

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No 695/86
T.A. No.

198

DATE OF DECISION 23.11.86

Shri N.K. Roy

Petitioner

Shri K.L. Bhatia.

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mrs. Raj Kumari Chopra,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

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

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

Done
(J.P. Sharma)
Member (Judl.)

Done
(P.C. Jain)
Member (Admn.)

Central Administrative Tribunal
Principal Bench: New Delhi.

Regn. No. OA-695/1986

Date of Decision: 23.11.90

Shri N.K.Roy

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri K.L.Bhatia,
Advocate.

For the respondents

... Mrs. Raj Kumari Chopra,
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)
Hon'ble Shri J.P. Sharma, Member(Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant moved this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 25.7.1986 passed by the Director, Directorate of Field Publicity, Ministry of Information and Broadcasting reverting the applicant in a departmental enquiry under Rule 14 of the CCS(CCA) Rules, 1965, from the post of Superintendent, to the post of Stenographer Grade III for a period of four years and further promotion only on suitability.

2. The applicant claimed the relief for setting aside the impugned order dated 25.7.1986.

3. The facts as alleged by the applicant are that he was working with the Orissa Government from 6.3.1956 to 19.5.58, ^{while} ~~xxx~~ he received an offer of appointment on 12.5.1958 for the post of Stenographer in the regional office of Directorate of Field Publicity, Ministry of Information and Broadcasting with headquarter at Bhubaneswar. The applicant joined the post on 30.5.58 and produced ^{a copy of the} Matriculation Certificate. The applicant was promoted as Stenographer Selection Grade with effect from 7.10.1977 and subsequently as Superintendent with effect from 6.8.1980 at New Delhi. He was appointed against a regular vacancy as Senior Superintendent on adhoc basis w.e.f. 20.1.83 but he was reverted to the post of Superintendent after a period of two years. The date of birth of the applicant was wrongly

written in the service-book as 17.10.1938. His Matriculation certificate was misplaced and when it was found, in 1977, the applicant learnt that the actual date of birth is 17.10.1940. Thus due to clerical error of the clerk concerned who noted down the date of birth in the service book, the applicant would be two years older than his actual age. In order to correct the service record, the applicant submitted an application dated 31.3.1977 alongwith a copy of the Matriculation certificate. His date of birth was accepted as 17.10.40 and corrected in the service record by the order dated 21.1.83 (Annexure-III). The applicant alleged that he was placed under suspension by the order dated 26.3.82 (Annexure-IV) but the suspension order was revoked by a subsequent order dated 20.5.82. However, it was intimated that enquiry will proceed with regard to the case relating to the change of applicant's date of birth. Subsequently, by the order dated 1.12.82 (Annexure VI), the disciplinary proceedings initiated against the applicant were dropped and suspension period was treated as on duty.

4. The applicant further alleged that four years thereafter the departmental disciplinary proceedings again commenced with regard to the same fact of the change of the date of birth in the service record, and the applicant was served with a charge-sheet on 14.6.84 (Annexure VII). The articles of charge against the applicant are as follows:

ARTICLE I

That the said Shri N.K.Roy, while functioning as Stenographer in the Regional Office of the Directorate of Field Publicity at Bhubneshwar (earlier known as Regional Office (Orissa), Five Year Plan Publicity) during the period from 1958 to 1977 exhibited lack of integrity inasmuch as he intentionally and knowingly gave wrong information to the Government regarding his date of birth. By his above act, the said Shri Roy violated Rule 3(1)(i) of the CCS(Conduct) Rules, 1964.

ARTICLE II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Roy exhibited lack of integrity inasmuch as he managed to tamper with the records and destroy the evidence against him regarding the wrong

information given by him about his date of birth at the time of his appointment in the Regional Office of DFP, Bhubaneshwar in 1958. By his above act, the said Shri Roy violated Rule 3(1)(i) of the CCS(Conduct) Rules, 1964.

ARTICLE - III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Roy committed misconduct unbecoming of a Government servant inasmuch as he tried to mislead the Government by giving wrong information vide his application dated 31.3.1977. By this above act Shri Roy contravened the provision of rule 3(1)(iii) of the CCS(Conduct) Rules, 1964.

