

K. Bhaskar Vs. the Commanding Officer and ors.

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Court : Central Administrative Tribunal CAT

Decided On : Feb-04-2002

Judge : N Prusty, H A S.K.

Appellant : K. Bhaskar

Respondent : The Commanding Officer and ors.

Advocate for Pet/Ap. : Shri. Veerabadhra

Judgement :

1. The applicant, who was initially employed in the canteen of the respondents as a casual labour in December 1990, later on appointed as Sales Assistant with effect from 1.4.1992 and promoted as Store Assistant Grade I from 1.12.1995, has filed the present application challenging the order of punishment imposed on him in a disciplinary proceeding, inter alia praying therein to; (ii) Quash the Disciplinary Proceedings under the Memorandum No. TCU/1/ 190/1/ORG dated 14.12.2000, (Annexure A-1) as excessive, arbitrary and, therefore, void. While directing the respondents to treat the applicant as a Government servant and draw all consequential service and monetary benefits.

(in) Consequently, direct the respondents to draw the pay and allowances for the intervening period i.e., from the date of removal till the date of reinstatement with interest.

(iv) Pass any other order or direction as deemed fit by this Hon'ble Tribunal in (he interest of justice, equity and fairplay in administration.

The brief facts, as stated by the applicant in this application are that, while he was working as In-charge, Bulk, HQ TC(V) Canteen, it was alleged against him that there was a loss of liquor and general store items worth Rs. 31,140/- and also the applicant caused/had to cause misappropriation of gift items that came along with the products and hence failed to maintain absolute devotion to duty. As such for the reasons stated above a disciplinary proceeding was initiated against the applicant and he was served with the memorandum of charges seen at Annexure A-1 along with the documents such as confidential "surprise check of liquor items in canteen store on 23 August 1999" dated 26.8.1999, etc. and the said disciplinary proceeding ultimately ended in the order of punishment dated 14.12.2000 (Annexure A-2) directing the applicant to pay Rs. 23,730.88ps, as penalty and in removal from service with immediate effect.

2. The applicant has challenged the action of the respondents in initialing the very disciplinary proceeding as against him alone and also the order of the punishment on the following grounds : Principles of natural justice were not followed; During the course of enquiry list of witnesses, daily order sheet, enquiry report etc. were not supplied to him; Confidential report which was submitted, after thorough enquiry by an authorised officer, much prior to the disciplinary proceeding, had not been taken into consideration; On the basis of the confidential report a joint enquiry/proceedings ought to have been conducted against the Canteen Manager and the applicant. In view of the fact that the applicant was only a worker/canteen boy/Stores Assistant and whereas the Canteen Manager is the real authority so far as stocks etc. of the canteen arc concerned, but the Canteen Manager has been examined as a witness against the applicant; Shortage, if any, was due to the negligence of the Canteen Manager because of the fact that the Manager is in charge of the canteen including the stocks, but not the applicant who was only a Stores Assistant; The basis for coming to conclusion that the applicant was responsible for the entire loss has neither been discussed in the report of the Enquiry Officer or in the order of the Disciplinary Authority; The applicant had admitted the shortage in the stock, but nowhere has he admitted that he was

responsible for the shortage/loss; Clause 18 of Rule 14 of the CCS (CCA) Rules has not been followed; It is a case of no evidence as the man who is actually responsible for the loss, as per the confidential report also, has been examined as a witness against the applicant, whereas he himself ought to have been charge sheeted along with applicant and faced the same disciplinary proceedings. The very proceeding itself indicates that the so called statements or admission of loss, were obtained under threat/coercion; It is a case of no evidence in the eye of law and hence the order of punishment is not sustainable and liable to be set aside. In this regard the learned Counsel for the applicant relied upon the decisions reported in AIR 1961 SC 1070 and 1969 SLR 666.

3. The respondents have filed their reply stating therein that the applicant had pleaded guilty before the Board of Enquiry : All reasonable opportunities were given to the applicant during the enquiry : On the basis of the acceptance of guilt and mercy petition punishment was imposed by the disciplinary authority : In view of the admission of guilty enquiry report had not been supplied to the delinquent and punishment can be imposed once there is confession and also further enquiry is not required.

