

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No. 1174/86

New Delhi this the 15th Day of March, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Sh. Brahm Singh,
S/o Sh. R.L. Jatav,
Haus Khas Post Office,
New Delhi.

Applicant

(Sh. Sant Lal, for the applicant)

versus

1. Union of India
through the Secretary,
Ministry of Communications,
Sanchar Bhawan,
Ashok Road,
New Delhi.
2. Director-General,
Posts and Telegraphs,
Sanchar Bhawan,
Ashok Road,
New Delhi.
3. Secretary,
Posts and Telegraph Board,
Dak-Tar Bhawan,
Patel Chowk,
Parliament Street,
New Delhi.
4. Deputy Director-General (Vig.-T),
Office of Director-General of Posts and
Telegraphs,
Department of Telecommunications,
Ministry of Communications,
Dak-Tar Bhawan,
Parliament Street,
New Delhi.
5. Union Public Service Commission,
through its Secretary,
Sahjahan Road,
Dholpur House,
New Delhi.

Respondents

(Sh. Jasbir Singh, proxy counsel for Sh. K.C. Mittal,
counsel, for the respondents)

ORDER (ORAL)

delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

1. The applicant, an Ex-Assistant Engineer, is aggrieved by the orders passed by the disciplinary authority and the appellate authority. In the disciplinary

proceedings, initiated against the applicant, the disciplinary authority while accepting the recommendations of the Inquiry Officer, ordered punishment of compulsory retirement of the applicant. In appeal, to the President of India, he remained unsuccessful. The orders of the disciplinary authority and the President of India are being impugned in the present application.

2. This O.A. has a chequered history. Earlier, this Tribunal by its order dated 2.8.1988 allowed this O.A. and quashed the order of the Disciplinary Authority as well as the appellate authority on the ground that the applicant was not furnished with a report of the Inquiry Officer by the Disciplinary Authority before it passed the order of punishment. The respondents felt aggrieved and approached the Supreme Court by means of Special Leave Petition. On 4.1.1994, the Supreme Court in Civil Appeal No.637 of 1989 set aside the order of this Tribunal on the ground that this Tribunal wrongly applied the law laid down in Mohd. Ramzan Khan's case. The Supreme Court, however, remitted the matter to this Tribunal with the direction that it should hear the applicant on the remaining points, which were raised in the original O.A.

3. The applicant, an Assistant Engineer in the Delhi Telephone District, was working as Construction Officer(Cables) Idgah Exchange, Delhi between 7.3.1980 and 3.9.1980. The post of Construction Officer(Cables) was a co-ordinating post with Assistant Engineer(Cables). Two Junior Engineers(JEs) were working under him. These JEs were responsible

for local purchase of stores - calling of tenders, quotations, their scrutiny and obtaining the orders of the competent authority thereon. The applicant was competent to make purchase of stores upto the value of Rs.500/- at a time, within his own powers and for stores beyond this value, he was required to obtain the sanction of the higher competent authority. The AGM(MM), O/O the GM, Delhi Telephone District was responsible for the purchase of stores of mass consumption.

4. The charges, against the applicant, in substance are these:

(1) Between May and October, 1980, he made purchases of different items of stores worth Rs.8888.54 from M/s Sharda Trading Corpn. Shahadara, M/S Mahar Trade Corpn., Shahdara and M/S Indian Tools Stores, Meena Bazar, Jama Masjid, Delhi. He received quotations for the purchase of these stores on 12.5.80 and 12.7.80. The quotations were undated. In view of the large quantity of stores which were purchased by the applicant, he should have called for quotations to ensure supply at competitive rates but he made the purchases on the basis of three quotations obtained and entertained by him from each of the above three firms.

(2) There was no construction work in progress or pending when purchases were made and there was, therefore, no requirement or demand of the stores in question at that time. The applicant did not even consult the two J.Es in the matter of purchase, even though they were responsible for the purchase of stores, including inviting tenders etc. The applicant made a purchase under his personal instructions and pressure to his subordinate staff, inasmuch as he asked them to submit "Issue slips" for getting

issued the stores in question and he himself endorsed on the slips "Please issue". The subordinate staff have stated that they were forcibly asked to submit their "issue slips".

(3) The applicant made the aforesaid purchase on the basis of lowest quotations obtained from the aforesaid three firms. He did not verify the rates. The rates accepted by the applicant were higher than the prevailing rates in the market. The applicant, therefore, caused loss to the department.

(4) in order to maintain his limit upto the value of Rs.500/- he split up the purchases of the stores worth Rs.8888.54 so as to keep them within his power. The applicant made purchases of the stores in excess of his financial powers and without observing codal formalities etc.

