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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 2198/2002

Date of Decision 23.4.2003

Sh.P.S.Chandel ... Applicant

Sh.S.S.Tiwari ... Advocate for the Applicant

VERSUS

UOI & Ors ... Respondents

Shri Madhav Panikar Advocates for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2198/2002

New Delhi this the 23rd day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

P.S. Chandel,
S/o late Shri Milkhi Ram,
R/o F-2958, Netaji Nagar,
New Delhi.

... Applicant.

(By Advocate Shri S.S. Tiwari)

Versus

1. Union of India, through,
Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi.
2. Secretary,
Research & Analysis Wing,
Cabinet Secretariat,
Room No.7, Bikaner House (Annexe),
Shahjahan Road,
New Delhi.
3. Additional Secretary (Pers),
Research & Analysis Wing,
Cabinet Secretariat,
Room No.7, Bikaner House (Annexe),
Shah Jehan Road,
New Delhi.
4. Joint Secretary (Pers),
Research & Analysis Wing,
Cabinet Secretariat,
Room N.7, Bikaner House (Annexe),
Shah Jehan Road,
New Delhi.

... Respondents.

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman.

B

The applicant has impugned the penalty order issued by the respondents dated 18.1.2002, which has been passed after holding a Departmental inquiry against him under the provisions of Rule 14 of the CCS (CCA) Rules,

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1965 imposing on him a penalty of compulsory retirement with effect from the date of issue of the order.

2. The brief relevant facts of the case are that the applicant had joined service with the respondents as a Lab, Assistant in February, 1977 and was subsequently promoted as Junior Research Assistant in February, 1985. According to him, he was being harassed by one Mr. P. K. Ghildiyal and he had made several representations against him but of no avail. Later, he sent a legal notice against his harassment by Shri P. K. Ghildiyal by notice dated 25.6.1998 through his advocate to the respondents pointing out his misdeeds. After receipt of the notice, the respondents issued a memo dated 1.9.1998 warning him to desist from making such representations directly to senior officers/outside authorities without exhausting the normal channels. According to the applicant, there is no normal channel for sending such a legal notice, as provided under the Rules/instructions as a Government servant. Upon receipt of the Memo dated 1.9.1998, the applicant returned the same in original to the respondents by making certain remarks, by his note dated 7.9.1998. The applicant was charge-sheeted vide memo dated 4.7.2002, on the ground that during the period from 1.6.1998 to 30.9.1998, he had committed gross misconduct inasmuch as he returned in original the Memo dated 1.9.1998 ¹⁸back to the Addl. Secretary (Pers.), after making unwarranted remarks thereon in using intemperate language and in a

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most discourteous manner displaying a highly contemptuous, defiant and disrespectful attitude towards his superior officers.

3. The second charge against the applicant was that during the period from 1.6.1998 to 30.9.1998 he had committed gross misconduct inasmuch as he was instrumental in getting published or causing to be published a news item in the "Indian Express" dated 28.9.1998, containing details of the incident which led to issue of a warning to him and his colleague Shri S.K. Gupta by Addl. Secretary (Pers) with the sole aim of defaming the Department.

4. The Inquiry Officer vide ^{by} his report dated 24.8.2001 had come to the conclusion, after conducting the inquiry and discussing the evidence that Charge no. I was proved and Charge no. II was not proved. The applicant has submitted his reply on 25.9.2001. The disciplinary authority vide impugned order dated 18.1.2002 has held that the tone and tenor recorded by the applicant on the Memo clearly indicates that he had nothing but sheer contempt for such a senior level officer as the Additional Secretary (Pers.) in the Organisation. He has also stated that the "Expression like 'Put you in proper place', 'dragging you to the Court of Law', 'Please show me your authority' and 'you have tried to short-circuit the procedure; gone over the head of your seniors and superiors, described them as "outsiders" and sent this memo in their name, behind their back but without their knowledge' which in itself is a misconduct are expressions which leave no scope for

