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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.764/1996

New Delhi, this 22nd day of January, 1997

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri Bhagmal
s/o Shri Bansi Ram
374, Sector 8, R.K. Puram, New Delhi .. Applicant

(By Advocate Shri Deepak Verma)

Versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Director
National Crime Records Bureau
East Block, R.K. Puram
New Delhi .. Respondents

(By Advocate Shri M.K. Gupta)

ORDER

The grievance of the applicant is with regard to the Memo issued by respondent 2 dated 26.8.93 warning the applicant to be careful in future and desist from using intemperate language to Senior Officers not behoving a Government servant of his status. It was further stated in the Memo that a copy of the said Memo was also being placed in his ACR folder.

2. This application was originally filed by two applicants S/Shri Bhagmal and Harbhajan Singh and Miscellaneous Application had also been filed seeking permission to file a joint application. That MA was, however, rejected and hence there is only one applicant in this case. The joint application filed for condonation of delay was also rejected as MA for joining

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together was rejected. Subsequently, the applicant has filed another MA for condonation of delay. Shri Deepak Verma, learned counsel has submitted that since the applicant's wife was operated on 25.5.94 for cancer and was discharged only on 2.6.94 and continued to be under medical treatment, the applicant could not file this application earlier. He has, therefore, submitted that there were compelling reasons for condonation of delay in filing the OA.

3. Relying on the judgement of the Tribunal in S.S.Ray Vs. UOI & Ors. [1991(1) SLJ page 256], the learned counsel submits that the impugned Memo, which has been placed in the ACR folder, is a 'censure' issued to him without due compliance of the clarifications issued under the provisions of Rule 11 of CCS (Classification, Control and Appeal) Rules, 1965, by DP&AR OM No.22011/2/78-Est.(A) dated 16.2.1979, the relevant portion of which is extracted below:

"In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings the officer should be penalised, the disciplinary authority should award the penalty of 'censure' atleast. If the intention of the disciplinary authority is not to award a penalty of 'censure' then no recordable warning should be awarded. There is no restriction on the right of the disciplinary authority to administer oral warnings or even warnings in No.22011/2/78-Est.(A) dated 16.2.79).

He, therefore, submits that the warning in writing issued to the applicant cannot form part of the character roll, although he has no objection to the same being placed in his personal file. He has also submitted that after the issue of the Memo, the applicant had made a detailed representation on 9.9.93 in which it was, inter alia, stated that the notice has

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been drafted by a lawyer and has been signed by the applicant in good faith, and if any part of the language was distasteful, he regrets. The learned counsel submits that for these reasons the impugned Memo needs to be quashed and set aside.

11a 78 4. The respondents have filed a reply, in which they

have taken the preliminary plea that the application is barred by limitation. Shri M.K. Gupta, learned counsel submitted that during the relevant period, the applicant continued to attend the office and he could have, therefore, filed this application also in time. The respondents' have also stated that the language of the representation used by the applicant and addressed to senior officers, including the Secretary, Ministry of Home Affairs and Director, NCRB-Respondent 2, to implement the judgement of CAT in OA 1428/90 are unwarranted. Shri M.K. Gupta, learned counsel has also submitted that a similar Memo had also been issued to Mr. Deepak Verma, present counsel of the applicant who had also addressed a similar representation dated 12.8.93 and there was no justification for the applicant to use the language used in his "Notice for contempt". He has correctly submitted that a notice for contempt can only be issued by a court, and not in any case by the applicant. OM No.39/21/56-Estt(A) dated 13.12.56, which clarifies the difference between a 'censure' and 'warning' also provides as follows:

78. "There may be occasions, on the other hand, when a superior officer may find it necessary to criticise adversely the work of an officer working under him (e.g. point out negligence, carelessness, lack of thoroughness, delay, etc.) or he may call for an explanation for some act of omission or commission and taking all circumstances into consideration, it may be

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felt that, while the matter is not ~~serious~~ enough to justify the imposition of the formal punishment of 'censure', it calls for some informal action such as the communication of a written warning, admonition or reprimand. If the circumstances justify it, a mention may also be made of such a warning, etc. in the officer's confidential roll".

The learned counsel submitted that, as seen from the above instructions, even a recordable warning is not a minor penalty, unlike censure under rule 11 of the CCS(CCA) Rules, 1965. He, therefore, denied that the impugned memo is violative of Rule 16 of the said Rules. He submitted that both on the grounds of limitation and ^{, therefore, b.} merits the OA should be dismissed.

5. I have carefully examined the pleadings and submissions made by the learned counsel for the parties.

6. The applicant has pleaded that because of his wife's illness he could not file the application in time. The impugned memo was issued to him on 26.8.93 and this OA has been filed on 25.3.96. Admittedly, the applicant's wife was operated in May, 1994 and discharged on 2.6.94. It is relevant to note that during the intervening period, the applicant had attended the office. In the facts and circumstances of the case, therefore, the applicant has failed to show sufficient ground to condone the inordinate delay of more than two and half years in filing the OA. This application is therefore liable to be dismissed on the ground of limitation.

7. Apart from the above, I find there is no merit also in this application. A perusal of the representation made by the applicant entitled "Notice for contempt"

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addressed, inter alia, to the Secretary and Director of the Department shows that the language used by him leaves much to be desired. I also agree with the submissions made by Shri M.K. Gupta, learned counsel that it is not correct or justified for the applicant to state that contempt proceedings shall be initiated against these officers if they do not comply with the directions of the Tribunal's judgement dated 8.1.93 in OA 1240/90 within ten days, as it is for the Tribunal to take such action if it finds it necessary under law.

8. DPAR's OM dated 16.12.79 (supra) relied upon by the applicant is not relevant to the facts of this case but on the other hand MHA's OM dated 13.12.56 (supra) is relevant. In order to maintain an atmosphere of discipline, decency, decorum and efficiency in Government offices, such acts of omission and commission in day to day functioning which generally do not always amount to violation of conduct rules cannot be ignored by the senior officers/competent authority when it comes to their notice. The OM dated 13.12.56 clarifies the above position and empowers the superior officers to take appropriate action taking all the circumstances into consideration, which includes placing of the warning in the confidential roll. In the facts and circumstances of the case, the impugned Memo dated 26.8.93 conveying to the applicant to desist from using ~~intemperate~~³⁸ language to superior officers which is unbecoming of a government servant in future is not contrary to the instructions or unjustified, which calls for interference in the matter (see also the observations of this Tribunal in Sushil Kumar Pal Vs. UOI & Ors. [SLJ 1996(3) page 335]).



9. In the result, the application is dismissed both on the grounds of merit and limitation. No order as to costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

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