

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1658/2003

New Delhi, this the 13th day of April, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member (A)

M.S. Goel
14, Vaishali Apartments
Vikaspuri, New Delhi

.. Applicant
(Shri O.P.Gehlot, Advocate)

versus

Government of NCT of Delhi, through

1. Lt. Governor
Delhi
2. Secretary
Players Building
IP Estate, New Delhi
3. Secretary
Department for the Welfare of SC/ST/CBC/MIN
B Block, II Floor
Vikas Bhavan, New Delhi

.. Respondents
(Shri Ajesh Luthra, Advocate)

O R D E R

Shri S.K. Naik:-

The applicant had earlier filed OA 2351/2000 assailing the order of punishment dated 15.6.1998 and appellate authority's order dated 20.1.2000 affirming the punishment. After discussing the case in detail and upon hearing the learned counsel for the parties, that OA was allowed by order dated 1.8.2001 and the impugned orders were set aside by the Tribunal, keeping it open to the disciplinary authority to take up the proceedings from the stage of issuing notice to the applicant after recording tentative reasons for disagreement and also keeping in view the observations made in that order and to pass an order after affording reasonable opportunity to the applicant if so desired.

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2. Thereafter, a copy of the brief note giving therein the tentative reasons for disagreement with the findings of IO was given to the applicant vide OM dated 18.9.2001, in response to which applicant made a representation mentioning therein a variety of grounds. This representation and all other related records of the case were considered by the disciplinary authority, who after recording his view concluded that the applicant was guilty of the charge framed against him, passed another order dated 18.10.2001 by which the pay of the applicant was reduced for a period of two years wef 1.1.2001 entailing therewith that he would not earn increment of pay during the period of reduction and on the expiry of that period, the reduction would have the effect of postponing his future increments of pay. Applicant made an appeal against this order, which was rejected by the appellate authority (Respondent No.1) vide his order dated 25.11.2002. By virtue of the present application, these orders are being challenged by the applicant.

3. Since the facts of the case leading to the issue of earlier punishment orders have already been discussed, we do not deem it necessary to discuss the same once again. We would restrict ourselves to the grounds taken by the applicant in support of the challenge in the present OA.

4. The counsel for applicant has stated that this is a case of no evidence. Drawing our attention to the charge-sheet, which is at page 49 of the paper book, he contends that while the applicant is being charged for processing the application for issue of special permit in

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an irregular manner in disregard of the laid down procedure, the respondents at no point of time stated as to what is the laid down procedure. Even now when the matter has come up before the Tribunal for the second round, they are not in a position to define as to what the laid down procedure is? The respondents have thus failed to pin point any misconduct on part of the applicant, the counsel contends.

5. Drawing a reference to the statement of imputation of misconduct on page 25 of the paper book, the counsel further contends that the statement of imputation travels beyond the charge when it holds the applicant responsible for allowing an outsider to prepare the necessary documents for the issuance of the permit. Contending that the statement of imputation not only goes beyond the charge but also it is in contradiction inasmuch as while the charge is for processing the application in an irregular manner, the statement of imputation clearly states that it is not the applicant but a private person who has prepared the application. Thus clearly there is no link between the applicant and the alleged misconduct. Referring to the judgment of the Hon'ble Supreme Court in Sher Bahadur v. Union of India & others, (2002) 7 SCC 142, the counsel contends that in the absence of any link to alleged misconduct, the proceedings could not be sustained.

6. The counsel has submitted that the applicant was posted as Head Clerk only 10 days prior to the date of the incident. As a matter of fact, he was only a Statistical Assistant but was ordered to be posted as the Head Clerk.

Head Clerk and this aspect has not been taken into consideration by the authorities. The counsel also contends that the inquiry report has not been properly analysed inasmuch as none of the witnesses have stated that Shri Krishan Kumar filled up the application form for the permit. There was nothing that debarred the respondents from examining Shri Krishan Kumar, who was a material witness in the case. Shri Girdhari Singh who, according to the respondents, should have processed the case as the LDC of the STA Branch also has not been examined. The counsel, therefore, contends that the inquiry officer has arbitrarily and illegally given the findings without any evidence, thus warranting the intervention of the Tribunal.

7. In support of his contention, the counsel has referred to the judgment of the Hon'ble Supreme Court Kuldeep Singh v. Commissioner of Police & others, 1999 SCC (L&S) 429, in which it has been held that interference by the Court will be fully justified if the finding of guilt is based on no evidence, as is the case here.

