CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00496/2017 Orders pronounced on: 13.08.2019
(Orders reserved on: 16.07.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR.A K. BISHNOI, MEMBER (A)

Y. Jonil Singh

S/o Sh. Y. Kesho Singh,

age 31 years,

R/o Quarter No. 3/3, P&T Colony,

Karnal,

Haryana-132001

(Group C).

.... Applicant

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Communications and Information Technology, Department of Posts,
   New Delhi.
2. Chief Post Master General, Tamil Nadu Circle, Chennai-600002.
3. Post Master General, Western Region, Tamil Nadu Circle, Coimbatore, Tamil nadu-641002.
4. Director Postal Services,
   Western Region, Tamil Nadu,
   Coimbatore-641002.

.... Respondents

Present: MR. ROHIT SETH, ADVOCATE, FOR THE APPLICANTS.
MR. K.K. THAKUR, ADVOCATE, FOR RESPONDENTS.

O R D E R
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):

The applicant has invoked the jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985, for quashing the charge-sheet dated 23.1.2014 (Annexure A-1), inquiry report dated 23.11.2015 (Annexure A-2), order dated 2.3.2016 (Annexure A-3), vide which penalty of removal from service has been imposed upon him, order dated 24.5.2016 (Annexure A-4), rejecting the appeal filed by him and rejection order dated 14.3.2017 of Review petition filed by him and for grant of all the consequential benefits, after quashing these orders.

2. The facts are not largely in dispute. While working as Inspector of Posts, Udhagamandalam/Ooty Sub division under Nilgiris Division, applicant was endorsed a letter dated 29.6.2012 (Annexure A-6), relating to opening of applications for post of GDSMD. The applicant participated in the process. However, he was placed under suspension on 3.8.2012 and was charge sheeted on 23.1.2014 (Annexure A-1), on the allegation that he accepted bribe of Rs.45,000/- from Y. Riyafudhin on 11.7.2012 to appoint one A.R. Ayeshathabasum as GDSMD Nelakotta SO in Nilgiris division in connivance with R. Sivakumar, Officiating Inspector (Posts), Gudalur Sub Division and other articles of charges. After conduct of enquiry, vide order dated 2.3.2016, the penalty of removal from service was imposed upon the applicant. The appeal and Review petition were also dismissed by the relevant authorities.

3. The learned counsel for the applicant has challenged the impugned proceedings on a number of grounds like charges are vague, statements of witnesses were recorded in Tamil language which applicant could neither understand nor read and the English translated short lines by a non expert of translation used to be shown to applicant on papers, which he used to sign but suspiciously enough the same were never formed part of

inquiry record to the knowledge of the applicant nor were the translated version supplied to him during or after inquiry for preparing his cross examination or defence, all the officials and the witnesses use to discuss, converse in Tamil language and applicant being from North East state of Manipur could never understand what is being discussed or told to enable him to defend himself effectively and lead his defence in a better manner to avoid any severe prejudice which has caused injustice to his defence. The other grounds are that charge is not specific, there is no motive for alleged charge, there is no violation of letter dated 17.9.2003, no action could be taken on the basis of pseudonymous complaint, the meaning of coordinator has not been understood in right perspective, opening of applications have no relevancy with ultimate selection etc.

4. The respondents have filed a detailed reply opposing the claim of the applicant. They submit that proceedings have been conducted as per rules and law and there is no ground, whatsoever, to interfere with the impugned orders. Since applicant was held guilty of a serious charge and as such harsh penalty of removal from service was imposed upon him in consonance with decision of Apex Court in the case of Ramesh Chandra Sharma Vs. PNB & Another, JT 2007 (8) SC 588. It is submitted that arena of judicial interference in disciplinary proceedings is very limited.

