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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A. No. 1293 of 1998
O.A. No. 1181 of 1998

Decided on: 18.12.1998

Shri H.C. Dabral .....Applicant

(By Shri G.D. Bhandari.....Advocate)

Versus

Union of India and Another .Respondent(s)

(By Shri D.S. Mahendru.....Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not?

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

M.A. No. 1293 of 1998 and
O.A. No. 1181 of 1998

New Delhi this the 15th day of December, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri H.C. Dabral
R/o DG-992, Sarojini Nagar,
New Delhi. ..Applicant

By Advocate Shri G.D. Bhandari.

Versus

1. Union of India through
The Secretary,
Ministry of Commerce,
Udyog Bhawan,
New Delhi.

2. The (Chief Controller of Imports & Exports)/Director General, Foreign Trade,
Ministry of Commerce,
Udyog Bhawan,
New Delhi. ...Respondents

By Advocate Shri D.S. Mahendru.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Disciplinary proceedings were initiated against the applicant on the charge that he issued licence for Rs.44,60,922/- to a firm and acted in violation of Import Policy provisions and thereby did not maintain devotion to duty and violated Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964. The above disciplinary proceedings were held as common proceedings and the Articles of Charge and Imputations included the applicant working as Assistant Controller of Exports and Imports as well as two others who were functioning as Section Head and Lower Division Clerk respectively and were subordinates to the applicant. The above disciplinary enquiry resulted in the impugned order

imposing a minor penalty on the applicant, of reduction to the next lower stage in the time scale of pay for a period of three years without cumulative effect. Applicant without making a formal appeal, as provided under the rules, made a representation to the appellate authority submitting that it was not specified in the order as to what exact stage at which the pay had been fixed as a result of this penalty and he had also submitted that without prejudice to his right to seek any other remedy would make the request to the appellate authority to make the penalty effective from the date of occurrence and indicating the stage at which his pay had to be fixed as a consequence of this penalty. This was followed up by another detailed representation, Annexure B-1. The applicant has referred to these representations as details of remedies exhausted in para-8 of the application with details of which have been given in para 4.44. In reply to this, the respondents have stated that the representation of the applicant for giving retrospective effect to the penalty has been considered by the Ministry in consultation with the DOP&T and representations have been rejected.

2. The applicant has taken several grounds to challenge the impugned order. The main grounds taken by him are as follows:-

(i) Since he has been charged as having violated Rule 3(i)(ii) of the CCS (Conduct) Rules, 1964, it is enjoined in the aforesaid rule that he can be proceeded against under this rule only in respect of incidence/charge of lacking in devotion to duty when he habitually fails to

perform the task assigned to him and, therefore, contends that merely on the basis of a solitary incident, as given in the statement of imputations, he cannot be charged under this rule.

(ii) The said penalty of reduction to next lower stage for a period of three years was not in the list of minor penalties enumerated under Rule 11 as it then existed. It was only by an amendment of the rule by Notification issued in July, 1990 that the aforesaid penalty was introduced and, therefore, for the alleged misconduct the imposition of penalty which was not in existence at that time, was irregular and void.

(iii) The holding of common enquiry is in violation of statutory provisions of natural justice as in the said enquiry, the applicant would require the other two involved in the alleged misconduct to be examined and this was not possible in a common disciplinary enquiry.

(iv) The Inquiry Officers were changed frequently and this had caused prejudice to the applicant.

(v) The Inquiry Officer acted in a biased manner and proceeded to examine the applicant without recording the evidence in chief.

(vi) Although the alleged incident of signing the additional licence related to 1980, enquiry was initiated

only in 1985 and the proceedings were concluded in the year 1991 and thereafter the impugned order had been passed in 1997. The inordinate delay in the proceedings itself makes the proceedings liable to be quashed.

(vii) The witnesses examined by the prosecution clearly and unambiguously stated in the enquiry that the applicant had enjoyed the reputation of an honest and efficient officer and had an unblemished and untarnished service record. They had also deposed that the responsibility of a comparison of the licence as per the 'C' sheet approved by the applicant rests with the dealing hand. Prosecution witness SW-2 also desposed that that the portion in the licence for items not admissible having been typed can be a slip on the part of the officer at the time of signing the licence which could happen to any human agency and there was no lack of ordinary prudence or negligence on the part of the applicant.

(viii) The applicant was not given the benefit of defence assistant as he was appointed earlier as Presenting Officer. However, on this being cancelled subsequently, on his transfer, there was no bar to allow him to be the Defence Assistant. However, he was not nominated as Defence Assistant.

(ix) In the prosecution brief it was admitted that the irregularity had occurred at the time of comparison of licence which was obviously the duty of the dealing assistant and because of the pressure of work and

additional charge handled by the applicant, the failure of the dealing assistant in properly comparing the 'C' sheet as approved by him with the final licence which was put up before him, the same was inadvertently signed by him and this was not a case of wilful negligence.

