

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 726/88

1988

T.A. No.

DATE OF DECISION 23.9.1988

Shri K. P. Dohare

Petitioner

Shri S. S. Tewari with Shri J. S.
Bali

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Smt. Raj Kumari Chopra and

Advocate for the Respondent(s)

Shri V. P. Gupta

CORAM

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

The Hon'ble Mr. S. D. Prasad, Administrative Member.

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? Yes

4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

(S. D. Prasad)

Administrative Member

(P. K. Kartha)
Vice-Chairman (Judl.)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-726/88

Dated: 23.9.1988

Shri K.P. Dohare Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri S.S. Tewari with
Shri J.S. Bali, Counsel

For the Respondents Smt. Raj Kumari Chopra, and
Shri V.P. Gupta, Counsel.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.D. Prasad, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is working as Development Officer (Chemicals) in the Directorate General of Technical Development, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following two reliefs:-

(a) To set aside or quash the order dated 1.12.87 whereby the disciplinary authority imposed on him the minor penalty of stoppage of increments for a period of two years w.e.f. 1.9.1988 at the stage of Rs.4,000 in the scale of Rs.3,000-100-3500-125-4500 attached to the post of Development Officer with the stipulation that on the expiry of that period, it will not have the effect of postponing his further increments, and

(b) To direct the respondents to promote the applicant to the next higher post to which he is entitled and also to confirm him in the post of Development Officer as per the recommendations of the D.P.C. held in 1987.

2. The applicant had submitted a representation on 26.4.1984 to the Director General of Technical Development, wherein he had given certain details of the mal-practices committed by Shri M.S. Grover, Industrial Adviser and Shri H. Khaparde, Additional Industrial Adviser. On 12.6.1986, the President in his capacity as the disciplinary authority, issued a memorandum to the applicant proposing to take action against him under Rule 16 of the C.C.S. (CCA) Rules, 1965. The statement of imputations of misconduct or misbehaviour on which action was proposed to be taken, was enclosed with the said memorandum. The statement of imputation of misconduct reads as follows:-

"Shri K.P. Dohare, while functioning as Development Officer during 1984 in the Office of the Directorate General of Technical Development, had made a complaint dated 26th April, 1984, inter alia, against Shri M.S. Grover, Industrial Adviser, and Shri H. Khaparde, Additional Industrial Adviser. In the complaint against Shri Grover, he had quoted some extracts from the government files to substantiate the allegations made by him in the above complaint against these officers. On examination of the relevant records, the allegations made by Shri Dohare turned out to be false and without any substance. In the case of Shri Khaparde, he had indicated that the cost of construction intimated to the office by Shri Khaparde in respect of his house No. B-3/379, Paschim Vihar, New Delhi, was less than what Shri Khaparde had actually incurred. This was investigated by getting the cost of the house built by Shri Khaparde, assessed through the expert agency of the Government. The difference between the cost shown by Shri Khaparde and that assessed by the said agency, was only Rs. 50/-. This again proved that the complaint against Shri Khaparde was false and without any basis. Shri Dohare has thus maligned his superior officers by making false complaints against them. He sent the copies of the complaint inter alia to Prime Minister, Industry Minister, Secretary (ID). This has not only caused undue harassment and embarrassment to the two officers named above, but also brought their names and that of the office into disrepute. In spite of being advised that the allegations made by him were looked into and found not true, he persisted in his complaint repeating the false allegations.

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2. By the aforesaid acts, Shri Dohare has indulged in a conduct unbecoming of a Government servant of his status and thereby contravened Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."
3. On 1st December, 1987, the impugned order for imposing the penalty of stoppage of increments was passed by the disciplinary authority.
4. The applicant has contended that Rule 16 (1-A) of the C.C.S. (CCA) Rules, 1965 provides that an inquiry shall be held in the manner laid down in Rule 14 before making any order imposing on the Government servant any penalty if it is going to affect the pensionary benefits of the Government servant. In the instant case, the penalty imposed on the applicant by the impugned order would adversely affect the applicant's pension.
5. The respondents have stated in their counter-affidavit that the application is premature and barred by jurisdiction on the ground that the order against which he had come to the Tribunal is still under review by the President under Rule 29-A of the C.C.S. (CCA) Rules, 1965, under which the President has the power to review his own orders. Since the matter is already pending ^{for} ~~for~~ final disposal, it has been argued that the present application is untenable in law. It has further been stated that when the fact that the minor penalty imposed on the applicant was likely to affect the pensionary benefits of the applicant came to the notice of the President, the President, on reviewing the penalty imposed on the applicant, has decided to modify the penalty and has already made a reference to the U.P.S.C., as required under the Rules. As regards the confirmation of the applicant, it has been stated that the

