

**Central Administrative Tribunal
Principal Bench**

OA No.1712/2016

New Delhi, this the 22nd day of October, 2019

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

Pankaj Kumar Agarwal
S/o Late J. S. Gupta
R/o Flat No.53, Richmond Park,
Sector-6. Vasundhara
Ghaziabad 201 012
(Group-B Post)
Subject Dismissal
Age 44 years, Dept. MEA.

... Applicant.

(Applicant in person)

Vs.

1. Union of India
Through Foreign Secretary
Ministry of External Affairs
South Block,
New Delhi 110 001.

2. Union Public Service Commission
Through its Chairperson
Dholpur House, Shahjahan Road,
New Delhi 110 001.

... Respondents.

(By Advocates: Mr. M. S. Reen and Mr. R. V. Sinha)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant was initially appointed as Assistant in the Ministry of Finance in the year 1996. Thereafter, he joined the Ministry of External Affairs as Assistant. In the year 2011, he was posted as Cipher Assistant at the Consulate General of India (CGI), Toronto, Canada, and was

assigned the additional work of Protocol Officer. In the next year, he was posted as Assistant Consular Officer in the Consular Section of CGI. A Memorandum was issued to him on 10.09.2013 alleging that he demanded illegal gratification of C\$600 (600 Canadian dollars) from one Mr. Surriender Kumar on 13.07.2013 for issuing a Surrender Certificate, a five year visa and deletion of Shri Kumar's name from the local Black List, and has accepted the said amount in instalments. Another allegation was of the acceptance of illegal gratification of C\$180 (180 Canadian dollars) from one Ms. Zora Matadar for issuance of a Surrender Certificate for her brother Mr. Usman Yusuf Matadar. It was alleged that he tempered with the system of Consular Section in CGI, Toronto, and issued Surrender Certificate on a closed holiday without permission/authorization. The applicant submitted a detailed reply to the same. Thereafter, he was transferred to Ministry of External Affairs, New Delhi.

2. The applicant was served with a Charge Memo dated 15.01.2014 on the allegations contained in the Memorandum. Since the applicant denied the charges, a departmental inquiry was conducted against him. The Inquiry Officer (IO) submitted his report holding the Articles of Charge as proved. The copy of the report was furnished to the applicant, and on consideration of his reply thereto, the

Disciplinary Authority passed an order dated 18.04.2016 imposing the major penalty of dismissal from service. This OA is filed challenging the order of dismissal.

3. The applicant contends that the allegations made against him are not true, and they were framed only to cause harm to his career by some vested interests. It is stated that in the course of inquiry several documents and materials were used against him, but they were not made available to the applicant. He further contends that the findings recorded by the IO are the result of guess work and imagination and the same cannot be treated as the basis for imposition of major penalty.

4. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the Articles of Charge framed against the applicant are serious in nature, and before initiation of the disciplinary proceedings, a Memorandum was issued to him. The respondents stated that it is only after going through the reply given by the applicant in some detail, that the charge memo was issued, and that in the inquiry, adequate opportunity was given to him to cross examine the witnesses, and to verify the record. It is stated that the IO has undertaken extensive discussion of the entire evidence on record, and found that the Articles of charge framed against the applicant are proved. The

respondents stated that once the allegations of receiving the illegal gratification are held proved, it is appropriate to impose the punishment of dismissal against such employees.

5. The applicant argued his case in person. He reiterated the contentions raised in the OA. He also filed written submissions. He made an effort to convince us that the evidence of Mr. Surriender Kumar was totally unacceptable and imaginary, and the mere fact that the said Surriender Kumar accompanied him to a place in the street was treated as a basis to hold the Articles of Charge as proved. It is further stated that the efforts made by him to gain access to the video footages were not successful, and the proceedings were initiated against him.

6. Shri Manjeet Singh Reen and Shri R. V. Sinha, learned counsel for the respondents, on the other hand, submitted that the charges against the applicant are serious in nature, and to be fair to the applicant, a preliminary inquiry was conducted before the charge memo was issued. They submit that the person from whom the applicant is said to have been received illegal gratification has furnished a detailed account of the events in the inquiry, and though the applicant cross examined him, nothing was elicited to discredit his version. It is pleaded that the prescribed

procedure was followed at every stage and the Disciplinary Authority has also passed a detailed order, running into 14 pages, discussing the various aspects raised by the applicant and there are no merits in the OA.

