

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00900/2017
M.A. 350/00670/2017

Date of order: 20.08.2017

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Madhu Sudan Mukhopadhyay,
Son of Sunil Kumar Mukhopadhyay,
UPASANA APARTMENT,
98/21, S.N. Banerjee Road, Barrackpore,
Kolkata - 700 120.

.....Applicant

- V E R S U S -

1. Union of India service through the Secretary,
Ministry of Defence,
Department of Defence Production,
136, South Block,
New Delhi - 110 011.
2. The General Manager,
Rifle Factory Ishapore,
Ministry of Defence,
Govt. of India,
P.O. Ishapore Nawabganj,
Pin - 743144.
3. Chief Vigilance Officer,
Ordnance Factories Board,
AYUDH BHAWAN,
10A, S.K. Bose Road,
Kolkata - 700 001.
4. Works Manager/Admin,
Rifle Factory Ishapore,
P.O. Ishapore Nawabganj,
Dist. 24- Parganas (N),
Pin - 743 144.
5. Uma Shankar,
Jt. General Manager/P,
Rifle Factory, Ishapore
And
Inquiry Officer,

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P.O. Ishapore Nawabganj,
Dist. 24-Parganas (N),
Pin - 743 144.

6. Shri Arijit Mukherjee,
Assistant Works Manager/A,
Rifle Factory Ishapore,
P.O. - Ishapore Nawabganj,
Dist. - 24 - Parganas (N),
Pin - 743 144.

... Respondents

For the Applicant : Mr. B.R. Das, Counsel
Mr. K.K. Ghosh, Counsel

For the Respondents : Mr. S. Paul, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (i) Rescind, recall, withdraw and/or cancel the order A-1 directing continuation of Enquiry.
- (ii) Set aside and/or quash the charge-sheet (Annexure A-2).
- (iii) Refer the matter to the Govt. audit department under the control of CAG to make a thorough Audit and accounting of the transactions in cash office.
- (iv) Rescind/recall and/or withdraw the order A-3 with all website publications thereof, forthwith.
- (v) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof concessionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iv), above.
- (vi) Any further order/orders and /or direction or directions as to your Lordship may seem fit and proper.
- (vii) Costs."

2. Heard both Ld. Counsel, examined pleadings, documents on record.
3. An M.A. bearing No. 670 of 2017 has been filed for vacating the interim order dated 17.7.2017 vide which the respondents were directed not to proceed further with the departmental proceedings without the leave of this Tribunal.

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4. The submissions of the applicant, as made through his Ld. Counsel is that, he was appointed as a Semi Skilled Industrial employee in 1997, finally promoted as an Upper Division Clerk and posted in Cash Office on 26.12.2005, upon which, he had held the position of a Cashier from 1.1.2006 to 5.7.2017. The applicant was suspended w.e.f. 20.9.2016. The suspension was subsequently reviewed and extended and, thereafter, on 1.12.2016, was issued with a chargesheet with eight articles of charge.

That, an enquiry was initiated vide General Manager's order dated 2.1.2017 but, during the process of enquiry, PW-1 and PW-3 started stone walling questions of the applicant when he started examining PW-2. That, the applicant preferred a representation alleging bias against the enquiry authority which, however, was rejected by the disciplinary authority by orders dated 12.6.2017 (Annexure A-1 to the O.A.) and, further, the respondent No. 3, who is the Chief Vigilance Officer started influencing the disciplinary authority by disclosing alleged misappropriation of the applicant in not making over Rs. 1,70,23,500/- to the next Cashier. Hence, the applicant has come up in the instant O.A. challenging the chargesheet and proceedings thereupon in the instant O.A.

The applicant has advanced the following grounds in support of his contentions which are, inter alia, as follows:-

- (a) That, the disciplinary proceedings suffers from infirmity on the ground that the chargesheet issued by the respondent No. 2 was illegal.
- (b) That, although, the enquiry authority acted in colourable exercise of jurisdiction in trying to obstruct the proceedings in aligning himself with the prosecution witness and also as the

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enquiry authority failed to act in accordance with law, the disciplinary authority failed to change the enquiry authority and acted with a closed mind despite such capricious behavior of the enquiry authority.

(c) The respondent No. 3 widely published and authenticated criminal charges against the applicant with a oblique motive of influencing the disciplinary authority.

5. Per contra, the respondents in their written statement have disputed the claims of the applicant as follows:-

(a) That, irregularities in RFI Cash Office having accumulated over the years, it was found upon scrutiny that there were innumerable anomalies in cash books.

(b) Upon a meticulous enquiry against the anomalies it was suspected that the applicant who was the ex-Cashier was allegedly negligent in mis-matching the cash books in his failure to maintain imprest fund, register and its proper accounting over the years. There were also indications of cheque withdrawal with possible fake signatures and, consequent to such alleged negligence, the anomalies had accumulated over the years since 2006.

(c) That on 8.7.2017, the Security Personnel nabbed the applicant, who was trying to leave office premises with government papers in his personal custody even after he had handed over the charges of Cashier to his successor.

(d) On consideration of such accumulated irregularities, the disciplinary authority placed the applicant on suspension, and, thereafter, a chargesheet was drawn up for failure to perform his duties, failure to maintain absolute integrity in incorporating fake signatures, loss of government money and retaining valuable

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government documents in his own custody and that the applicant denied all charges in his written statement of defence.

