

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 23/88
T.A. No.

1988

DATE OF DECISION 31.10.1989

Shri R.C. Pathak

Applicant (s)

Ms. Mridula Roy

Advocate for the Applicant (s)

Union of India & Ors. ^{Versus}

Respondent (s)

Shri M.L. Verma

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

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

(delivered by Hon'ble Shri P.K. Kartha)

The applicant, who is a Supdt. in Grade I in the Office of the Chief Engineer, Bareilly Zone, Sarvatra Bhawan, Barailly Cantonment, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing the impugned orders dated 7.8.1987, 26.9.1987 and 31.12.1987 on the ground that the said orders were made by authorities who were not competent under the relevant rules. By the said orders, it has been proposed to hold inquiry against the applicant under Rule 14 of the C.C.S. (CCA) Rules, 1965. The impugned order dated 7.8.1987 was passed by Major General and Chief Engineer of the Headquarters, Central Command at Lucknow. The impugned order dated 26.9.1987 was made by Brig. and Chief Engineer of the

Bareilly Zone, Sarvatra Bhawan, Bareilly Cantt. The impugned order dated 31.12.1987 was made by Maj. Gen. and Chief Engineer, Headquarters, Central Command, Lucknow.

2. The application was filed in the Tribunal on 5.1.88. On 15.1.1988, the Tribunal stayed the inquiry proceedings pursuant to the impugned orders mentioned above. The application was listed for admission on 24.10.1989 when we perused the records of the case carefully and heard the learned counsel for both the parties. In our opinion, the application could be disposed of at the admission stage itself as the learned counsel for the applicant did not press the other reliefs sought in the application.

3. The applicant is the Vice-President of All India M.E.S. Civil Engineers Association which is recognised by the Government and Secretary of the National Confederation of Central Government Employees and Workers. He claims that several employees at Bareilly were benefited due to his variety of issues on behalf of the employees taking up (a ~~case~~) with the authorities concerned. He has alleged that respondent No.4 (Chief Engineer, Bareilly Zone) took strong exception to the gate meetings organised by him in 1986. He was suspended on 6.7.1987.

4. The case of the applicant is that the Appointing Authority as well as the authority competent to issue a charge-sheet for major penalty in the case of employees holding Groups 'C' and 'D' posts in the Engineer-in-Chief's Branch is the Engineer-in-Chief. In this context, reliance has been placed on the provisions of Rule 12(2) read with Part V of the Schedule to the C.C.S. (CCA) Rules, 1965. The applicant holds a Group 'C' post in the Engineer-in-Chief's Branch. The impugned orders were passed by Chief Engineers

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who were lower in rank to Engineer-in-Chief.

5. The case of the respondents is that the power of the Engineer-in-Chief has been delegated to the Chief Engineers by order dated 16th August, 1979 made in exercise of the powers conferred by clause (a) of sub-Rule (2) of Rule 12 of the C.C.S.(CCA) Rules, 1965. A copy of the said order has been annexed to the counter-affidavit filed by the respondents (vide Annexure IV, pages 74 and 74-A of the paper-book). According to the said order, in respect of all Group 'C' posts, including Office Supdt. Grades I & II, the authority competent to impose penalties and the appellate authority have been specified. Chief Engineer (Command) and Chief Engineer (Zone) have been so empowered to impose all penalties on incumbents of Group 'C' posts. The appellate authority, where the disciplinary authority is the Chief Engineer (Command), is Engineer-in-Chief, while in the case of Chief Engineer (Zone), it is Chief Engineer (Command).

6. The learned counsel for the applicant contended that the order dated 16th August, 1979 mentioned above, has not been published in the Gazette through a notification and that the necessary changes have not been made in the Schedule to the C.C.S.(CCA) Rules, 1965 thereafter. According to her, in the absence of such a notification and amendment of the Schedule, the said order will have no legally binding effect.

7. The contention of the learned counsel for the respondents is that the order dated 16th August, 1979 by its very nature, is executive in character and that it is not required to be notified in the Gazette and thereafter

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inserted in the Schedule to the C.C.S.(CCA) Rules.

8. Rule 12 of the C.C.S.(CCA) Rules deals with the disciplinary authorities. Sub-rule (1) states that the President may impose any of the penalties specified in Rule 11 on any Government servant. Sub-rule (2) provides, inter alia, that without prejudice to the provisions of Sub-rule (1) but subject to the provisions of Sub-rule (4), any of the penalties specified in Rule 11 may be imposed on a member of a Central Civil Service other than the general Central Service, by the appointing authority, or the authority specified in the Schedule in this behalf, or by any other authority empowered in this behalf by a general or special order of the President. In the instant case, the order dated 16.8.1979 was issued by the Under Secretary to the Government of India indicating therein that it was issued "by order and in the name of the President". The question arises whether such an order is required to be notified in the Gazette so as to make it operative and valid.

