

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2504/89  
T.A. No.

199

DATE OF DECISION 26.08.1993

<u>Shri Ved Prakash</u>	Petitioner
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India through UPSC</u>	Respondent
<u>Mrs. B. Rana</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. I.K. RASGOTRA, Member (A)

The Hon'ble Mr. C.J. ROY, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement *Me*
2. To be referred to the Reporter or not ? *yes*

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A)  
26.08.1993

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA.2504/89

DATE OF DECISION: 26/8/93

Shri Ved Prakash

Applicant

Versus

Union of India through

Union Public Service Commission

Respondents

Shri G.D. Bhandari

Counsel for the applicant

Mrs. B. Rana

Counsel for the respondents

CORAM: The Hon. Mr. I.K. RASGOTRA, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

JUDGEMENT

(delivered by Hon. Member(J) Shri C.J. ROY)

This application has been filed under Section 19 of the Administrative Tribunal's Act, 1985 against the order of the respondents dated 16.11.1989, whereby the applicant has been removed from service. The applicant has prayed for a direction to the respondents to reinstate him in the post of Mechanical Operator held by him prior to removal from service with back wages and other ancillary benefits of allowances and payment of arrears etc.

2. According to the applicant, he was appointed on 21.3.78 as a Peon and was later on promoted as a Mechanical Operator. He was an active member of the Central Government Class-IV Association. On 6.11.86 and 7.11.86, a peaceful meeting of the Association and "Central Government Clerk's Union" was held between lunch hours to discuss the progress of their demands in respect of the Charter of Demands in accordance with the Ministry of Home Affairs, Government of India, OM dated 6.3.64 (Annexure A-2). The respondents issued a letter dated 6.11.86 and 7.11.86 to the Leader of the Staff Side, Office Council, UPSC, stating that no permission can be granted to hold the Union meeting, which was against the policy directions of the Government cited (supra). The action of the respondents was malafide and they were working on pre-planned and chalked out negative policy, which came to the fore when permission was not granted to hold peaceful Lunch hour meetings, particularly

when on earlier occasions, similar permissions used to be given for holding the meetings in similar set of circumstances, and on the same premises, which now were labelled as Security zone. Permission so granted, are enclosed as Annexure A-7 and A-10. The union held peaceful meeting outside the security zone of the UPSC between 6.11.86 and 18.11.86 during the Lunch hours strictly observing the direction of the Government of India in which most of the unions and association members participated including the applicant. There is nothing that could be termed as disorderly or against the security of the State or which could be called as disturbing the public order, decency or morality. No derogatory/defamatory slogans were shouted by any of the participants. On 10.1.86, a suspension order was issued to him under rule 10(1) of the CCS(CCA) Rules, 1965 without giving any reasons and the applicant was restrained from leaving his Head Quarters without permission (Annexure A-4). Vide annexure A-5 order dated 11.11.86 the respondents made an amendment to the earlier suspension order in a most arbitrary and illegal manner. On 27.11.86, he made a representation ~~against the suspension order~~ expressing his regrets and requested for revocation of Suspension Order (Annexure A-11). Vide Annexure A-12 letter, dated 10.2.87, the respondents rejected his appeal. Neither disciplinary proceedings were initiated nor any charge-sheet served on him till February 1987, when respondents issued memorandum of charges dated 25.2.87 (Annexure-21). Vide annexure A-22 letter dated 9.10.87, the inquiring authority gave the details of the documents to be supplied for his defence and further directed him to inspect some of them. He claimed for all the documents requested therein to be supplied for which the respondents stated that the documents were awaited from the SHO police. The respondents added new witnesses as well as some additional documents to cover up the legal lacunae and gaps in the prosecution case, to which he objected. But his objection without being forwarded to the disciplinary authority was rejected. He submitted a representation dated 26.10.93 to the disciplinary

