

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1804/2003

New Delhi this the 11th day of November, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

R.P. Prashar,
S/o Sh. R.D. Sharma,
R/o D-879, Netaji Nagar,
New Delhi-110 023.

-Applicant

(By Advocate Shri Ashwani Bhardwaj)

-Versus-

1. Government of N.C.T. of Delhi,
through the Lt. Governor,
Raj Niwas,
Delhi.

2. Government of N.C.T. of Delhi,
through the Chief Secretary,
Govt. of NCT of Delhi,
Secretariat, Near Indira Gandhi Stadium,
I.P. Estate,
New Delhi..

-Respondents

(By Advocate Shri Ajay Gupta)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 30.10.2002, imposing upon him a minor penalty of withholding of two increments without cumulative effect..

2. Applicant while working as Research Officer was served with a memorandum for a minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 for the allegation of attending the office late during the months of September, October and November, 1999.

3. Applicant in response to the chargesheet requested the authorities to inspect the attendance register in original to enable him to file his reply, as according to him, he had never been late and had always marked his initials on the attendance rolls. According to

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applicant he had never marked his attendance over the cross without the time of arrival and departure. In response to the aforesaid request by a memorandum dated 31.7.2002 it is observed that copies of relevant attendance register has been forwarded to applicant to file his reply. Applicant was served upon attested copies of the attendance rolls for the concerned months.

4. Through his application dated 13.08.2002 applicant re-iterated his request for supply of the original record.. Vide memorandum dated 27.8..2002 applicant has been directed to inspect attested copies of attendance rolls which are treated to be as good as original one.

5. In response thereof, applicant through his representation re-iterated his plea of serving upon him the copy of the original or get it inspected.

6. The disciplinary authority vide impugned order dated 30.10.2002 holding that though applicant was allowed to inspect the attested copy of the relevant attendance rolls, as original register was not available, imposed upon applicant a minor punishment observing that there are clear cross marked on various occasions in the attendance column of applicant which are easily discernible.

7. The appeal preferred against the punishment remained unresponded to, giving rise to the present OA.

8. Learned counsel for applicant Sh. Ashwani Bhardwaj contended that applicant has been punished on suspicion and surmises without any evidence to support the charge. According to him, once an allegation has been levelled for late coming and marking attendance and signing on the cross, withholding of original attendance register despite request of applicant and furnishing attested copies without the original register has been lost, admittedly has deprived applicant a reasonable opportunity to defend, which is in violation of fair play and principles of natural justice.

9. It is contended that once the original has been lost from which source the attested copies have been prepared in absence of any credible proof or any valid justification by the respondents throws doubt on the credibility of respondents' plea.

10. Applicant denied the charges of coming late and contends that there are signature of applicant on the attendance register which shows his presence. He has been punished on presumptions. As applicant had never been issued any memo, warning or any advisory notes as to habitual late coming the allegations are not substantiated. According to applicant he used to underline his initial with a vertical line which gives impression of a cross. As the original has not been made available either for inspection or otherwise applicant could not prove his defence and establish his bona fides.

11. Lastly, it is contended that due to the aforesaid punishment applicant has been deprived of his rightful claim of promotion and despite strict rules of evidence having no applicability in a disciplinary proceeding, yet the original attested photo copy in absence of original document cannot take the place of original document and remains as unsubstantive evidence.

12. On the other hand, respondents' counsel Sh. Ajay Gupta vehemently denied the contentions and stated that applicant had inspected the relevant register duly authenticated by a gazetted officer and in view of the certified attested copy its reliance is permissible and as there is no tampering with the record applicant has been punished on some material and in a judicial review this Court has no jurisdiction to reappraise the evidence.

13. It is alleged that applicant has signed on the cross marks and his defence was not found tenable as there is no such vertical line or cross marks in his signature in the departure column of the attendance register.

14. I have carefully considered the rival contentions of the parties and perused the material on record. Even in a minor penalty on request by a delinquent official inspection of document is to be acceded to.. No doubt strict rules of evidence and concept of primary and secondary evidence has no applicability in the disciplinary proceeding but yet if the charges are of such a nature that the original document is required for valid defence of a government servant being custodian of the record it is

incumbent upon the authorities to produce in original the concerned document. The test of prejudice has already been held by the Apex Court in various pronouncements. The violation of principles of natural justice depends upon facts and circumstances of each case and no straight jacket formula can be evolved. However, in the present case applicant on inspection of the attested copies was satisfied that his usual signature with a vertical line gives impression of a cross and the contention put-forth by the respondents also he signed on the cross cannot be verified as the photo copy was not legible to that effect.. In that event production of original document was mandated not only to clarify the aforesaid defence but to establish the charge against applicant. However, in peculiar facts and circumstances attested copies of the documents can be admissible but in view of the observations made by the Disciplinary Authority that the original document, i.e., the original attendance roll is missing the source of attested copies which are photo copies of the original is dubious. No satisfactory explanation has come-forth as to how respondents have managed to reconstruct the photo copy and get it attested in absence of the original documents.

15. The request of applicant has not been paid any heed and was summarily rejected for furnishing him a copy of the original record or get it inspected. It is settled law on the subject by the Apex Court that if such a request is made it is incumbent upon respondents to have produced the original or to get the same inspected is substantiated from State of U..P. v. Shatrughan Lal. JT 1991 (6) SC 55.

16. As the observation of the disciplinary authority is based on presumption and his reliance for establishing the charge of late coming on an inadmissible document not forming the substantive evidence even in disciplinary proceeding evidence must link the official with the alleged misconduct as held by the Apex Court in Sher Bahadur v. Union of India, 2002 SCC (L&S) 1028. As applicant has been deprived of a reasonable opportunity in the departmental proceeding he has been prejudiced, which is neither fair nor in consonance with the principles of natural justice. In my considered view, applicant has been punished on presumption, surmises and suspicion and even on perusal of the attested copies the conclusion of guilt cannot be drawn even by a common reasonable prudent man. I have no hesitation to hold that the present case is of 'no evidence' and 'no misconduct' as well.

17.. In the result, for the foregoing reasons, OA is allowed. Impugned order is quashed and set aside. Applicant shall also be entitled to all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)