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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1831
T.A. No.

1988.

DATE OF DECISION 20.9.1989.

Shri K.L.Lamba, Applicant (s)

Shri K.L.Bhatia, Advocate for the Applicant (s)

Versus

Union of India & Ors. Respondent (s)

Shri M.L.Verma, Advocate for the Respondent (s) No.1
Shri P.P.Khurana, Advocate for respondent No.2.

CORAM :

The Hon'ble Mr. P. Srinivasan, Administrative Member.

The Hon'ble Mr. T.S. Oberoi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT (ORAL)

(Judgement of the Bench delivered by Hon'ble
Shri P.Srinivasan, Administrative Member)

The applicant who retired from the post of Regional Provident Fund Commissioner, Grade II on 31.7.1989 complains in this application that (i) he has not been regularised in the post of Regional Provident Fund Commissioner Grade II though he was promoted to that post on adhoc basis w.e.f. 10.7.1989, (ii) that he has been wrongly punished by order dated 2.5.1988 by way of stopping promotion for the next two years, (iii) that the respondents be restrained from reverting him from the post of Regional Provident Fund Commissioner Grade II in pursuance of their order dated 2.5.88 and (iv) that he be assigned seniority in the grade of Regional Provident Fund Commissioner Grade II on the basis of his appointment to that post from 10.7.1980, albeit on adhoc basis.

2. Shri K.L.Bhatia, learned counsel for the applicant and

P. Srinivasan

Shri M.L.Verma, learned counsel for respondent No.1 and Shri P.P.Khurana, learned counsel for the respondent No.2 have been heard.

3. Shri Verma supported by Shri Khurana raised three preliminary objections. In the first place, in so far as the applicant ^{has} sought regularisation of his appointment as Regional Provident Fund Commissioner from 10.7.1980, the application is badly delayed and should be rejected. Secondly, the applicant has not exhausted the remedies available to him under the Employees Provident Fund Staff Rules, 1971 in as much as having filed an application for review on 2.5.1988 addressed to the Secretary, Ministry of Labour, he has rushed to this Tribunal before the said review application was decided. ^M Thirdly, the applicant is seeking more than one remedy in this application and, therefore, the application is liable to be rejected on this account.

4. Shri Bhatia countering the objections of Shri Verma submits that the main plank of attack is the order of punishment dated 2.5.88. This order was the result of disciplinary proceedings initiated on 3.2.1983 and it was because of the pendency of these disciplinary proceedings that the applicant was not regularised in his post of Regional Provident Fund Commissioner till the date of his retirement. Again, it was because he was not considered for regularisation, he was sought to be reverted. In effect what the applicant is seeking is that the order of punishment ^M be set aside and he be given all consequential benefits flowing therefrom like regularisation from 1980 ^M and the quashing of the order of reversion as well as ^{has} ^{refixing} consequent seniority in the grade of Regional Provident Fund Commissioner Grade II. Since the order of penalty was passed on 2.5.1988, this application filed on 21.9.88 is well within time. No doubt, the applicant filed a review

P. S. ^{be}

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application on 2.6.1988 but since thereafter an order was passed on 29.8.1988 reverting him from the post of Regional Provident Fund Commissioner, he had to approach this Tribunal for relief. Now that he has also retired from service, he is not in a position to pursue the review application. As already stated, since all the reliefs claimed are consequential to the disciplinary proceedings ending in the imposition of penalty, the contention ~~is not sustainable~~^M that the applicant was seeking plural remedies has no merit^M.

5. After careful consideration, we are inclined to agree with Shri Bhatia that the main relief sought here is the quashing of the order of penalty dated 2.5.88 and that the other reliefs sought are purely consequential. With reference to the order imposing penalty, the application is within time. We are also satisfied that this is a fit case where we need not insist on the departmental remedies ^{being} ~~having~~ exhausted since the applicant has already retired from service. Section 20 which requires all departmental remedies to be exhausted uses the order "ordinarily" and so it is not mandatory that in every case such departmental remedy should be exhausted before an application is made to this Tribunal. We, therefore, reject all the preliminary objections raised by Mr. Verma.

