

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1135/2003

New Delhi, this the 17th day of November, 2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

Majeti Shanker Kumar,
C/o Dr. Halder,
A1/92, Sector 18,
Rohini, Delhi - 110 085.

...Applicant

(By Advocate: Shri L.R. Khatana)

Versus

Union of India through
Secretary,
Department of Science & Technology,
Technology Bhawan, New Mehrauli Road,
New Delhi - 110 016.

...Respondent

(By Advocate: Shri M.M. Sudan)

ORDER (ORAL)

Order delivered by Shri Shanker Raju, Member (J)

1. Applicant impugns respondents' order dated 22.5.2002 and 19.08.2002 whereby on imposition of major penalty of compulsory retirement appeal preferred culminated into rejection. Quashing of the aforesaid orders has been sought with any other relief.

2. Applicant while working as U.D.C. was proceeded against for a major penalty vide Memo dated 8.01.2001 under Rule 14 of the CCS(CCA) Rules, 1965. The statement of articles of charge is reproduced as under:-

" Article 1:

That the said Shri M. Shankar Kumar while serving as Upper Division Clerk in the Department of Science & Technology established a Non-Government Organisation named Shakthi Society for Rural and Urban

Development (SSRUD), Registration no. 109 of 1996 with its Head Office at Door No. 1-38-60, Kollurivari Street, Nazerpet, TENALI-522201 (Guntur District) and held the post of President (elected) of the said Society without obtaining prior sanction of the Competent Authority. This is violative of provisions of Rule 15 of CCS(Conduct) Rules, 1964.

Article-2:

That the said Shri M. Shankar Kumar while serving as Upper Division Clerk in the Department of Science & Technology used the Sakthi Society for Rural and Urban Development (SSRUD) for attempting to secure grants/financial assistance from the Department of Science & Technology for himself and his family members and close relatives, who were also the office bearers, members which tantamount to conduct unbecoming of a public servant. This violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-3:

That the said Shri M. Shankar Kumar while serving as Upper Division Clerk in the Department of Science & Technology unauthorisedly communicated official information which was accessible to him as an employee of the Department for furtherance of the interests of his own self as well as his family members through the said society. The said Shri Shankar Kumar, UDC not only unauthorisedly communicated the inside official information to his family members but also helped them to misuse the same in the similar manner in using unfair tactics of levelling allegations against departmental officials responsible for disbursing grants to Non-governmental organisation/voluntary groups, and to coerce them into releasing funds to Sakthi Society for Rural and Urban Development (which is largely a family based NGO) by writing threatening letters to Secretary, DST, Ministry of Science & Technology and other senior officers in the Government, thereby violating the provisions of Rule 11 of CCS (Conduct) Rules, 1964."

3. During the course of disciplinary proceedings, presenting officer made a request to the Enquiry Officer to bring on record certain additional documents



which inter-alia included letters written by the applicant on 18.10.2000 and 17.10.2001. The aforesaid request was turned down by the enquiry officer on 15.11.2001 on the ground that as the additional documents have been tendered after the prosecution had rested from the case, the same are not admissible. The Enquiry Officer after evidence and submission of written briefs by the presenting as well as charged officer concluded on articles of charge in his decision as under:-

"Article of Charge No. 1 - The charge against Shri M.Shankar Kumar, Upper Division Clerk, Department of Science & Technology that he established a Non-Governmental Organisation namely "Sakhti Society for Rural and Urban Development, Tenali and held the post of President (elected) of the said Society without obtaining prior sanction of the competent authority is established. In response to the Memorandum No. A-20017/19/84-Admn.1(B) dated 8th January, 2001 issued by the Department to the charged officer, he has while denying the allegation of relaying information to the said Society vide his letter dated 17th January, 2001, has designated himself as UDC, ISCA Cell and Hony. President, Sakhti Society Rural & Urban Development, Tenali 522 201, Andhra Pradesh. On rethinking, he made a Corrigendum dated 23.1.2001 requesting reading his designation as UDC in place of Hony. President, Sakhti Society Rural and Urban Development, Tenali. It is of paramount importance that here we are established truth and for that what is on record cannot be washed away by mere technicality. After all it is for the charged officer to brief his Defence Assistant with the complete information of the case.

