

(2019) 08 CAT CK 0086

In the Central Administrative Tribunal

Case No : Original Application No. 4397 Of 2013

Manish Kumar Namdev

APPELLANT

Vs

Managing Director And Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Section 14(18)

Citation : (2019) 08 CAT CK 0086

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Meenu Mainee, V.S.R. Krishna

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant was appointed as Customer Relations Assistant in the Delhi Metro Rail Corporation (for short, DMRC), in the year 2009. His services were confirmed in the year 2010.

2. It is stated that the applicant came to know about some corrupt activities which were said to be taking place in the DMRC, and that a complaint was submitted by him and some other employees on 18.12.2010, against one Mr. Arun Shukla. Another complaint dated 19.01.2011 is said to have been filed against Mr. Arun Shukla and one Mr. Rajnish. The applicant contends that he was pressurised to withdraw the complaints, but he did not yield. He is said to have made another complaint on 18.08.2012 against some other employees.

3. On 11.10.2012, the disciplinary authority issued a charge memorandum to the applicant alleging various acts of indiscipline. They ranged from unauthorised absence to refusal to perform duties. It was also mentioned that he refused to cooperate when cash check was undertaken on 30.09.2012, and that he abruptly

left the place even while the check was taking place, and that he submitted fabricated medical certificate.

4. The applicant submitted his explanation. Not satisfied with that, the disciplinary authority appointed an inquiry officer. A report was submitted by the inquiry officer on 29.04.2013 holding, articles of charge II to VIII as proved, and articles I and IX as partly proved. A copy of the report was made available to the applicant enabling him to offer his comments. The disciplinary authority took into account, the report of the inquiry officer, the comments of the applicant, and ultimately passed order dated 23.05.2013 imposing the punishment of removal from service. Aggrieved by that, the applicant availed the remedy of appeal, and that was rejected through order dated 22.08.2013. A revision, filed before the Director (Operations), was also rejected on 21.11.2013. This OA is filed challenging the order of punishment, as affirmed in appeal and revision, and assailing the report of the inquiry officer.

5. The applicant contends that the charge memorandum was issued to him at the instance of certain officials against whom he made complaints. He submits that an officer, though retired, from the vigilance wing of the DMRC, was appointed as the inquiry officer, and that the proceedings were vitiated on account of that. Reliance is placed upon certain judgments in support of the contention.

6. The applicant further contends that the factum of his undergoing treatment in a hospital, leading to his absence was doubted by the respondents, placing reliance upon letter said to have been issued from the hospital, and that though none from the hospital was examined, the letters were taken as true. He further stated that the inquiry officer did not follow the prescribed procedure, particularly as regards putting questions pertaining to the adverse factors that came into light in the course of the inquiry.

7. Another point urged by the applicant is that though he raised several issues in his comments against the report of the inquiry officer, the disciplinary authority did not take any of them into account, and even the appellate and revisional authorities did not address such important issues. The applicant further submits that the punishment imposed upon him is totally disproportionate, and that the entire proceedings were conducted in contravention of the settled principles.

8. On behalf of the respondents, counter affidavit is filed. It is stated that the applicant remained unauthorisedly absent on several occasions, and to justify that, he filed fabricated medical certificates. It is stated that the inquiry officer was not in service at all, and the mere fact that he was associated with the vigilance wing while in service, does not disqualify him from being associated with the inquiry. They further submit that when the applicant himself did not examine any witness to prove the medical certificate relied upon by him, there was no need to examine the official of the hospital who addressed the letter regarding the authenticity and genuineness of the certificate filed by the applicant. It is stated that the applicant has exhibited gross indiscipline in the

course of checking of the cash in the counter handled by him, and that he abruptly left the place even while the inspection was in progress. The respondents stated that the entire proceedings were conducted strictly in accordance with the law, and that the punishment imposed against the applicant is commensurate to the proved acts of indiscipline.

9. We heard Ms. Meenu Mainee, learned counsel for the applicant, and Mr. V. S. R. Krishna, learned counsel for the respondents.