any doubt as to their pertinence or as to the extent of disrespect shown by the charged officer against a superior authority duly established by law". He came to the conclusion that "Not only did the official use the most intemperate and discourteous/disrespectful language against a senior officer, but the official further accused him of issuing the warning in question "for extraneous consideration". In the circumstances of the case, he came to the conclusion that "such grave misconduct on the part of a Government servant, more particularly an employee of a Security Organisation, is a glaring example of insubordination, intolerance and wanton disregard to all norms of official decorum and good behaviour. The misconduct on the part of the official is highly subversive of discipline in the establishment and as such has to be viewed with extreme stringency. In view of this, the misconduct on the part of the C.O. would fully justify the imposition of the penalty of dismissal from service. However, having regard to the fact that the C.O. has put in more than 20 years of service under the Government, the undersigned is inclined to take a lenient view in the matter" and the penalty of compulsory retirement was imposed on him by the disciplinary authority.

5. The applicant had filed an appeal against the penalty order which was rejected by the appellate authority's order dated 4.7.2002. The applicant had taken the plea of discrimination in the matter of punishment inasmuch as another official i.e. Shri S.K. Gupta, RA (Tech), had been awarded only a penalty of 'Censure' on a similar charge. This plea has also been

vehemently argued by Shri S. S. Tiwari, learned counsel. He has submitted that while it is alleged that Shri S.K.Gupta had used "unparliamentary language" for which he has only been given the penalty of 'Censure', the applicant has been imposed a most severe penalty for using such language which according to him, is of a lesser nature than unparliamentary. On the ground of discrimination, the appellate authority has observed as follows:

"12. WHEREAS, as regards the contention of the appellant that he has been discriminated against in the matter of punishment in as much as another official had been awarded only a penalty of 'Censure' on similar charge, it is seen that even though the act of returning the warning memorandum to the issuing authority is common to both cases, the similarity ends there. The appellant in the instant case has crossed all limits of decency and official decorum and had used the most derogatory expressions towards a very senior officer of the Government which is clearly indicative of extreme contempt towards the authority duly established by law. Such extreme conduct on the part of a Government servant, particularly an employee of a Security Organisation, has to be viewed sternly and has to be visited with exemplary punitive measures. The C.O. had, by his aforesaid conduct, clearly proved to be unfit for continuation in the service of a Security Organisation".

6.- In the circumstances, the order of compulsory retirement imposed on the applicant by the disciplinary authority was confirmed and his appeal was rejected. Learned counsel for the applicant has relied on the judgement of the Tribunal in C.S. Manrai Vs. Union of India & Ors. (1986 ATC 587) which has been referred to and distinguished in the disciplinary

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authority's order dated 18.1.2002 as of no assistance to him. He has contended that merely making a representation and sending it directly to the higher authorities, has been held not to amount to misconduct in Manral's case (supra). The disciplinary authority in Para 11 of the impugned order has referred to this decision which has been relied upon by the applicant and has held that Government of India's Decision No.11 below Rule 3 of the CCS (Conduct) Rules which lays down that no permission is necessary for seeking redress of a grievance relating to one's service in a Court of Law, is of no assistance to the charged officer as the misconduct in this case is not of moving a Court of Law or of sending a legal notice through one's advocate but is one of showing disrespect and use of intemperate language against a senior officer. He has stated that while there was nothing to prevent the applicant from moving a Court of Law against the warning issued to him by the Additional Secretary if he felt aggrieved by issuance of the said warning and if so advised, or from making representations through proper channel for expunction/withdrawal of the warning administered to him, it was absolutely unbecoming of a Government servant to record such nasty and contemptuous remarks on the original warning memorandum and to return it to the issuing authority. For the same reason, the judgement of the Tribunal in C.S. Manral's case (supra) is also of no assistance to him. Another case relied upon by the learned counsel for the applicant is a judgement of

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the Hon'ble Supreme Court in State of U.P. Vs. Raj Pal Singh (2002 (2) SC SLJ 60). He has submitted that while Shri S.K. Gupta, who had used unparliamentary language had been given only the least punishment of Censure, the applicant, for using such language which was less serious than unparliamentary language, has been penalised with compulsory retirement after holding a Departmental inquiry. He has, therefore, contended that this is a case of discrimination. He has, therefore, prayed that the disciplinary authority's and the appellate authority's orders should be quashed and set aside.