authority against the manner in which it is functioning quoting some examples, thereby requesting for change of inquiry officer and stay of proceedings thereof. The inquiry authority refused to adjourn the proceedings when he was preoccupied with JCM Meeting. The disciplinary authority rejected his request for change of Inquiry Officer vide memo dated 17.11.88. As per the directions of the Inquiry Authority, he submitted a list of 50 Defence Witnesses, indicating the relevance of their evidence. Due to fear of intimidation, he did not give the actual relevance but was insisted vide order dated 6.2.89. The defence witnesses will prove that he did not exhort any staff for pen-down strike, nor did he organise or address any meetings. He submitted another list of 33 defence witnesses which was rejected in spite of his representation without passing any reasoned or speaking orders except saying that their evidence shall be negative. The mind of the inquiring authority is reflected by way the 28 DWs were rejected and on the other hand 47 PWs were admitted, although only 11 PWs gave evidence. The 36 others were given up when they refused to depose on tutored lines. The prosecution was allowed nearly 1½ years period of time to introduce witnesses but the DWs evidence of only 5 was allowed and completed in 2-3 weeks time and thus a fair opportunity has been denied to him to meet the case. The PW1 has categorically stated that the group of persons going around in the corridors and exhorting others not to work, consisted of persons named by him. But his name does not appear there. He has further stated that he did not come across any handbill bearing the name of the applicant. The Inquiring authority allowed only 5 defence witnesses and did not allow him on filmy grounds to produce any more witnesses and rest of the defence witnesses were thus prevented illegally to depose and state the facts in violation of the statutory provisions, depriving any opportunity to meet the case and defend himself. The inquiry started after a delay of over one year and prior to this, inquiry against another employee Shri R.B. Manjhi was conducted who was exonerated and reinstated. Not pleased with this, the respondent No.2 changed the Presenting Officer in order to ensure the findings of his liking

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so as to victimise him and similarly situated officer bearers of the union. The respondents thus violated the provision of statutory rules and a fair opportunity was not afforded to produce his defence and witnesses/ to cross-examine PWs. Addition of witnesses and documents was secured by the respondents to fill up gaps in evidence already adduced, original copies of relied upon documents were not produced and above all as many as 34 witnesses were not allowed to be produced. Further the respondents played the cards well by drawing a wedge amongst workers ranks by making some of them as a sort of approvers.

3. The respondents have denied that they have removed the applicant from service in an arbitrary and illegal manner based on the illegally conducted enquiry. The inquiring authority came to the conclusion that out of the four articles of charges, the first three articles of charges ie. Article-I, Article-II and Article-III are proved against the applicant on the basis of the evidence on record. The disciplinary authority rightly held that the acts of indiscipline and misconduct duly proved against the applicant are of serious nature and subversive of discipline and he is not a fit person to be retained in Government service. They have denied that because of applicant's Trade Union Activities and his participation in expounding the cause of the Association, the respondents developed animosity, bias and adopted a vindictive attitude towards the applicant. It is also denied that the applicant being an office bearer was duty bound to draw the attention of the authorities towards certain illegalities perpetuated on Class-IV/Group D employees, fight against unjust and illegal suppressive action of the low paid employees. The demands raised in the letter of Shri V.K. Mittal dated 31.10.1986 were fully considered and factual position and the decision taken by the UPSC on some of the demands were conveyed to them vide letter dated 5.11.1986 issued to the leader of staff side of office council(Annexure R-1). The applicant and his colleagues unauthorisedly organised, participated and

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conducted demonstrations meetings etc. inside the boundary wall of the office premises of UPSC. Reference to Rule 7 of the CCS(Conduct) Rules, 1964 may conveniently be made which provides inter alia that no Government servant shall engage himself or participate in any demonstration, which is prejudicial to the interest of.....public order, decency.....or which involves defamation or incitement of offence, and no Government servant shall resort to or in any way abet any form of/strike in connection with any matter pertaining to service or the service of any other Government Servant. Holding such meetings or demonstration within the office premises was subversive of discipline and harmful to public interest and violative of decency. Government of India have made it clear through written instructions that holding of such meeting or demonstration by any Government Servant without permission within his/her office premises is strictly prohibited. Such permission to hold demonstration was specifically refused especially in view of the Civil Services (Main) Examination that commenced from 7.11.86 by a communication by UPSC to Shri V.K. Mittal Leader Staff side when authorities of UPSC learnt through distribution of leaflets by Leader Staff side that such a meeting was planned in UPSC premises from 6.11.86. Thus the applicant and the Union Leaders did not write to UPSC for formal permission to hold meeting in UPSC premises from 6.11.86 and went ahead with their preparation for the meeting. The relevant leaflet is Annexure (R2). It was because of the Civil Services (Main) Examination 1986 which commenced on 7.11.86 and in order to avoid disturbance to the candidates using lawn and other parts of the premises both to relax as well as for study of the afternoon papers, permission to hold meeting/public demonstrations within the compound of the UPSC premises were denied. But it was held without any permission of competent authority and in violation of rules. During the course of the aforesaid meetings/demonstrations derogatory slogans were shouted and defamatory <sup>and</sup> objectionable posters making inter alia allegations of