9. The learned counsel for the applicant drew our attention to the Government of India's instructions contained in the O.M. dated 13th September, 1957 dealing with the notification of amendments to statutory rules. It is, inter alia, stated in the said O.M. that all statutory rules have the force of law and no amendment in any such rule acquires legal validity unless it is formally made and notified in the same manner as the original rules concerned. The O.M. refers to some instances which have been noticed wherein changes were effected only by an executive order and not by a formal

amendment of the relevant rules although the validity of any alterations in the conditions of service made by executive orders alone remain open to challenge in a court of law. In view of this, the O.M. concludes with the following instructions:-

"All concerned are, therefore, requested to note and observe the following instructions in this regard:-

- (i) In all cases in which conditions of service already embodied in rules are to be altered, such alteration should invariably be made by a formal amendment of the rules made and notified in the appropriate manner.
- (ii) Where the intention of the alteration is to liberalise the rules in favour of the Government servants, there may be no objection to giving effect to the intention by means of an executive order in advance of the formal amendment of rules. But the formal amendment should invariably be made as soon as possible."

(Vide Govt. of India, M.H.A. O.M. No.F-4/3/57-Estt. (A) dated 13.9.1957).

In our opinion, the aforesaid instructions by the Government of India would not be applicable to the delegation of powers made by a special order issued in the name of the President by invoking the provisions of Rule 12 (2) (a) of the C.C.S. (CCA) Rules, 1965.

10. Intrinsic evidence for the above conclusion is available in the provisions of the C.C.S. (CCA) Rules, 1965. In the said Rules, wherever notification in the official

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Gazette is required, the same has been mentioned. In cases where an order, ^{or} general, or special, ^{or} is to be issued, the same is mentioned without any requirement of publication in the official Gazette. For example, in Rule 2 (f), "Department of the Government of India" has been defined to mean any establishment or organisation declared by the President by a notification in the official Gazette to be a department of the Government of India. No such requirement of notification in the official Gazette is mentioned in the Rules where orders are to be made by the authorities concerned. For example, Rule 3(2) provides that the President may, by order, exclude any class of Government servants from the operation of all or any of these rules (see also rules 14(5) (c) and 18). In several sections reference has been made to the making of general or special order. For example, in Rule 6 it is stated that civil posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall, by a general or special order of the President, be classified as mentioned in the said Rule. The proviso to Rule 8 is to the effect that the President may, by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments. (See also Rules 9(2), 10(1), 12(2)(a) & (b), 13(1), 14(8) (b), 24(1), 29(1)(vi) and 35). The intentment of these rules is quite clear. These ² orders are to be made by the authority concerned not as subordinate legislation but in the form of executive orders. In our opinion, such orders are not required to be published in the official Gazette.

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11. The rule relating to the publication in the official Gazette relates to delegated legislation, such as rules or orders, & bye-laws. In the case of, some form of publication would be necessary before they become effective. It would be sufficient if the general or special orders made by the President are made known to the officers of the department concerned. In the instant case, the applicant has not disputed the publication of the order dated 16th August, 1979 but has only questioned its legality and propriety on the ground that it should have been notified in the Gazette of India. We see no substance in the said contention. After the conclusion of the hearing, the respondents have shown to us the relevant file relating to the making of the order dated 16th August, 1979. It is seen that the said order has not been published in the official Gazette. However, the Engineer-in-Chief's ^Q Branch, Army Headquarters, New Delhi, vide letter dated 31st August, 1979, have circulated among all concerned about the making of the said order. In para.6 of the said circular letter, it has been stated that it should be ensured that the orders are brought to the notice of all concerned and that the disciplinary cases/appeals are dealt with in future strictly in accordance with the same. The letter dated 31.8.1979 was issued in the ordinary conduct of Government business and we are satisfied that the existence of the order dated 16th August, 1979 has been brought to the notice of the employees of the respondents. In our opinion, the bringing to the notice of the employees about the existence of the order dated 16th August, 1979 would be sufficient and that the publication of the said order in the official Gazette

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is not a mandatory requirement under the rules.

At the admission stage itself.

12. In the light of the foregoing, we see no merit in the present application and the same is dismissed. The interim orders passed on 15.1.1988 and continued thereafter until further orders, are hereby vacated.

13. Before parting with this case, we would like to add that the respondents should hold the inquiry pursuant to the impugned memoranda dated 7.6.1987, 26.9.1987 and 31.12.1987 expeditiously and after observing the procedure laid down for the inquiry in the C.C.S. (CCA) Rules. The applicant should also fully cooperate with the holding of the inquiry. In case the applicant is aggrieved by the final order passed by the disciplinary authority, he will be at liberty to file a fresh application in accordance with law after he has exhausted the remedies available to him under the C.C.S. (CCA) Rules, 1965. The parties will bear their own costs.

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(I.K. Rasgotra) 31/10/88
Administrative Member

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31/10/88
(P.K. Kartha)
Vice-Chairman (Judl.)