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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1891/89

New Delhi, this the 29th, July, 1994.

HON'BLE SHRI C.J.ROY, MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (A)

Shri Mohinder Pratap Dosaj,
s/o Shri Kashmiri Lal Dosaj
Resident of New Delhi c/o
Shri Sant Lal Advocate, C-21 (B),
New Multan Nagar, Delhi-56.

..Applicant

(By Shri Sant Lal Advocate)

Versus

The Union of India, through:
The Secretary,
Ministry of Communications,
Department of Telecommunications,
New Delhi.

..Respondents

(By Shri N.S.Mehta, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (A)

The applicant was functioning as Sub Divisional Officer (SDO-T). He was served with a charge sheet with the following articles of charge by Memo No.A-41/82-Vig.II dated 2-7-83 issued in the name of President:-

While functioning as SDO(T), Srinagar during the period April-May 1980, Shri MP Dosaj committed the following irregularities:-

- (i) he colluded with Shri Nachhatar Singh, the then DET.Srinagar, Shri MK Dhar, the then J.E. Baramula, Shri MK Safaya, the then JE Sopore and certain line staff of Baramula Sub-Division and misappropriated Rs.6140/- disbursed as Temporary Advance to the line staff during the period 27-4-80 - 1-5-80 and thereby made wrongful pecuniary gain for himself;
- (ii) he disbursed the said amount of Rs.6140/- as Temporary Advance to the line-staff in the Baramula Sub-Division during the said period without any authority to do so;
- iii) he disbursed the said Temporary Advance without any emergent work or justification therefor;

- iv) he disbursed the Temporary Advance in contravention of the Rule 123 of the P&T Financial Hand Book Volume-III;
- v) he passed fictitious bills supported by vouchers signed by non-existent labourers, in adjustment of the said Temporary Advance during the said period;
- vi) he fabricated documents to show that he visited certain places and distributed the Temporary Advance there, while he actually did not visit those places.

Enquiry Officer was appointed and in his enquiry report of 23-10-84 the Enquiry Officer held only charges (ii), (iii) (v) and (vi) as proved and the remaining charges not proved. As per requirement the advice of Union Public Service Commission (UPSC) was sought and the UPSC in its advice dated 30-3-88 also held charges (iii), (iv) and (vi) as proved but charge (ii) as only partly proved. After considering the advice of the UPSC, the report of the enquiring authority and the totality of the circumstances of the case, the President ordered that the pay of the applicant be reduced by three stages from Rs.2300/- to Rs.2120/- in the time scale of Rs.2000-3500 for a period of three years with effect from 1-8-88 with the further stipulation that the applicant shall not earn increments during the period and on expiry of the period the reduction shall have an effect of postponing their future increments. This order was issued on 13-7-88. A revision petition was filed by the applicant on 2-2-1989 (An.A6 to DA) This DA has been filed on 15-9-89 by which time the revision had not been disposed of. In this O.A a prayer has been made for setting aside the impugned punishment order dated 13-7-88 and for consequential benefits.

2. At the time of arguments the learned counsel for the applicant stated that the revision petition

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filed by the applicant is still not disposed of. The main grounds advanced by the applicant are that the serious charges of collusion for misappropriating Rs.6140/- and passing of fictitious bills have not been held as proved; even the other charges which mainly related to disbursement of certain amounts etc., are correctly established. Much reliance was placed on the deposition of Nachhatar Singh, DE Phones in the enquiry conducted in the case. A copy of deposition has been attached as Annexure A4 to the OA and as per this, Shri Nachhatar Singh admits that he was DT(E) Srinagar at the relevant point of time and he had verbally ordered the applicant to visit Baramula Sub Division for effecting relevant payments. The learned counsel for the applicant thus argued that there could be no irregularity in the disbursement made since such action was taken based on the verbal orders of the Controlling Officer namely DE(T) Srinagar.

