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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1382/2001

New Delhi this the 2nd day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri S.A.T.Rizvi, Member (A)

Shri Anil Vats
S/O Shri Ram Kanwar Vats,
last working as Sorting Asstt.
Delhi Sorting Division,
R/O Azadpur Delhi, address for
service of notices
C/O Sh. Sant Lal, Advocate,
C-21 (B), New Multan Nagar,
Delhi-56

..Applicant

(By Advocate Shri Sant Lal)

VERSUS

1. The Union of India, through the Secretary, Ministry of Communication, Deptt. of Posts, Dak Bhawan, New Delhi-1
2. The Director Postal Services (R), Delhi Circle, Meghdoot Bhawan, New Delhi.
3. The Sr. Supdt. Airmail Sorting Division, Chankayapuri, New Delhi

..Respondents

(By Advocate Ms. Harvinder Oberoi)

ORDER (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The applicant is aggrieved by the order issued by the disciplinary authority dated 27.6.2000 removing him from service and rejection of his appeal by the appellate authority's order dated 26.3.2001.

2. Before passing the aforesaid impugned orders, admittedly the respondents had issued a show cause notice to the applicant dated 10.11.1998. In this show cause notice,

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after mentioning the relevant facts, it had been stated that the gravity of the charge is such as to warrant the imposition of a major penalty and accordingly proposed to impose on him the penalty of compulsory retirement from service. The same facts are reiterated in the so called 'Inquiry Report' enclosed with the show cause notice that the proposal is to compulsorily retire the applicant from service on the ground of his conduct which had led to his conviction on a criminal charge. However, what the disciplinary authority has done is to remove him from service, which has been confirmed in appeal by the appellate authority.

3. One of the grounds taken by Shri Sant Lal, learned counsel for the applicant is that the punishment order passed by the respondents is liable to be quashed and set aside, on the ground that what has been stated in the show cause notice as proposed punishment and what has been passed in the punishment order are quite different. Even if, as contended by the learned counsel for the respondents, both the punishments, namely, compulsory retirement and removal from service are major penalties under Rule 14 of the CCS (CCA) Rules, 1965, we see force in the submissions made by Shri Sant Lal, learned counsel for the applicant. It would have been a ^{big} different matter, if the respondents had not mentioned the quantum of punishment proposed to be imposed on the applicant in the show cause notice and left it open to the disciplinary authority. They had clearly proposed imposition of the penalty of compulsory retirement whereas they have proceeded to impose the penalty of removal from service.

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4. The second ground taken by the applicant is that the representation was made by the applicant to the aforesaid show cause notice in which he has taken a number of grounds. He has submitted that none of these grounds have been duly considered or dealt with by the appellate authority, which shows non application of mind. He has relied on the judgement of the Tribunal (Madras Bench) in P. Sharmugham vs. Govt. of India (1991) 18 ATC 761 (Madras) Learned counsel has submitted that there was no additional material or change of circumstances between the issuance of the show cause notice and the passing of the order by the disciplinary authority to justify enhancement of ^{the} punishment to ~~of~~ removal from service in respect of the proposed punishment of compulsorily retirement.

5. This OA was filed on 28.5.2001 when the aforesaid appeal against the judgement of the Additional Sessions Judge, Delhi convicting the applicant to undergo rigorous imprisonment (RI) for 2½ years and pay a fine of Rs.2000 for offences under sections 326/26-IPC and further RI for one month and a fine of Rs.500/- for offences under sections 427/34-IPC was pending. In the meanwhile, the Hon'ble High Court in Criminal Appeal No.423/1997 passed the order on 6.9.2001 the operative portion of this order reads as follows:

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" In view of the compromise filed and taken on record and the statement of learned counsel for the State, I allow compounding of the offence under Section 324/323/34 IPC as also offence under Section 427 IPC. All the appellants are acquitted of charges as regards offence under Section 324/323/34 and 427 IPC. The conviction of Anil Vats

under Section 27 of the Arms Act is confirmed. However, as regards the sentence for the offence under Section 27 of the Arms Act, I deem it appropriate at this stage, in view of the fact that 16 years have elapsed and the occurrence which gave rise to this offence has more or less been settled between the parties, it would be in the interests of justice that the sentence therefor is modified to that already undergone. Learned counsel for the State has no objection. I order accordingly".

6. Learned counsel for the applicant has submitted that while the conviction of the applicant was under Section 27 of the Arms Act, he was not ordered to undergo any sentence of RI ^{and 1B}, it had been ordered that the sentence imposed on him of RI and fine by the Addl. Sessions Judge is modified to that of "already undergone". Learned counsel has, therefore, submitted that this is also a relevant issue which the respondents should keep in view.

7. We have heard Ms. Harvinder Oberoi, learned counsel and considered the reply filed by the respondents. Learned counsel has submitted that since the proposed penalty of compulsory retirement ^{is} one of the major penalties, there is no illegality if the disciplinary authority ^{preferred one} ~~penalty and~~ thereafter imposed another penalty i.e. removal from service. We are unable to agree with this contention because in that case, the disciplinary authority could have examined the show cause notice to which reply has also been filed by the applicant, which has apparently not been considered in detail by the disciplinary authority while passing the impugned order dated 27.6.2000. He has come to the conclusion that the retention of the applicant in Govt. Service is ruled out and he also does not deserve ^{post} any/retirement benefits which he would otherwise be entitled to ^{1B}.

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under the Rules. If he had been compulsory retired as proposed in the show cause notice, the reasons for the enhanced punishment ought to have been spelt out by the disciplinary authority which has not been done. It is settled law that the disciplinary authority and the ^{and should have} appellate authority are exercising judicial functions ¹⁸² ₁₈₂ give ^{the} reasons in accordance with law/rules and instructions while passing such orders. It is also settled law that it is not for the Tribunal to substitute its decision on the quantum of punishment imposed by the competent authority unless it is shocking or perverse. While we are not coming to the conclusion in the facts and circumstances of the case that the orders passed by the respondents are perverse but at the same time there is a ¹⁸² lacuna in the final orders passed by them vis-a-vis the show cause notice. It is also relevant to note that the appeal pending in the High Court has since been decided by order dated 6.9.2001.

8. In the above facts and circumstances of the case and for the reasons given above, the OA partly succeeds and is allowed with the following directions:

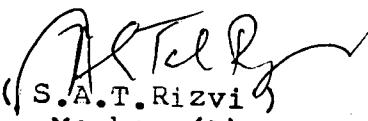
The impugned punishment order dated 27.6.2000 and appellate authority's order dated 26.3.2001 are quashed and set aside. The applicant may submit a supplementary representation to bring on record the aforesaid order of the Hon'ble Delhi High Court to respondent No.3, who shall thereafter pass a detail.

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speaking and reasoned order after taking into account the grounds taken in the OA and keeping in view the aforesaid observations within a period of three months from the date of receipt of a copy of this supplementary representation, with intimation to the applicant.

No order as to costs.


(S.A.T. Rizvi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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