Shri T.C.Dhangwal, Deputy Secretary was appointed as Enquiry Officer who submitted the report on 30.4.85 (Annexure-VIII) and held that Articles I and III have been proved and article II has not been proved. After the advice of the U.P.S.C., the punishment order dated 25.7.1986 (Annexure IX) was issued in the name of the President imposing the penalty of reduction in rank from the present post of Superintendent to the lower post of Stenographer Grade III for a period of four years, with further direction that at the end of this period if he is found fit he will be restored to the post of Superintendent as well as pay and seniority. The applicant has taken a number of grounds to assail the aforesaid order of punishment. It is alleged that material witnesses were not examined; material documents were not given to the applicant; the order of penalty is incomplete and illegal; lack of evidence to prove the charges and that when once the proceedings were dropped on 20.5.82 (Annexure V), the memo of charge-sheet could not be submitted again on 14.6.1984 (Annexure VII). On the above grounds, the applicant prayed for quashing of the impugned order.

5. The respondents contested the application taking a preliminary objection that the applicant had not preferred a Revision under Rule 29 of the CCS(CCA) Rules, 1965 and Review under Rule 29A of the said rules against the order dated 25.7.1986, so the application is barred under Section 20 of the Administrative Tribunals Act, 1985. It is further stated that the year of birth mentioned in the applicant's

service record as 1938 was not a clerical mistake. It had been mentioned/declared by the applicant intentionally. In April, 1980, a reference was received from the Central Vigilance Commission communicating that the age of the Stenographer of the regional office was changed, by taking bribe of Rs.2000/-, by the Administrative Officer who had removed all the previous records and evidence. He was even below the ^{minimum requirement} ~~age~~ at the time of appointment on this irregular change of date of birth. The Central Vigilance Commission requested the Ministry of Information and Broadcasting to verify the information and submit a report. The preliminary enquiry was conducted and the Director of Field Publicity decided to initiate disciplinary proceedings against the applicant and placed him under suspension on 26.3.1982 (Annexure IV). The suspension of the applicant was reviewed by the President and it was decided by the President to revoke the suspension with effect from 19.5.1982 but disciplinary proceedings should continue (Annexure-V). Soon after this, there was a change of Director and one Shri Partap Kapoor joined who, ~~against the~~ procedure prescribed, dropped the proceedings without sending a report to the Central Vigilance Commission. His suspension period was also regularised by said Shri Kapoor on 13.11.82. As per procedure prescribed in the Vigilance Manual, in respect of the complaints forwarded for enquiry to the administrative Ministry/Department, the Chief Vigilance Officer concerned has to make an enquiry or get an enquiry conducted to verify the allegation and a report is to ^{be submitted} to the Central Vigilance Commission together with the relevant records. It is only on receipt of the advice of the C.V.C that a decision to close the case can be taken. Since earlier decision was taken by the Ministry on behalf of the President to continue the proceedings while revoking the suspension of the applicant on 20.5.82, the Director, Publicity Shri Kapoor acted beyond his

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jurisdiction to drop the proceedings on 13.11.1982. When the new Director joined, and the facts came to his knowledge, the disciplinary proceedings again commenced as said in the application. The Enquiry Officer conducted the enquiry and observed the procedure prescribed including the principles of natural justice and tried to procure the evidence of the prosecution witnesses but the witnesses ^{could not} come to Delhi and after that on the basis of the documents, the Enquiry Officer submitted the report holding that charges I and III stand proved against the applicant and the impugned punishment ^{impugned} was imposed. The order does not suffer from any defect and ^{valid} is as per the instructions contained in O.M. dated 7.2.64 of the Ministry of Home Affairs. Along with the counter a copy of the recruitment rules Annexure R-1 has also been filed.

6. We have heard the learned counsel for the parties at length and have gone though the records of the case. The first page of the service-book (Annexure-XIV) shows that it bears the signature of the applicant in Column No.11 and in Column No.6 the date of birth 17.10.38 is written. In the end of this first page of the service-book there is the signature of Shri B.N.Rath, Regional Officer, Orissa. The case of the applicant is that earlier to 20.5.80 he had ^{the} also worked with Government of Orissa from 6.3.56 to 19.5.58. The educational qualification of the applicant at that time was Matriculate. Actually, ^{if claimed} the date of birth of the applicant as 17.10.40 had been mentioned earlier, then he could not have a job in the Government of Orissa because he was hardly 15½ years of age at that time. A copy of the Matriculation certificate (Annexure XV) shows that the applicant passed Matriculation examination in the year 1954 from ^{the} Utkal University. In this high school certificate his date of birth is recorded as 17.10.40. The applicant in para 6.2 of the application stated that he received offer of appointment on 12.5.58 from the Under Secretary Home (Public Relations) for the post of Stenographer