3. The respondents in their counter-reply have denied that there was any irregularity in initiating the common proceedings in view of the fact that they were advised by the Chief Vigilance Commissioner that there was no need to change the proceedings from common proceedings to separate proceedings as co-accused can be examined as witnesses, if necessary. They have also denied any personal bias of the Inquiry Officer against the applicant. It is also contended on behalf of the respondents that the Inquiry Officers are nominated by the Chief Vigilance Commissioner and any changes of Inquiry officer had been recommended by the Chief Vigilance Commissioner for various reasons and consequent on such recommendation, the disciplinary authority had appointed Enquiry Officer so nominated. The applicant has been served with all the documents and the Inspecting Officer had appraised the evidence on record. They have also explained that after the Inquiry Officer's report was made available, the disciplinary authority was required to consult the CVC, UPSC and DOPT before taking a final decision. In this case, the disciplinary authority felt that the penalty advised by the UPSC was not commensurate with the gravity of charge and, therefore, the matter was again referred to the UPSC, which reiterated their earlier advice. The matter was again referred to the

DOP&T as a case of non-acceptance of advice of UPSC as per procedure and it was on this account that the final impugned order could be issued in February, 1997. The respondents have averred that although there was delay in the conclusion of the proceedings due to the fact that several agencies had to be consulted, the disciplinary proceedings were conducted according to the procedure prescribed in the rules and there had been no denial of opportunity to the applicant or any violation of principles of natural justice.

4. The learned counsel for the applicant referred to plethora of judgments in support of his arguments. We shall deal with them simultaneously when we discuss the grounds taken by the applicant.

5. The applicant contends that only in a case of habitual failure to perform task assigned to him, he should be deemed to be lacking in devotion to duty within the meaning of clause (i) of the CCS (Conduct) Rules, 1964. We are unable to accept this contention. Maintaining devotion to duty is cast upon every Government servant. Devotion to duty can be said to be lacking when the Government servant acts in a manner prejudicial to the interest of the Government either by a single act or series of acts. What is clarified is that a Government servant who has to perform a task within a specified time with certain standard and efficiency, habitually does not perform so, can be said to have not maintained devotion to duty. This

does not preclude other instances where the applicant had by his conduct or by negligence, acted in a manner prejudicial to the interests of the Government or acted against the policy of the Government. We, therefore, reject this contention.

6. As regards the ground that the particular penalty was not enforced at the time when the misconduct was alleged, we are of the view that at the time when the penatly was imposed at the conclusion of the disciplinary proceedings, this penalty is included in the statutory rule. The fact that the penalty finally imposed was not one of the penalties at the time of initiation of the disciplinary proceedings, is of no material consequence.

7. The applicant also contends that there should not have been any common proceedings. We have considered this matter carefully. From the records, we find that the disciplinary authority having started the enquiry has made it into a common departmental enquiry involving the applicant and two of his subordinates in view of the common transactions involved and the applicant was charged with violation of Rule 3(i)(ii) of the CCS (Conduct) Rules, 1964 and others were charged with violation of Rules 3(1)(i) and 3 (1)(ii) of the Rules ibid. No prejudice has been caused to the applicant as a result of holding this common proceedings. Therefore, we are unable to accept this contention also.

8. The applicant submits that because of inordinate delays in the conduct of the disciplinary proceedings extending to over 16 years, the proceedings are liable to be quashed on this ground of delay alone. The learned counsel for the applicant relies on the number of decisions to support this contention, namely, **Mohanbhai Dungarbhai Parmar Vs. Y.B. Zala and Others, 1980 (1) SLR 324 (Gujarat High Court); Mir Ahmed Ali Vs. The State of Karnkata and Others, 1981 (2) SLR 723 (Karnataka High Court); A.P. Augustine Vs. Superintendent of Post Offices, Alwaye, 1984 (2) SLR 163 (Kerala High Court); Bejoy Gopal Mukerjee Vs. U.O.I. & Another, 1989 (9) ATC 369** and a few other cases. We have seen these judgments and have considered this matter. It cannot be said that the enquiry was initiated after a long time lag. It was initiated in 1985 itself relating to the alleged misconduct in 1980. Because of various changes in the Inquiry Officers from time to time, as advised by the Chief Vigilance Commissioner who had to nominate the concerned Inquiry Officer from time to time for administrative reasons, the disciplinary proceedings dragged on and could be concluded only in 1991. Unfortunately, thereafter as stated by the respondents, the proceedings required to be progressed after due consultation with the Chief Vigilance Commissioner, UPSC and DOP&T. In this case, we find that the disciplinary authority had felt that the penalty recommended by the UPSC was disproportionate to the alleged misconduct and, therefore, disagreement with the recommendations of the UPSC had to be got cleared with the DOP&T. All these processes, no doubt, could have been

expedited but in view of the different agencies involved and the administrative delays in processing such cases in consultation with the CVC, it is true that the impugned order was issued very late. As the reasons for delay are fairly explained in the averments of the respondents (para 4.36 of the reply), we do not think it will be appropriate to hold that the disciplinary proceedings have been vitiated on the grounds of delay. The learned counsel referred to the decision in **Union of India & Others Vs. J. Ahmed, AISLJ 1979 SC 308** to contend that the alleged misconduct of signing the licence would at best amount to negligence or lack of efficiency and this would not amount to misconduct. We have seen this decision. The Apex Court has clearly held as follows:-

