

Central Administrative Tribunal
Principal Bench

O.A. No. 899 of 2000

New Delhi, dated this the 1st March 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri S.P. Jain,
S/o Shri M.S. Jain,
R/o 185D, Pocket C,
Siddarth Extension,
New Delhi-110014. . . Applicant

(By Advocate: Shri P.P. Khurana, Sr. Advocate
with Ms. Jamaliwad)

Versus

1. Union of India through
the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-110001.
2. Director General,
All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi-110001.
3. Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110011. . . Respondents

(By Advocate: Shri H.K. Gangwani)

ORDER

Shanker Raju, M(J)

Applicant impugns Disciplinary Authority's order dated 87.4.93 (Annexure A-1) as well as Appellate Authority's order dated 13.5.99 (Annexure A-1 Colly.). He also impugns Respondents' order dated 21.9.1993 treating the period of suspension from 26.8.86 to 1.1.92 as period not spent on duty.

2. The brief facts of the case are that by order dated 12.9.85 sanction was accorded for

applicant's deputation to Indonesia for attending an advance training course in Bahasa Language at Jakarta for a period of 6 months commencing from 13.9.85. Applicant returned from deputation on 26/8/86 and was placed under suspension on the same date. Disciplinary Proceedings were initiated against him under Rule 14 CCS (CCA) Rules vide Memo dated 1.3.87 on the allegation that

- (i) he left India on 14.9.85 without being formally relieved of his duties by the Head of the Office and without furnishing the requisite bonds;
- (ii) in complete disregard of the sanctions issued he had joined a refresher course without informing and seeking prior approval of Govt. of India; and
- (iii) he had ignored the instructions of Govt. conveyed to him through Indian Embassy at Jakarta for leaving at the end of sanctioned period of his deputation first upto 12.3.86 and thereafter the extended period of deputation upto 30.6.86 and made extraneous attempts to get the deputation further extended. Furthermore he did not take up the examination of second semester in May 1986 in Bahasa Indonesia and failed to furnish correct information regarding the examination to Indian Embassy and had brought outside pressure for getting extension of his stay in Indonesia.

3. Applicant had earlier filed O.A. No. 427/87 challenging his suspension by order dated 26.8.86. That O.A. was disposed of by order dated 3.9.92 with a direction to respondents to complete the Disciplinary Proceedings by 31.10.92, failing which respondents were directed to resintate applicant in service with all consequential benefits.

4. As Respondents failed to conclude the proceedings on or before 31.10.92, applicant's suspension was revoked by order dated 2.11.92 (Annexure A-4) and he joined duty the same date.

5. The E.O. in his findings exonerated applicant from Articles of Charge No.1 and 2 and a part of Article of Charge No.3 but held applicant guilty of lack of devotion to duty and conduct unbecoming of Government servant in ignoring the instructions of Government for leaving Jakarta at the end of the period/extended period of deputation and for not taking the examination in the second semester in May, 1986 and also not furnishing correct information regarding the examination to the Indian Embassy, Jakarta.

6. The Disciplinary Authority by memo dated 11.11.92 served a copy of the enquiry of the report upon applicant, to which he filed his reply. Thereupon after disagreeing with the findings of the enquiry officer pertaining to Article of Charge-1 and 2, he held applicant guilty of these Articles of charge also, and issued impugned penalty order dated 8.4.93. Applicant appealed against the same vide his appeal dated 28.2.94, which was rejected by order dated 6.9.95 on the ground that it was barred by time.

7. Applicant was also served with a show cause notice regarding the treatment of suspension period as period not spent on duty for all purposes.

8. Applicant had challenged the penalty order as well as appellate order in O.A. No. 505/96 which was disposed of by order dated 14.9.98, whereby the appellate order was set aside with a direction that the same should be decided on merits.

9. Thereupon appellate authority consulted the UPSC and on receipt of their advice dated 12.5.99, he passed the impugned order dated 13.5.99 upholding the Disciplinary Authority's order which has given rise to the present O.A.

10. The learned senior counsel Shri P.P.Khurana appeared along with Ms. Jamali Wad has assailed the orders on various legal pleas but at the outset contended that the enquiry proceedings as well as consequent order passed were rendered illegal because, although the disciplinary authority disagreed with the E.O's finding in respect of certain articles of charge, ~~as~~ ^{with} neither ~~even~~ the reasons for disagreement communicated in writing to applicant, nor was he afforded an opportunity to show cause against the same, as a result of which there was a denial of the principles of natural justice, thereby severely prejudicing applicant. Reliance in this connection was placed on the Hon'ble Supreme Court's rulings in Narain Mishra Vs. State of Orissa 1969 SLR SC 657; Punjab National Bank & Others Vs. Kunji Bihar Mishra 1998 (5) SC 548; Bank of India & Anr. Vs. Degala Surya Narain JT 1999 (4) SC 489 and Yogi Nath D. Bade Vs. U.O.I. 1999 (7) JT 62.

