

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2574/99

New Delhi: this the 13th day of November, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

V.K. Chaudhary,
Supdt. Engineer (Civil)-II,
Civil Construction Wing,
All India Radio, 9th Floor,

Soochna Bhawan,
New Delhi-3

.....Applicant.

(By Advocate: Shri R. Venkatramni with
Shri S.M. Garg)

Versus

1. Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.

2. The Chief Engineer (Civil)-I,
All India Radio,
PTI Building,
Parliament Street,
New Delhi-1

....Respondents.

(By Advocate: Shri H.K. Gangwani)

ORDER

S.R. Adige, VC(A):

Applicant impugns the disciplinary authority's order dated 19.1.99 (Annexure-4).

2. Applicant was proceeded against departmentally vide Memo dated 29.5.91 (Annexure-III) on 5 Articles of charge relating to execution of civil works at Jamshedpur for AIR Studio and Staff quarters while working as Executive Engineer (Civil) AIR.

3. The Inquiry Officer in his report dated 30.12.94 held each of the 5 charges as not proved.

4. The Disciplinary Authority disagreed with the Inquiry Officer's report dated 30.12.94 and communicated the reasons for his disagreement along with copy of

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the Inquiry Officer's report to applicant on 26.2.96 for representation, if any.

5. Applicant submitted his representation on 25.3.96.

6. After considering the same, respondents sought UPSC's advice in the matter vide letter dated 5.8.96. UPSC in their letter dated 6.1.97 for the reasons contained therein advised that the ends of justice would be met in the present case if a minor penalty of withholding of increment for a period of one year was imposed upon applicant.

7. The disciplinary authority disagreed with the quantum of penalty advised by UPSC vide aforesaid letter dated 6.1.97 in as much as he had decided to impose one of the major penalties upon applicant and referred the matter back to UPSC on 6.10.97 for reconsideration of their advice.

8. The UPSC however in their letter dated 28.1.98 reiterated their earlier advice, upon which the disciplinary authority referred the matter to DP & T on 9.3.98 for their advice.

9. The DP & T with their UO dated 11.8.99 advised that the proposal of the disciplinary authority for disagreement with UPSC may be agreed to, and a major penalty of reduction by one stage in the time scale of pay for one year with cumulative effect may be imposed upon applicant.

10. Agreeing with the same the disciplinary authority by impugned order dated 19.1.99 imposed the aforesaid

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penalty upon applicant.

11. Varous grounds have been advanced in the OA, but a serious legal infirmity in the conduct of the proceedings which strikes at its very root and which in our view warrants our judicial interference is that copies of UPSC's letter dated 6.1.97 recommending award of only a minor penalty and dated 28.1.98 reiterating their earlier advice, both of which were favourable to applicant, as well as DP & T's letter dated 11.8.99 advising that the proposal for disagreement with UPSC's advice may be agreed to, were not supplied to applicant before the impugned orders were passed by the disciplinary authority. This in our view is a denial of the principles of natural justice and consequent violation of Article 311(2) of the Constitution. We are supported on this view by several judicial rulings.

12. It is true that under Rule 17 CCS(CCA) Rules as well as Rule 32 of these Rules, a copy of UPSC's advice needs to be supplied with the disciplinary authority's order and not before. It is also true that CAT Principal (Full) Bench in its order dated 22.4.99 in OA No. 1744/97 Chiranjil Lal Vs. UOI & Ors. has held that non-supply of UPSC's advice at the predecisional stage was not a denial of fair hearing to that applicant as he had already exercised his right to fair hearing when he made a representation on the same material as was before the UPSC. However, in that order of the Full Bench it is also clearly observed that when the UPSC expressed disagreement with the provisional conclusion of the disciplinary

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authority, a copy of the UPSC's advice letter was required to be furnished to the charged officer before the disciplinary authority took the final decision. Nothing has been shown to us to establish that the aforesaid order dated 22.4.99 has been stayed, modified or set aside.

13. Again a Division Bench of the Tribunal in which one of us (Shri S.R.Adige, VC(A)) was a party in OA No. 1103/98 Raj Kamal Vs. UOI & Ors. decided on 12.1.2000 held that non-supply of UPSC's advice which was favourable to applicant before the disciplinary authority passed the order was violative of the principles of natural of justice, as it had denied to him the opportunity of a predecisional hearing to highlight the UPSC's advice which was in his favour. Accordingly in that case, the disciplinary authority's order was quashed and set aside, leaving it open to respondents to proceed against that applicant strictly in accordance with law, within a specified time limit. Respondents therefore filed CW No. 2372/ 2000 and CM No. 3746/2000 challenging the Tribunal's aforesaid order dated 12.1.2000 in Delhi High Court, who by its order dated 22.5.2000 affirmed the Tribunal's conclusions extended the time granted by the Tribunal to proceed against that applicant in accordance with law. The decision of the Tribunal in Raj Kamal's case (supra) as affirmed by the Delhi High Court was followed by two Coordinate Benches of the Tribunal vide order dated 2.8.2001 in OA No. 2582/2000 Shri R.K. Mishra Vs. UOI & Ors. and order dated 14.9.2001 in OA No. 1826/98 Chiranjit Singh Khurana Vs. UOI & Ors., which are squarely applicable to the facts and circumstances of the present case.

14. Following the aforesaid rulings we hold that non-furnishing to applicant of the UPSC's advice letters dated 6.1.97 and 28.1.98 both of which were favourable to him, was a denial to him of the basic principles of natural justice which resulted in grave prejudice to him and was therefore violative of Article 311(2) of the Constitution. As this OA is entitled to succeed on account of this legal infirmity, which is fatal to the conduct of the disciplinary proceedings, we do not consider it necessary to discuss the other grounds taken in the OA.

15. In the result the OA succeeds and is allowed to the extent that the impugned order dated 19.1.99 is quashed and set aside. Applicant's pay should be restored with arrears, as if the penalty had not been imposed, within 2 months from the date of receipt of a copy of this order. It will however be open to respondents thereafter to proceed against applicant in accordance with law. No costs.

A. Vedarathnam
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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