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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1413 of 1987
T.A. No.

DATE OF DECISION 15-1-88

Shri Rajender Ray Petitioner

In person Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr. M.L. Verma, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yr*
2. To be referred to the Reporter or not? *yr*
3. Whether their Lordships wish to see the fair copy of the Judgement? *—*

15/1/88
(Birbal Nath)
Administrative Member

J. Jain
(J.D. Jain)
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn.No. OA 1413/87

Date of Decision 15-1-88

Shri Rajender Ray

...Petitioner

Versus

Union of India and others

...Respondents

For Petitioner: In person

For Respondents: Mr. M.L. Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.D. JAIN, Vice-Chairman,
HON'BLE MR. BIRBAL NATH, Administrative Member,

JUDGMENT:

(delivered by Justice J.D. Jain, V.C.)

By means of this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner who is employed as an Information Assistant in Central Information Service, All India Radio, is seeking to set aside the order dated 25th October, 1984 passed by the disciplinary authority, viz., The Secretary, Government of India, Ministry of Information & Broadcasting, imposing a major penalty of reduction in rank from Grade III to Grade IV of the Central Information Service for a period of 3 years, order dated 15.5.86 passed by the President of India rejecting the statutory appeal of the applicant under Rule 27(2) of the C.C.S.(CCA) Rules (hereinafter referred to as "the Rules") and order dated 16.6.87 also passed by the President of India under Rule 29(a) of the Rules rejecting his review petition.

2. The facts of the case in brief are that the petitioner was working as an Assistant News Editor, All India Radio, Ranchi in 1980. His job consisted of reporting, selection and editing of the news of local

interest and compilation of the ten-minute Hindi News Bulletin and as an Editor-in-charge, he was solely responsible for any professional lapse in the News Bulletin. On 18.4.80, the Stenographer attached to the office was on a usual weekly off. However, the Station Director did not provide him^{with} a substitute stenographer as was the normal practice and at about 5.00 PM, he expressed his inability on telephone to provide a typist. The applicant, therefore, wrote down the entire 10 minute bulletin in his own hand. The announcer came to the office as usual only about 20 minutes before the time of the News broadcast, viz., at 6.20 P.M., but he too showed his inability while rehearsing the News Bulletin, to read from the hand written rough script and also to keep up the time schedule. Under these strained circumstances, the applicant on the spur of the moment, took upon himself the work of the News Reader. He read the news bulletin which inter alia contained the ^{impugned} ~~radio~~ News Item which translated in English reads as follows:-

"The News Section of All India Radio, Ranchi is now-a-days facing great difficulties in normal functioning for shortage of staff. For the last two and a half years no news reader has been posted on a permanent basis here. The post of Correspondent is also lying vacant after the transfer of the last correspondent about three months back."

"Today the situation reached such a pass that one person single handed had to perform the duties of reporter, editor, clerk and news reader".

3. Since the aforesaid insinuation amounted to criticism of government functioning, disciplinary proceedings were taken against the applicant for failure

to maintain complete devotion to duty by broadcasting the difficulties of the News Section of All India Radio, Ranchi in the aforesaid News Bulletin. So he was charged with violation of Rule 9 of the Central Civil Services (Conduct) Rules, 1964.

4. The article of charge as well the statement of imputation were read out to him by the Inquiry Officer and he admitted the factum of reading out the aforesaid News Item. However, he contended that as an Assistant News Editor, he was professionally entitled to make comments and apprise the general public of the correct state of affairs. According to him it was nothing more than narration of bare facts. However, the higher authorities in the department took it as an affront on his part. The Inquiry Officer found him guilty of the aforesaid charge and the disciplinary authority concurring with the findings of the Inquiry Officer ~~and~~ imposed a penalty of reduction in rank from Grade III to Grade IV of Central Information Service as stated above.

5. The contention of the petitioner is that proviso to Rule 9 covered the action of the petitioner in reading out the aforesaid news item. Further, according to him, Rule 9 is applicable to general Government Servants, i.e., other than those working in Radio or Television, who are entitled to make any adverse statement on any current or recent policy or action of the Central Government or State Governments in Radio broadcast or press. The argument putforth precisely is that the news and the News Bulletin of AIR and the Television have to bear the character of news as information and not as means of Government publicity. He has also adverted to some

instructions issued by the Director of News Service Division who is a professional head of News Section, All India Radio etc. in this behalf.

6. The application is resisted by the respondents, inter alia, on the ground that the instant application is barred by the principle of res-judicata inasmuch as the petitioner had already filed a writ petition, being C.W.2675 of 1984 in the High Court of Delhi and the same was dismissed in limine by the High Court by a speaking order dated 3rd December, 1984 (copy Annexure R-II). Feeling aggrieved thereby, the petitioner filed a petition for Special Leave to Appeal to the Supreme Court being No.14257 of 1984. However, the same was also dismissed vide order dated 26.2.85 after notice to the respondents. Thus, according to the respondents, the present application is nothing but an abuse of the process of court by filing successive applications on the same cause of action.