3. The learned counsel for the applicant further argued that all disbursement as temporary advance was only for emergent work for which the applicant took necessary approval and such disbursement had been made only as per rules and procedure. In view of this, even charges (ii), (iii) and (iv) cannot be sustained. On a perusal of the enquiry report and the advice of the UPSC, we note that there has been some evidence based on which it has been concluded that the charges are proved or at least partly proved. It is not expected of the Tribunal to re-assess the evidence. What is required is only to see whether rules of natural justice have been followed in the conduct of the enquiry and whether the decision has been arrived at based on evidence available on record.

4. With regard to item (vi) of the charge, the enquiry ^{Office} had come to the conclusion that the applicant had not

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been able to explain his movements properly. The Commission had agreed with the findings of the enquiring authority. We do not propose to discuss this article of charge since in articles (ii), (iii) and (iv) the decision regarding responsibility of the applicant has been based on certain evidence.

5. We, however, note that after holding a common enquiry proceedings against the applicant as well as a number of others including the then controlling DE(T) only the applicant seems to have been awarded a punishment which has resulted in considerable monetary and other losses to him. The quantum of punishment appears to be out of proportion to the charges that have been held proved and is rather shocking our conscience. However, we have to ^{follow} the Hon'ble Supreme Court's guidelines in the case of UOI Vs. Parmananda reported in AIR 1989 SC 1185 to the effect that the Tribunal has no power to substitute its own discretion for that of the authority in relation to the quantum of punishment so long as the penalty can lawfully be imposed. It has been held that the adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with and the Tribunal cannot interfere with the penalty and the conclusion of the enquiry that the competent authority has based on evidence even if some of it is found to be irrelevant or extraneous to the matter. Thus we are not issuing a mandamus reducing the penalty. We refer back the matter to the revision authority for reconsideration of the quantum of punishment. This approach has been adopted by the Hon'ble Supreme Court in the case of State Bank of India Vs. Samrendra Kishore reported in JT 1994(1) SC 217. In that case where the punishment of removal was said to be ^{harsh} the matter was ^{remitted} to the appellate authority for reconsideration regarding the quantum of punishment.

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6. In this U.A. we are referring the matter to the revisionary authority with whom the revision petition dated 2-2-1989 submitted by the applicant is already pending. We observe the following factors which call for considerable mitigation in the quantum of punishment.

- (i) The charge of collision/misappropriation has not been established.
- (ii) Certain disbursement to the tune of Rs.6140/- as temporary advance to the line staff in the Baramula Sub Division has taken place. This disbursement has been done partly without proper authority (oral direction of the higher authority was available for exercising the power). Certain procedural lapses are alleged but the other parties involved have been given considerably lesser punishment. Even the Divisional Engineer who gave oral orders has been punished only with censure.
- (iii) For disbursement as required, the applicant was doing additional work over and above his normal duties. One of his colleagues went on a short casual leave and on direction from the Divisional Engineer the applicant discharged the duties of his colleague in addition to his own. The charges relate to the period April-May 1980 but the charge sheet was issued three years later and the final punishment was issued only in the year 1988. Due to the delay in the process the applicant's promotions were also getting delayed.
- (iv) The learned counsel for the applicant

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mentioned across the bar that the over all financial loss to the applicant because of the punishment comes to ~~lacs~~ ^{lakhs} of rupees and this is very much out of proportion to a negligible disputed amount of disbursement.

7. In the circumstances, we direct the respondents to have the revision petition dated 2-2-89 disposed of as per procedure taking into account the above observations. The applicant is also given liberty to submit a further representation in continuation of the revision petition already submitted by him and this further representation should be submitted within two months. The revision petition should be disposed most expeditiously in view of the delay which has already occurred.

8. The O.A. is disposed of with the above directions. No costs.

P. J. Thiruvengadam
29/7/94
(P.T. THIRUVENGADAM)
Member (A)

C. D. Roy
29/7/94
(C.D. ROY)
Member (J)

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