

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1580/88
T.A. No.

199

DATE OF DECISION 31.12.1990.


<u>Shri R.A. Prasad</u>	Petitioner
<u>Shri Ajit Puddiserry</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India and Others</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(AMITAV BANERJI)
CHAIRMAN
31.12.1990.

6-

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PRINCIPAL BENCH: NEW DELHI

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Shri R.A. Prasad

...Applicant

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THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

For the applicant

Shri Ajit Puddiserry,

Counsel

For the respondents

Shri P.P. Khurana,

Counsel

(Judgement of the Bench delivered by Hon'ble

Mr. I.K. Rasgotra, Member (A))

Shri R.A. Prasad, Ex. Assistant Executive Engineer, Central Water Power Commission has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order confirming the imposition of major penalty of "dismissal from service, which shall ordinarily be a disqualification for future employment under the Government" as already imposed on him vide order No.7(27/83Vig. dated 5.11.1986.

2. The relevant facts of the case are that the applicant was served a chargesheet for alleged misconduct committed while working as Assistant Engineer, Water Survey Sub-Division, Gorakhpur. The main charges against him are that he had not disbursed salaries of the work charged staff after drawing temporary advance for the purpose but made entries in the registers indicating that the amounts drawn for payment of wages, additional dearness allowance (ADA) have been disbursed to the relevant personnel. The applicant has submitted that he

2

handed over the amount to his Subordinate to send the money by Money Order to the concerned staff who reported that the money was remitted through Money Order. He did not produce the Money Order receipts as the same were misplaced. When the matter came to the knowledge on receipt of the complaints from the staff, the applicant refunded the entire amount of about Rs.4,000/-. The applicant was later promoted and transferred to Delhi as Assistant Executive Engineer. In 1982 a preliminary ex-parte enquiry was held and he was issued a formal chargesheet in 1983. The applicant attended the enquiry and admitted the delay in making payment of the wages and ADA and submitted that he handed over the amounts to his Subordinate and that he was cheated by the latter. The Enquiry Officer came to the conclusion that the applicant had temporarily embezzled an amount of Rs.35,000/- which according to the applicant was not the charge against him. Acting on the findings of the Enquiry Officer, the disciplinary authority imposed the penalty of dismissal from service on the applicant. In revision the punishment imposed on him was confirmed.

3. The applicant contends that he had drawn Rs.1800/- from the Executive Engineer on 6.9.1976 for remittance to certain employess towards pay for the month of August, 1976. However, after about 8 months it came to light when complaints were received that the wages had not been paid to the concerned employees. The applicant refunded Rs.1800/- from his own pocket.

Again in December, 1976 the amount of Rs.5,297.95 was drawn by the applicant for disbursement of ADA. Out of this Rs.200 were given

8

by him to his Subordinate for remittance by Money Order to the work charged staff. Hereagain, complaints were received later that the said amount has not been received by the concerned employees. The applicant refunded this amount also from his own pocket. Again on the third occasion a sum of Rs.12,371.25 being wages for December, 1976 of some work-charged staff was drawn by the applicant and entrusted to the same persons for remittance. Again on complaints received it transpired that some work charged staff have not been paid their wages. The applicant again refunded Rs.2,000 to the Government. The applicant contends that in all he refunded a total amount amounting to Rs.4,000 to the Government which was paid to the work charged staff after considerable delay. According to him these facts were known to the authorities during 1976-1977. He admits that he ought to have informed the higher authorities immediately on detection of fraud committed by his Subordinate but out of sheer fear due to threats to his life and the lives of his family members he had to keep quiet. The applicant however does not seem to consider these transactions as grave, since inspite of these as he was promoted as Assistant Executive Engineer in July, 1980 after he submitted his explanation, when his explanation was called for. Further it was his understanding that since he had been promoted as Assistant Executive Enginner, adverse remarks in the ACR on him for the year 1977 ^{have} been expunged. He, therefore, believed that there was no reason for starting fresh enquiry against him vide chargesheet dated 1.11.1983 (Annexure A-III). The various articles of charges are briefly mentioned hereunder:-

2

Article I:

