

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 164 of /1995 Decided on : 22-12-95

K.L. Kapoor ... Applicant(s)

(By Shri R.K. Kamal Advocate)

versus

U.O.T. ... Respondent(s)

(By Shri R.L. Dhawan Advocate)

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

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

1. To be referred to the Reporter or not ? Yes.

2. Whether to be circulated to other Benches
of the Tribunal ? No

(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI.

O.A.No.164/95

New Delhi: This the 22 nd December, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER(A)
HON'BLE DR. A.VEDAVALLI, MEMBER(J).

K.L.Kapur,
Retd. Dy.Chief Engineer,
Northern Railway,
R/O B-2/94, Safdarjung Enclave,
New Delhi
By Advocate Shri R.K.Kamal.Applicant.

Versus

1. Union of India through
Secretary, Railway Board,
Rail Bhawan, Rafi Marg,
New Delhi - 1,

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi - 1

..... Respondents.

By Advocate Shri R.L.Dhawan.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri K.L.Kapur, Retd. Deputy Chief Engineer, Northern Railway, has impugned the order dated 16.11.94 (Annexure-A1) imposing a cut of 10% in his pension for 3 years.

2. Shortly stated, the applicant while still in service was proceeded against departmentally vide Memo dated 27.10.89 on three charges (Annexure-A3) viz. that while working as Dy.C.E/Con./MNTS during 1986-87, he committed gross misconduct in as much as:

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- i) He invited two tenders on 26.5.86 for similar works of computerisation in Delhi Area at different stations. One of the tenders was opened on 12.6.86. The rates received in the tender opened on 12.6.86 (Tender II) were much lower than that opened on 10.6.86 (Tender I) but he did not take this fact into account while formulating Tender Committee minutes on 17.6.86 and also kept the other tender committee member Dy. FA & C.A.O/C-I in dark deliberately about such lower rates received in Tender II resulting thereby avoidable loss of lakhs of rupees to the Railway!
- ii) During the execution of the work the quantities of works were increased enormously by including several independent works such as construction of boundary wall and temporary office at HNZM & KRTN, Microwave tower foundation etc. The original accepted tender value of Rs.8.36 lakhs was increased to Rs.9.13 lakhs at the time of execution agreement and further increased to Rs.15.92 lakhs at the completion stage thus creating an increase of 74.3% over and above the agreemental cost. The provisions of para 1268 of Indian Railways Code for the Engineering Department 1982 were totally ignored by Shri Kapoor while getting these additional works executed.
- iii) Though the works of computerisation were urgent and time bound yet the dates of completion of Contract were extended by Shri Kapoor many times without any penalty as provided in Clause 17(4) of the General Conditions of Contract, 1971. The original date of completion was 18.9.86 but the works were not completed till 15.3.87 even.

By his above acts of omission and commission the said Shri K.L.Kapoor had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant thereby contravened Rules

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3(1) (i) , (ii) and (III) of Railway Services
(Conduct) Rules, 1966.

3. It appears that the applicant was prematurely retired from service on 13.8.90 by the competent authority in accordance with the powers conferred by Rule 1802(a) IREC Vol.II 1987 Edition.

4. The enquiry proceeded even after the applicant's premature retirement and the I.O. (Commissioner for Departmental Inquiries) in her report dated 28.2.91 (Annexure-A5) held Article I of the charge proved and Articles II and III of the charge as not proved. A copy of the Enquiry report was served on the applicant vide letter dated 14.8.91 to enable him to represent, in response to which he represented on 4.9.91 to the Disciplinary Authority. After considering the inquiry report and the applicant's representation, and other case records, the Disciplinary Authority accepted the E.O's findings and the Railway Minister on behalf of the President tentatively decided to impose a cut in the monthly pension of the applicant for a specified period. The matter was referred to the UPSC for their advice who opined in respect of Article I, that while the applicant's malafide intentions were not proved beyond reasonable doubt it was proved to the extent that he as Tech.Member of the Tender Committee for Tender I was well aware of another tender for similar work in the same period in which much lower rates had been quoted but he failed to bring this to the notice of the other Member of the Tender Committee. In respect of Articles II and III

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they opined that the same were not proved. They advised imposing a 10% cut in the pension admissible to the applicant for 3 years. Accepting this advice, the respondents issued the impugned order dated 16.11.94, against which this OA has been filed.