7. The applicant was initially appointed in the Ministry of Finance. Later on, he was posted in the Ministry of External Affairs. In the year 2011, he was posted at CGI, Canada. In the year 2013, a Memorandum was issued to him asking his version about the allegations that emerged against him. The Memorandum dated 10.09.2013 reads as under:-

“MEMORANDUM

It has been brought to the notice of the undersigned that Shri Pankaj Aggarwal, former Cipher Assistant and now Section Officer, while posted in the Consular Section in Consulate General of India, Toronto, indulged in the commission of the following alleged misconducts:

- (i) That he established contact with one Shri Surriender Kumar and one Ms. Zohra Matadar (sister of Shri Usman Usuf Matadar), the two applicants for consular services in the Consulate and asked them to visit the Consulate on July 13, 2013 (Saturday), which was a closed holding, without permission/authorization.
- (ii) That he demanded illegal gratification of C\$600/- from Shri Surriender Kumar on July 13, 2013 for issuing a Surrender Certificate, a five year visa and deletion of Shri Kumar's name from the local Black List (BL) and accepted C\$500/- from Shri Surriender Kumar on July 13, 2013. He again asked Shri Surriender Kumar to visit the Consulate on July 16, 2013, to collect the documents on payment of balance

C\$100/-, and handed over the documents to Shri Taraq Mahmood, India-Based Security Assistant, to deliver it to Shri Surriender Kumar, on payment of C\$100/-, instead of sending it to the service provider M/s BLS International Services for onward delivery to the applicant.

- (iii) That the demanded and accepted illegal gratification of C\$180/- from Ms. Zohrar Matadar on July 13, 2013, for issuance of a Surrender Certificate for her brother, Shri Usman Yusuf Matadar, without issuing any receipt against the payment and delivered the Surrender Certificate and Passport to her in the Consulate, instead of sending it to M/s BLS International Services Canada Inc, for onward delivery to the applicant.
- (iv) That he tampered with the system of Consular Section in CGI Toronto, by deleting the name of Shri Surriender Kumar from the BL without permission/authorization.
- (v) That he issued four Surrender Certificates on July 13, 2013 (Saturday), which was a closed holiday, without permission/authorization.

2. By his above acts, Shri Pankaj Aggarwal, former Cipher Assistant and now Section Officer, has shown lack of integrity, devotion to duty and exhibited conduct unbecoming of a Government servant thereby violating Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

3. Shri Pankaj Aggarwal, former Cipher Assistant and now Section Officer, is hereby asked to explain within a period of 10 days of the receipt of this Memorandum, as to why disciplinary proceedings should not be initiated against him for his above mentioned misconducts.”

The applicant submitted a detailed reply to it. Apart from making an effort to explain the events that have taken place

between him and Mr. Surriender Kumar, the applicant sought to raise some other issues pertaining to the working in the office, particularly, in relation to one Shri Tara Chand, UDC. In the meanwhile, the applicant was transferred to Delhi on 15.01.2014. He was issued a charge memo with the following Articles of Charge:-

“Article I : That the said Shri Pankaj Kumar Agarwal, while functioning as Assistant Consular Officer, in Consulate General of India, Toronto, during the period June-July 2013, accepted an illegal gratification of C\$500.00 for issuing a Surrender Certificate, a five year visa and clearing the name from the local BL (Black List), from one visa applicant, Mr. Surriender Kumar Saxena. Shri Aggarwal accepted illegal gratification to favour Shri Saxena so that the latter does not have to pay penalty of C\$1200.

By his above act, Shri Pankaj Kumar Agarwal has shown lack of integrity, lack of devotion to duty and exhibited conduct unbecoming of a Government servant thereby violating the provisions of Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article II : That the said Shri Pankaj Kumar Agarwal, while functioning as Assistant Consular Officer in Consulate General of India, Toronto, accepted an illegal gratification of C\$180.00 from one Ms. Zohra Matadar (sister of Shri Usman Yusuf Matadar) for issuing a Surrender Certificate to her brother, Mr. Usman Yusuf Matadar.

By his above act, Shri Pankaj Kumar Agarwal has shown lack of integrity, lack of devotion to duty and exhibited conduct unbecoming of a Government servant thereby violating the provisions of Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.”

8. The applicant submitted a statement of defence on 17.04.2014, pleading ‘Not Guilty’. One Shri Inder Singh, Deputy Secretary, retired from Chief Vigilance Commission

(CVC), was appointed as Inquiring Authority (IA for short). Oral and written documents were recorded therein, and the applicant has also participated. In his report, the IA held the charges as proved. Taking the same into account, and after giving an opportunity to the applicant to reply to it, the Disciplinary Authority imposed the punishment of dismissal from service through order dated 18.04.2016.

9. Time and again, the Hon'ble Supreme Court cautioned the High Courts and the Tribunals from interfering with the findings in the disciplinary proceedings. It was held that the judicial review can be only of the decision making process, and not the decision itself. In ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*** (1992 Suppl.2 SCC 312), the Hon'ble Supreme Court held as under:

“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."

10. In ***State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya*** (2011) 4 SCC 584, the Hon'ble Supreme Court held as under:-

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide *B. C. Chaturvedi vs. Union of India* - 1995 (6) SCC 749, *Union of India vs. G. Gunayuthan* - 1997 (7) SCC 463, and *Bank of India vs. Degala Suryanarayana* - 1999 (5) SCC 762, *High Court of Judicature at Bombay vs. Shahsi Kant S Patil* - 2001 (1) SCC 416)."