4. We have heard the learned Counsel for both the sides and gone through the pleadings, documents relied upon by both sides and the written argument filed by the learned Counsel for respective parties.

During the course of hearing Shri Veerabadhra, learned Counsel for the applicant brought to our notice the contents of paras 3,4 and 5 of the confidential report dated 26.8.1999 (part of Annexure A-1 -at page 15) wherein it has been reported that - Para 2 : "Apart from this the gifts are also received from CSD depot which are not required to be given with the product. No record was found for the distribution of such gift items.

Para 4 : "It is seen that all the transactions on the bulk register are made by the canteen manager, he issues a slip to the store keeper to issue the liquor based on which items are moved out of the store to the consignee mentioned in the slip. This slip is not even signed by the manager. During the check it was found that file containing all such slips were held by the canteen manager. The store keeper

does not have any book to show the quantity of the stock held by him. As per para 11(k) Chapter 6 of IAP 3503 the canteen manager is personally responsible for the receipt, safe custody, sales and proper accounting of the stock of the canteen. He is further responsible for any deficiency in the canteen stock....." Para 5 : ".... On 22 Aug at about 0900 the issue of liquor was supervised by the unit personnel and there after the store was sealed again. At about 1345 Wg Cdr Ajit Singh CO HQ TG(U) wanted two bottles of Beer from the store, Canteen manager informed him that the stores are sealed by APM and it cannot be opened unless some one from the Provost Unit is present, he directed him to break the seal and supply the items to him. In this connection the statement of Shri K.P. Abraham the canteen manager is placed at Appendix 'C.5. As such the report clearly indicates that there is no record regarding receipt and distribution of gift items. All transactions on bulk register were made by canteen manager. He issued the slips to store keeper to issue the liquor and the files relating to such slips were held by canteen manager. The store keeper did not have any book to show quantity of stock held by him. As per para 11(k) Chapter 6 of the TAP 3503 the canteen manager was personally responsible for receipt, safe custody, sale and proper accounting of the stock of the canteen and he is responsible for any deficiency in the stock. Para 5 of the report also indicates that stocks are also supplied to senior officer without following the norms of opening a sealed store by breaking open the seal. In view of the above contents of the confidential report, we have no hesitation to accept the contentions of learned Counsel for the applicant that the Manager of the canteen is rather more responsible for the entire loss than the poor canteen boy/Stores Assistant-who is only in charge stock and performs his duty under the direct control of the Manager and the Manager is responsible for receipt, safe custody, sales and proper accounting the stocks. As such disciplinary proceeding, if any, ought to have been initiated jointly against the Manager and the canteen boy/Stores Assistant and in that view of the matter examining the said Manager as a witness against the applicant in the disciplinary proceeding cannot be said to be just and proper which is also unacceptable to the very common sense.

6. Nothing has been produced before us by the respondents to indicate that the applicant has accepted the guilt in unambiguous terms except his statement before the Board of enquiry, rather he had only admitted regarding shortage of

stock. The xerox copies of documents which were filed by the learned Counsel for respondents along with memo dated 19.11.2001, rather indicates that in most of the documents the applicant has only signed on the dotted lines and also most of the relevant documents including his so called letter of confession and appeal for mercy appears to have been typed in one typewriter, only leaving the space for signature blank, where the applicant has to put his signature-which more particularly are seen at page I to 5, Ex.C (page 8,9 and 10) and Ex.F (page 13) - which is the xerox copy of the so called letter of confession and appeal for mercy. The Hon'ble Apex Court in a number of cases, have been pleased to hold that the admission of the delinquent officer must be in specific, clear and unambiguous terms.

7. In the case of Jagdish Prasad Saxena, AIR 1961 SC 1070 in paragraph 11 and 13, the Hon'ble Apex Court has been pleased to hold. "...In such a case, even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Article 311 (2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show-cause notice was served on him he has had no opportunity at all to meet the charge. After the charge sheet was supplied to him he did not get an opportunity to cross-examine Kethulekar and others. He was not given a copy of the report made by the enquiry officer in the said enquiries. He could not offer his explanation as to any of the points made against him; and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show-cause notice was served on him. In our opinion, the appellant is justified in contending that in the circumstances of this case he had no opportunity of showing cause at all, and so the requirement of Article 311 (2) is not satisfied.