7. We find considerable merit in the preliminary objection raised by the respondents. We have perused the order dated 3rd December, 1984 passed by a division bench of the High Court of Delhi dismissing C.W.No.2675/84 filed by the petitioner in limine. It is a speaking order. It was observed by the High Court that "the petitioner admittedly made a broadcast telling the listeners of the radio that the condition of the All India Radio, Ranchi, where he was working as an Assistant News Editor, was appalling. This was in fact a ventilation of his personal grievances. He did not have the assistance of a typist and other facilities which he thought he required. On this broadcast the department took action against him and finally reduced him in rank."

It was further observed by the High Court that -

"In the first place he says that he was entitled to broadcast about the conditions of the department as it was a news item and falls within the framework of the guidelines. We have seen the guidelines. In our opinion, he has no right to air his grievances on the All India Radio. The proper way was to make representations to the head of the department if he was facing any difficulty in the reading of the news.

In the second place, he says, that the inquiry is invalid. We have seen the charge. The only question before the inquiry officer was whether he, the petitioner, did make the broadcast in question. The petitioner admitted this. The inquiry officer found that he had no right to go on the air and broadcast the difficulties of the News Section of the All India Radio Ranchi in the news bulletin dated 18.4.80. He found that this was against the norms of the Government department to speak against the norms of the ~~Gaxx~~ department of the Radio."

The learned Judges concluded by saying that:-

"the petitioner, it seems to us, has an inflated notion of the freedom of a news reader. He says that he was entitled to assert his independence and broadcast what he conceived was the truth and therefore a 'news'.

There is no substance in this petition. We accordingly dismiss it in limine."

8. Obviously, the aforesaid order deals squarely and fully with the contention sought to be raised by the petitioner in the instant application. He is challenging the punishment awarded to him on the same ground that being an Assistant News Reader he had professional freedom to state facts in the News Bulletin for the information of the listeners as he was telling nothing but the truth. However, we are in complete agreement with the observations of the learned Judges of the High Court of Delhi. The rule

of res judicata would certainly be attracted in a case like this. The said rule rests on considerations of public policy and it is in the interests of public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction and it is also in public interest that individuals should not be vexed twice over with the same kind of litigation. In "The Virudhunagar Steel Rolling Mills Ltd. Vs. The Government of Madras, AIR 1968 SC 1196, it was held that -

"Where a writ petition under Article 226 is disposed of on merits and the order of dismissal of the petition is a speaking order, that would amount to res judicata and would bar a petition under Article 32 on same facts, irrespective of whether a notice was issued to the other side or not before such decision was given. The petitioner's only proper remedy in such a case would be to come in appeal from such a speaking order passed on merits."

9. The foregoing observations were made by their Lordships in the context of maintainability of a writ petition under Article 32 of the Constitution of India which guarantees a fundamental right to a citizen to move the Supreme Court by an original petition whenever his grievance is that his fundamental rights have been illegally infringed. However, the rationale behind the dictum laid down by their Lordships apparently is that the jurisdiction of the High Court in dealing with the writ petition filed under Article 226 is substantially the same as the jurisdiction of the Supreme Court in entertaining an application/petition under Article 32. Reference in this context may be made with advantage to "Daryao and others Vs. State of U.P. and others: AIR 1961 SC 1457. A fortiori, therefore the principle of res-judicata will bar a fresh writ petition and for that matter an application

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under Section 19 of the Administrative Tribunals Act. Needless to say that the Tribunal exercises all the powers which a High Court was exercising under Article 226 of the Constitution in respect of service matters of all Central Government servants. As already mentioned, above, the petitioner has even exhausted his remedy of filing an appeal by seeking a special leave to appeal to the Supreme Court which was dismissed in limine after notice to the respondents. Under the circumstances, we hold that the instant application is not maintainable, being barred by principle of res-judicata.


10. Finding himself in this predicament, the petitioner made a desparate attempt to cross the hurdle of res-judicata by urging, rather vehemently, that even if this application is precluded by principle of res-judicata so far as order dated 25th October, 1984 passed by the disciplinary authority is concerned, no such impediment should come in his way so far as the challenge to the order of the appellate authority dated 15.5.86 and order made by the President of India on his review application dated 16.6.87 is concerned. Similarly, the order of the Under Secretary dated 17th July, 1985 rejecting his representation for expunction of the adverse remarks which were ~~pass~~ based on the same facts from his Annual Confidential dossier can well be challenged in this application. However, we do not feel persuaded to endorse the proposition canvassed by the petitioner. It is for the simple reason that if he is debarred from calling in question the original order of punishment passed by the disciplinary authority, it ^{is} ~~is~~ highly

doubtful that we will be well advised to entertain a challenge against the appellate/review order except perhaps to a limited extent as to whether the said orders comply with the legal requirements or not. Hence, we have thought it fit to examine the contention raised by the petitioner for assailing the said orders.