5. The first ground taken is that the charge sheet is illegal and void because it is vague, and prejudices the guilt of the applicant and thereby a bias was created by the Disciplinary Authority in the mind of the Inquiry Officer. It is contended that in view of the fact that the EO was the appointee of the Disciplinary Authority, he was bound to be influenced by the prejudging of the issues by the Disciplinary Authority. Support in this connection has been sought from M.A. Narayana Sethy Vs. Div. Manager- 11(1990) ATLT 41.

6. A plain reading of the charge sheet shows that it is specific and explicit and is not at all vague. Nor is there any merit in the contention that the charge sheet prejudged the applicant's guilt and biased the EO's mind who was the Disciplinary Authority's appointee. The letter dated 15.11.90 written on behalf of the G.M.(P) Northern Railway, addressed to the applicant (Annexure-A2), in our view correctly explains the position that the Disciplinary Authority had to appoint an Enquiry Officer to go to the case and the EO in this particular case worked under the CVC and not the Disciplinary Authority and hence there was no bias. Narayana Sethy's case (Supra) has no relevance here, because in that case the EO was directly subordinate ^{to} the Disciplinary Authority which is not the case here. Hence this ground fails.

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7. Next it has been argued that the applicant's representation alleging bias was disposed of at the level of the Chief Engineer and not by the appropriate reviewing authority which violated DPAR's O.M. dated 9.11.92 and thereby vitiated the disciplinary proceedings. Support in this connection has been sought from the judgment in Hansu Mondal Vs. UOI & others-1991(2)ATJ 109. In this connection, we note that DPAR's O.M. dated 9.11.92 refers to a situation where an representation is made by a Govt. servant against an Inquiry Officer on the ground of bias.

That OM has no application to the facts of the present case, and the ruling in Hansu Mondal's case does not help the applicant either, because as correctly pointed out by the IO in paragraph I of her report, it was not a representation alleging bias on the part of the IO. Hence the disposal of this representation at the level of the C.E. cannot be said to have vitiated the disciplinary proceedings and this ground also fails .

8. The next ground taken is that there is no finding of 'grave misconduct' either by the EO or by the UPSC and hence the imposition of the penalty after the applicant's retirement is illegal. In D.V.Kapoor Vs. UOI 1990 (14) ATC 906 the Hon'ble Supreme Court has held that the President's powers are hedged with a condition precedent that a finding should be recorded either in the DE or judicial proceedings that the petitioner has committed grave misconduct or negligence in the discharge of his duty while in office. In the present case, the President vide impugned order dated 16.11.94 has come to a distinct

finding that the proven element of the charge under Article I is so grave as to warrant a cut in the pension normally admissible to the applicant. The impugned order dated 16.11.94 forms part of the departmental proceeding and under the circumstances the requirement as laid down in D.V.Kapoor's case (Supra) is fully met with and this ground also fails.

9. The next ground taken is that it is a case of no evidence, but a plain reading of the EO's report makes it abundantly clear that this ground has no merit and it is not a case where there is no evidence in respect of Article I of the charge. This argument also fails.

10. Next it has been contended that the penalty is discriminatory as no action was taken against the Finance Member of the Tender Committee. It is well settled that the plea of hostile discrimination cannot be successfully advanced to defeat the purposes of the law. Even if the respondents have not taken action against any or all the other persons involved, that does not diminish the applicant's own culpability in the matter.

11. The last ground urged is that there has been a denial of the principles of natural justice. It is clear from the contents of the inquiry report that the applicant was given every reasonable opportunity of being heard to defend himself, but he of his own volition did not cooperate with the EO who was compelled to proceed ex parte. Under the circumstances this ground also lacks merit.

12. In UOI & others Vs. Upendra Singh-1994(27) ATC 200, the Hon'ble Supreme Court have held that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution and, therefore, the principles, norms and the constraints which apply to the said jurisdiction, apply equally to the Tribunal. If the QAs were to be filed in the High Court, it would have been termed properly speaking, as a writ of prohibition and a writ of prohibition is issued only when patent lack of jurisdiction is made out. Their Lordships have quoted with approval the decision in H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons-1992 Supp (2) SCC 312, the relevant portions of which are extracted below:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

Applying the above touch-stone to the facts of the present case, it is not possible for us to hold that the applicant did not receive fair treatment or that

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he was denied opportunity to defend himself properly, and under the circumstances we find ourselves unable to grant the reliefs prayed for by the applicant.

13. This CA fails and is, therefore, dismissed.
no costs.

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

S.R.Adige
(S.R.ADIGE)
MEMBER (A).

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