

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 551 OF 1994

New Delhi this the 8th day of December, 1997.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN  
HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

Shri G. C. Gupta  
Son of Shri R. P. Garg,  
R/O IA/45-B, Ashok Vihar,  
Phase-I, Delhi-110052. .... Applicant

( By Shri G. D. Gupta, Counsel )

-Versus-

1. Union of India through  
Secretary to Government of India,  
Ministry of Information & Broadcasting,  
Shastri Bhawan,  
New Delhi-110001.
2. Union Public Service Commission  
through its Chairman,  
Dholpur House,  
Shahjahan Road,  
New Delhi-110011. .... Respondents

( By Shri N. S. Mehta, Sr. Standing Counsel )

O R D E R

Shri Justice K. M. Agarwal :

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for quashing the impugned penalty of removal from service passed on 1.2.1993 by the competent authority against him, besides claiming consequential and incidental reliefs as detailed in para 8 of the application.

2. Briefly stated, when the applicant was posted at Chattarpur and functioning as Assistant Station Engineer, All India Radio, one Shri R. C. Aggarwal, Engineering Assistant committed suicide

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on 28.2.1978. The concerned authorities considered that Shri R. C. Aggarwal committed suicide because of the severe harassment given to him by the applicant. Accordingly, the applicant was suspended and subjected to departmental enquiry. The charges framed against the applicant were found proved by the enquiry officer. The President of India being the disciplinary authority considered the facts and circumstances of the case and after taking into account the findings of the enquiry officer came to a provisional conclusion that a formal penalty was called for against the applicant on the basis of the misconduct alleged and found proved by the enquiry officer. The case was thereupon referred to the Union Public Service Commission, (in short, UPSC), for their advice. The UPSC also found the misconduct to be proved and taking a serious view of the matter, advised the President to impose a penalty of compulsory retirement on the applicant. Accordingly, the applicant was awarded a penalty of compulsory retirement by order dated 24.4.1982. This order was set aside by the Tribunal by its order dated 8.6.1989 in T.A. No. 947/1985 on the ground that the applicant was not supplied with a copy of the report of the enquiry officer before imposing the penalty on the applicant. The Tribunal's order was affirmed by the Supreme Court in Civil Appeal No. 341/1991 dated 28.1.1991. The applicant was thereafter supplied with a copy of the enquiry report and given an opportunity to make his



representation against it. After taking into account the additional materials brought on record, the President again came to the conclusion that *prima facie* the charges were found proved and referred the case to the UPSC for opinion. This time again the UPSC came to the conclusion that the charges were proved but instead of proposing compulsory retirement, as was earlier done, a recommendation was made for imposing a penalty of removal from service. Accordingly, the impugned order of penalty was passed against the applicant. Being aggrieved, he has filed this O.A. for the said reliefs.

3. The respondents contested the application filed by the applicant.

4. Although the learned counsel for the applicant urged before us several grounds, he submitted that the applicant would be satisfied if the punishment of removal from service was reduced to the earlier punishment of compulsory retirement. The learned counsel virtually concentrated his arguments on the question of penalty and urged that without there being any additional material on record for enhanced punishment, the competent authority could not impose, or the UPSC could not propose for enhanced penalty. The penalty of removal imposed, therefore, appeared to be vindictive and arbitrary in nature.

5. The learned counsel for the official respondents submitted that after the case was remanded, the disciplinary authority after

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reconsideration of the entire case could impose either a lesser penalty or a higher penalty. In the present case a higher penalty was imposed and as the Supreme Court says in several cases, the Tribunal cannot interfere with the discretion exercised by the disciplinary authority in the matter of punishment.

6. After perusing the record and hearing the learned counsel for the parties, we are of the view that ordinarily we cannot question or look into the propriety or quantum of penalty imposed on an employee after finding that the misconduct was proved. However, in the present case, what we find is that on the same set of facts, compulsory retirement was the punishment advised by the UPSC and imposed on the applicant. After the remand, the UPSC has not given any reason as to why they considered the higher punishment of removal from service to be appropriate in the present case, though the facts remained the same. It is pertinent to note that under the facts and circumstances of the case, the President of India was earlier of the view that a formal penalty would meet the ends of justice. This fact is also mentioned in the impugned order dated 1.1.1993. Under these circumstances, we are of the view that this application deserves to be partly allowed by reducing the penalty of removal from service to a penalty of compulsory retirement.

7. We may reiterate that the learned counsel for the applicant did not seriously dispute that

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there was no procedural or legal infirmity in the enquiry held against the applicant. We could also find no such infirmity in the enquiry or in the finding of the disciplinary authority that the charges were proved.

8. Under the aforesaid circumstances, this application partly succeeds and it is hereby partly allowed. The finding of the disciplinary authority that the misconduct was proved calls for no interference, but so far as the penalty is concerned, we direct that the penalty of removal from service shall stand altered to a penalty of compulsory retirement. Accordingly, consequential benefits shall be given to the applicant. No costs.

*Tom*  
( K. M. Agarwal )  
Chairman

*R. K. Ahuja*  
( R. K. Ahuja )  
Member (A)

/as/