The request for introduction of authenticated documents received from the District Registrar, Guntur were not allowed as the request was made by the Presenting officer after he had rested the case but these were taken on record. The documents, submitted by Defence Assistant i.e. Outlook weekly magazine 11th December, 2000 with the article "CHILD IS THE FATHER OF MAMMON" and the list of defence witnesses containing 14 names of senior departmental officers was found irrelevant and out of context and scope of the

inquiry, but these were also taken on record. It is on record that Shri M. Shankar Kumar made a written request dated 18th October, 2000 to the Governing Body/General Body of the Sakthi Society for Rural and Urban Development, Door No. 1-38-60, Nazerpet, Tenali - 522 201 (AP) that "due to personal reasons, I resign as the President of Sakthi Society for Rural and Urban Development immediately. As per directions from my employer i.e., Department of Science & Technology, New Delhi - 110 016, I cannot hold an elective post in your Society without prior sanction vide its letter No. C-13013/01/97-Vig./Admn.1(B) dated 4th October, 2000." The said letter was received by the Society on 27.10.2000 under acknowledgement by M. Gayatri under Society's Seal. It is noted that it has already been established in the Department that Shri M. Shankar Kumar was holding the post of President of the Society and he resigned from the Presidentship of the Society. To be quoted.

The Defence Assistant's plea that if the defence witnesses had been allowed it could have proved that senior officers of the Department were holding elected posts in NGOs/Cultural Bodies, Commercial Bodies which are registered under the Indian Society Act, 1860 most of which are receiving heavy grants from Department of Science & Technology with the assumption that the charged officer was also competent to hold such an elective post in the NGO (Society) without prior sanction of the Department does not hold good as senior officers may hold such posts with Government sanction or as a part of official duties. His plea on the basis of the factual information provided by prosecution witness Dr. Shukla that members of the Project Advisory Committees (PAC) were recipients of grants approved by these Committees also cannot draw parallel with the inquiry in question as the Experts on the PACs may get the Projects for which funding is made by the Government against fixed criteria.

The Article of Charge no. 1 is as such fully established.

Article of Charge No. 2 - The charge that Shri M. Shankar Kumar while serving as UDC in the Department used the Sakthi Society for admitting to secure grants/financial assistance from the Department of Science & Technology for himself and his family members and close relatives who were also the office bearers/members is also established. The Defence Assistant's plea that the documents by which the charges were to be proved were not original documents and hence could not be

admitted because the documents were not signed by the proposer i.e. the office bearer of the Society and these could be manipulated or replaced does not hold good in the official parlance as the project proposals received with covering letter have the project documents signed only in the end. However, as the first charge is established that Shri M. Shankar Kumar established the NGO named Sakthi Society and held the elective position in the Society as per the documents received from the Department as also from the District Registrar, Guntur in addition to his own statement made in the letter dated 17th January, 2001, there is little doubt that he was an interested party for submission of the project documents from the Society for funding by the Department. It was suggested by the Defence Assistant during the proceedings of the inquiry that one of the prosecution witnesses, Dr. B.K. Shukla informed the Society of the sanctioning of a project proposal of the Society against gratification which was denied by the witness. The same witness had informed that Shri Shankar Kumar used to come to him to know the status of the sanctioning of the project proposal submitted by the Society. The charge of bribe is intended to malign as well as demoralize the prosecution witness though it confirms the interest of the charged officer in the project.