5. The inquiry Officer held some of the charges as proved and some of the charges as not proved. However, the Inquiry Officer observed in his order that, inspite of the fact that he directed the Presenting Officer to produce the relevant rules wherein the "codal formalities" were laid down, ^{Now} such rules were produced. It is also to be noted that Inquiry Officer did not record any finding ^{received any} that the applicant pecuniary advantage on account of the alleged irregular purchases made by him. The Secretary, P&T Board in paragraphs 5 and 6 of its order dated 6.9.1984 observed:

"5. Shri Brahm Singh was appointed to TES group 'B' by the P & T Board. Therefore, P&T Board is the competent Disciplinary Authority in his case. The case was considered by the P & T Board in the meeting No.4 held on 28.7.1984. After taking into

consideration all the facts and circumstances of the case and the evidence produced during the inquiry, the Board accepted the findings of the Inquiring Authority to the effect that Charges No. I, V & VI are fully proved, Charge No. II is also established except that part which says that there was no construction work in progress or pending, Charge No. IV is partially established and Charge No. III is not proved against the charged officer. In view of the seriousness of the charges established, the Board decided that the charged officer was not a fit person to be retained in service.

6. The P & T Board, therefore, order the compulsory retirement of Shri Brahm Singh, Assistant Engineer, Statellite Communication Maintenance, Jaipur from service with immediate effect."

6. It will be immediately seen that the P & T Board considered the report cursorily. It did not record any reasons as to why it accepted the findings of the Inquiry Officer that certain charges had been proved against the applicant. It also did not state any reason as to why it imposed harsh punishment of compulsory retirement from service.

7. The appellate authority in paragraphs 1 to 1.5 of its order merely catalogued the various arguments advanced by the applicant in his memorandum of appeal. Paras 5 and 6 of the appellate order are material, therefore, they are being extracted:

" 5. Since the President is the Appellate Authority in this case, advice of U.P.S.C. has been obtained, a copy of which is enclosed.

6. After considering the submissions made in the appeal, advice of the U.P.S.C. and on an objective assessment of the case, the President has accepted the advice of U.P.S.C. that the penalty of compulsory retirement imposed on Shri Brahm Singh is not excessive and

there is no justification for modifying the orders passed by the disciplinary authority. The President has, therefore, rejected the appeal of Shri Brahm Singh."

8. The appellate authority has not at all gone into the merits of the case. It has not even cared to record the finding that it accepted the finding of the Disciplinary Authority. It has contended itself by accepting the advice of the U.P.S.C. that the charge has been brought home to the applicant. Indeed, this a very unsatisfactory method of disposing of a statutory appeal. Rule 22(2) of the CCS(CCA) Rules casts a duty upon the appellate authority to consider, amongst others, whether the finding of the Disciplinary Authority are warranted by the evidence on record. There is no consideration at all on this aspect of the matter.

9. The expression "consider" has been considered by the Supreme Court in Ram Chander vs. Union of India, ATR 1986(2) S.C.252. Their Lordships were considering the import of Rule 22(2) of the Railway Servants(Discipline Appeal) Rules, 1968, where the expression, "consider" was used. Their Lordships held that the word "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies giving reasons for its decision.

10. In the instant case, we have already shown that no attempt was made by the appellate authority to go into the merits of the case. It also failed to record any reasons. Their Lordships also held that in view of the fact that 42nd constitutional amendment, the constitutional right to avail of the

second opportunity on the question of punishment having been taken away, the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. In the present case, it appears from the reading of the order of the appellate authority that no personal hearing was given to the applicant.

11. The provision to Rule 27(2) of the CCS(CCA) Rules merely lays down that the Commission shall be consulted in all cases where consultation is necessary. This provision does not give a licence to the appellate authority to surrender its judgment to the Commission. The recommendations of the Commission is not binding on the appellate authority. The appellate authority may agree or disagree with the Commission's recommendations.

12. The applicant was served with a charge sheet on 21.10.1982. We are in the year 1994. Nearly 12 years have elapsed. He has already suffered much. This, in our opinion, is a fit case where we should not direct the appellate authority to pass a fresh order. Interest of justice requires that the disciplinary proceedings should come to an end. The applicant remained out of employment since 6.9.1984. He has been punished more than enough. Taking the totality of the facts and circumstances of this case, we not only quash the order dated 6.9.1984 passed by the P & T Board and the order dated 30.6.1988 passed by the appellate authority but also the order dated 21.10.1982 passed by the Director General P&T, whereby disciplinary proceedings were initiated against the applicant.

13. The Hon'ble Supreme Court on 4.1.1994 passed

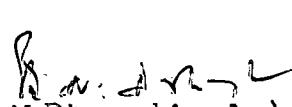
an order, the relevant portion of which is extracted:

" Before we part we must refer to an interim order passed by this Court on 3rd February, 1989 whereby the stay of the operation of the Tribunal's judgment was made conditional on the Union Government paying to the respondent the monthly salary with effect from January 1, 1989. We vacate that order but it will be open to the parties to seek appropriate orders in this behalf from the Tribunal when it finally disposes of the matter."

14. The applicant shall be re-instated in service. However, he will not be paid any back wages. Whatever amount has been received by him from the respondents under the afore-quoted order of the Hon'ble Supreme Court, shall not be recoverable from him. The seniority of the applicant shall be reckoned on the footing that he continued to be in service all along without any interruption.

15. With these directions, this O.A. is disposed of finally but without any order as to costs.

/sds/


(B.N.Dhondiyal)
Member(A)


(S.K.Dhaon)
Vice Chairman