7. We have seen the reply filed by the respondents and heard Shri Madhav Panikar, learned counsel. They have referred to the relevant facts and the orders briefly mentioned above. They have submitted that the applicant through his advocate Shri B.B. Rawal, sent a notice dated 25.6.1998 to the Cabinet Secretary and Secretary (R&AW) (Respondents 1 and 2, respectively) about the alleged acts of misconduct committed by his supervisory officer, Shri P.K. Ghildiyal, Deputy Secretary and inter alia, seeking permission for his prosecution in an appropriate Court of Law. They have submitted that though the applicant had failed to comply with the provisions of Rules to route his representation regarding his grievances through proper channel, they have stated that they took a lenient view and issued a non-recordable memo dated

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1.9.1998. By this memorandum, he was warned to desist from making representations directly to the senior officers/outside authorities without exhausting normal channels. They have submitted that this Memorandum was returned by the applicant in original with certain remarks which read as follows:

"1. It is not an 'alleged' but a positive act of misconduct by Sh. P.K. Ghildyal, Dy. Secretary (Press) and for this misconduct of Dy. Secretary (Press), my advocate has issued a legal notice to Secretary (R) and Cabinet Secretary as he is empowered under the Advocates Act.

"2. This memo should have been addressed to him to enable him to explain my alleged misconduct and put you in proper place by dragging you to the Court of Law. Please note that he is an Advocate ad not a Govt. servant like you and me.

3. You have also described the Secretary (R) and Cabinet Secretary as outsiders. Please show me your authority to do so, failing which I will be constrained to believe that you have tried to short-circuit the procedure, gone over the head of your seniors and superiors, described them as "outsiders" and sent this memo in their name, behind their back but without their knowledge which in itself is a misconduct.

4. This is a covert effort to protect Sh. Ghildyal for extraneous consideration".

8. The respondents have stated that a simple warning as above, given to the applicant was not intended to be placed in the ACR Dossier and was generally intended to caution the official to be more careful in future. They have also stated that in case he was aggrieved by the warning, he could have submitted a representation through proper channel to the issuing authority in polite language but instead, he returned the

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original warning memorandum itself to the issuing authority with the remarks like "put you in proper place", "dragging you to the Court of Law and "please show me your authority' and so on. According to the respondents, the applicant had used most intemperate, disrespectful and extremely contemptuous language against a senior officer, including that he had done so "for extraneous consideration". In the circumstances of the case, learned counsel for the respondents has submitted that on conclusion of the Departmental proceedings held against the applicant and consideration of the report of the Inquiry Officer, the disciplinary authority compulsorily retired him, which has been upheld ~~by~~ by the appellate authority and the punishment was justified in the circumstances of the case. He has also submitted that the disciplinary proceedings have been held in accordance with the Rules. The appellate authority has also considered all aspects of the appeals submitted by the applicant, including the ground of discrimination against him in the matter of punishment vis-a-vis Shri S.K. Gupta, who was given the penalty of censure. They have referred to the reply given by Shri S.K. Gupta (R-II) and have submitted that while Shri S.K. Gupta had also returned the Memorandum dated 1.9.1998, the similarity ends there as the applicant while returning the papers to the issuing authority had used intemperate and improper language which has led to the imposition of the penalty of compulsory retirement against him. In this connection, it is relevant to note

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that for the remarks made by Shri S.K. Gupta in his note dated 16.9.1998 while returning the memo dated 1.9.1998 in original to the issuing authority, he has stated that "I thought it to be my patriotic duty to bring the serious breach of security to the notice of my seniors/superior officers but instead of appreciating my efforts, I am sought to be warned probably shield culprits in high places and this is just not acceptable to me". He had also requested certain copies of the rules/instructions open or confidential permitting the use of word "outsiders" for Secretary and Cabinet Secretary. In the circumstances, learned counsel for the respondents has prayed that the O.A. may be dismissed.

