

Q

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.141 of 2003

New Delhi, this the 21st day of April, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.A. SINGH, MEMBER (A)

Jai Kishore Mishra
Ex.Daftry, SI (ADM)
Air Force Head Quarter, Government of India,
Office Address: Air Force Head Quarter,
Vayu Sena Bhavan,
New Delhi.

Address for service of Notice:
Quarter No.29, Road No.8,
Andrews Ganj, New Delhi-49.Applicant

(By Advocate: Shri Sandeep Singh)

Versus

1. Union of India through its
Secretary of Defence,
Defence Ministry,
Government of India,
New Delhi.
2. Joint Secretary (Trg) &
Chief Administrative Officer,
C-11 Hutmants, DHQPD, Ministry
of Defence,
Government of India,
New Delhi.
3. Ex.Capt. Shir Ram
Village & Post Mungarka
Tehsil Narnal, District Mahendargah
(Haryana).
4. Sunil Kumar
Village & P.O. Bhungarka
Tehsil Narnal,
District Mahendragarh Haryana.
5. Rajesh Kumar
Village and P.O. Bhungraka
Tehsil Narnal, District Mahendragarh
Haryana.Respondents

(By Advocate: Shri S.M. Arif)

O R D E R

By Hon'ble Mr.Kulidip Singh, Member(Judl)

The applicant has filed this OA to challenge
the order of dismissal from service passed by the
disciplinary authority. His appeal against the appeal has

K

also been rejected.

2. The disciplinary enquiry was initiated against the applicant under Rule 14 of the CCS (CCA) Rules on the allegations that the applicant had received a sum of Rs.70, 000/- from S/Shri Sunil and Rajesh on the pretext of getting them recruited in the Indian Army. The applicant was also charged for accepting gifts for his wife, and also a plot bearing No. D-55 Chanakya Place, Part-I, New Delhi given to her wife by his mother-in-law without getting the requisite sanction by the competent authority and or with the previous knowledge of the prescribed authority. The third charge against the applicant was that he had also not sought requisite permission from an authorised officer nor intimated this information to authorised officer regarding sale of plot No.D-55 Chanakya Place, Part-I, New Delhi and purchasing of Plot No.D-55 Sainik Enclave, Mohan Garden, New Delhi-110 059. When these memo of charges were issued, the applicant did not admit the allegations so enquiry officer was appointed and enquiry was conducted.

3. The Inquiry Officer examined various witnesses as well as the documentary evidence which was taken on record. The Inquiry Officer concluded his enquiry holding that the charges against the applicant are proved. Copy of the enquiry report was sent to the applicant. The applicant was asked to submit his comments upon the enquiry officer's report and after considering the same confirmed that the findings recorded by the Inquiry Officer and imposed the penalty of dismissal from service upon the applicant. The applicant

then preferred an appeal. The appellate authority after considering the contentions raised by the applicant in his appeal rejected the appeal of the applicant and confirmed the order passed by the disciplinary authority.

4. In the grounds to challenge these orders the applicant submits that he had taken a private loan of Rs.65,000/- from the complainant for construction of his house which was gifted by his mother-in-law to his wife and he had not taken Rs.70,000/- from two persons to get them recruited in the Indian Army, as alleged by the complainant.

5. It is further stated that the petitioner is working only as Daftry in SI (ADP) Air Force Headquarter, Government of India which is totally different department so there is no question of cheating the complainants for recruitment of two persons.

6. It is further stated that the Inquiry Officer had not properly considered the facts and evidence on record of the case and the findings recorded by the Inquiry Officer are perverse since the Inquiry Officer did not believe the facts that the applicant had taken a loan from the complainants.

7. The applicant also submitted that he had made a complaint to the Inquiry Officer regarding arbitrary proceedings and action initiated by the Inquiry Officer so the Inquiry Officer was biased against him so on this ground also the findings recorded by the Inquiry Officer are liable to be quashed.

8. The OA is being contested by the respondents. The respondents denied that there was any biased attitude of the Inquiry Officer towards the Charged Official

regarding the proceedings filed on record which would go to show that reasonable opportunity was provided to defend his case. Even the Inquiry Officer had allowed the applicant to call the defence witnesses but it is the Charged Official who had himself failed to produce the defence witnesses.