(e) As the applicant denied all charges, a formal enquiry was constituted and an Enquiry Authority and a Presenting officer were appointed. The Enquiry authority conducted eight hearings on 10.4.2017, 24.4.2017, 4.5.2017, 17.5.2017, 23.5.2017, 24.5.2017, 27.5.2017 and 29.5.2017 respectively. The first seven enquiries were concluded with full satisfaction on behalf of all parties. During the eighth hearing, however, the defence assistant requested the enquiry officer to exhibit documents from PW-2 during cross-examination, stating therein that the cross-examination would only proceed after such documents were examined by the delinquent official. The enquiry officer, however, recorded his observations against the exhibition of said documents and continued with the reexamination of PW-2. The defence assistant, however, instead of availing the opportunity to cross-examine PW-2, conclusively confirmed that there was no need to continue the cross-examination and thereafter the enquiry officer concluded the proceedings of that date.

(f) All of a sudden, the applicant represented to the disciplinary authority, alleging bias against the enquiry authority and, according to the respondents, such allegations of bias were not raised in the initial stages of the enquiry or prior to the enquiry but only after the eighth enquiry and, accordingly, the claims made by the applicant for inspection of documents in connection with cross-examination of PW-2 as well as allegation of bias which was duly decided by the disciplinary authority on 12.6.2017, are ample

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testimony to the fact that the applicant's claims are baseless and deserves to be dismissed ab initio.

The respondent authorities also stated that they have filed a M.A. praying for vacation of the interim relief that had stopped the disciplinary proceedings from continuing without the leave of the Court.

6. The issue before us for adjudication is whether there are procedural violations in the disciplinary proceedings in not furnishing the documents to the applicant and also whether the respondent authorities were deciding as per rules in rejecting his allegation of bias and in deciding to continue with the enquiry.

7.1. Basically two issues have been raised by the applicant in the context of procedural violation. As stated above, the first contention is that he was not given the opportunity to examine all documents as relevant to the proceedings and was, therefore, prejudiced in the context of non-disclosure.

In this context, we note that the rules generally ensure full disclosure of documents on which the disciplinary authority wishes to rely for proving the charges against the employee. It is almost invariably stipulated that, along with the charge-sheet, a list of documents by which the charges are proposed to be sustained, must be delivered to the charged employee. Moreover, an obligation is often imposed upon the enquiring authority to allow the employee inspection of such documents within a specified time for the purpose of preparing his defence.

It has also a settled principle of law that if relevant confidential material is not disclosed, then the decision making process will be vitiated as ruled in ***Kanda v. Government of Malaya 1962 AC 311;***

in Shareef v. Commissioner for Registration of India & Pakistani Residence, 1966 AC 47 and,

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in **Trilok Nath v. Union of India, 1967 SLR 759 (SC)**, wherein the Hon'ble Apex Court has consistently held that non-disclosure of such documents would amount to denial of reasonable opportunity.

At the same time, however, the Hon'ble Court, in **Suresh Pathrella v. Oriental Bank of Commerce, (2006) 10 SCC 572** stated that non-disclosure of documents cannot be held to be a rigid principle of denial of reasonable opportunity and that non-supply of documents when such omission caused no prejudice to the delinquent would not amount to denial of reasonable opportunity.

In **Govt. of A.P. v. A. Venkata Raidu, (2007) 1 SCC 338**, the Court ruled that, if any material is used, a copy thereof should be supplied to the party against such enquiry but only relied upon documents are needed to be supplied to the delinquent. Non-supply of documents when such action caused no prejudice to the delinquent did not amount to denial of reasonable opportunity as held in **Suresh Pathrella (supra)**.

In **Chandrama Tewari vs. Union of India, 1987 (Supp) SCC 518**, the Hon'ble Apex Court laid down the law on the aspect as to whether the principles of natural justice was violated as to where a document (although mentioned in the charge-sheet) which is neither relevant to the charge, nor referred to, or relied upon by the authorities, nor necessary for cross-examination, is not supplied to the charged employee. The Hon'ble Apex Court held as follows:-

"While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such documents or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case."

[Signature]

Accordingly, we grant the applicant liberty to prefer a representation to the competent respondent authority for disclosure of necessary documents after establishing relevance of the same in the process of enquiry and, the competent respondent authority, shall, after receipt of such representation, decide on the relevance of the documents so sought and convey his decision to the charged officer/applicant accordingly.

7.2. The second issue which has allegedly prejudiced the applicant is the purported biasness of enquiry authority. In this case, we refer to CCS (CCA) Rules wherein Rule 14 (8) of the Rule:

"(8) Inquiry to be stayed when application is made against the Inquiry Officer's appointment on ground of bias - For the purpose of GID (12), the Reviewing Authority would normally be the Appellate Authority.

Obviously, any representation against the appointment of Inquiring Officer on grounds of bias should be made as soon as the Inquiring Authority has been appointed, but not after the proceedings have commenced and reached an advanced stage. No hard and fast rules can, however, be laid down and each case will have to be examined on merits on the facts and circumstances brought out by the concerned Government servant alleging bias on the part of Inquiring Authority. As the rules stand at present, it is not possible to deny to the Government servant the right to ask for review of any orders issued under CCS (CCA) Rules, 1965, at any time."

As laid down in the rules, the government servant has the right to ask for review of the orders of enquiry authority, particularly, on grounds of bias. As the disciplinary authority has rejected his claim, we accordingly grant liberty to the applicant to prefer a representation before the appellate authority disputing the decision of the disciplinary authority on continuation of Enquiry authority alleged of bias.

7.3. The applicant will prefer both his representations within a period of 4 weeks from the date of receipt of a copy of this order and the respondent authorities will convey their decision within a further period of 6 weeks after receipt of the same.

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Needless to say, that until the two issues are resolved, the proceedings against the applicant will remain in abeyance.

8. With these directions, the O.A. is disposed of. M.A. No. 670 of 2017 praying for vacation of interim order is disposed of accordingly.

There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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