"....it is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a charge sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge sheet....

"....In our opinion, therefore, the High Court was in error in coming to the conclusion that no prejudice had been caused to the appellant as a result of the respondent's failure to hold an enquiry against him after supplying him with a charge sheet. The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services." These principles laid down by the Hon' ble Apex Court have also been followed in a number of decisions by different High Courts. The so called statements of the applicant dated 30.9.2000 before the Board of Inquiry cannot be termed as a statement made voluntarily, in specific, clear and unambiguous terms. While the fact remains that a poor class IV/Group D employee or a Stores Assistant was facing the Board of Enquiry, where only senior Air Force officers were present, rather the applicant might have been awed into signing the statements on the dotted lines.

8. The learned Counsel for the applicant also filed a copy of the judgment of the Hon'ble Supreme Court in the case of Union of India v.M. Aslam and Ors., AIR 2001 SC 526, wherein the Hon'ble Court have been pleased to observe that "the status of the employees in the Unit-Run-Canteens must be held to be that of a Government employee" and further held that "the status of the employees serving in the Unit-Run-Canteens to be that of Government servants, but that by itself ipso facto would not entitle them to get all service benefits as is available to the regular Government servant or even their counter parts in CSD canteens. It would necessarily depend upon the nature of duty discharged by them as well as the Rules and regulations and administrative instructions issued by the employer." 9. The learned Counsel for the applicant also filed the copy of the Terms and

Conditions of Services of URC employees, dated 27.9.2001 wherein it has been mentioned that: "(K) Disciplinary procedure: Disciplinary proceedings are to be in conformity with CCS (CCA) Rules, 1965, as amended from time to time, both in format/content and procedure, in order to ensure that principles of natural justice are not violated, However, the Rules/para number etc., of relevant CCS (CCA) Rules, 1965, is not to be quoted, since a URC employee is not a Government employee." These terms came into effect with effect from 1.6.2001. Even though the disciplinary proceeding was of the year 2000, nothing was brought before us by the learned Counsel for the respondents to that effect that there were other prescribed procedure to be followed prior to 2001 in respect of disciplinary proceeding in respect of employees of Unit run.canteens. But in our view whatever prevalent rules may be there in operation prior to 2001 in respect of conducting the disciplinary proceedings against an employee of Unit run canteen, the cardinal principle i.e., the principle of natural justice must be followed and the delinquent official must be afforded all reasonable opportunities to defend himself in a disciplinary proceeding and in a proceeding where such opportunity has not been given to the delinquent official to defend himself properly, the proceeding itself is arbitrary, illegal and hence is void ab initio.

10. So far as the present case at hand is concerned the entire disciplinary proceeding had been conducted by the Authorities in a pre-ordained and cut and dried manner. Principles of natural justice had not at all been followed, No defence assistant was provided to the applicant during the enquiry nor he was allowed to cross examine any witness, The applicant had not been supplied with the list of witnesses, copies of all relevant documents, copy of daily order sheet, copy of depositions of witnesses, copy of report of the Enquiry Officer, which were very much essential for the delinquent official to defend himself properly in a disciplinary proceeding. The statement of the applicant signed before the Board of enquiry was so cryptic and terse that it lacks credibility. The applicant must have been put to such position where he would have no option left except signing the statement, in the presence of senior officers whom he obviously held in awe. The applicant, as it appears has signed all the papers, without knowing their implications. The statement made in the proceedings of the inquiry that the reply of the delinquent official was not convincing enough to disprove the charges neither

gives the contents of the reply nor was there any analysis as to why it was not convincing.

11. The learned Counsel for the respondents has failed to show us any other rules, which is being followed in respect of an employee of the unit run canteens in a disciplinary proceeding, which permits the Enquiry Officer/Disciplinary Authority and others not follow the rules of natural justice and thereby not to afford reasonable opportunity to the delinquent official to defend himself properly. The learned Counsel for the respondent during the course of hearing in this regard submitted that the Inquiry report, copy of documents, list of witnesses, depositions of the witnesses need not be supplied to the applicant as he has made confessions regarding the loss and once there is confession further enquiry is not required; or the enquiry report etc. need be supplied. Punishment can be imposed on the basis of confession. But the learned Counsel for the respondents failed to show us any rules, which were being followed in respect of employees of Unit Run Canteens prior to 2001, which permits the department to ignore completely the principles of natural justice and fail to extend reasonable opportunity to a delinquent official to defend himself in a disciplinary proceeding in accordance with the due process of law. In our considered view, if there is such a rule then the same shall not be sustainable in the eye of law and is liable to be quashed in limine.

