

**Central Administrative Tribunal
Principal Bench**

OA No.497/2014

New Delhi, this the 31st day of October, 2019

**Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

R.S. Rana, Assistant Director(Min)
Land Management (Coordination)
Vikas Sadan, New Delhi. ...Applicant

(By Advocate: Shri Malaya Chand)

Vs.

1. Delhi Development Authority
Through its Vice Chairman
Vikas Sadan, INA
New Delhi-110023.
2. The Finance Member
Delhi Development Authority
Vikas Sadan, INA
New Delhi-110023. ...Respondents

(By Advocate: Shri Sanjay Singh for Shri Arun Birbal)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was initially appointed as Stenographer in the Delhi Development Authority (DDA for short) in the year 1986. The next promotion is to the post of Assistant Director. The Recruitment Rules of the Organisation provided for promotion to the post

of Assistant Director from the post of Stenographer through the process of Limited Departmental Competitive Examination(LDCE) also. Such an examination was held in the year 2005 and the applicant was not successful therein. He went on making representations for re-evaluation of his answer sheets, particularly, the one of English paper. Ultimately, on the basis of a representation made in the year 2011, re-evaluation is said to have been made and as a result thereof, he was extended the benefit of promotion to the post of Assistant Director through order dated 16.03.2012.

2. At a later stage, it was alleged that English paper of the applicant was revaluated, though there was no such direction by the Hon'ble High Court for revaluation. It was mentioned that the re-evaluation, was only of Hindi paper, on the basis of the orders of the Hon'ble High Court. A further allegation was that the applicant had resorted to manipulation of the answer script and on that basis, he was declared as qualified, and promoted. The order of promotion was withdrawn on 11.05.2012. It appears that the applicant successfully challenged the order dated

11.05.2012 on the ground that the principles of natural justice were not followed, but, at a later stage, a reasoned order was passed and as of now, the order of withdrawal of promotion, is in operation.

3. The applicant was issued a charge memo dated 06.06.2013, alleging that he misused the official position to get his answer sheet, in English paper, for the test held in the year 2005, re-evaluated in the year 2012 without there being any court order and that he is also responsible for tempering his answer sheet of English paper, before it was sent for re-evaluation. This OA is filed challenging the charge memo dated 06.06.2013.

4. The applicant contends that the allegations made against him, in the charge memo are baseless and are not supported by any record and that the charge memo is liable to be set aside. The applicant filed MA Nos. 456/2015 and 250/2019 by raising certain pleas, based upon the developments that have taken place during the pendency of the OA. It is stated that the Inquiry Officer has submitted his report holding that both the articles of charge are proved and that the Disciplinary

Authority has taken the view that the Article-I cannot be said to have been proved. With these and other contentions, the applicant prays for quashing of the charge memo.

5. The respondents filed a short as well as a detailed counter affidavit. According to them, the examination was conducted in the year 2005 and taking the advantage of the posting of an officer as Commissioner under whom the applicant worked, he got the paper in English re-evaluated. It is also stated that the applicant gained access to the answer scripts which were in the custody of the Commissioner and tempered with them before the re-evaluation was done. Reference is made to the report obtained from the Forensic Science Laboratory. It is ultimately pleaded that the truth or otherwise of the charges, against the applicant, needs to be examined in the disciplinary proceedings and that the O.A. is not maintainable.

6. We heard Shri Malaya Chand, learned counsel for the applicant and Shri Sanjay Singh for Shri Arun Birbal, learned counsel for the respondents, in detail.

7. The challenge in this OA is to the charge memo dated 06.06.2013. Two Articles of charge are framed and they read as under:-

"Article-1

Sh. R.S. Rana, Asstt. Director while working as Assistant Director in PB-1 during 2011-12 has been found responsible for misuse of his office position by getting his answer sheet of English paper of the test for the post of Asstt. Directors held in year 2005 re-evaluated in 2012 without any Court orders by seeking approval from VC, DDA by misrepresentation of the facts on record.

Article-II

Sh. R.S. Rana, Asstt. Director while working as Assistant Director in PB-I during 2011-12 has also been found responsible for tempering of his answer sheet of English paper before sending the same for re-evaluation.

By his above acts, Sh. R.S. Rana, Asstt. Director DDA exhibited lack of absolute devotion to duty, lack of absolute integrity amounting to grave misconduct and acted in a manner unbecoming of a Govt. servant thereby contravened Rule 4(1) (i)(ii) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1990, as made applicable to the employees of the Authority."