9. After careful perusal of the pleadings and the relevant documents on record and the submissions made by the learned counsel for the parties, we find no merit in this application for the following reasons:

10. A perusal of the remarks made by the applicant, while returning the memo dated 1.9.1998 in original, reproduced in Paragraph 7 above shows that the conclusions of the disciplinary authority and the appellate authority that he had crossed all limits of decency and official decorum and had used the most derogatory expressions towards a senior officer of the Government are justified. It is relevant to mention that the Courts of Law are not meant for such purposes

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as referred to by the applicant in his note but have been instituted to dispense Justice to genuine litigants. Viewed in this context also, the expressions used by the applicant not only show indiscipline in the office but is totally unacceptable in the public interest. It is settled law that the Courts/Tribunal are not to substitute their views or conclusions for that of the competent authorities in such matters as if it is acting as a court of appeal, especially when an inquiry consistent with the Rules has been held, where the principles of natural justice have also been complied with. In any case, the applicant has not alleged that either the Rules or principles of natural justice have been violated. Learned counsel for applicant had submitted that the applicant had not been allowed to call Shri B.B. Raval, his advocate with regard to the publication in the public media "Indian Express" and he was not allowed to be called as a witness. This request has been disallowed by the Inquiry Officer on the ground that the argument was vague which we cannot hold is unjustified, taking into account the facts and circumstances of the case. Apart from this, it is also noticed that this witness/applicant's advocate was to be called as a witness by the applicant with regard to the second article of charge which has been held not proved by the Inquiry Officer. In the facts and circumstances of the case, no prejudice has been caused to the applicant. In the circumstances of the case, we do not also find any

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violation of the Rules or the principles of natural justice in the manner the inquiry proceedings have been held, particularly with regard to the penalty orders imposed on the applicant on the conclusions arrived at by the competent authorities that charge no. 1 has been held proved.

11. Much emphasis was placed by Shri S.S. Tiwari, learned counsel that only an advisory memorandum was issued to Shri P.K. Ghildiyal to be careful in future while dealing with the subordinates and to desist from using hard/unparliamentary language in the official matters" vide memo dated 1.9.1998. Learned counsel has submitted that hardship and intemperate language used in the case of the warning issued to Shri P.K.Ghildiyal, Deputy Secretary (Pers.) was much more serious than the type of language the applicant had used while returning the memorandum of warning issued to him on 1.9.1998 as reproduced in paragraph 7 above. It is relevant to note that while warning memoranda were issued to both the persons, that is, the applicant and Shri P.K. Ghildiyal, the latter accepted the advisory memorandum whereas the applicant responded to the same in the manner mentioned above, on which Departmental proceedings have been initiated against him under the provisions of Rule 14 of the CCS (CCA) Rules, 1965. A perusal of the language used by the applicant, while returning the warning memorandum shows that it is nothing less than "unparliamentary language" or

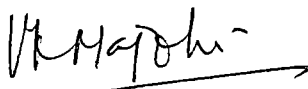
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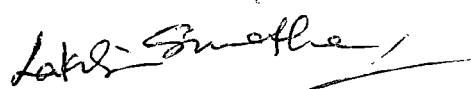
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"improper language" used by a Government servant. In the facts and circumstances of the case, the attempt of the learned counsel for the applicant to contend that the language used by the applicant was less serious than unparliamentary language begs the question and cannot be accepted.

12. In the circumstances of the case, the views expressed by the competent authorities and the punishment of compulsory retirement imposed on the applicant, after taking a lenient view having regard to his past service can neither be considered as mala fide excessive nor illegal, justifying any interference in the matter. In the circumstances of the case, neither of the judgements relied upon by the applicant assists him. There is also no discrimination as alleged by the applicant which averment has also been adequately dealt with by the respondents in the punishment orders. We also do not find any merit in the other contentions raised by the learned counsel for the applicant.

13. In the result, for the reasons given above, the O.A. fails and is accordingly dismissed. No order as to costs.


(V.K. Majotra)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'