

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(8)

O.A. No. 845/86
T.A. No.

199

DATE OF DECISION 18.3.1991

<u>Shri Om Prakash</u>	<u>Petitioner</u>
<u>Shri Shanker Rajiv</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>Union of India & Anr</u>	<u>Respondent</u>
<u>Shri K.C. Mittal</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. Justice Kamleshwar Nath, Vice 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 ?
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 ?


(I.K. Rasgotra)
Member (A)

IN THE GENERAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(6)

O.A. NO. 845/1986

DATE OF DECISION 18.3.1991

Shri Om Prakash

.....Applicant

Vs.

Union of India & Anr.

.....Respondents

CORAM

JUSTICE SHRI KAMLESHWAR NATH, HON'BLE VICE-CHAIRMAN
SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

For the Applicant

.....Shri Shanker Rajiv

For the Respondents

.....Shri K.C. Mittal

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

JUDGEMENT

DELIVERED BY JUSTICE SHRI KAMLESHWAR NATH,
HON'BLE VICE-CHAIRMAN

This application under Section 19 of the
Administrative Tribunals Act is for quashing an order
the applicant
dated 12.09.1985—Annexure G whereby L was compulsorily
retired from service after enquiry into charges of misconduct

2. The applicant, Om Prakash was working as Tradesman-E
in the Solid State Physics Laboratory, Delhi when a

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memorandum of charge-sheet, Annexure-C dated 10th April, 1985 under the signatures of the Director was issued to him. The memorandum accompanied a statement of Articles of charges. Article had mentioned that the applicant 'has been absenting from duty in an unauthorised manner in the past also and w.e.f. 21.1.1985 to 25.3.1985" and, therefore, was guilty of willful neglect of duty and misconduct in violation of Article-3 of the C.C.S. (Conduct) Rules, 1964. Article-2 charged him of disobedience in two parts :-

- (i) For refusal to take delivery of office communications dated 10.8.1984 and 17.8.1984 and
- (ii) For failing to report for duty in response to telegrams dated 21.1.1985, 31.1.1985 and 28.2.1985.

In these respects also, he was alleged to misconduct in violation of aforesaid Rule-3.

3. Annexed to the memorandum was also a statement of imputation of misconduct. It mentions that despite written warnings dated 11.2.1982, 28.9.1982, 11.11.1982 and 1.5.1984 for absenting from duty during the periods from 9.8.1984 to 23.8.1984, 19.10.1984 to 2.11.1984 and

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13.11.1984 to 26.12.1984, he again absented himself during the period ~~10.8.1984~~, specified in Article-1 of the charge, namely from 21.1.1985 to 25.3.1985, even though telegrams have been sent to him on 21.1.1985, 31.1.1985 and 28.2.1985 to report for duty. By the first telegram, he was also asked to report to Dr.R.M.L. Hospital for treatment in case of sickness, but he did not respond. He was also informed that in case, he did not join duty, disciplinary action would be taken against him.

4. Annexure-D is the applicant's reply dated 19.4.1985, to the memorandum of charges contained in Annexure-C. In this paper, he set out a reply only in respect of his absence from 2.1.1985 to 25.3.1985; he said nothing about his previous absence or about non-compliance of communications dated 10.8.1984, and 17.8.1984, although particulars had been given in the statement of imputation of charges.

5. Regarding absence from 2.1.1985 to 25.3.1985, he said that, scared on account of threats to kidnap his children and to kill wife, he did not move out of his house. He added that a police Constable who was

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responsible for those threats, had also threatened to get him arrested on false charges, but only when the matter was patched up with the Constable, he got peace of mind and joined duty. He admitted that he had received the telegrams, but had depression on account of the aforesaid threats and, therefore, had not violated Rule-3 of the C.C.S. (Conduct) Rules. He gave no specific reply to the first part of Article-2 of the charges regarding refusal to take delivery of office communications dated 10.8.1984 and 17.8.1984.

6. The Director on a perusal of the reply (Annexure-D) observed that it was not relevant and gave another opportunity to the applicant to furnish his defence (Vide letter dated 14.5.1985-Annexure E).

7. The applicant's final reply is Annexure-F dated 20.5.1985. With reference to the Director's letter, Annexure-E dated 14.5.1985, the relevant portion of his reply is as follows :

"I admit all the charges framed against me in your letter No. P/1263/SPL/CON dated 10.4.1985 except charge ⁽ⁱ⁾ of Article-2 of Annexure-I to the said letter.... I, therefore, pray your kind honour

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to kindly delete/cancel this charge.

So far as the other charges are concerned, all these were the outcome of my mental depression as I have already explained in my letter of 19th April, 1985.....

In view of the above, I pray your kind honour to kindly take a lenient view in my case and forgive me for my mistakes.

I once again solemnly affirm and undertake that in future, I will never give a chance to have any type of complaint in performing my duty. I specifically assure you of my punctuality."