11. The first contention of the petitioner is that there is total non-compliance with the provisions of Rule 27(2) of the Rules which lays down that the appellate authority shall consider -

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders confirming, enhancing, reducing or setting aside etc. the penalty. No doubt, there is considerable force in this contention of the petitioner, if we look at the appellate order dated 15.5.86 standing by itself because the appellate authority has not specifically dwelt on these aspects of the matter. However, it would be pertinent to note that the appellate authority ^{had} considered and was guided by the advice given by the UPSC in this respect. The impugned order ^{inter alia} ~~further~~ states that the appellate authority, viz., the President of India, also considered the advice given by the UPSC and the records of the case and after taking into consideration all the facts and circumstances of the case had come to the conclusion that there there was no reason to accept the



appeal of the petitioner. Naturally, therefore, we deemed it fit to peruse the advice tendered by the UPSC vide their letter dated 11th March, 1986 (Annexure R-VIII) and we find that the U.P.S.C. had dealt at length with all aspects of the matter including the legal submissions made by the petitioner. The Commission also noted the fact that on 26th May, 1984 the charge against the petitioner was read out to him and he confirmed that he had broadcast the message from the All India Radio Ranchi while reading the News Bulletin on 18.4.80. However, he stated that he did all this because the situation was tense and he was upset. They also considered the plea of the petitioner that he had told the Inquiry Officer that the inclusion and broadcast of the news item in question was a part of his normal duty and was not an act of misconduct and was also not against the guidelines of the news policy of the Government of India. However, the Commission observed that the Inquiry Officer had gone into the reasons given by the petitioner for making the broadcast, but he did not find ^{the same} to be convincing. So the Commission concluded by saying that -

"Therefore, there was no merit in the plea taken by the petitioner in his appeal that the Inquiry Officer had closed the enquiry without following the provisions of sub-rules (9) and (10) of Rule 14 of the CCS(CC&A) Rules, or that he has arrived at his findings on the basis of personal knowledge, as alleged by the petitioner."

The Commission also considered the instructions and guidelines restricting the editorial discretion of the petitioner, but held that "by no stretch of imagination, could this amount to "news" fit for inclusion in a news bulletin." The Commission further observed that -

"There are proper methods of seeking redressal of staff grievances and that the misuse of a

powerful medium of communication for airing staff grievances was a serious matter".

Not only that, the Commission also critically examined Rule 9 of the C.C.S.(Conduct) Rules, 1964 (for short "the Conduct Rules"), especially in the context of the second proviso thereto which is as under:-

"Provided that nothing in this Rule shall apply to any statements made or views expressed by a Government servant in his official capacity or in due performance of the duties assigned to him"

The Commission observed that:-

"According to the above proviso, the action of the Government servant has to be in his official capacity or in the due performance of the duties assigned to him, which was not the case in so far as the action of Shri Roy in broadcasting the news item in question is concerned, as it was not done in bona fide discharge of his duties as a News Editor."

Lastly, the Commission also considered whether the penalty imposed upon the petitioner was excessive and not commensurate with the severity of the guilt of the petitioner and it found that the same was not excessive.

12. In view the detailed examination of the grounds of appeal filed by the petitioner by the Commission, we do not think, it was at all necessary for the disciplinary authority (viz., the President in the instant case) to go over the whole matter again, and record a reasoned order as required by Rule 27(2)(supra). The very fact that the President considered the report of the U.P.S.C. as also the material on record was therefore enough to dispose of the appeal especially when the President was pleased to accept the advice tendered by the Commission. By no stretch of imagination it can be said that there is non-compliance with Rule 27(2) or Rule 29 of the Rules by the Competent Authority.

13. We have also carefully examined the provisions of Rule 9 of the Conduct Rules ^{as} ~~also~~ the provisions of sub-rule (9) of Rule 14 of the Rules. We are of the considered view that the conduct of the petitioner in the instant case does not fall within the purview of second proviso to Rule 9 of the Conduct Rules which is in the nature of an exception, because it was neither a statement made nor a view expressed by the petitioner in his official capacity or in due performance of the duties assigned to him. It was out and out a ventilation of his personal grievance because he had to do the whole job single handed for want of assistance from a stenographer or even the announcer on the said date. Surely, he was not imparting ^a news of public interest. It may be that he did all this on the spur of the moment, but that would not take it ^{out of} the mischief of Rule 9 of the Conduct Rules. Likewise, in view of the fact that he admitted the factum of having made the broadcast before the Inquiry Officer, there was virtually nothing for the Inquiry Officer to keep the inquiry alive ~~and~~ inasmuch ^{the} as ~~only~~ question which survived then was whether the so-called news broadcast by the petitioner amounted to misconduct or not within the meaning of Rule 9 and this aspect of the matter has been considered not only by the Inquiry Officer, but also by the learned Judges of the High Court of Delhi and finally by the appellate authority as advised by the U.P.S.C.

14. To sum up, therefore, this application is not only barred by principle of res judicata, but is also devoid of any merit. It is accordingly dismissed.

15/1/88
(Birbal Nath)
Administrative Member
15.1.88

J. D. Jain
(J.D. Jain)
Vice-Chairman
15.1.88