The plea of Defence Assistant that the Presenting Officer merely throws out allegations in all directions into the air making wild allegations even against family of the charged officer without producing even a smallest shred of evidence proving any link of the charged officer with the imagined family members is also made only on the technicality that the documents submitted by the Government are not authentic because these are not signed on each page and can be manipulated. He even goes to the extent that the Presenting Officer has drawn his own conclusions that Dr. MRK Murthy and Smt. Majeti Gayatri are his father and wife respectively. Also that Dr. M.S. Kumar mentioned in the Members of the Association cannot be identified with Shri M. Shankar Kumar. The charged officer is a government employee and the information about his family members is available in office as authentically given by himself. But the fact that Shri M. Shankar Kumar cannot be identified with Dr. M.S. Kumar is a serious matter as Shri M. Shankar Kumar has impersonated for Dr. M.S. Kumar as is evident from the documents received from the District Registrar, Guntur.

Hence, the second article of charge is also fully established.

Article of Charge No. 3 - The third charge pertains to Shri Shankar Kumar unauthorisedly communicating official information is not fully established by the prosecution. But circumstantial evidence suggests that he was instrumental in giving the information to the Society. Also going by other two charges as these have been established, the instinct is that as Shri Shankar Kumar was himself instrumental in establishing the NGO (Society) and was holding the elective post of President, he had the opportunity to have information both which is for general public as well as which could be gathered by him from various sources in the office and could be given by him to the Society. The charge as such is established.

CONCLUSION

Article of Charge Nos. 1, 2 & 3 are as such fully established. Charge No. 1 is already established by the Administration & Vigilance as is evident from the Department's letter No. C-13013/01/97-Vig/Admn.1(B) dated 4th October, 2000. The Charge no. 1 is the very basis for Charges 2 & 3."

4. The aforesaid finding of the enquiry officer was tendered to the applicant and on his representation a major penalty of compulsory retirement was inflicted by the disciplinary authority on the ground that the contentions of the applicant would be highly undesirable as he is likely to indulge in such practices in future.

5. Appeal preferred against the said order was turned down on 19.08.2002, giving rise to the present O.A.

6. At the outset, learned counsel for the applicant states that as the petition was filed by the applicant in person, in his relief though quashing of the impugned orders has been sought but without any specific request for re-instatement or consequential

benefits. However, a prayer has been made to any other relief being a hyper technical plea. As the natural consequence of quashing of impugned orders is re-instatement and other benefits to the applicant, the aforesaid objection has no relevance.

7. Shri Khatana, learned counsel for the applicant states that the present is the case of 'no evidence'. Referring to the findings recorded by the Enquiry Officer, it is contended that on article of charge-I regarding applicant being an elected representative of the non-governmental organisation run by his wife, the enquiry officer has relied upon to come to the finding of guilt against him on a letter written by the applicant on 18.10.2000 wherein he stated his reasons for resignation as President of Sakhti Society for Rural and Urban Development, Tenali, Andhra Pradesh as he cannot hold an elected post in the Society without prior sanction. Vide his letter dated 4.10.2000 this is deemed to be an evidence to the effect that the applicant held the post of President of the Society. Apart from this no further evidence has come forth to establish the charge.

8. Referring to the above, it is stated that in a disciplinary proceedings an evidence has to be tendered through a witness to prove the its authenticity. Though strict rules of evidence are not applicable in the departmental enquiry, yet applying the principle of preponderance of probabilities, a test of reasonable

prudent man is to be applied. Document which does not form part of the enquiry proceedings as not listed in the list of documents and when the same were tendered by the presenting officer the rejection shall preclude and stop the respondents from considering those documents as a piece of evidence to hold the applicant guilty of the charge. As the same is not an evidence substantive or otherwise, consideration of which is beyond the scope of departmental enquiry. As this document cannot be tendered as an evidence, the charge could not be substantiated. Moreover, as an alternate plea, it is stated that as the aforesaid document has not been put to the applicant for rebuttal and non-supply of the same construes violation of principles of natural justice and infringement of the procedural law laid down under Rule 14 of the CCS(CCA) Rules *ibid*.