8. No further proceedings appear to have been conducted after this reply. The impugned order of compulsory retirement was passed on 12.9.1985-Annexure G by the Director whose relevant portion is as follows:-

"And whereas the Director, Solid State Physics Laboratory after taking into consideration the representation dated 20.5.1985 of Shri Om Prakash, Tradesman 'E' took in No.13 in which the individual has admitted all charges except charge (i) of Article-2 of Annexure-I, is satisfied that the charges of willful neglect of duty and gross misconduct, the unbecoming of a Government servant in violation of Rule-3 of the C.C.S. (Conduct) Rules, 1964 are established against Shri Om Prakash, Tradesman 'E',

Now, therefore, Director, being the disciplinary authority, hereby orders the imposition of the penalty of compulsory retirement on said Om Prakash, Tradesman 'E'."

9. The applicant preferred an appeal dated 4.11.1985-Annexure-H to the Ministry of Defence; the appeal was

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dismissed by order dated 3.4.1986, Annexure-I where it was stated that on a careful consideration of the submissions made by the applicant in his appeal and other relevant records and evidence, the appellate authority was of the view that the penalty imposed was correct and met the ends of natural justice.

10. The applicant then preferred a mercy appeal Annexure-J dated 22.5.1986 to the Defence Minister; that mercy appeal also was not accepted by the Defence Minister as communicated to the applicant by memorandum dated 17.9.1986 Annexure-K.

11. The case of the applicant is that the punishment order is invalid because it rests on an admission which was not an unqualified and complete admission. It is urged that the applicant had given explanation of his inability to report for duty during the period from 2.1.1985 to 25.3.1985 and, therefore, it was the duty of the disciplinary authority to hold a regular enquiry and give an opportunity to the applicant to give his evidence in defence.

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12. The case of the respondents is that the applicant's admission was clear and unambiguous and was good enough to be acted upon for the purposes of recording a finding that the applicant was guilty.

13. There is no controversy with the proposition that an admission made by the charged employee has to be considered as a whole and that it is not permissible to rely upon the inculpatory portion and ignore the exculpatory portion. The real question is whether the material on the basis of which the disciplinary authority arrived at the finding of guilt, constitutes an admission of the charges.

14. It is clear from the contents of Annexure-F extracted above that the applicant admitted all the charges except the first part of Article-II. The denial of this part of the charge was taken notice of in the impugned punishment order which, therefore, does not rest on it; it is on the remaining part of the admission that the order has been passed.

15. The remaining part of the admission contained in Annexure-F deserves to be considered in respect of two

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sets of facts. Article-1 of the charges mentioned that the applicant had been absenting from duty in unauthorised manner 'in the past also and w.e.f. 21.1.1985 to 25.3.1985. The reply contained in Annexure-F makes no denial of his absence 'in the past also', although adequate detail of absence in the past period was set out in the statement of imputation of misconduct. The admission in Annexure-F, therefore, was an admission of unauthorised absence during the period from 21.1.1985 to 25.3.1985 and also of the past period set out in the statement of imputation of misconduct. The only explanation which he purported to make in this respect was his mental depression, "already explained in my letter of 19th April, 1985". This letter at Annexure-D only deals with the period of absence from 21.1.1985 to 23.3.1985 and does not speak of the absence in the earlier periods.

16. The explanation in respect of absence from 21.1.1985 to 23.3.1985 certainly deserved a better attention of the disciplinary authority by giving an opportunity to the applicant to produce evidence in support of the explanation.

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17. We do not agree with the learned counsel for the applicant that simply because the applicant had submitted an explanation of absence, a regular proceeding for taking evidence in support of the charges should have been conducted because the applicant had admitted the fact that he was unauthorisedly absent. It is well established that a fact which is admitted need not to be proved by evidence; but at the same time when a fact is sought to be proved by admission and the charged employee has given an explanation of the conduct for which he is charged, it should have been fair and in accordance with the principles of natural justice to call upon the employee, i.e., the applicant, to produce the evidence in proof of his explanation. Since that was not done, there could be an infirmity in the findings of the disciplinary authority in so far as the guilt for absence during the period 21.1.1985 to 23.3.1985 was concerned. However, the learned counsel for the respondents has pointed out to the attendant circumstances, as appearing from the applicant's replies, Annexures-D & F and says that as a whole, the disciplinary authority cannot be said to have committed any palpable error in arriving

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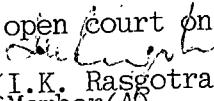
at the finding that the applicant had admitted all the charges except the first part of Article-II. In the last para of Annexure-D, the applicant had stated that he apologised 'for the mistakes on my part and pray you to be sympathetic...'; he promised never to repeat such an activity in future. In Annexure-F, he prayed disciplinary authority, to kindly take a lenient view in my case and forgive me for my mistakes", with a solemn promise, never to give a chance of any kind of complaint in performing his duty. Read as a whole, these statements do give a reasonable ground for the disciplinary authority to hold that the applicant had admitted all the charges except part-I of Article-II.

18. On a careful consideration of all the matters, therefore, we are unable to hold that the punishment order suffers from any illegality.

19. The learned counsel for the applicant lastly urged that the penalty of compulsory retirement is excessive; that question is no longer open to us after the decision of the Supreme Court in the case of Union of India Vs. Perma Nanda (1988) 2 Supreme Court Cases, 177. For the aforesaid reasons, this application is dismissed; parties shall bear their own costs.


(I.K. RASGOTRA)
MEMBER (A) 18/3/91

Pronounced by me in the open court on
18.3.1991.


(I.K. Rasgotra) 18/3/1991
Member (A)


(KAMLESHWAR NATH)
VICE-CHAIRMAN