12. In support of his contention Shri Sugumaran, the learned Counsel for the respondents cited the decisions reported in 1988(7) SLR 668 and 1989(7) SLR 784 (para 7). But as we find the subject matter of the decision of the Calcutta Bench of the Tribunal in the case of Union of India v. Cyan Singh, 1988(7) SLR 669 and decision of the Patna Bench of the Tribunal in the case of Bhagwan Pandey v. Union of India are completely different. In the present case the applicant has been denied of all reasonable opportunities available to him under the law as stated in paragraphs above and also there is no admission of the applicant in respect of charges framed against him in unambiguous, clear cut terms. Hence the principles decided by the difference Benches of the Tribunal shall have no applicability to this case.

13. We have patiently heard the learned Counsel for both the parties and gone through the documents produced and decisions cited by the respective parties. The confidential report, which is the basis of the charges levelled against the applicant and has been filed as a part of Annexure A-1 - clearly indicates that "all transactions on the bulk register are made by the canteen manager. He issues a slip to the store keeper to issue liquor.... This slip is not even signed by the Manager.

During the check it was found that file containing all such slips were held by the canteen manager. The store keeper does not have any book to show the quantity of stock held by him. As per para 13 (k) Chapter 6 of IAP 3503 the canteen manager is personally responsible for the receipt, safety custody, sales and proper accounting of the stock of canteen. He is further responsible for any deficiency in the canteen stock, (para 4 of the report). The said report further reveals that on 22 August after the store was sealed Wg. Cdr. Ajit Singh CO HQ TC directed to break the seal and supply the items (two bottles of beer) to him. The statement of Shri K.P. Abraham in this regard was recorded by the officer who conducted the confidential enquiry. The entire report clearly indicates that the manager was main person who was responsible for the stocks in the canteen. But in the disciplinary proceeding surprisingly the same Manager had been examined as a witness against the applicant, who is just a poor canteen boy/Assistant entrusted with the work in the bulk store'. The confidential report further indicates that the store after being sealed was also used to be opened by breaking the seal by the order of higher officers and as it is seen that the officer who ordered for supply of two bottles of beer by breaking open the sealed lock was himself the disciplinary authority. As such the confidential report clearly indicates that the lower grade employee (applicant) had been made a scape goal, for the shortage in the canteen, the running of which was the responsibility of the Canteen Manager.

14. Keeping in view facts and circumstances stated above, in case the departmental respondents decided initially to initiate a disciplinary proceeding on the basis of the confidential report, they should have instituted joint disciplinary proceeding against the canteen manager first and thereafter against the applicant who was only working as a store assistant under the Canteen Manager and ought

to have afforded all reasonable opportunities to the charged official to defend himself, following the due process of law. As such the entire proceeding against the applicant alone is vitiated, unsustainable in the eye of law and hence is liable to be quashed. However, in case the respondents so decide, they are at liberty to institute a joint disciplinary proceeding against all the officials who were responsible for the shortage/loss and also take the decision in the matter giving all reasonable opportunities to the charged officials to defend themselves properly in accordance with law and also allowing them to take the help of a defence assistant/a professional defence assistant, if they so desire.

15. In view of the observations made above the application is allowed.

The disciplinary proceeding initiated against the applicant under Memorandum No. TCU/1910/1/ORG dated 15.01.2000 under Annexure A-1 and as such the consequential orders of the disciplinary authority under Annexure A-2 are quashed. The respondents are directed to reinstate the applicant in his former post forthwith along with all consequential financial benefits, treating his service as a continuous one, refund the penalty amount, if any, realised from him in the meantime and pay all the past financial benefits from the date of removal from service till the date of reinstatement within a period of two months from the date of receipt of a copy of this order, It is open to the respondents to institute denovo enquiry, if they so decide, following the principles of natural justice/the due process of law, keeping in mind the observations made in the paragraphs above. However, there shall not be any order as to costs.

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