while he had been working in the Orissa Government from 6.3.56 to 19.5.58. If the year of birth is taken as 1940, then the applicant was hardly 15 years and some months of age in the year 1956 and was ineligible to get the Government service till he attained majority at the age of 18. However, in the present case when the applicant offered himself for appointment he gave his date of birth as 17.10.1938. According to the applicant himself, ~~xxxxxxxxxxxxxx~~ the appointment of the applicant was subject to condition of production of certificate of educational qualification and certificate of age. Since, the applicant was only matriculate, the only certificate he had to file was that of the Utkal University of passing wherein Matriculation in 1954 / his date of birth is recorded as 17.10.1940. The incorrect date of birth, 17.10.1938, continued to remain in service record of the applicant till it was got corrected by the applicant by the application dated 31.3.1977 (Annexure-II) i.e. the applicant moved this application after 19 years of his employment. In this application the applicant has written "off-late it came to my notice that the date of my birth according to my matriculation certificate is 17.10.1940 but in my service book it has been wrongly recorded as 17.10.1938." The applicant also sent Matriculation certificate alongwith this application. This date of birth was corrected by the order dated 28.7.78 (Annexure-XVII). After this correction has been effected, as stated in the reply by the respondent in April, 1980, Central Vigilance Commission made a reference to the Ministry that the correction of date of birth of a Stenographer of the regional office has been done after taking a bribe of Rs.2000/- and on this a preliminary enquiry was held. In the above context, it is to be seen whether the enquiry conducted against the applicant had been according to the

procedure prescribed under the CCA(CCS) Rules, 1965 and the applicant had been afforded due opportunity or not and further whether the enquiry ~~could~~ be held again in 1984 having been earlier dropped in 1982 by the then Director Shri Kapoor.

7. The respondents in Para 6.8 have stated the reasons for commencement ~~of~~ ^{of} the enquiry in 1984 after it was dropped in 1982. The applicant in the rejoinder in para 7 showed ignorance ~~of~~ ^{been} the fact whether a reference had/received from the Central Vigilance Commission in April, 1980 concerning the applicant or not. Further it is said that the said reference was in fact about a complaint against the Administrative Officer for taking bribe. Nothing has been stated about the remaining part of para 6.8 which runs in about $2\frac{1}{2}$ pages. It is ~~not~~ ^{stressed} by the learned counsel for the applicant that the enquiry could not be commenced again in 1984, as the earlier enquiry was dropped and that ~~be~~ ^{be} ~~would~~ against the procedure prescribed. The learned counsel for the applicant has placed reliance on the authority of Bhagwan Dass Vs. C.M.E. reported in 1970 AIR page 250 Allahabad High Court and S.A. Venkataraman Vs. Union of India, AIR 1953 SC page 250. Both these authorities are totally besides the point. In the Allahabad case, there was a rightful decision to drop the proceedings by the competent authority and similarly in the Venkataraman's case the delinquent official was exonerated after investigation. So, both the above cases are on the point that when once in a lawful manner enquiry proceedings end in favour of the charged official then the disciplinary proceedings cannot be commenced again. Thus, there is no illegality in recommencing the disciplinary proceedings against the applicant.

8. Regarding the charges I and III the enquiry officer has based his findings on the basis of documents. Charge I is that the applicant ^{had} knowingly given wrong information

to the Government regarding his date of birth and charge No. III is that he gave wrong information in the application dated 31.3.1977 for correction of date of birth and as such, the applicant conducted in a manner, unbecoming of a Government servant, violating Rule 3(1)(iii) of the CCS(Conduct)Rules, 1964. Though a list of witnesses had been given, it was immaterial as the matter rested only on the documentary evidence. Therefore, B. Mohanti and Shri B.N. Rath both of Bhubaneswar who were mentioned as witnesses were not examined. The Enquiry Officer has given out in the report the reason of non-examination that the witnesses could not come. The Enquiry Officer considered the defence of the applicant. The defence of the applicant has been that the wrong mention of the year of birth in the service-book was as a result of a clerical error. He had not made entry in his service book. ~~He had only signed the first page of the service book.~~ He had only signed the first page of the service book as required under the rules. In the proforma relating to the service sheet he had shown the date of birth as 17.10.1938 as till then he had not discovered the correct date of birth. This specific defence in a manner goes to establish that the applicant did give the date of birth as 17.10.1938 instead of 17.10.1940. The finding of the Enquiry Officer, therefore, based on the documents, cannot be said to be in any way perverse. The argument of the learned counsel for the applicant that the documents were not supplied to him is not at all relevant. The grievance of the applicant is that he was not furnished a copy of the final decision taken by Shri Partap Kapoor regarding dropping of the earlier disciplinary proceedings and accepting the date of birth as 17.10.1940 and the other papers relating to holding of an enquiry into charges relating to change of birth and final decision of Shri M.L.Lal has no bearing to the present case. The dropping of the proceedings against the applicant was also known to the applicant and regarding other documents, the department claimed the privilege. In claiming the privilege it is said that according to