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corruption and malpractices in the conduct of Civil Services (Main) Examination and other services were made against senior officers of UPSC, Shri Manish Bahl, Secretary and Shri S.K. Bose, Joint Secretary (Confidential) UPSC. Annexure R-4 collectively contains some defamatory posters. The meetings caused annoyances, inconvenience, disturbance and distraction to the candidates and supervisory staff in the Civil Services (Main) Examination. Complaints were also received from some of the candidates appearing in the Examination about the disturbance. (Annexure R-5). The applicant was placed under suspension w.e.f. 10.11.1986 as he alongwith others went round the sections of the UPSC on 10.11.1986 asking the employees not to work as part of 'pen down' strike, which was against the rules. The designation of the applicant was shown inadvertently as Technical Assistant in the order dated 10.11.86/<sup>and</sup> was corrected by subsequential order dated 11.11.86. Therefore, there was no reversion orders in his case. Further identity card was not desirable to him as he was under suspension. The applicant was allowed to inspect all the documents listed in Annexure-III of the memo dated 25.2.87 and photo copies of all the said documents were also made available to him (Annexure R-6). They also denied that any assurance was given to senior leaders for withdrawing the agitation. Shri V.K. Mittal, Leader Staff side vide his letter dated 19.11.86 informed, the office of the UPSC regarding the suspension/<sup>of agitation</sup> which he ~~was~~ along with other associates had organised from 6.11.86 to 18.11.86, without any authority (Annexure R-9). In response to the above letter, UPSC informed and clarified to him that no assurance were given to the Chairman, Confederation of Central Government Employees and workers vide letter dated 19.11.86 (Annexure R-10). The applicant was rightly placed under suspension as his activities were subversive of office discipline and disciplinary proceedings were instituted against him under Rule 15 of the CCS (CCA) Rules, 1965. After assessment of the evidence adduced during the course of inquiry, the inquiring authority held that out of the four articles of charges, three articles of charges

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were proved against him. The disciplinary authority after taking into account the representation dated 20.9.89 of the applicant, and the evidence on record, came to the conclusion that the applicant is not a fit person to be retained in Government service. It is denied that the inquiring authority adopted dictatorial, arbitrary and whimsical approach in rejecting all defence witnesses except 5 witnesses. The relevancy of the list of witnesses and their statement is within the jurisdiction of the inquiry officer. If all the witnesses have to depose to the same incident, then repetition from them all is not called for. Otherwise, the proceedings can never end. The inquiry officer after considering all aspects passed valid and reasoned order considering the remaining defence witnesses as not relevant. Order sheet dated 21.2.89 and 7.3.89 are annexed. They have also denied that the respondent No.2 changed the Presenting Officer in order to ensure the findings of his liking as to get a lever to victimise the applicant and similarly placed office bearers of the Union. The facts are that the Presenting Officer requested for grant of Earned Leave on account of some unexpected development at his home and consequentially requested to be relieved from duties of Presenting Officer vide application dated 18.8.87 (Annexure R-13). Therefore, an Under Secretary was appointed as Presenting Officer w.e.f. 24.8.87. After assessing the evidence adduced during the course of Inquiry, the Inquiring Authority held that out of the four articles of charges, 3 articles of charges have been proved and the fourth article of charge regarding his unauthorised entry in Confidential Branch has not been proved. It is submitted that out of the four articles of charges, three charges are acts of indiscipline and misconduct duly proved against the applicant are of a serious nature and subversive of discipline. The applicant is, therefore, not a fit person to be retained in Government service. The order of removal from service of the applicant is justified, valid, legal and based on good reasoning.



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4. The applicant has filed a rejoinder more or less reiterating the same facts and views as expressed in his application.

5. We have heard the learned counsel for both parties and perused the document and records of the case.

6. It is a matter of fact that a meeting of the Association and Central Government Clerk's Union was held between lunch hours on 6th and 7th of November, 1986 in the UPSC premises. The respondents have brought to the notice of the Leader Staff side vide letter dated 6.11.86 and 7.11.86 that the permission for holding meeting/ demonstration in the UPSC premises cannot be granted in view of the Civil Services (Main) Examination, which was being held wef. 7.11.86 and any violation of these instructions will be viewed<sup>seriously</sup>!

7. The learned counsel for the applicant has cited in his support a judgement in OA 299/90 dated 5.4.91, in which, the Tribunal had quashed the disciplinary proceedings initiated against the applicant.