8. In the statement of imputation, a detailed account of the acts and omissions on the part of the applicant is furnished. The gist thereof is that, subsequent to the taking of LDCE, held in the year 2005, some of the unsuccessful candidates approached the Hon'ble High

Court of Delhi seeking re-evaluation and directions were issued only for re-evaluation of the Hindi paper. The applicant is said to have made a representation in the year 2011 seeking re-evaluation, of his English paper, and though the endorsement by the Commissioner was only for re-evaluation, that too in case there exists an order of High Court, the applicant managed to get it re-evaluated. Another allegation is that before the re-evaluation was done, the applicant tempered with the answer script.

9. It has already been mentioned that on the basis of the re-evaluation, the applicant was declared as successful in the LDCE and that, in turn, led to the order of promotion. The order declaring the applicant as successful in the LDCE, reads as under:-

“Dated 15.03.2012

In partial modification of EO No.61 dated 16.01.2006, the competent authority is pleased to declare Sh. R. S. Rana, the then Sr. Stenographer Roll No.66 successful in the Limited departmental examination to the post of Assistant Director (Ministerial) held on 24.07.2005, 31.07.2005 and 17.08.2005.

2. The empanelment/promotion of Sh. R.S. Rana to the post of Assistant Director (Ministerial) on the basis of the examination held in the year 2005, will be subject to clear VCR at that point of

time when promotion orders of successful candidates were issued vide EO No. 96 dated 24.01.2006."

10. The consequential order of promotion is as under:-

"16th March, 2012

The Competent Authority is pleased to appoint Sh. R.S. Rana to the post of Assistant Director (Ministerial) in Pay Band of Rs.9300-34800/- with Grade Pay of Rs. 4800/- (revised) w.e.f. 24.01.2006, the date on which his junior candidate was appointed in the departmental examination held in July 2005.

2. The seniority of Sh. R.S. Rana, in the cadre of Assistant Director (Ministerial) is hereby assigned below Sh. Anil Sharma and above Sh. Gian Chand Sharma.

3. He may exercise his option for fixation of pay as per provisions of F22(I)(a)(1).

4. This issues with the approval of the Competent Authority."

11. Shortly, thereafter the respondents withdrew the order of promotion on 11.05.2012. The said order reads as under:-

"Whereas Sh. R.S. Rana, then Sr. Stenographer and now Assistant Director (Ministerial), was declared successful vide E.O. No.421 dated 15.03.2012, in the limited departmental examination to the post of Assistant Director (Min.) held on 24.7.2005, 31.7.2005 and 17.8.2005, consequent upon the re-evaluation of his English paper.

Whereas, subsequently, vide E.O. No.425 dated 16.3.2012, of the then Commissioner (Personnel), Sh. R.S. Rana was consequently placed in the cadre of Assistant Director (Ministerial) with effect from 24.1.2006, then date from which his junior was appointed in the Assistant Director grade in the departmental test held in July 2005 and also assigned seniority accordingly.

Whereas, it has subsequently come to the notice that the following aspect was not brought into the notice while examining the representation of Sh. R.s. Rana for re-examination of his paper.

The Hindi paper of the examinees for the written examination for the post of the Assistant Director (Ministerial) were got re-evaluated as per the direction of the Hon'ble High Court. However, there are no such orders for checking of the English paper. As such his contention of re-evaluation on the basis of court orders, vide his representation dated 17.11.2011, is not correct.

Hence, keeping in view the above facts which were not brought to notice earlier, the competent authority has decided that the re-evaluation of the English paper done in the case of Sh. R.S. Rana, Assistant Director (Ministerial) was flawed. The competent authority is therefore, pleased to declare the E.O. No.421 dated 15.3.2012 and E.O. No.425 dated 16.3.2012, as null and void and withdrawn."

12. We are not concerned with the order of withdrawal or promotion. The subject matter of the OA is only the charge memo.

13. Time and again, the Hon'ble Supreme Court cautioned the High Courts and the Tribunals from interfering with the charge sheets. The basic principle is that if a charge memo is issued to an employee, the truth or otherwise of the allegations contained therein, is to be tested in the departmental inquiry and it is only when an order, adverse to the interest of the employee is passed by the disciplinary authority, that he can institute proceedings before the Tribunal or court by raising all the pleas touching on the validity of the inquiry or the defects in the entire process. The only exception is where;

(a) the disciplinary proceedings are initiated by an authority not vested with the power under the relevant rules and;

(b) even if the contents of the charge memo and the statement of imputation are taken as true, no act of misconduct can be perceived.