9. As regards the findings recorded on facts by the Inquiry Officer are concerned, the respondents submitted that the same are well reasoned. He has based his findings on oral evidence as well as upon the documentary evidence furnished by the complainant and the witnesses and the findings on fact recorded by the Inquiry Officer has been accepted by the disciplinary authority and which in turn has been accepted by the appellate authority so this court should not interfere with the findings recorded by the authorities. Rather while sitting in a judicial review, the court is required to see whether the procedure adopted by the disciplinary authority and the appellate authority in arriving at the decision has been proper or not. If there is any procedural lapse on the part of the authorities in arriving at a decision, the court can certainly interfere.

10. We have considered the rival contentions and gone through the record.

11. The only contention raised by the applicant is that he had taken a sum of Rs.65,000/- as a loan and not Rs.70,000/- as alleged by the complainant for the purpose of recruiting, namely, S/Shri Rajeev and Sunil in the Indian Army.

12. We have also seen the statements recorded by the Inquiry Officer as placed on record by the applicant

(29)

.5.

himself.

13. The complainant when filed his complaint also along with his complaint annexed some documents which are in the hand of applicant himself. Those documents do have a reference of Sunil and Rajeev who were the candidates to be recruited in the Indian Army which has also come in evidence that recruitment has to take place at Sagar (MP) and the applicant had accompanied them to Sagar recruiting office and twice they had gone to Sagar for the purpose of recruitment. Though those persons had not been recruited and it appears that the difficulty started thereafter when the complainant demanded back their money. That is why a detailed complaint was made. But the fact remains that payment of amount for the purpose of recruitment has been established on record when the evidence was recorded before the Inquiry Officer.

14. The defence theory that the applicant had taken a private loan could not be established nor there is any document to show the same and even otherwise we while sitting as a court of judicial review are not required to go into the details of the facts that it is only because the applicant had raised a plea that the findings recorded are perverse so we have to look into the evidence. But there is nothing on record which may suggest that the findings recorded by the Inquiry Officer are perverse rather there is evidence available on record which show that the applicant had taken the amount from the complainants for the purpose of getting two persons recruited in the Army.

15. With regard to the other charges the applicant admitted that his wife had accepted a gift from his

K

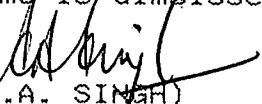
mother but he did not inform, rather the applicant pleaded that accepting of gift from a near relation need not be informed. In this regard we may also mention that it is only when the complaint was made the applicant informed in the year 1999 about these transactions but not at the time when the transactions took place.

16. The counsel for the applicant has referred to Rule 13 of the CCS (Conduct) Rules which deals with Gifts and referred to Explanation given to Rule 13(1) of CCS (Conduct) Rules which defines Gifts. The explanation says that the expression gift shall include free transport, boarding, lodging or other service or any other pecuniary advantage provided by any persons other than a near relative or personal friend having no official dealings with the Government servant. Referring to the same the learned counsel for the applicant submitted that since the mother of the wife of the applicant is mere relation so the applicant's wife could accept gift from her mother. To our mind this contention of the learned counsel for the applicant has no merits because the applicant has read this expression in isolation whereas the same has to be read with Rule 18 which deals with the transactions of movable, immovable and valuable property which requires that every Government servant shall on his first appointment to any service or post submit a return of his assets and liabilities, in such form as may be prescribed by the Government servant giving the full particulars the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person. This covers the case of

the acquiring or disposing of any immovable property which can be done with the previous knowledge of the appointing authority by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any of his family and in this case it an admitted case of the applicant that he had acquired immovable property in the name of his wife by way of gift from her mother-in-law and he had not informed the prescribed authority so there is violation of Rule 18(2) of the CCS (Conduct) Rules, 1964, so the applicant has been rightly held guilty on this account also (emphasis supplied).

17. No other contention has been raised before us so we find that no interference is called for.

18. In view of the above, OA has no merits and the same is dismissed. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL.)

/Rakesh