5. We have heard learned counsel for the parties at length and examined the material on file with their able assistance.

6. The learned counsel for the applicant raised a very important issue that the applicant belongs to North East and could not understand Tamil language. He vehemently argued, that there has been violation of principles of natural justice as applicant has been denied proper opportunity of defending himself. It is argued that statements of witnesses were recorded in Tamil language, which applicant could not understand or read

and the English translated short lines by a non expert of translation used to be shown him, which he used to sign but the same were never formed part of inquiry record. It is also so mentioned in para 5 (i) of O.A. It is pleaded that even the translated version was not supplied to him during or after inquiry for preparing his cross examination or defence. To this, the reply of the respondents in corresponding para of written statement is as under :-

> "The applicant on knowing the nature of the Inspector posts duties and language of the Region joined in the Inspector Post cadre. To assist the applicant the Inquiry officer has permitted Shri R. Krishna Kumar, Retired Dy. Superintendent of Post Office, as Defence Assistant. It is the look out of the applicant to get it translated the documents with the help of his Defence Assistant. No rule is there in CCS (CCA) Rules to provide translated documents to the CGS. The main purpose of providing Defence Assistant to the charged official is to extend such helps to the CGS. Hence, the argument of the applicant as he never understands what is being discussed or told in the enquiry is not acceptable".

7. The stand taken by the respondents, as extracted above, on the issue of providing translated copies of versions of witnesses, leaves much to be desired. It is the duty of the Disciplinary Authorities to ensure that a delinquent employee is provided full opportunity to defend himself. Admittedly, applicant belongs to North-East and the proceedings were taking place in Tamil Language and as such it was duty of the Inquiry Officer to have provided applicant copies of depositions in English. He cannot shift his responsibility upon the shoulder of the Defence Assistant. In these circumstances, the question arises, as to whether the impugned proceedings stand vitiated or not.

8. We need not delve over the question posed above, as the same stands answered by High Court of Judicature at madras in Writ petition No. 21188 of 2011 – **P.A. PANEERSELVAM VS. STATE BANK OF INDIA**, decided on 29.11.2011. In that case the petitioner had claimed that he was conversant with Tamil only and as such inquiry should be conducted in

the language known to him. The Court, after discussing the law on the point laid down by Apex Court and other Courts, held that the claim of petitioner merited acceptance. The observations made by Hon'ble High Court are reproduced in extenso, as under :-

> "6. The only issue to be considered in this writ petition is as to whether the enquiry proceedings will have to be conducted in English or Tamil. It is the specific case of the petitioner that the language understood by him is Tamil. Merely because he has not objected to the charge sheet issued by the first respondent and the petitioner filed an affidavit in English, it cannot be construed that he has understood the language of English. It is settled law that in a departmental enquiry, it is for the department to prove the charges against the delinquent officer. While conducting an enquiry, every element of fairness will have to be shown in favour of the delinquent officer. The enquiry officer conducts the proceedings which have the character of a quasi judicial action. While imposing the punishment, the disciplinary authority will have to consider the report of the enquiry officer viz-a-viz the explanation to be given by the delinquent officer. Therefore, the report of the enquiry officer assumes importance in a departmental proceedings. It is no doubt true that the Tripartite Agreement mandates that any notice, order, charge sheet, communication or intimation meant for an individual employee, shall be in a language understood by him. When the clause specifically states that even a communication should be in a language that has to be understood by the delinquent employee, by natural corollary, the same will have to be applied in all force to the subsequent enquiry. While it can be said that a delinquent officer can give explanation to the charge sheet given in English and also file the affidavit in English by taking his own time and by consulting people, the same cannot be said about enquiry proceeding which is conducted by the enquiry officer in Camera. While initiating the proceedings, witnesses will have to be examined and therefore what is important is the demeanor of the witness concerned. Therefore until and unless a delinquent is aware of the question put to the witnesses, he may not be in a position to put forth his defence in a proper manner. A delinquent officer is not a mere spectator in an enquiry proceedings and sufficient opportunity will have to be given to such an officer. The fact that a delinquent officer is represented by the defence representative or by itself cannot be a ground to hold that notwithstanding the fact that the enquiry is conducted in a language which the said delinquent is not able to understand properly, the same can be allowed to go on in the presence of the defence representative. After all a defence representative is nothing but an authorised person representing the delinquent.
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> "....In Raziya Umar Bakshi vs Union of India (1980 Supp Scc 195) the Hon'ble Supreme Court in paragraphs 3 to 5 has observed as follows:-
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> Para 3: "... The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex facie.
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> Para 4: In case of Hadibandhu Das vs District Magistrate, Cuttack it was clearly held that merely oral explanation of an order without supplying him a translation in a script or language which the detenu understood amounted to a denial of right of being communicated the grounds. In the instant case, it is not even alleged in the affidavit of Mr. Shah that any translation or translated script of the grounds was furnished to the detenu.
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> Para 5: In this view of the matter the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority is satisfied that the grounds are couched in a