14. Reference in this regard, may be made to the judgment of the Hon'ble Supreme Court in ***Union of India v. Upendra Singh*** 1994 SCC (3) 357. In fact,

the judgment is relied upon by the learned counsel for the applicant.

15. The facts of that case are: a charge memo was issued to the respondent therein and challenging the same, he filed an OA before the Tribunal. Initially, an order of stay was passed and aggrieved by that, the appellant i.e., the Union of India filed an SLP before the Hon'ble Supreme Court. The order of stay was vacated and direction was issued to the Tribunal to dispose of the OA on merits.

16. Finally, while disposing of the OA, the Tribunal discussed the charges and recorded finding in favour of the employee and had set aside the charge memo. The Union of India approached the Hon'ble Supreme Court. The Hon'ble Supreme Court *inter alia* observed as under:-

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of

the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal v. Gopi Nath & Sons*⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para

"8) Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the

tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

17. From this, it becomes clear that the Tribunal cannot undertake the functions of a D.A., much less that of an I.O. Same situation obtains in the instant case also.

18. It is not the case of the applicant that the officer who issued the charge memo is not vested with the power or that the allegations contained in the charge memo can be taken as true.

19. During the course of arguments, it is brought to our notice that the applicant filed an application under the Right to Information Act, 2005 and in reply thereto, he has been informed that the report of the I.O. was submitted to the D.A. and the latter, in turn, has taken the view that the findings of the I.O. that Article No.1 is proved, cannot be accepted. If that is true, it is a sad reflection on the functioning of the D.A.. Hardly, one

comes across a case where the D.A. disagrees with the findings of the I.O., even where the charge is held as proved. We do not want to address that issue, since it does not fall for our consideration at this stage.

20. Arguments are also advanced to the effect that the applicant was not given adequate opportunity to cross examine the witnesses or to get the documents referred to some other agency.

21. In the normal course, we would have given direction to the IO to permit the applicant to cross examine any witness or to enable him to seek opinion of certain specialized agency. However, once it is brought to our notice that the I.O. has since submitted his report, that option is not available to us.

22. Reliance is placed upon an order dated 10.04.2019 passed by this Tribunal in OA No.3446/2015. That was a case in which the order of punishment was challenged and on finding that there was some defect in the proceedings, the OA was allowed. The relevant paragraph reads as under:-

“11. After excluding the possibility of changing codes by other employees, the inquiry officer

stopped it at the applicant. In a way, he can be said to have adopted the process of elimination. His acumen on the subject is presented in the concluding paragraph as under:

"I will fail in my duty if I ignore some legally available evidence on record which may reasonably support the conclusion that the delinquent employee is, in fact, guilty of the charge even if such evidence may not be in the sense of technical rules governing regular proceedings but in a fair common sense manner as man of understanding of worldly wisdom will accept. Proof does not mean proof to rigid mathematical demonstration because that is impossible it must mean such evidence as would a reasonable man to come to a particular conclusion."

12. It is just impermissible in a departmental inquiry to arrive at conclusions in this manner. The whole episode smacks of an imperfect exercise by the inquiry officer, and the report is based on no evidence. It is based just on the basis of imaginations. The entire proceedings are vitiated. The report submitted by the inquiry officer cannot be sustained in law. As a result, the order of punishment which is based upon it, is liable to be set aside."

It was not a case where the charge memo was challenged.

23. Another judgment relied upon by the applicant is in the case of **Roop Singh Negi v. PNB & Ors.** AIR 2008 SC (Supp) 921. There again, the challenge was to the order of punishment. In both the cases, the

subject matter was the orders of punishment, whereas in the instant case, it is the charge memo itself.

24. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in ***Fakhruddin v. The State of Madhya Pradesh*** AIR 1967 SC 1326. It is in relation to the proof of writing on opinion of the handwriting expert. We are of the view that the applicant ought to have raised the plea before the inquiry officer and in case his request was rejected, he ought to have approached the proper forum. Once the report of the I.O. is submitted, we find it difficult to apply the principles laid down in the said judgment, even before the D.A. takes a view.

25. We, therefore, dismiss the OA and direct that the disciplinary proceedings referable to the charge memo shall be concluded within a period of two months from the date of receipt of a copy of this order in accordance with law. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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