10. The applicant was employed in the DMRC in the year 2009. It appears that he was entrusted with the duties of public relations, and at times, he handled cash counters also. He was issued a charge memorandum dated 11.10.2012. It contained nine articles of charge, and they read as under:

"Article-I

Sh Manish Kumar Namdev while performing his scheduled shift (1500-2300 hrs) on CCC at PBGH station from 11 Aug 2012 - 14 Aug 2012, left duty place before scheduled end of shift time.

Article-II

Sh Manish Kumar Namdev failed to maintain proper cash as per business rule at CCC duty at SHD on 19.08.12 in shift (07:45 Hrs-15:45 Hrs).

Article-III

Sh Manish Kumar Namdev reported sick during same duration when his planned leave was not sanctioned for 10 days (05.09.2012 to 14.09.2012) by competent authority as the inquiry was in progress in regard to his complaint marked to Director/ Operation.

Article-IV

Sh Manish Kumar Namdev failed to submit proper record of his sickness for the 10 days (05.09.2012 to 14.09.2012) & discrepancies were observed in the medical documents.

Article-V

Sh Manish Kumar Namdev misused his SV-4 card during his sickness period & is in habit of misusing while performing duty.

Article-VI

Sh Manish Kumar Namdev refused to perform the duty in roster on 26.09.12 as communicated by SM/SHD on 25.09.12.

Article-VII

Sh Manish Kumar Namdev failed to maintain metro ethics & misbehaved with AM/ Ops/L-5 on 30.09.12 at 11:35 Hrs at CCC/SHD during cash check & did not

cooperate in official work.

Article-VIII

Sh Manish Kumar Namdev left the CCC duty without any reliever on 30.09.12 at 11:35 Hrs from CCC/Station, SHD protesting against cash check.

Article-IX

Sh Manish Kumar Namdev did not complete his assigned shift on 30.09.12. Cash in presence of other staff was counted by station staff & was found short by Rs.119/-."

Each of the articles were elaborated in the statement of imputations, appended as Annexure-II to the charge memorandum. The list of documents relied upon by the respondents, and the list of witnesses proposed to be examined by them, were enclosed as Annexures-III and IV.

11. An inquiry officer was appointed, and he submitted his report dated 29.04.2013. Articles II to VIII were held proved, and articles I and IX were held partly proved. After making copy of the report of the inquiry officer available to the applicant, and obtaining his comments thereon, the disciplinary authority passed order dated 23.05.2013 imposing the punishment of removal from service upon him.

12. The first contention advanced by the applicant is that the very initiation of the proceedings against him is motivated and vitiated. According to him, the charge memorandum was issued because he submitted complaints against some officials, alleging acts of corruption. It was not even alleged that the official against whom the applicant submitted complaint is the disciplinary authority, or that such an officer was instrumental in getting the charges framed. A bald allegation, not supported by any material cannot be accepted. Further, when the articles of charge framed against the applicant are totally different, and none of them are in relation to the submissions of complaints by him, it is too difficult to hold that the proceedings are vitiated. In the course of inquiry also, the applicant did not elicit information in this behalf, much less did he examine any independent witness, to prove his contention. Hence, the ground pleaded by him cannot be accepted.

13. The second plea of the applicant is that the inquiry officer was from the vigilance wing of the DMRC, and he ought not to have been appointed as such. Reliance is placed upon the judgments of the Hon'ble Supreme Court in Union of India & others v Prakash Kumar Tandon [(2009) 1 SCC (L&S) 394] and Ministry of Finance & another v S. B. Ramesh [JT 1998 (1) SC 319], and the order of this Tribunal in Surender Singh Batra v Union of India & others [OA No.4393/2011 (Principal Bench)], decided on 16.09.2014]. In those judgments, it was held that an officer of the vigilance department in which a charged employee was working, cannot be appointed as the inquiry officer. It was observed that the inquiry proceedings are initiated for all practical purposes by the vigilance wing of the

department, and since the vigilance officer would have prior acquaintance with the entire issue, he cannot be appointed as the inquiry officer, so that an impartial and fair inquiry is ensured.

14. The said principle would have certainly become applicable in the instant case, had the vigilance officer of the DMRC been appointed as the inquiry officer. He is, however, a retired employee, and it was not even pleaded that he handled the case of the applicant at any point of time. Further, the objections of this nature are required to be raised at the threshold, so that if the allegation is found to be true, the inquiry officer is replaced by another. The record does not disclose that any such objection was raised. We, therefore, do not entertain that objection.