9. It is contended that as per Rule 12 of the rules *ibid* enquiring authority for the reasons to be recorded in writing refused to tender the documents has no relevance. Moreover, rules 14 & 15 of the rules *ibid* empower the disciplinary authority as well as enquiring authority to allow the presenting officer to produce evidence, not included in the list given, with opportunity to the applicant to inspect before taking same on record. As the enquiring authority despite conscious of this provision of tendering the evidence in the form of documents by the presenting officer, refused to take it on record, the same cannot form part

of the record. Moreover, the proviso and note to rules 14 & 15 ibid provides that no new evidence shall be permitted or any witness shall be called to fill up any gap in the evidence as such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

10. Referring to rules 14 & 21(a) of the rules ibid, it is stated that the disciplinary authority in his right and jurisdiction may further examine any of the witnesses, recall them before imposing punishment. Moreover, rule 15 of the rules calls upon the disciplinary authority to remit the case to the enquiring authority for any reasons for holding further enquiry. Despite the aforesaid, once the documents were not allowed to be tendered in evidence, nothing prevented the disciplinary authority to exercise his right under rule 14 and 21(a) as well as Rule 15 of the Rules ibid. Once the right has not been exercised, the same cannot be exercised to fill up the gaps now in the guise of denovo proceedings which would prejudicially affect the interest of the applicant.

11. In so far as article of charge-2 which pertained to secure grants/financial assistance from the Department of Science & Technology to the N.G.O. is concerned, though no evidence has come forth to establish the charge merely on suspicion and surmises, the applicant has been held guilty of the charge, which cannot be sustained.

12. Referring to article of charge no. 3 pertaining to unauthorized communication of official information to the Society is concerned, the enquiry officer himself observed that the charge is not fully established but on presumption that as the applicant held the technical post of President of the society, might have communicated the official information, which came to his possession while posting in IFD division of the department.

13. In nutshell what has been contended is that the present is a case of 'misconduct' and 'no evidence' while the findings arrived at are based on suspicion and surmises without any evidence and do not pass the test of a reasonable common prudent man in consonance with the law laid down by the Apex Court in Kuldeep Singh vs. Commissioner of Police & Ors, 1998(8)JT 603.

14. Applicant, who had been given sufficient opportunities to defend, having failed to rebut the charges, has been rightly punished which is in accordance with law. As such OA is to be dismissed. However, documentary evidence and his admission in letter dated 18.10.2000 has been observed to be tendered in the knowledge of the applicant.

15. In the rejoinder the applicant has reiterated the pleas already taken in his O.A.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. Non-supply of relevant documents relied upon to hold the charge, is certainly an incident of violation of principles of natural justice causing prejudice to the delinquent and an ante-thesis to fair play in the light of decision of the Apex Court in State of UP vs. Shatrughan Lal & Anr., 1998(6) JT 55, vitiates the enquiry.

18. Relevancy of non-supply of such documents need not be proved as per the decision of the Apex Court in State of UP vs. Harinder Arora, 2001 (6)SCC 392 as on the face of record the enquiry officer held the charge proved on the basis of these two letters written by the applicant and as these documents have not found place in the list of documents served upon the applicant alongwith Memo under Rule 14 of the CCS(CCA) Rules and also request of the presenting officer to bring on record these additional documents once turned down do not form part of the record. Non-supply of these documents and reliance is in violation of the principles of law laid down by the Apex Court in Pepsu Road Transport Corpn. vs. L.D. Gupta, 2002 SCC L&S 61.

19. In our considered view these documents could have been brought on record by the presenting officer

with the prior approval of the enquiry officer under Rules 14 & 15 of the Rules *ibid*. Brining on record the additional evidence an extraneous matter not forming part of the D.E. is certainly to fill up the gaps in the evidence, which is not permissible under the rules. It is also not a case where the evidence recorded suffers from any inherent lacuna or defect.