Shri R.A. Prasad while functioning as Assistant Engineer received a temporary advance amounting to Rs.17,337.20 on 6.9.1976 for payment to the work charged staff for the month of August, 1976. Shri R.A. Prasad rendered the temporary advance account showing in the concerned pay bill that three workers viz. S/Shri Babu Lal Shukla, Baijnath Mistri and Omprakash were paid their wages for the month of August, 1986 by Money Order remitted on 7.9.1976 although no such transaction existed in the relevant permanent imprest account through which the Money Order Commission receipts were to pass. After 9 months, i.e. on 2.8.1977 Shri Prasad refunded the amount being the pay of three work charged staff to the Divisional Office. The three staff members were eventually paid their salary for 8/1976 by the Divisional Officer after a lapse of 9 months. Shri Prasad, therefore, exhibited lack of integrity, devotion to duty and conduct unbecoming of a Government servant in violation of Rule - 3 of CCS (Conduct) Rules, 1964 by :-

- a) Falsely recording in the pay bill and temporary advance account that he paid to the said 3 work charged staff their wages for the month of 8/76 by Money Order on 17.9.1976.
- b) Not replying to the queries of the Executive Engineer seeking clarifications on the doubtful payment of wages to the said three workcharged staff.
- c) Refunding the wages of the said three workcharged staff in the divisional office

on 2.7.1977 i.e. after a lapse of about 9 months to cover up the defalcation.

- d) Causing delay of about 9 months in paying monthly salaries to the said three work-charged staff.

Article II

Shri R.A. Prasad received a temporary advance amounting to Rs.5297.95/- on 20.12.1976 for payment of Additional Dearness Allowance to four work-charged employees. The payments were however not made and Shri R.A. Prasad was again found to lack of integrity, devotion to duty and conduct unbecoming of a Government servant in violation of Rule 3 of the CCS (Conduct) Rules, 1964.

Article III

The applicant received a temporary advance amounting to Rs.12,371.25/- on 7.1.1977. Some of the workers again were not paid till their complaints were received although records exhibited that the money was remitted to them on 17.1.1977. Shri Prasad, therefore, is charged for lack of integrity devotion to duty and conduct of unbecoming of a Government servant.

Article IV

This article deals with the dialatory tactics and non-response to the question asked by the Executive Engineer under whom the applicant was working during 1977 of matters relating to Articles 1,2 and 3.

4. Earlier the Executive Engineer, Varansi conducted a preliminary investigation vide his letter No.WRFFD/C/82/6493 dated 1.10.1982 submitted that Shri R.A. Prasad did not attend the said preliminary investigation inspite of reminders sent by him and by the Superintending Engineer. He showed lack of

integrity, devotion to duty and conduct unbecoming of a Government servant.

5. In the enquiry conducted by the Commissioner, departmental enquiries, the applicant pleaded guilty. The applicant is however aggrieved that the Enquiry Officer did not take into account the circumstances in which he had pleaded guilty. He also says that there was no embezzlement of money nor was there any charge for embezzlement of Rs.35,000/-. He is also aggrieved as the Union Public Service Commission also proceeded on the basis that the applicant had accepted his own guilt and therefore did not apply its mind to all aspects of the case carefully.

6. By way of relief the applicant has prayed that the order of the respondents No.3(27)/83Vig. dated 1st September, 1987 confirming the penalty imposed and the order of dismissal dated 5.11.1986 be quashed and that he may be reinstated in service with full back wages and other service benefits.

7. Shri Ajit Puddiserry, the learned counsel for the applicant stressed that although the incident related to the year 1976, the applicant was served a chargesheet on 1.1.1983. The learned counsel contended that the applicant was promoted as Assistant Executive Engineer in July, 1980 and confirmed as Assistant Executive Engineer on 9.8.1982. The normal assumption in such a situation would be that matters relating to 1976, 1977 which had been subject of preliminary investigation was behind him. The initiating of the enquiry at such a belated stage violates principles of natural justice as the witnesses are not likely to be available for

2

proper defence and it becomes relatively difficult to marshal necessary evidence. In this particular case the learned counsel submitted that the delay in the enquiry was totally unjustified.

8. Shri Arun Sharma and Shri P.P. Khurana, learned counsel appearing for the respondents submitted that the applicant had drawn temporary advance of Rs.17,337.20/- on 6.9.1976, Rs.5,297.95/- on 20.12.1976 and Rs.12,371.25 on 7.1.1977 for payment of wages, ADA to the work charged staff working under him. On receipt of complaints from some of the employees it was revealed that the payments as recorded in the pay bill record had actually not been effected to some employees. The applicant, was, therefore chargesheeted vide memorandum dated 1.11.1983 for showing lack of integrity, devotion to duty and acting in a manner unbecoming of a Government servant, thereby violating CCS (Conduct) Rules 3 (i)(ii), 3 (1)(iii) 1964. The charged officer during the preliminary hearing was asked whether he pleaded guilty or not. He, chose to plead guilty. In effect he could not but plead guilty as he had made good the money from his own pocket on all the three occasions. The applicant not only orally admitted the delay in making payments but also made admission in his written statment at Annexure R-2 (pages113-115) annexed to the written statement of the respondents. Regarding the temporary embezzelment the learned counsel for the respondents submitted that the phrase 'Temporary Embezzelment' has been used to connote temporary misappropriation only. It is not the case of the respondents that he has embezzelled the