15. The applicant, thirdly stated that though certain documents said to have been issued by Ayushman Hospital were relied upon in the inquiry, none connected with the same was examined, and the finding recorded by the inquiry officer in this behalf cannot be said to be based on any evidence. The plea is referable to articles III and IV of the memorandum of charge. It is in relation to the absence of the applicant for a period of ten days. The applicant stated that he was sick during that period, and relied upon medical certificate said to have been issued by Ayushman Hospital. The respondents verified from that very Hospital, about the genuineness of the certificate relied upon by the applicant. The Hospital issued a letter to the effect that the certificate relied upon by the applicant was not issued by them. The inquiry officer dealt with this issue in detail in his report.

16. It is evident that the applicant relied upon an OPD card and a medical certificate dated 04.09.2012, and another medical certificate dated 14.09.2012, covering the period of ten days between 05.09.2012 and 14.09.2012. Those documents were filed as exhibits P-1/6, 7 & 8. It is a different matter that the medical certificate was said to be not containing signatures of any doctor, nor there existed any prescription. A letter was obtained by the DMRC from Ayushman Hospital about the genuineness of the OPD card and the two medical certificates relied upon by the applicant. That was marked as exhibit P-5. According to this, the documents relied upon by the applicant were not genuine.

17. The respondents would have been under an obligation to examine the officer or authority who issued exhibit P-5, if only the applicant examined the person who issued exhibits P-1/6, 7 & 8. Further, the applicant did not take any steps to prove exhibits P-1/6, 7 & 8, at least when he was confronted with exhibit P-5. When the burden was upon him to prove the genuineness of the medical certificates, he cannot shift the same to the respondents, who simply have shown that the documents relied upon by the applicant are not genuine. We, therefore, reject this plea.

18. Fourthly, it is pleaded that the inquiry officer did not put to the applicant, the summary of evidence and other adverse factors, to elicit his reaction. The exercise is referable to rule 14(18) of the CCS (CCA) Rules, 1955, and akin to

the one, contemplated under Section 313 Cr.PC.

19. Normally, we come across cases in which the inquiry officers do not take the trouble of putting to the delinquent employee, the circumstances that emerge against him at the final stage of the proceedings. In the instant case, however, obviously on account of his past experience, the inquiry officer apprised the applicant of the circumstances that existed against him. Though it appears that certain suggestions were made and mandatory questions were put, we are satisfied that the purpose underlying rule 14(18) was served. Once the principles of natural justice are complied with, the employee was given opportunity to cross examine the witnesses at every stage, he was permitted to adduce his evidence and state his case, and the inquiry officer has also indicated the factors that militate against the employee; it can safely be inferred that the requirement under the law has been complied with. The scrutiny cannot be at a micro level, nor can the report of an inquiry be equated to the judgment of a trial court in a criminal case.

20. Lastly, it is pleaded that the punishment imposed against the applicant is disproportionate. Had it been a solitary act of indiscipline on the part of the applicant, we would have certainly considered the feasibility of directing imposition of any penalty, other than that of removal from service. The charges held proved against the applicant are indeed serious. Not only he remained unauthorisedly absent for several spells, but also tried to justify the same by producing fabricated record. His non-cooperation in the course of inspection, and walking away even while it was in progress, is unbecoming of an employee who was kept in charge of a cash counter. Organisations like Road Transport Corporations and Railways depend upon the collections received from commuters. Any leakages in the amounts so collected would prove to be detrimental to the very survival of the organisation. It must also be kept in mind that if any irregularity in handling of cash is noticed, the loss to the organisation is not limited to that. It would only indicate that the misappropriation of that nature is taking place, but was not noticed earlier. Whatever may be the circumstances under which the Courts and Tribunals tend to be lenient in the context of imposition of penalty, the same becomes untenable when the charges relate to handling of finances, on the part of the delinquent employee.

21. The appellate and the revisional authorities have examined the matter in detail, and there was adequate application of mind to the extent it was required at those stages.

22. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.