8. In the instant case, the enquiry has not been conducted jointly. Each charged officer was tried separately and based on the facts and circumstances of each case, a decision was taken. So, the judgement cited therein by the applicant is not applicable in this case.

9. It may be seen that the Tribunal is not an Appellate Authority and cannot reappraise the evidence. The opinion of the Officer, who conducted the enquiry has to be given weightage because he has the benefit of observing demeanour of the witnesses during the examination.

10. The applicant was impleaded in this inquiry on the ground that he participated in the demonstration conducted during lunch hour against the instructions of the Government of India. XXXXX. 3 charges were proved by the disciplinary authority. The applicant also questions the removal of service by the disciplinary authority. One of the grounds alleged by him is that during the course of the enquiry, neither the defence witnesses were allowed to be examined nor the documents were permitted for inspection. The respondents letter dated 9.10.87 shows to have given all the necessary documents required therein by him, have been furnished and only the documents at Sl.No.5,11,12 and 13 were not given, but were allowed to be inspected.

The FIR is the only document which was not given to him or was allowed inspection. Hence this point <sup>does</sup> not have any relevancy.

11. We have seen the deposition of 11 witnesses, out of which, 10 of them have witnessed the applicant's activities such as preventing officers from entering into office, making derogatory speeches, pasting posters/pamphlets etc. The findings of the enquiry officer after thorough examination of the witnesses cannot be said to be perverse. There cannot be any motive behind all the witnesses examined to make false statement against the applicant. So the contention of the applicant that the evidence is perverse is negatived.

12. As regards the allegation of the applicant that out of 50 defence witnesses only 5 were allowed to be examined is not bad in law because the Inquiring Officer has every right to conduct the enquiry in a manner not to prolong it by examining too many witnesses. It is necessary here to reiterate that the quality of evidence is important than the number of witnesses adduced. The prosecution witness' evidence should be believed unless there is any other ground that there are witnesses motivated to implicate falsely the charged officer. Not a whisper about the motive of any witnesses against the charged officer to falsely implicate him is elicited in the cross examination nor their evidence was shaken. The non-signing of the charged officer of the evidence of PW5 is only at best can be said to be a ploy in order to delay the proceedings, by asking for a change in the Presenting Officer/Inquiry Officer. Therefore, the allegation of the applicant that the defence witnesses were not allowed to be examined is not acceptable. The fact that the charged officer took almost 1½ years to submit the list of witnesses/documents shows the motivation for delaying the proceedings.

13. The charges framed against the applicant are specific and are not vague. The object of framing of charges is only to make the charged officer to understand what is the charge framed against him and what reply he has to give to meet the charges. So the point does not hold any merit.

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14. The Government of India, Ministry of Home Affairs, OM dated 6.3.1964 clearly states that the demonstrations or the raising of slogans or other such disorderly conduct should not be permitted within office premises and disciplinary proceedings should be started against those found indulging in such action within office premises. The permission to hold demonstration was specifically refused especially in view of the Civil Services(Main) Examination that commenced from 7.11.1986. Despite this, the demonstration was conducted thus causing disturbance to the smooth functioning of the office.

15. The contention that the disciplinary authority adopted a partisan and biased attitude towards the applicant is not proved to any cogent evidence nor we find anything in the record. The allegation that the disciplinary authority has rejected the request of the applicant for change of Enquiry Officer cannot be accepted, as valid reason has been given by the Disciplinary Authority in the letter dated 17.11.1988.

16. It is categorically denied in the counter filed by the respondents that no preliminary enquiry is conducted and no statement of prosecution witnesses were recorded earlier. Hence the contention of the applicant that no preliminary enquiry report is given to him is not tenable.

17. In view of the findings above, we do not consider it necessary to go into other points raised, as they are not germane to the main case. It is pertinent to note that the applicant has not even preferred the appeal by exhausting his departmental remedy. In the circumstances, we dismiss the OA as devoid of merit.

18. This will however, not preclude the respondents from considering the case of the applicant for his rehabilitation in service, if he chooses to make a request to that effect, on humanitarian grounds. This observation is being made in view of the submission made at the Bar during the course of arguments that some of the participants in the same agitation were reinstated in service due to various reasons.

19. With this observation, the OA is disposed of. No costs.

(C.J. ROY) 26/8/93  
MEMBER(J)

(I.K. RASGOIRA)  
MEMBER(A)