O.M.No.C-13012/4/80-Vig. dated 14.1.1985 it is not in the public interest.

9. The applicant was duly allowed access to the relevant documents and the enquiry officer conducted the enquiry proceedings according to the Rules. The learned counsel for the applicant placed reliance on AIR 1963 M.P. Page 115, Govind Shankar Vs. State of M.P. regarding the non-examination of the witnesses of the prosecution. The examination of the witnesses is to prove the charge against the charged official. In case, the witnesses are not examined and their examination has a bearing on the likely result of the enquiry then their examination is necessary. However, where the Articles of Charge only refer to a document like the present case, the wrong mention of date of birth, then the best evidence is only document. So, the authority relied upon is not applicable to the present case. The learned counsel referred to AIR 1961 SC P.1623 - State of M.P. Vs. Chinta Mani, regarding the non-production of the documents. The documents which the applicant desired ~~have~~ been referred to ~~xxxxx~~ in the earlier part of the judgement. One of the documents was allowed ^{to be} ~~/inspected~~ and the other was not forthcoming on the plea of the privilege of the prosecution. The Enquiry Officer in the proceedings of the enquiry dated 22.4.1984 gave sufficient reasons in para 5 at page 39 of the file (Annexure-XI). Moreover the dropping of the proceedings by the Director, ^{Shri} ~~Pratap Kapoor~~ was not in accordance with the rules. The cited authority refers to the documents which had a bearing to the merit of the charge. In the present case it is not so.

10. The learned counsel for the applicant also challenged the order on the ground that it does not show as to when the order has to come into force. The impugned order imposed the penalty of the reduction to the lower grade of Stenographer and the order is effective when steps are taken in the light of the punishment order. There is no ambiguity or illegality in

the order by omission of the specific date when the order has to come into effect. In such a case the date of the order is the date when the order becomes effective. The respondents have also in para 6.11.2 and 6.11.4 of the written statement pointed to the same fact.

11. The learned counsel for the applicant also assailed the order on the ground that even after the compliance of the order regarding reduction to the lower grade of Stenographer Gr.III, the restoration to the original post shall be only on the suitability of the applicant. The learned counsel pointed to the infringement of FR 59(3) and O.M. of the Ministry of Home Affairs dated 7.2.1964 which provided automatic restoration after the period of penalty.

FR-59(3) lays down:

"3. where the period of reduction is specified in the order of penalty the Government servant concerned shall be automatically restored to his old post after the expiry of the specified period."

The impugned order of penalty is under Rule 11(vi) of the CCS (CCA) Rules, 1965, which lays down:

"11(vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service;"

Because of the above provisions the provisions of FR-28 and FR 29(2) are attracted and not the provision of FR-59(3) as argued by the learned counsel for the applicant.

"FR-28: The authority which orders the transfer of a Government servant as a penalty from a higher to a lower grade or post may allow him to draw any pay, not exceeding the maximum of the lower grade or post, which it may think proper:

Provided that the pay allowed to be drawn by a Government servant under this rule shall not exceed the pay which he would have drawn by the operation of Rule 22 read with clause(b) or clause(c), as the case may be, of Rule 26."

(P.C.)

: 11 :

F.R.-29(2): If a Government servant is reduced as a measure of penalty to a lower service, grade or post, or to a lower time-scale, the authority ordering the reduction may or may not specify, the period for which the reduction shall be effective; but where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent."

12. In view of the above discussion, the application is devoid of merits and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (Judl.) 27/11/90

P. C. Jain
(P.C. Jain)
Member (Admn.)