11. Reverting to the facts of the case, it is not the complaint of the applicant that he has not been permitted to cross examine the witnesses. The record discloses that the main complainant, i.e., Mr. Surriender Kumar was examined as SW-3 in the Chief Examination by the Presenting Officer. He gave a detailed account of what transpired between him

and the applicant herein. The Question Nos.6 & 7, and answers thereto, are as under:-

“Q-6. When did you meet Pankaj Agarwal for the first time?

A: On Saturday (13.07.2013), when I went to pick up visa, I met Pankaj Agarwal for the first time. He called me thrice over my phone and told that my visa is ready, come and pick it up. When I met him, he told that there is some complaint against me and it is required to be rectified. For the said work, a penalty amounting to C\$1253 be required for rectifying. On Saturday when I picked up visa, I met him first time.

Q-7. Did you pay money to Mr. Pankaj Agarwal (PA)?

A: Mr. Pankaj Agarwal agreed to rectify the matter on paying of C\$600. I paid him C\$500 on Saturday. I told him to pay the balance C\$100 later.”

The applicant cross-examined SW-3 extensively, by putting as many as 28 questions. Nowhere in the cross examination, he has suggested to the witness that he did not pay him any money at all. Even during the course of examination, the witness referred to the payment more than once, and no suggestion was made to counter it. The Ex-Consul, Mr. Prit Pal Singh, was examined as SW-1. He confirmed his Note filed as Ex S-1. He did cross examine all the witnesses. It did not result in any detriment to the departmental proceedings. It is not, as if, the allegations were made against the applicant off and on, and the charge sheet was issued as a matter of course. Much correspondence ensued before the issuance of charge sheet. In the communication dated 20.07.2013 (Ex S-1) from the

Indian Consul at Toronto to the MEA, New Delhi, a detailed account of the entire episode was furnished. A perusal of paragraphs 6 to 9 discloses the gravity of the issue. It read as under:-

“6. Details of what transpired may be seen from the attached notes recorded by both Shri Prit Pal Singh and Ms. D. Charandasi, HOC, who was entrusted the next day to carry out her own independent enquiries. From the enquiries conducted it is apparent that on July 13, Pankaj Aggarwal issued four Surrender Certificates on a Saturday, when he was not expected to perform these services, as the Consulate is open only for emergency services like a death case or a medical emergency. He separately asked two applicants, Surriender Kumar and Usman Yusuf Matadar, to come to the Consulate. He accepted \$500/- from Surriender Kumar for issuance of a visa, a Surrender Certificate and deletion of his name from BL and \$180/- from Ms. Zohra Matadar for issuance of a Surrender Certificate for her brother, Usman Yusuf Matadar.

7. In my two conversations with him, Pankaj Aggarwal denies that he has accepted any money from the two applicants but is prepared to repay the money to Surriender Kumar. In HOC's presence, he has also asked for a sympathetic consideration of his case, citing the future of his children. He has also accused Prit Pal Singh of framing him in this case.

8. The fact that Pankaj Aggarwal has accepted money has been clearly established by two separate and independent accounts, from Shri Surriender Kumar and Ms. Zohra Matadar who visited the Consulate on July 13th. Both have confirmed verbally and in writing and are prepared to cooperate in the event of further enquiries. The veracity of their statement is further substantiated and corroborated by the camera footage that we have obtained from our inhouse CCTV camera as well as the footage given to us by the manager of the building. I have seen the footage along with Ms. D. Charandasi, HOC and Sh. Naveen Sharma, PS. On July 13, Pankaj Aggarwal is seen accompanying Shri Surriender Kumar to the ATM machine and accepting cash from him. Subsequent

footage of July 16th further confirms that he again met Shri Surriender Kumar at the mall located in the Consulate building thereby corroborating Shri Surriender Kumar's detailed account.

9. This is a serious lapse and a clear case of instituting a vigilance enquiry questioning Pankaj Aggarwal's integrity. It also appears to be the tip of the iceberg. If one were to enquire further into Pankaj Aggarwal's activities, it is possible that similar cases may come to light. The fact that he is also the Cipher Assistant is a cause of serious concern. Given his propensity for taking bribes as established in these two cases, he can be easily compromised in the future on cipher related matters."

12. The note of Ex Consul, Mr. Prit Pal Singh, itself runs into 6 pages. The video footages were made part of the record. They were furnished to the applicant. The phone call details were also made part of the record to prove that the applicant called Mr. Surriender Kumar. When such is the irrefutable evidence, we find it difficult to find any fault with the outcome of the inquiry. Apart from the acts of misconduct on the part of the applicant, the reputation of the country in a foreign land was also involved. Through his acts and omissions, the applicant brought disrepute to the country in the eyes of the Canadian public.

13. We do not find any merit in the OA. It is accordingly dismissed.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/