

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1291/1997

New Delhi, this 17th day of August, 2000

Hon'ble Dr. A. Vedavalli, Member(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

(32)

Bhopinder Singh  
728, Block 8  
BKS Marg, New Delhi .. Applicant

(By Shri H.K.Gangwani, Advocate)

versus

Union of India, through

1. Cabinet Secretary  
Bikaner House, Shahjahan Road  
New Delhi  
2. Director (SSB)  
Block V(East), R.K.Puram  
New Delhi  
3. Director of Estate  
Nirman Bhavan  
New Delhi .. Respondents

(By Shri P.H.Ramchandani, Sr. Advocate with  
Shri R.V.Sinha, Advocate)

ORDER

Smt. Shanta Shastry

The only short point that needs determination in this case lies on a narrow compass i.e. whether the order of penalty of compulsory retirement imposed on the applicant can be given retrospective effect?

2. We have heard the learned counsel for the parties and perused the records.

3. Briefly stated, the uncontroverted facts of the case are that the applicant while working as Assistant at the SSB Hqrs., New Delhi in the Directorate General Security, Cabinet Secretariat since 1.3.78 was transferred to Pb & HP Division at Shimla on 23.2.89. He did not join the said posting in Shimla but remained unauthorisedly absent from that date and tried to get his transfer cancelled without success. Thereafter, he

applied for voluntary retirement after giving three months notice on 1.1.90 and to relieve him as early as possible. Instead of either rejecting or accepting his request for voluntary retirement, the respondents initiated disciplinary proceedings against him by issuing charge-memo dated 23.9.92 on the charges of unauthorised absence without intimation and for not obeying the orders of transfer. The applicant submitted written statement of defence on 1.10.92, denying the said charges. An enquiry was conducted as per the procedures and upon agreeing with the findings of the Enquiry Officer (EO, for short) the disciplinary authority (DA, for short) and after having carefully gone through other records of the enquiry, imposed penalty of dismissal from service on the applicant with immediate effect vide his order dated 17.8.95. The applicant appealed against the same and the appellate authority (AA, for short) after careful consideration of the appeal and after giving personal hearing to the applicant along with his defence assistant revised the penalty of 'dismissal from service' to 'compulsory retirement' from service with effect from 23.2.89 when he was transferred to Shimla and since the day he did not join duty. This order was passed on 6.1.97.

(33)

4. The applicant was in possession of government accommodation. As a result of penalty of compulsory retirement retrospectively from 23.2.89, the accommodation was deemed to have been cancelled by the Estate Officer. The applicant was declared unauthorised occupant from 23.6.89 onwards and by order dated 25.2.97 demand of Rs.2,25,338 was raised towards penal rent upto 28.2.97.

3X

5. The applicant is now before this Tribunal seeking to quash the aforesaid impugned orders. His main objection is that the AA imposed the penalty of compulsory retirement with retrospective effect which is bad in law.

6. Though the applicant has taken several grounds against the order of compulsory retirement, from the pleadings available on record we find that the applicant has prayed for compassionate consideration of his case on humanitarian ground and to have mercy on him vide his application dated 27.12.96. In para 9 of this letter the applicant has prayed that "in view of the position explained above, your goodself may kindly have mercy on me and set aside the order of dismissal from service or atleast reduce the quantum of punishment to one of compulsory retirement so that I could get the pensionary benefits for the service rendered by me". The AA therefore having considered the prayer reduced the punishment to that of compulsory retirement to enable the applicant to get pensionary benefits. Therefore, the applicant should have no grievance against the said order as it was at his own request that the punishment was converted to compulsory retirement. Therefore, the applicant has no case in this regard.

7. However, the thrust of the argument of the learned counsel for the applicant was mainly on the fact that the order of compulsory retirement has been given effect retrospectively from the date the applicant remained absent. We agree with the applicant that the order of punishment cannot have retrospective effect especially



when the final order of DA was passed only on 17.11.95.

It is against the principles of natural justice to punish somebody with retrospective effect. Also the order is defective in the sense that it will create an anomalous situation whereby the very charge would not survive because if the applicant is retired compulsorily from 23.2.89, then the charge of wilful absence after 23.2.89 will have no basis. We are therefore inclined to agree with the applicant that the order of the AA cannot be said to be legally tenable. In the result, we order deletion of the following portion of the AA's order dated 6.1.97:

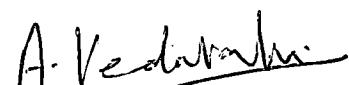
"w.e.f. 23.2.89 when he was transferred to HP Division and since the date he did not join duty"  
 Instead the order of compulsory retirement should be made effective from 17.11.95, when the final order was issued by the DA. The period of absence from 23.2.89 to 17.11.95 shall be regularised as per rules.

8. Since the penalty of compulsory retirement would now have the effect from the date of issue of the order of the DA i.e. 17.11.95, recovery of demand of Rs.2,25,338 ordered by the Estate Officer on 25.2.97 shall also be revised accordingly.

9. The OA is partly allowed as aforesaid. No costs.



(Smt. Shanta Shastray)  
 Member(A)



(Dr. A. Vedvalli)  
 Member(J)

/gtv/