

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No.2521 OF 2002

This the 27th day of June, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Chandra Mohan Saraswat  
S/o Shri Nanak Chand Saraswat,  
(Ex. Upper Division Clerk, Compulsorily Retired),  
of the Office of Superintending Engineer,  
High Power Transmitter, All India Radio,  
Aligarh (U.P.).

Present Address:

C/o Shri Devendra Kumar Sharma  
Quarter No.6/32, Najafgarh,  
(Behind the house of Smt. Maya Devi, Ex-Block  
Parmukh), New Delhi

....Applicant

(By Advocate : Shri D. N. Sharma)

Versus

1. Union of India, (through :-  
The Secretary to the Government of India)  
Ministry of Information & Broadcasting,  
Prasar Bharati Board, Shastry Bhawan,  
New Delhi.
2. The Director General,  
All India Radio/ Prasar Bharati,  
Broadcasting Corporation of India  
Akashvani Bhavan, Parliament Street,  
New Delhi.
3. The Superintending Engineer,  
Prasar Bharati/Broadcasting Corporation of India  
High Power Transmitter, All India Radio  
Aligarh. (U.P.).

....Respondents

(By Advocate : Shri B.K. Barera)

O R D E R

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A) :

Challenge in this OA is directed at orders of  
4.4.2001, passed by the Disciplinary Authority,  
imposing on the applicant (Chandra Mohan Saraswat),  
the punishment of compulsory retirement and of  
21.11.2001, passed by the Appellate Authority,  
confirming the same.

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2. Heard S/Shri D.N. Sharma and B.K. Berera, learned counsel appearing for the applicant and the respondents respectively.

3. The applicant, a Upper Division Clerk, working under Superintending Engineer, High Power Transmitter, All India Radio, Aligarh, was chargesheeted on 29.4.1999, on five articles of charge, pointing to misbehaviour/misconduct by the applicant. Following the denial of the chargesheet, inquiry proceedings were initiated against the applicant. On the I.O.'s report, being forwarded to the applicant, for furnishing observations, the applicant on 24.3.2000 requested that the charge against him be withdrawn as nothing had been proved against him. The Disciplinary Authority, without duly examining the I.O.'s report and the applicant's representation, imposed on him the major penalty of compulsory retirement on 27.3.2000. The appeal filed by him before the Director General, All India Radio, indicating that not even a single charge had been proved, was disposed of on 19.2.2001, by setting aside the punishment order, with the directions that the Disciplinary Authority shall communicate the note of disagreement with the I.O.'s report to the applicant, obtain his representation thereon afresh and thereafter pass suitable orders. Thereafter the Disciplinary Authority on 2.3.2001 communicated to the applicant, his note of disagreement with the I.O.'s report. The applicant filed his representation, after consideration of which the Disciplinary Authority once again issued the order

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of compulsory retirement on 4.4.2001 to the applicant, which was upheld by the Appellate Authority without considering the various points raised in the appeal. Hence, this O.A.

4. Grounds raised in this OA are that :

- (a) the entire incident arose from a complaint filed by the applicant against the humiliation, which he received at the hands of one Premveer Singh, Motor Driver, which led him to go to the residence of the Superintending Engineer on 25.4.1999 at night;
- (b) though the complaint was filed by the applicant against the Motor Driver who had misbehaved no action had been taken against him while the applicant has been proceeded against;
- (c) in the inquiry report reference had been made to the indisciplined behaviour of the Motor Driver who has been permitted to go scot-free while the applicant had been roped in;
- (d) decisions ordered, on the basis of personal knowledge of the Disciplinary Authority, without any application of mind, was vitiating (Mangai vs. Director of Social Welfare (1988 6 ATC 356) ;
- (e) when statements given by the witnesses, do not relate to commission of offences charged, it is a case

of no evidence (Om Prakash Vs. Union of India (244-Swamy's CL Digest 1993);

(f) when there is no definite findings on the guilt of the charge officer, the Disciplinary/Appellate Authorities should exercise greater care and caution (Lakhpal Singh Vs. C.S.I.R. and others (266-Swamy's CL Digest 1993);

(g) orders of penalty in cases of no evidence, cannot be sustained (R.L. Julgaonkar Vs. Union of India and others (219-Swamy's CL Digest 1995/1); and

(h) orders passed, in disciplinary proceedings, on extraneous consideration cannot be sustained (K.S. Joshi (smt.) Vs. Union of India and another (176-Swamy's CL Digest 1994).