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11. On the other hand Respondents' counsel Shri Gangwani strongly rebutted these contentions and denied that any prejudice ~~had~~ been caused to applicant on this account. According to him the decision in Kunj Bihari's case (supra) would not have any retrospective application. He took the preliminary objection regarding constructive res judicata, by referring to the Tribunal's decision ^{dated 14.9.98} in O.A. No. 505/96, and contended that as applicant in that O.A. had already assailed the penalty order as well as the order treating the period of suspension as not spent on duty, and as the Tribunal had not set aside the penalty order, but had only quashed the appellate order, this amounted to an implied affirmation of the penalty order on merits, and applicant was precluded from challenging the same at this stage.

12. We have given our careful consideration to the rival contentions.

13. In our considered opinion, the preliminary objection regarding non-maintainability of the O.A. on the ground of constructive res judicata and the contention that the penalty order could not be quashed at this stage, has to be rejected. In order to bring the matter within the ambit of constructive res judicata, it has to be established that the points at issue in the present

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O.A. had been adjudicated between the same parties. We have perused the order dated 14.9.98 in O.A. No. 505/96 which contains the following observations:

"It does not appear necessary to give detailed facts of the case as the learned counsel for the applicant submitted that the applicant will be satisfied if the respondents are directed to decide his appeal against the two orders dated 8.4.93 and 21.9.93 after setting aside the order dated 6.9.95 dismissing his appeal as barred by time."

14. From the foregoing it is clear that the Tribunal had concluded that the rejection of appeal on the ground of its being time barred was cryptic in nature and as a result the same was set aside and the appeal was directed to be disposed of on merits. There was no discussion on the merits of the Disciplinary Authority's order, and in that conspectus, it cannot be said that the aforementioned grounds raised by Shri Khurana are hit by constructive res judicata.

14A. As regards Respondents' contentions, that the Hon'ble Supreme Court's ruling in ¹Kunj Bihari's case (supra) would have no retrospective application, we find that even as far back as in Narain Mishra's case (supra) the Aprex Court has set aside the punishment order on the ground that despite the Disciplinary Authority disagreeing with the findings of the E.O., the reasons for disagreement had not been communicated to the delinquent, and no

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notice or opportunity has been accorded to put forward his defence before the penalty order was issued.

15. Prima facie, therefore, on the date when the Disciplinary Authority passed the penalty order, the legal position clearly mandated that if the Disciplinary Authority disagreed with the E.O's findings, he should record reasons of his disagreement and communicate the same to applicant, to give him an opportunity to represent against the same before taking a final decision in the matter.

16. Clearly, therefore, by disagreeing with the findings of the E.O. and yet by not communicating the reasons for the disagreement and giving applicant a reasonable opportunity to represent against the same before the Disciplinary Authority take a final decision in the matter, the principle of natural justice have been controvenered, resulting in prejudice being caused to applicant, owing to denial of reasonable opportunity to defend himself as held by the Supreme Court in the rulings cited above.

17. Under the circumstances the impugned orders of the Disciplinary Authority as well as that of Appellate Authority order cannot be sustained in law.

18. In normal circumstances we would have remanded the matter back to the Disciplinary Authority to take the proceedings ^{forward} from the stage of communication of his reasons for disagreement. However, having regard to the fact that the charges against applicant are not very serious in nature, and the Departmental Proceedings themselves have been unduly protracted and have gone for almost 15 years during the course of which applicant had been subject ^{'hold/harbor'} to considerable mental tension, we would not ~~have been~~ ^{be} justified in remanding back to the Disciplinary Authority.

19. In the result, and having regard to the reasons recorded above, the O.A. succeeds and is allowed. The impugned orders dated 8.4.93, 21.9.1993 as well as 13.5.99 are quashed and set aside. Applicant shall be entitled to all consequential benefits including treatment of suspension period as period spent on duty for all purposes w.e.f. 26.8.86 to 1.1.92. These directions should be implemented by Respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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(S.R. Adige)
Vice Chairman (A)

/GK/