2

13

Government money, but that he temporarily misappropriated the money till the same was refunded for making payment to the concerned staff, who had been denied their dues for months together. The learned counsel further submitted that "The Government has the discretion in every case considering the nature of the alleged misconduct and other circumstances whether a criminal prosecution should be launched". Such a discretion in the Government does not mean that the provision for the departmental enquiry in such charges of misconduct is in violation of the provisions of Article 14." AIR 1964 SC 72/79 S. Partap Singh Vs. UOI.

The respondents in their written statement have submitted that on three successive occasions some of the work charged staff working under the applicant were not paid their dues in time. Whereas the entries in the imprest cash book were made that the money had been remitted by Money Order. The Money Order receipts were not available on record. The case is therefore clearly of temporary misappropriation. The applicant also did not cooperate with the executive engineer in the preliminary enquiry. When the employees who had not been paid complained, the applicant admittedly refunded the money involved. The fact however which cannot be ignored is that the scrutiny of the record indicated that entries were made in the temporary advance account. There were also entries in the cash account regarding the money receipt. In the course of the enquiry the applicant admitted all the four charges as he had no other option available to him. The respondents therefore averred that Shri Prasad was not a fit person to be retained in Government service

21

and passed the impugned order dated 5.11.1986 after obtaining the advice of the UPSC. The respondents have also questioned the argument of Shri Prasad that the amount was snatched from him by some one whom he could not name for fear of his life and that of his family. The amount of about Rs.37.000 has been drawn by him separately on three different occasions and it is unbelievable that part of the same was snatched from him on all the three occasions. He had also not lodged any complaint with the Police regarding the loss of money or regarding the threat to his life. His plea that he made good the loss of the Government proves his good intention cannot also be taken as its face value as he refunded the money only after the complaints of non-payment were received from the affected employees.

9. Before we proceed further let us examine the catena of judicial pronouncements cited by the learned counsel for the applicant.

a. Samarendra Narayan Ghose Vs. The State of Bengal & Ors. 1984(1)CLJ 56. A perusal of this case indicates that this is of no help to the applicant. The facts of the case in Samarendra Narayan Ghosh Vs. State of West Bengal (supra) are distinguishable. The petitioner in this case was working in Civil Supply Department where he was entrusted the responsibility of maintaining the stocks, supply and distribution. Having found some irregularities regarding excess issue of blank ration cards he is said to have invited the hostility of certain influential people. He was transferred and the grounds of the transfer were found to be mala fide by the High Court. The infirmities detected in 1967-1968 were however raked up in 1987. The High Court of Calcutta held that the delay in initiating

-15-

proceedings against the petitioner itself constitutes denial of reasonable opportunity to the applicant to defend himself. The High Court also held that:

"These apart, the said Rule, not being retroactive, but only prospective, the petitioner could not also be proceeded with under the said Rules, for such offence, which happened or occurred long prior to the coming into force of the same."

Such circumstances ^{do not} obtain in the case before us.

b. Mohd. Habibul Haque v. UOI & Ors. 1978 (1) SLR 637 and UOI & Ors. v. Mohd. Habibul Haque 1978 (1) SLR 749. The learned counsel relied on the above cases to support the plea that since the applicant had been promoted after the said incident in 1976 it must be assumed that the authorities had condoned the misconduct against him for which he has been punished. In both the cases the High Court came to the conclusion that the misconduct committed prior to the date of promotion is condoned by the act of promotion. In fact both the citations relate to the same case. While the first citation relates to Civil Rule No.7435(W)/74 decided on 1.4.1977, the latter is an appeal filed against the judgement of the Lower Court. The facts of the case indicate that the petitioner was given a penalty of reduction of pay which was later sought to be enhanced by the appellate authority to dismissal. For the reasons given in the judgement the Court did not find such an action justified. The facts of the case before us do not bear any relation to the facts of the cases mentioned above and we, therefore, do not consider the ratio of the judgement not substantiated by an

21

16

analysis of the facts of the case.

c. The next case cited by the learned counsel was that of Shri P.L. Khandelwal v. Union of India & Ors. 1989 (1) ATR 402 where the lapses on the part of the petitioner were known to the department in the year 1981 and the departmental proceedings were initiated in 1987. The lapses noticed however related to the discharge of statutory powers exercised in the matter of quasi-judicial functions. This decision of the Tribunal is of no help to the applicant.