language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands..."

Similar in Surjeet Singh vs. Union of India ((1981) 2 SCC 359), the Hon'ble Supreme Court has in the following manner:

Para 8: "In Nainmal case Fazal Ali, J., who followed Hadibandhu case held that the communication of the grounds of detention in a language understood by the detenu was as essential requirement for the validity of a detention order which, in the absence of such requirement being fulfilled, would be repugnant to the provisions of Article 22(5) of the Constitution and would thus stand vitiated. And that is a view which has been consistently held by this Court.

Para 9: The facts with which we are here concerned, insofar as they are relevant to the decision of the point canvassed before us, are on all fours with those of the three cases cited above. As already pointed out, the grounds of detention were supplied to the two petitioners in the English language a language with which they were not conversant. The service of the grounds on them in that manner could not be considered under the circumstances to be effective communication to them thereof so as to afford to them a real opportunity of making a representation against the order of detention."

Para 6: "Where it is stated that the detaining authority explained the grounds of detention to the detenu, court insists on adequate proof in the absence of any translation being furnished. Thus in Lallubhai Jogibhai Patel v. Union of India the detenu did not know English but the grounds of detention were drawn up in English and the detaining authority in affidavit stated that the Police Inspector while serving the grounds of detention fully explained the grounds in Gujarati to the detenu. Admittedly, no translation of the grounds of detention into Gujarati was given to the detenu. It was held that there was no sufficient compliance with the mandate of Article 22(5) of the Constitution which required that the grounds of detention must be communicated to the detenu. "Communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. This follows from the decisions in Harikisan v. State of Maharashtra and Badibandhu Das v. District Magistrate."

Considering the ratio laid down by the Hon'ble Apex Court, this Court in P. Munirath has held as follows:

23. In this context, it is clear that even though the ground that the petitioner was unfamiliar of Hindi language was raised in the appeal grounds, neither in the order of the appellate authority nor in the enquiry report, the said assertion was denied by the respondents. Hence, it can be safely concluded that the petitioner was not familiar with Hindi.

24. In the present case, the punishment meted out to the petitioner was dismissal, which is a death penalty in the industrial jurisprudence. Therefore, this Court has no hesitation to believe the statement made by the petitioner that he was denied the reasonable opportunity of defending himself in the enquiry as it was held in Hindi, the language with which the petitioner was not familiar. Any amount of statement made by the respondents about the notings made by the Enquiry Officer, which also was in Hindi, will not cure the defect crept into the enquiry record.

25. Under the above circumstances, the enquiry conducted by the respondents will have to be necessarily set aside and accordingly, set aside. The writ petition will stand allowed. The impugned order of

dismissal dated 18.12.1997 as confirmed by order dated 27.03.1998 will stand set aside. The petitioner is entitled to have all the consequential benefits. If the respondents want to conduct an enquiry afresh, that will have to be done only in the language known to the petitioner and he must be given the assistance of an agent as provided in the Rules to defend himself in the enquiry. No costs.

In S. Dhanasekaran vs Commandant 42 Bn in (W.P. No.11983 of 2003) dated 04.01.2011 it has been held as follows:

"11. In the factual matrix, by reference to the files submitted by the respondents, it is clear that there is no explanation forthcoming from the respondents to show as to whether the proceedings were translated to the petitioner in the language known to him, or not. That apart, even in respect of the charge relating to the consumption of liquor by the petitioner, there is no record to show that the respondents have taken pertinent efforts for the purpose of proving that the petitioner was intoxicated. It is also seen that the decision has been predominantly arrived at based on the preliminary enquiry and not on the basis of the proceedings conducted during the disciplinary proceedings.