same is subject to his being found fit by the D.P.C. and also subject to the availability of a permanent post in the grade. Moreover, in view of the latest instructions on the subject issued by the Government, confirmation in each grade/post is not necessary when an official has been confirmed in any post held by him. As the applicant is already confirmed as Assistant Development Officer, this contention of the applicant does not hold good.

6. We have carefully gone through the records and heard the learned counsel for both the parties. To our mind, the contention of the respondents that the filing of the present application is premature on the ground that the President is undertaking a review of the impugned order under Rule 29-A of the C.C.S.(CCA) Rules, 1965, is not legally sustainable. Section 20(1) of the Administrative Tribunals Act provides that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of grievances. Sub-Section (2) of this Section deals with the cases where a person shall be deemed to have availed of all the remedies available to him under the relevant service rules. Sub-Section (3) of this Section provides that for the purpose of Sub-Section(1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary, shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

7. In the instant case, the applicant had not submitted a memorial to the President. Rule 22 of the C.C.S.(CCA) Rules, 1965 specifically provides that no appeal shall lie against any order made by the President.

8.

In Shri Tulsi Ram Vs. Union of India & Another, A.T.R. 1987 (2) C.A.T., 498, the Principal Bench of the Tribunal presided over by the Hon'ble Chairman, has held that when the President has made the order, only a memorial can be submitted to him and that failure to file any such memorial cannot be construed as failure to exhaust all the remedies available under the service rules within the meaning of Section 20 of the Administrative Tribunals Act. That apart, the provision contained under Sub-Section (1) of Section 20 against the Tribunal entertaining an application if the applicant had not exhausted all the remedies available to him, states that the Tribunal shall not ordinarily admit an application. There is no total bar against the Tribunal admitting the application in the circumstances of a particular case.

9.

In view of the above and in the facts and circumstances of the present case, we are of the opinion that there was no procedural infirmity in the filing of the present application before us.

10.

The learned counsel for the applicant stated that as the impugned order will adversely affect the amount of pension payable to the applicant - and this is admitted by the respondents - the provisions of Rule 16(1-A) of the C.C.S.(CCA) Rules, 1965, would be attracted and that the impugned order is liable to be struck down.

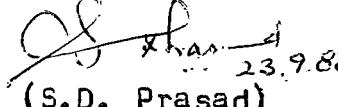
11.

We are inclined to agree with the contention of the learned counsel for the applicant to the extent that the impugned order is not legally sustainable. From this, it does not necessarily follow that it should be struck down as the impugned order has not yet been implemented. Before that, the President has, suo moto, undertaken ^a the review

of the impugned order and has decided to modify the penalty in consultation with the U.P.S.C.

12. In the light of the above, it will be fair and just to pass the following order and directions in the present case:-

- (i) The respondents are directed to pass their order in the suo moto review proceedings within a period of two months from the date of communication of this order.
- (ii) The respondents shall consider and take a decision in the matter of promotion of the applicant to the next higher post in accordance with the relevant rules and final decision in the suo moto review, within a period of three months from the date of decision in the said review.
- (iii) The respondents shall similarly consider and take a decision in the matter of confirmation of the applicant in the post of Development Officer in accordance with the relevant rules within a period of three months from the date of communication of this order.
- (iv) There will be no order as to costs.


23.9.88
(S.D. Prasad)
Administrative Member


23.9.88
(P.K. Kartha)
Vice-Chairman(Judl.)