In the above circumstances, the OA should succeed pleads the applicant.

5. In the counter affidavit filed on behalf of the respondents, it is pointed out that the order <sup>order</sup> imposing penalty of compulsory retirement passed by the Disciplinary Authority on 27.3.2000, had been set aside in the appeal and the matter had been remitted for de novo inquiry from the stage of disagreement of the Disciplinary Authority with the I.O.'s report. Thereafter on 2.3.2001, the Disciplinary Authority issued a fresh communication to the applicant indicating his reasons for disagreement with the

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I.O.'s report. After considering the fresh representation filed by the applicant on 14.3.2001, the Disciplinary Authority once again passed the order of compulsory retirement, which was <sup>duly</sup> ~~upheld~~ by the Appellate Authority.

5. Respondents point out that the proceedings were initiated against the applicant, on the basis of complaint received by the respondent no.3 which were duly inquired into. The Disciplinary Authority was neither directly nor indirectly concerned with the event which had taken place on the night of 25th/ 26th April 1999 in the AIR colony/office <sup>and was ~~happened~~ not an isolated part</sup>. It was wrong to state that the charges levelled against the applicant ~~were~~ not proved. While the findings of the inquiry report were not definite, in respect of some of the charges but the occurrence of the incidence had not been denied in the findings. The Disciplinary Authority had taken a decision after considering all the facts and circumstances of the case as well as the representation filed by the applicant. In fact the earlier order of the Disciplinary Authority had been set aside by the Appellate Authority on the ground of non-fulfillment of the procedural requirement of furnishing the note of disagreement with the I.O.'s report. The same had been done and a fresh order had been issued after duly considering all the points raised in the representation. Nothing further was expected from the Disciplinary Authority. It is further pointed out that the applicant had gone to the residence of Premveer Singh, Motor Driver at odd

hours, which showed that he had failed to behave in a manner, expected of a Government servant. While through-out the respondents had acted in a correct and legal manner, the applicant had not cared to do so. The entire incident, was not a case of complaints/counter-complaints between two employees but something which had emerged from a number of complaints raised against the applicant by his colleagues and neighbours. The applicant had attempted to extricate himself from the situation by filing a FIR, which has been referred to in the inquiry report as a 'cooked up attempt to strengthen the case in his favour after having come to know that the inquiry ordered in the matter was on its way'. The respondents having acted through-out in a proper manner and no infirmity or violation of principles of natural justice having occurred in the proceedings, there was no ground for interference by the Tribunal. The respondents also pointed out that the plea made by the applicant that this was a case of no evidence was totally baseless and, therefore, the various decisions, raised by the applicant, would not come to his assistance.

7. In the rejoinder as well as during the oral submissions, the applicant reiterated his pleas that he was proceeded against on the malafide action of the respondent no.3, Superintending Engineer (Disciplinary Authority), that none of the charges raised against him could be described as 'misconduct' which would arise only in cases of conduct involving moral

turpitude, corruption, embezzlement, desertion of duties. The applicant was not guilty of any of the above and, therefore, the action of the respondents against him was totally misconceived and malafide. The punishment of compulsory retirement imposed upon him was also highly unconscionable and totally incommensurate with the alleged misconduct. The Tribunal's intervention is, therefore, called for, prays Shri Sharma, learned counsel for the applicant.

8. On the other hand, Shri Berera, appearing for the respondents, has averred that the proceedings have been gone through correctly and the respondents have committed no procedural irregularity. The punishment imposed on the applicant was also reasonable, he says.

9. We have carefully deliberated on the rival contentions in the matter and perused the relevant documents produced before us.