12. Even in respect of the enquiry officer's report, which is stated to have been served on the petitioner, there was no occasion for the petitioner to submit a representation for the reason that in the meantime he came to be transferred and posted at Shivpuri as admitted by the parties. In such circumstances, I am of the considered view that on the factual matrix of the case, especially relating to the language in which the disciplinary proceedings was conducted, there is no proper compliance of the principles of natural justice and therefore, the impugned orders are liable to be set aside, however, with liberty to the first respondent to conduct fresh enquiry in the language known to the petitioner, if so advised, failing which the petitioner will be entitled for all the benefits under the law.

Accordingly, the impugned orders are set aside and the writ petition stands allowed, however, with liberty to the first respondent to conduct fresh enquiry in conformity with the principles of natural justice in the language known to the petitioner, if so advised. No costs."

7. Therefore, considering the ratio laid down by the Hon'ble Apex Court which has been followed by this Court on two earlier occasions, this court is of the view that the petitioner is entitled to have the enquiry conducted in the language known to him. The contention of the learned counsel for the first respondent that the writ petition as filed is premature also cannot be countenanced. When it is a specific case of the petitioner that the Tripartite Agreement governing the same has been violated which in effect leads to the infringement of the principles of natural justice, affecting the rights of the petitioner, it is very well open to him to file a writ petition. In other words when there is a violation of the principles of natural justice which would have the effect of setting aside the proceedings, the same will have to be rectified at the earliest point of time. The judgment relied upon by the learned counsel for the first respondent is not applicable to the facts of the case. The issue involved therein is totally different as the challenge is made to the show cause notice on merits. In as much as this Court has not decided its merits of the case and decides the issue only on the ground of principles of natural justice, the ratio laid down by the Hon'ble Apex Court is not applicable to the case on hand.

8. Further this Court is not quashing the charge memo, as the request of the petitioner itself is to quash the order the first respondent in declining to consider the request of the petitioner to conduct the enquiry proceedings in Tamil. It is seen that all the witnesses are having proficiency in Tamil. Therefore, it is just and proper that the enquiry should be conducted in Tamil. It is also not clear as to whether the second respondent is well-versed in Tamil. Since the second respondent is nothing but an Umpire or an Arbitrator, this Court is of the considered view that until and unless the said respondent is having proficiency in Tamil, he shall not be allowed to conduct the enquiry. Accordingly, the

> order impugned is hereby set aside and the first respondent is directed to conduct the enquiry in the Tamil language. If the second respondent is not having the proficiency in Tamil, then the said respondent shall not be allowed to proceed with the enquiry.
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> 9. Learned counsel for the first respondent submitted that the petitioner is going to retire in the month of December 2011, in such view of the matter, the enquiry is directed to be completed within a period of four weeks from the date of receipt of a copy of this order and the petitioner shall not take the plea of his retirement in the event of disciplinary authority holding against him. It is also made clear that the petitioner shall co-operate with the enquiry. The writ petition is ordered accordingly. No costs"

9. The Courts in the aforesaid extracted portion have held that the punishment of dismissal, which is a death penalty in the service jurisprudence, cannot be imposed in such a light hearted manner. The Courts have believed the delinquents that they were denied the reasonable opportunity of defending themselves in the enquiry as it was held in a language, not known to them. The principle of law laid down in the indicated case applies, on all fours, to the facts of this case as well and it is held that the proceedings indeed stand vitiated.

10. In view of the above discussion, this O.A. is allowed in part. The impugned inquiry proceedings, penalty order, appellate order and review orders are quashed and set aside. The matter is remitted back to the respondents to conduct the inquiry proceedings in the light of the law laid down in the case of P. A. Panneerselvam (supra), if so advised. The parties are left to bear their own costs.

(A.K. BISHNOI)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH
DATED: 13.08.2019

HC*