20. The disciplinary authority has also failed to exercise his authority and right under Rules 14 & 21(a) for not bringing on record the documents or recalling / examining any witness or treating the said documents as part of the record. Disciplinary authority further faulted with by not passing an order under Rule 15 of the Rules by holding further enquiry and remitting the matter back to the enquiring authority on admissibility of the aforesaid ground. As a quasi judicial authority presumption of being well versed with the procedural rules is on the disciplinary authority. Ignorance cannot be made excuse once the disciplinary authority has faulted with and has failed to exercise his right taking into consideration these documents, being an extraneous matter and deprived the applicant of an opportunity of reasonable hearing and to defend which violates the doctrine of fair play and principles of natural justice causing prejudice to the applicant.

21. In so far as article of charge no. 1 that the applicant unauthorisedly without permission held the

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post of President of the Society (NGO) is concerned, the only evidence which has come forth in the conclusion of the enquiry officer is two letters written by the applicant which never formed part of the enquiry and were refused to be brought on record by rejection of the request of the presenting officer. As such, the same cannot be treated as a material evidence to hold the applicant guilty of the ~~charge~~ charge. Accordingly the conclusion drawn on the basis of these documents constitute no material and reliance of the enquiry officer is on 'no evidence' and the conclusion is, therefore, perverse.

22. As regards article of charge no. 2 pertaining to using of his official position in securing grants and financial assistance is concerned, merely because the first charge has been established, enquiry officer has held the applicant guilty. The conclusion that the applicant could not be identified as he has impersonated is a serious matter and has managed to release the funds is a perverse finding based on suspicion and surmises. No material either credible or relevant to the charge or evidence has been produced in the enquiry to establish the charge. Hence, the charge remained un-substantiated for want of evidence.

23. As regards article of charge no. 3 is concerned, though the enquiry officer concluded that the charge is not fully established but on circumstantial evidence which is permissible under the

2

enquiries held that as the applicant was himself instrumental in assisting the NGO he could have gathered the information from various sources in the office which can be given to the Society. Once the charge of an elected President to the Society has not been established the same cannot be relied upon holding the applicant guilty of this charge. The aforesaid conclusion is misnomer and is based on suspicion and surmises without any credible evidence as to leaking of information from Ministry to the Society by the applicant.

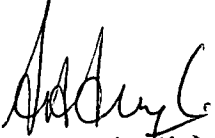
24. Having regard to the aforesaid discussion, the conclusion arrived at by the enquiry Officer does not pass the test of a common reasonable prudent man. The findings are, therefore, perverse based on 'no evidence'.

25. In so far as order passed by the disciplinary authority is concerned, no reasons have been recorded for inflicting the punishment as required under rule 15 of the rules ibid. However, having agreed with the report of the enquiring authority which has decided the case on surmises and held the applicant guilty and punished him not only for his misconduct but also on the ground that his continuation in government service would perpetuate the aforesaid indulgence in future. This is an extraneous charge. It is seen that there has been non-application of mind by the disciplinary authority to the record of enquiry which interalia

included gross violation of procedural rules. Being a quasi judicial authority, it was incumbent upon the disciplinary authority to have acted in accordance with rules and have examined the contentions of the applicant in right perspective in not speaking order in such circumstances is a serious infirmity vitiating the order.

26. As far as appellate order is concerned, as per rule 27 of CCS (CCA) Rules not only the procedure illegalities and quantum of punishment but several other factors are to be taken into consideration. We, on perusal of the order, find it to be a bald mechanical order without any reasons. Proportionality of punishment as well as procedural illegalities going to the root of the case has not at all been considered and gone into.

27. In the result, for the foregoing reasons, O.A. is allowed. Impugned orders passed by the respondents cannot be sustained in law and are accordingly quashed and set aside. Respondents are directed to re-instate the applicant forthwith and he would be entitled to all consequential benefits except back wages which would be made available to him within three months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

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