10. We find that the applicant was originally issued a chargesheet on 29.4.1999 containing five articles of charge. On his denial of the same, inquiry proceedings were conducted and the I.O. indicated that four out of the five articles of charge were not proved. However, the Disciplinary Authority, disagreed with the findings of the I.O. and penalised the applicant by compulsorily retiring him from service. The Appellate Authority remitted the matter to the Disciplinary Authority, for re-inquiry from the stage of communication of the I.O.'s report along with

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the note of disagreement. After receiving the applicant's representation on the note of disagreement, the Disciplinary Authority imposed on the applicant once again the punishment of compulsory retirement vide impugned order dated 4.4.2001. We find that the Disciplinary Authority had only accepted the findings of the inquiry officer, as far as it related to the I.O.'s observations with regard to Article V of the chargesheet stating that 'he as a good Government servant is expected to uphold himself and his family within his means', which according to the Disciplinary Authority 'is a gist of Article V of the charges and circumstances of Article IV of the charges are also indicative of his pecuniary tightness'. He also indicated that he has partially accepted the findings of the Inquiry Officer and held that they also stood proved in part. He has thereafter gone on to amend the articles of charge in I, II, III and IV. His explanation is that while in the earlier chargesheet reference had been made to the intoxicated or inebriated state the applicant, the same had not been proved, which made the action and conduct of the applicant still worse. The Disciplinary Authority had stated that :

"Modified in the light of Inquiry Officer's report his offence has all the more gravity as he has done so in his total senses. There could have been some excuse for the acts if these were under some influence, but as total acts have been carried out soberly with utmost alertness, these cannot be accepted in any other form but willful well-planned acts.":

On the basis of above findings, the Disciplinary

Authority has imposed the penalty of compulsory retirement on the applicant. It is evident from the above, that the Disciplinary Authority's order was based on articles of charge, not communicated to the applicant but were chosen and modified by him while passing the order. It definitely gives us the impression that the Disciplinary Authority had taken a decision to punish the applicant, in spite of his earlier order having been set aside for not following the requirement of communicating a proper note of disagreement with the findings of the I.O.'s report to the applicant. He has just completed the procedural formality of communicating the note of disagreement to the applicant but has stuck to his original findings themselves with additional explanations which were not communicated to the applicant and that too without any plausible ground or justification. This cannot be endorsed.

11. The Appellate Authority, has apparently passed a detailed and speaking order, whereunder he has found omissions and irregularities in the order of the Disciplinary Authority, but had gone ahead to uphold the latter's final stand on the mere finding in respect of Article V that the applicant 'as a good Government servant is expected to uphold himself and his family within his means'. He has also stated that the applicant had been given all the opportunity to explain his case and, therefore, no interference in the Disciplinary Authority's order was warranted. He has further opined that the modifications in the

articles of the charge made by the Disciplinary Authority in the final order was proper. This does not merit acceptance. We find that no adequate reason has been shown either by the Disciplinary Authority or the Appellate Authority to differ from the findings of the Inquiry Officer that the charges in articles I to IV have not been proved. These charges relate to moving in the office premises in intoxicated or inebriated condition, quarrelling with Premveer Singh, Motor Driver, going to the residence of Prem veer Singh quarrelling with Ram Krishan, Head Clerk, in an intoxicated condition . All of these have been found by the IO to have been not proved and the DA had not been able to show how the applicant can be declared as guilty on the above. The only charge which is found to have been proved is that the "applicant does not appear to uphold himself and his family within his means as expected from a good Govt. servant." This is more of a sweeping generalisation, based on the fact that when the applicant was taken to the hospital, he had to be helped as he did not have finances. This cannot be treated as an indictment warranting any punishment . Four out of the five charges raised against the applicant is shown as not proved and the fifty article shown as proved is only a general statement, this is a case osf no evidence . This cannot support imposition of any punishment. No other inference can emerge in the circumstances of the case. The impugned orders would, therefore, have to be quashed and set aside.

12. In the above view of the matter, the application succeeds and is accordingly allowed. The impugned orders dated 4.4.2001 and 27.11.2001, passed respectively by the Disciplinary Authority and the Appellate Authority are quashed and set aside with all consequential benefits to the applicant. The respondents are directed to reinstate the applicant in service at the earliest and in any event within two months from the date of receipt of a copy of this order. No costs.

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(V.S. AGGARWAL)  
CHAIRMAN

(GOVINDAN S. TAMPI)  
MEMBER (A)

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