8. Referring to his contention that Shri Krishan Kumar, who is alleged to have filled up the form, was not produced to prove the document, the counsel contends that keeping in view the judgment of this very Tribunal in Latoor Singh v. Union of India & others, 2003 (1) Administrative Total Judgments 105, the counsel contends that the inquiry proceedings will be vitiated. In the said judgment, it has been held that any document which is produced in an inquiry cannot be validly proved if the

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maker of that document is not summoned in the inquiry for the purpose of affording the reasonable opportunity to the charged officer to cross-examine him. Similarly, the proceedings stand vitiated for non-examination of the material witnesses in the case as has been held by the Supreme Court in Hardwari Lal v. State of U.P. & others, 2000 SCC (L&S) 85. The counsel contends that in the said judgment, it was held that the failure to examine material witnesses in a departmental inquiry will be in violation of the principles of natural justice and would stand vitiated.

9. The counsel further contends that the disagreement note has not been signed by the competent authority as it does not bear any signature thereon and further that the impugned orders show the irregularities of the Union Public Service Commission not having been consulted in the matter. The counsel, therefore, submits that the impugned orders suffer from serious illegalities and irregularities and need to be quashed and set aside.

10. The counsel appearing on behalf of the respondents on the other hand has contended that when the matter was considered by the Tribunal earlier in OA-2351/2000, the only point on which the orders were set aside was on the technical ground of a tentative view not having been expressed on the disagreement note which now stands complied with. The applicant, therefore, is debarred from agitating the matter with regard to the details of inquiry. Referring to the judgment of the Hon'ble Supreme Court in Government of Tamil Nadu & another v. A. Rajapandian, 1995 (2) AISLJ 216, the counsel contends that the Tribunal cannot sit in an appeal over the

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judgment of the disciplinary authority so long as the said authority has arrived at the conclusion after carefully assessing the material/evidence before him. The Apex Court, in the said judgment, held as under:-

"Where there is some relevant material which the Disciplinary Authority has accepted and which material reasonably support the conclusion reached by the Disciplinary Authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the Disciplinary Authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority."

11. The respondents in the case after carefully evaluating the report of the inquiry officer and the evidence thereon have imposed a minor penalty which is fully in consonance with the gravity of charge and, therefore, no interference by the Tribunal is warranted, the counsel contends.

12. We have carefully considered the arguments advanced by the counsel appearing for the parties. We have also carefully perused the documents on record. As has already been stated, when OA 2351/2000 was considered by this Tribunal earlier, the procedural lacuna of the respondents not having given the opportunity of being confronted with the tentative view ^{on disagreement with EO 32} to be taken by the respondents had been pointed out. The respondents have since completed that formality. However, the applicant in the present O.A. has again raised some of the procedural lacuna, such as material witnesses not having been produced and some of the documents not having been proved. In particular, he has

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referred to the non-examination of Shri Kishan Kumar and Capt. Bharat Singh cited by them as witnesses. We, however, find that the respondents have dealt with this case as primarily resting on the evidence already available on the record. The Inquiry Officer in his report has discussed the evidence in detail and arrived at the findings based on whatever material was available before him and the number of witnesses produced before him. The point in such a situation is to be considered on the touchstone of whether any prejudice has been caused to the applicant. Herein we find from the records that the applicant himself has admitted having initialised the special permit leaving aside some of the columns blank. He has also taken the plea that even a private person acting on behalf of the applicant for a permit can also fill up the form. However, it is not the function of the Tribunal to either reappreciate or go into the details of the findings. We, therefore, do not consider the proceedings to be vitiated on this plea of non-production of all the witnesses listed by the respondents.

13. The learned counsel for the applicant has argued this to be a case of no evidence. We, however, do not agree. As has already been stated earlier, even though all the witnesses have not been produced by the respondents, four out of the six cited by them have appeared and testified during the proceedings. The applicant himself has participated and defended his case. He has raised objections and taken the necessary plea and, therefore, the principles of natural justice have also been fully complied with.

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14. During the course of the arguments, learned counsel for the applicant had also raised the point of the applicant being a Statistical Assistant who was assigned the job of a Head Clerk. He has also stated that the applicant had worked only for ten days when the incident is reported to have occurred. The counsel appears to have intended that the respondents ought to have taken a lenient view in this background of the matter. We, however, find that irrespective of the period and the background, the applicant had been assigned certain ~~duties~~ In the case in hand, he was appointed as Head Clerk in a responsible position and he should have exercised his supervisory role with due care and diligence. The respondents have stated that they have already taken a lenient view and the punishment awarded is quite in keeping with the gravity of the misconduct. We are in agreement with the contentions raised by the learned counsel for the respondents in the matter.

15. Under these circumstances and in view of the discussions made above, we find no merit in the OA warranting our interference and the same is accordingly dismissed without any order as to costs.

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(S. K. Naik)
Member (A)

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Aggarwal
(V. S. Aggarwal)
Chairman