under Rule 19 of the CCS (CCA)

Rules be not imposed against him. On receipt of the same, the applicant submitted his explanation on 10.05.2013. Taking the same into account, the DA passed order dated 03.09.2013 dismissing him from service. Appeal preferred by him was rejected on 05.02.2014. Hence, this OA.

4. The applicant contends that issuance of SCN contemplated under Rule 19 of the CCS (CCA) Rules is not an empty formality and the DA and the Appellate Authority (AA) have not applied their mind and have taken some incorrect facts into account while passing the impugned orders. It is also stated that the prescribed procedure was not followed.

5. The respondents filed counter affidavit opposing the OA. It is stated that the applicant was convicted of the offences referable to Sections 7 & 13 of the PoC Act and the inevitable consequence is that the punishment provided for under Rule 19 of the aforesaid Rules was imposed. It is stated that the prescribed procedure was followed.

6. We heard Shri Sachin Chauhan, for the applicant and Shri Amit Yadav for Shri Ankur Chhibber, for the respondents.

7. It is the matter of record that the applicant was convicted by a competent Court of Criminal Jurisdiction, for offences referable to Sections 7 & 13 of the PoC Act. Sentence of rigorous imprisonment of two years and fine of Rs.5000/- were imposed.

8. Rule 19 of the CCS (CCA) Rules is quoted hereunder:

“Notwithstanding anything contained in rule 14 to rule 18 -

- (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.]”

9. Clause (i) of Rule 19 gets attracted in the case of the applicant. First proviso mandates that even when the punishment is sought to be imposed by invoking Clause (i), the employee must be given opportunity of making a

representation. It is in this context, that the applicant was issued a SCN. In response to the same, he submitted his explanation on 10.05.2013. The DA took the same into account and passed order dated 03.09.2013 imposing the punishment of dismissal from service. The manner in which the SCN was issued and the reply was considered, is reflected in the impugned order in the following paragraphs :

“AND WHEREAS, a Show Cause Notice dated 25.04.2013, was served upon Sh. Harish Chand Khulbe, Kanungo for making representation against the aforesaid proposed penalty.

AND WHEREAS, Sh. Harish Chand Khulbe, Kanungo made a representation dated 10.05.2013, against the aforesaid proposed penalty, to the Divisional Commissioner, Delhi/Disciplinary Authority for his consideration. The representation dated 10.05.2013 of Sh. Harish Chand Khulbe, Kanungo has been considered by the Divisional Commissioner, Delhi and it is felt that averments made by Sh. Harish Chand Khulbe, Kanungo in his said representation are devoid of merit.

NOW, THEREFORE, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby impose a penalty of dismissal from service, which shall ordinarily be a disqualification for future employment under the Government, upon Shri Harish Chand Khulbe, Kanungo (under suspension) and orders accordingly.”

10. The plea of the applicant that various points raised by him were not considered, is difficult to be accepted. The reason is that the consideration of representation submitted in reply to a SCN issued in compliance with the proviso to Rule 19, cannot be compared to the regular departmental

inquiries. If the same yardstick is to be applied, then the very purpose of enacting separate provision like Rule 19 would be defeated. Another aspect is that while in the regular departmental proceedings the misconduct is to be established in those very proceedings, an indictment already exists in the proceedings under Rule 19. The only purpose which the SCN referable to Rule 19 would serve is to enable the DA to apply its mind to the limited aspect of the quantum of punishment to be imposed, depending upon the gravity of the offence proved against the employee.

11. In the instant case, the applicant was found guilty of the offence of demanding and accepting illegal gratification and punishment under Sections 7 & 13 of the PoC Act was imposed. Therefore, not much was expected from the DA. On facts also, it cannot be said that the punishment of dismissal is not warranted, if one takes into account, the sentence awarded by the Criminal Court.

12. The AA has also examined the matter in detail. There also the law did not require much from him except that he can verify whether the DA has followed the prescribed procedure and whether the punishment imposed by the DA was warranted in the facts and circumstances of the case.

13. It is represented that the applicant preferred appeal before the Hon'ble High Court aggrieved by the conviction and sentence imposed against him by the Trial Court. It is needless to mention that if he is acquitted by the Hon'ble High Court, it would be open to him to approach the appropriate authority, for appropriate relief in accordance with law.

14. With the above observation, the OA is dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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