6. ^S On the merits of the application Shri Bhatia ~~contended~~^{stated} that the charge levelled against the applicant was two fold, namely, that he had connived with the R.P.F.C. Chandigarh during the year 1979 to get the personal car of the Chief Provident Commissioner repaired and to manipulate the official records to make it appear that the repair expenses were actually incurred on the office staff car which was, in fact, not sent for repairs, thereby causing a loss of Rs.179/-. The Enquiry Officer returned a finding that the charge of connivance with the R.P.F.C. and manipulation of records have not been proved. That being so, there was no charge left for which the

J. S. Bhatia

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Y) Could : 4 :
applicant ~~should~~ be punished. The Enquiry Officer, in effect introduced a new article of charge by stating that the applicant was negligent in issuing the cheque for Rs.179/- particularly, when he doubted the genuineness of the repair bills and had taken issue on this count~~ed~~ with his superior, ^Y the Regional Provident Fund Commissioner, Chandigarh, Shri Chatterjee. The Enquiry Officer went beyond the charges actually levelled against the applicant in coming to the conclusion and that too without any evidence. The applicant had stated that he was only a Drawing and Disbursing Officer and he had to issue the cheque on account of the repair bill which had been sanctioned by his superior officer, namely, the Regional Provident Fund Commissioner and ^{if} he did not do so, he would have been ^Y guilty of disobedience. On the other hand, soon after when the applicant became convinced that the entire transaction was fictitious he filed a complaint to the Office of the Chief Provident Fund Commissioner in the same month. Shri Bhatia contended that the finding of guilt recorded by the Enquiry Officer was ^Y based ~~passed~~ on no evidence.

7. Shri M.L.Verma, drew our attention to the fact that the role of this Tribunal was that of judicial review, it was not expected to reappraise the evidence again. If there was some evidence on the basis of which ^{we Y} finding of guilt could be founded it is not for this Tribunal to go into the adequacy of the evidence nor can this Tribunal interfere with the quantum of penalty as held by the Supreme Court in Parmanand's case, AIR 1989 SC 1185.

8. We have considered the matter very carefully. Shri Bhatia is right when he points out that the charge against the applicant was of connivance with Shri S.S.Chatterjee in manipulating the records to show that expenses had been incurred on the repair of the staff car and paying the cost of repairs accordingly, ^{though Y} while the staff car ~~cannot be~~ was ^{not sent for repairs} repaired at all. He has been acquitted of the charge of

P. S. Verma

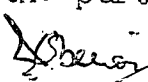
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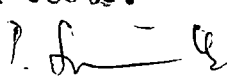
connivance or of manipulation of records. He explained to the Enquiry Officer that he had to issue the cheque as Drawing and Disbursing Officer since the ^M bill has been sanctioned by his immediate officer, Shri Chatterjee, who was the then Regional Provident Fund Commissioner. ^{we understand that} ~~Whether~~ Shri Chatterjee has been proceeded against and punished and obviously he was the main person behind what happened. In any case, from the memo of charges issued to the applicant and the Enquiry Report, it is clear that the only role of the applicant was the issue of the cheque as Drawing and Disbursing Officer. His defence before the Enquiry Officer was that he ^{he cheque} had to issue ^M for otherwise he would be guilty of disobedience. This has been rejected by the Enquiry Officer out-right^M. In addition, the applicant made a complaint as early as in July, 1979 itself to the authorities of the irregular practice adopted by Shri Chatterjee which in our opinion, establishes his innocence in the matter. We are, therefore, convinced that there was indeed no evidence on the basis of which the Enquiry Officer could record the finding of guilt against the applicant in respect of ^{the} ^M charge levelled against him. We have, therefore, no hesitation in quashing the impugned order dated 2nd May, 1988. All consequential relief due to the applicant should also be given to him.

9. In the result, we pass the following orders:

1. The order dated 2.5.88 imposing a penalty on the applicant is hereby quashed.
2. The respondents will extend to the applicant all consequential benefits like regularisation, seniority promotion etc. within four months from the date of receipt of this order.

10. The application is disposed of on the above terms leaving the parties to bear their own costs.


(T.S. Oberoi)
Member (J)


(P. Srinivasan)
Member (A)