d. The next case cited by the learned counsel is that of G.L. Naik v. Union of India & Ors. 1988(6) ATC 830 decided by the Jabalpur Bench on 10.12.1987. The facts of this case are that the delinquent was chargesheeted for unauthorised absence and was imposed punishment of compulsory retirement. He explained unauthorised absence on account of his sickness which was covered by proper medical certificate. He continued to remain absent beyond the period covered by medical certificate. He could not submit extended medical certificate in time owing to illness but submitted the certificate along with the fitness certificate. The act of absence done by him as explained above was not intentional but due to circumstances beyond his capacity for which he was very sorry.

The above statement of the delinquent was interpreted as confession of guilt for which he was charged by the concerned disciplinary authority. The Bench held that "while interpreting as confession the admission has to be explicit and unequivocal. The Bench also relied on the case of Om Prakash v. State of U.P. AIR 1960 SC 409 where the Hon'ble Supreme Court observed that unless there is a plenary

21

admission of guilt the facts may be interpreted reasonably and admission of all the facts which constitute the offence should be present to hold him guilty of the charge. We are of the view that the ratio of this case is not relevant to the matter before us.

e. The case of Hanumat Govind Nargundkar & Another v. State of M.P. AIR 1952 (39) SC 343 was cited by the learned counsel for the applicant to buttress his argument that the admission of guilt without any detailed examination cannot be taken as a proof of being guilty of charges levelled against him. Admittedly, there were circumstances which delayed the payment to some work charged employees on three occasions. However, the "circumstances from which the conclusion of guilt is to be drawn should be fully established and all the facts so established should be consistent only with the help on the basis of guilt of the accused..... In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human possibility the act must have been done by the accused." The learned counsel emphasized that no detailed analysis of the circumstances to establish the fact of guilt has been carried by the Enquiry Officer, the disciplinary authority, the appellate authority to establish the guilt. On the other hand everyone seems to have proceeded to come to the conclusion of the applicant "being guilty on his mere admission of guilt without considering the circumstance attending the admission.

f. The case of Satya Parkash v. UOI & Ors. 1980 (3) SLR 64 is not relevant to the issue raised in

2

the present case as the Enquiry Officer in that case has taken into consideration his personal knowledge about the petitioner while deciding as to whether the petitioner was guilty of charge levelled against him.

g. Lastly the learned counsel cited case of State of Punjab v. Sukhdev Singh (P&H)1980 (3) SLR 29 relates to the denial of all allegations of the delinquent except his having taken liquor. The Enquiry Officer did not record any evidence because according to him in reply to the chargesheet he had admitted his guilt in the written statment filed by him. The report by the Enquiry Officer made on that basis was accepted by the disciplinary authority and the respondents petitioner was dismissed from service. The case is distinguishable.

10. We have heard the learned counsel of both the parties and given our deep thought to the submissions made and the material before us. Admittedly, the temporary advances were drawn by the applicant on three occasions for payment of ADA to the work charged staff. Some of the staff were not paid although the entries in the record showed that the payments had been made through Money Order. There was, however, no Money Order receipts. When the work charged employees who had not received the payment complained, the applicant refunded the money and eventually the payments were made to the concerned after 8/9 months. The understanding of the applicant that his promotion from Assistant Enginner to the grade of Assistant Executive Engineer washed away the serious irregularities committed by him is not acceptable as his promotion could not have been withheld unless the charges were framed and


21

19


chargesheet issued to him. He pleaded guilty in the enquiry proceedings and "it is a settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all." AIR 1952 SC 343 Hanumant Govind Nargundkar & Anr. v. State of M.P.

We are therefore not inclined to accept the submission of the learned counsel for the applicant that the applicant's admission of guilt was not proved as the Enquiry Officer had not recorded his finding for each charge in coming to the conclusion of admission of guilt against each article of charge. The fact that the applicant refunded the money without demur cannot also be lost sight of. Much cannot also be made out of the fact that the adverse entries were not communicated to him and yet he had been promoted. As long as the adverse entries which were not communicated had not been considered by the DPC, they do not prejudice the case of the applicant. The issue of non-communication of the adverse entries is a non-issue in the case processed under CCS (CCA) Rules, 1965.

Keeping in view the above discussion, the application fails and is dismissed without any order as to costs.


(I.K. RASGOTRA)

MEBER(A)


(AMITAV BANERJI)

CHAIRMAN

/SKK/