> "12. The High Court was of the opinion that misconduct in the context of disciplinary proceedings means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings".
> (emphasis added)

9. Their Lordships had observed earlier as follows:-

> "A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct as was held by this Court in **P.H. Kalpani Vs. Air France, Calcutta, 1964 (2) SCR 104.**

10. We have pointed out as a result of this misconduct, the applicant had acted prejudicially against the interest of the Government and in gross violation of the Import Policy duly approved by the legislature. This

decision is, therefore, not of any help to the applicant.

11. Another ground taken by the applicant is that he was not given a Defence Assistant whom he had nominated. There is nothing on record to show that the applicant had made any further request for nominating his Defence Assistant as nominated by him subsequent to his transfer and on the cancellation of his appointment as Presenting Officer. In view of this, plea is not tenable.

12. The other ground taken by the applicant is that the licence was signed by him inadvertently although in the 'C' sheet he had passed the orders correctly. It was due to the failure of the dealing assistant and the typist who had the primary responsibility to prepare the licence as ordered by him correctly. We find that the applicant as well as his subordinates had been charged in these proceedings. As pointed out by the respondents, the applicant has been charged for violation of Rule 3(1)(ii) whereas the other officials were charged for violation of Rule 3(1)(i) and Rule 3(1)(ii), i.e., maintenance of absolute integrity and devotion to duty which is unbecoming of a Government servant. Therefore, the respondents have been rather clear in their minds on the extent to which the applicant was responsible for the alleged transaction. It cannot be accepted that an officer authorised to sign an important document like additional licence amounting to Rs.44,60,922/- under the relevant Import Policy could absolve himself on the plea that in the draft 'C' sheet he had ordered correctly but the final

valid licence was signed by him without due caution because of the failure of his subordinate officials. It is only for this that he has been charged and the fact that others have failed in their duty does not absolve the applicant of his responsibility as an officer duly authorised to authenticate licence. In view of this matter, this contention of the applicant is not accepted.

13. The learned counsel, however, argued that the impugned order is basically defective. It imposes a minor penalty of reduction to the next lower stage in the time scale of pay for a period of 3 years without cumulative effect. The learned counsel argued that this order was passed in 1997 whereas at the time when this was passed the applicant would have superannuated in 2 years time. He, therefore, argued that the disciplinary authority has issued this order without proper application of mind. We have considered this matter. In our view this is a purely technical mistake, which can be corrected. We do not consider that on this ground alone, the impugned order should be quashed. In any case, the reduction can be given effect to for a period of 3 years from 1997 in view of the present decision of the Government to enhance the age of retirement upto 60 years and consequently the impugned orders can be enforced by the respondents as there will be no practical difficulty in this regard in the present circumstances. Further, since the punishment is without cumulative effect, at the end of punishment and well before the retirement of the applicant, his pay would be restored to its normal stage but for the punishment and this would

not affect his retirement benefits also. In this view of the matter, the decision in **V.V. Ramaiah Vs. Union of India per General Manager, S.C. Rly, Secunderabad & Others, ATJ 1993 (2) page 424** relied upon by the learned counsel for the applicant will not be relevant.

14. On the question of bias of the Inquiry Officer raised by the learned counsel for the applicant, we do not find that the plea of bias is tenable as there is no material on record to establish this plea. The learned counsel for the respondents has rightly relied on **Ex. Head Constable Ram Chander and Another, 1996(2) ATJ 544.**

15. In the conspectus of the above discussion, we are of the considered view that the grounds taken by the applicant are not tenable. In a disciplinary enquiry the Courts and Tribunals do not act as courts of appeal [illegible] a settled law that Tribunals cannot reappraise the evidence also. As far as the decision making process is concerned as laid down in U.O.I. & Others Vs. Upendra Singh, JT 1994(1) SC 658, we do not find that the disciplinary enquiry has been vitiated in any manner. The due procedures have been followed in this case and the applicant has also been given adequate opportunity for defence as revealed in the proceedings of the enquiry and there has been no violation of principles of natural justice.

16. In the light of the foregoing, we do not see any ground to interfere with the impugned orders. The

application fails and is accordingly dismissed. There shall be no order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh