

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1739
T.A. No.

1987.

DATE OF DECISION

28.9.90

Shri Hardan Singh

Petitioner

Shri D. R. Gupta

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri Arun Sharma, proxy counsel for Shri P. P. Khurana.

Advocate for the Respondent(s)

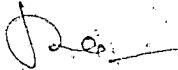
CORAM:

The Hon'ble Mr. S. P. Mukerji, Vice-Chairman.

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

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?

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


(J. P. Sharma)
Member (J)


(S. P. Mukerji)
Vice-Chairman

Central Administrative Tribunal
Principal Bench: New Delhi.

Regn. No. OA-1739/87

Date of Decision: 28.9.1987

Shri Hardan Singh

....Applicant.

Vs.

Union of India & Ors. Respondents.

For the applicant Shri D. R. Gupta,
Advocate.

For the respondents Shri Arun Sharma proxy
counsel for Shri P.P.
Khurana, Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Vice-Chairman,
Hon'ble Shri J.P. Sharma, Member (Judicial)

JUDGEMENT

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

The applicant, a Lino Operator, Government Press, Faridabad, filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 19.12.86 and 10.6.87 of the Disciplinary Authority and Appellate Authority respectively as well as the order dated 24.9.1987 passed by the Disciplinary Authority by which the applicant after enquiry was compulsorily retired under CCS(CCA) Rules, 1965.

2. The applicant claimed the following reliefs:

- 1) quashing/setting aside of Memorandum of Charge dated 2.12.1985 and the Statement of Article of Charges framed against the Petitioner as well as the Statement of imputation of mis-conduct or mis-behaviour against the petitioner in Annexure-I & II accompanying the Memorandum dated 2.12.1985.
- 2) quashing and setting aside the enquiry proceedings held on the basis of the Office Memorandum No.VIG/18/86/685 dated 2.12.1985.
- 3) quashing and setting aside of the Enquiry Report dated 15.9.1986.
- 4) quashing and setting aside of the order of punishment No.VIG/18/85/907 dated 19.12.86.
- 5) quashing and setting aside of the order No.C-16013/12/87-AV dated 10.6.1987.
- 6) quashing and setting aside of the Memorandum No.VIG/18/85/660 dated 24.9.1987.

7) allowing the petitioner's petition with costs and thereby directing the respondents to reinstate the petitioner on duty with payment/release of all the back wages for the period from 19.12.1986 to the date of the petitioner's retirement falling due on 31.1.1990.

8) directing the respondents to pay and release the amount of LTC in the sum of Rs.6,750/- and to pay all such arrears of wages with earned increments and the promotion.

3. The facts given by the applicant are that while working as Lino Operator in Government Press, Faridabad, the applicant submitted on 5.7.1982 the bill for reimbursement of the claim of Rs.6,750/- in respect of Leave Travel Concession (LTC). The applicant contends that on 19.5.85 he alongwith his family consisting of himself, his wife, two daughters Kumari Usha Rani, Kumari Anita Rani and son Shri Dinesh Singh travelled by Bus No.DEP-3894 from New Delhi to Kanyakumari. The applicant did not get any advance towards this L.T.C. The applicant was asked by the respondents, on submission of reimbursement claim, to furnish the details of journey. The applicant submitted a photo-copy of the certificate issued by the Travel Agency M/s. Asian Tourist Centre dated 18.5.1985 containing the list of passengers who travelled by the said bus from New Delhi to Kanyakumari. The applicant was not made any payment but a memo dated 2.12.1986 was issued under Rule 14 of the CCS(CCA) Rules, 1965 proposing to hold an enquiry against the applicant and a statement of charges was also issued. The Inquiry Officer after concluding the enquiry on 21.4.1986 submitted his report on 15.9.1986. The Disciplinary authority on 19.11.1986 passed the impugned order of compulsory retirement of the applicant from service. The appeal filed was also dismissed as said above on 10.6.1987. Another appeal was preferred on 28.7.1987 which was returned by memo dated 24.9.1987 with the remarks that appeal should be filed before the President of India.

4. The case of the respondents as given in their written reply is that the applicant submitted a false claim of LTC regarding her daughter Anita Rani/ alongwith other members of the family from New Delhi to Kanya Kumari and as such the conduct of the applicant was unbecoming of a Government servant violating the provisions of Rule 3(1)(i) and 3(1)(iii) of the CCS(Conduct) Rules,1964. The applicant did not submit any defence statement on the charges levelled against him. The charges levied against the applicant/stood proved and the impugned punishment orders were passed. The appellate authority considered the matter and did not find any force in the memo of appeal submitted by the applicant which was dismissed. It is said that on verification of the passengers list from the State Transport Authority, Delhi Administration, Delhi, it was observed that the name of Kumari Anita Rani, the daughter of the applicant appearing at Serial No.4 was not covered in the passengers list and the claim/ of the said daughter had/ falsely made by the applicant. The applicant/ been given full opportunity. The applicant tried to get money from the government by submitting a false claim and the action taker by the office was justified and legal. The applicant himself did not produce any witness in defence. The applicant did not submit any application for LTC advance. The applicant only submitted application for reimbursement of the LTC claim. There is no substance in this application and it deserves to be dismissed.

5. The applicant filed the rejoinder reiterating the same facts as given out in the application and also submitting that order passed is very harsh. It is further stated that no witnesses were produced from either side and as such there is no case against him.

6. We have heard the learned counsel of the parties at length. The first ground taken by the learned counsel for

the applicant is that the charge-sheet has been framed by closed/mind and in this connection Article I of the charge-sheet (Annexure-6) has been referred to which reads as follows

"That the said Shri Hardan Singh while functioning as Lino Operator in the Government of India Press, Faridabad exhibited gross misconduct, acted in a manner most unbecoming of a Government servant by misappropriating the Government money of LTC advance and exposed himself to doubtful integrity which is in violation of Rule 3(1)(i) and 3(1)(iii) of the CCS(Conduct) Rules,1964." (Emphasis added).

7. In the imputation of mis-conduct (Annexure-2) of the charge-sheet, it is mentioned "that on verification with the State Transport Authority, Delhi Administration, Delhi, the name of Kumari Anita Rani, daughter of Shri Hardan Singh, Lino Operator is not appearing in the list of passenger of Bus No.DEP 3894 covered by Special Permit No.5279 dated 18.5.1985. From the photo-copy of the list of passengers submitted by the applicant, the aforesaid name of Kumari Anita Rani appears to have been added afterwards" It is further stated that since he has submitted a claim for Kumari Anita Rani also who did not actually perform the journey, so he violated the provisions of Rule 3(1)(i) and 3(1)(iii) of the CCS(Conduct) Rules,1964. No witness is mentioned in support of the article of charge. The charge as framed is about the misappropriation of Government money and actually no advance was also as conceded. by the respondents in the reply was ever given to the applicant as LTC advance. There arises, therefore, no question of misappropriation of Government money. When the charge framed against the applicant is totally wrong and is not a fact, the then/whole of the enquiry proceedings based on that charge have to go. The charg-sheet means departmental memorandum are wherein/indicated in detail the charge or charges against a delinquent Servant calling upon him to show cause as to why action should not be taken against him. The charge, therefore is one of the important description or accusation against the servant Government. In Sushil Kumar Mukerji Vs. State of West Bengal

it is held that and Others reported in 1977 CHN page 1014. /the words of the charge would give exactly the speaking mind of the disciplinary authority regarding the framing of the charges. In this reported case the charge shows that the delinquent official was found to be in possession ^{of} a specific amount found by the detailed calculation. In view of the wording of the charge, it was clear that the officer concerned had a closed mind. The same view has been taken in another Calcutta case Vimal Kant Mukerji Vs. State of West Bengal Reported in 1980 (1) CHN page 35. In that case also the charge-sheet shows that the charge-sheet was issued with a closed mind even at the stage of the framing of the charges and this itself renders the charge sheet void and bad in limine as the same violated the principles of natural justice. In the case in hand the Disciplinary Authority and Appellate Authority did not go through charge framed against the applicant which goes to show that there was no proper application of mind by either of them. In fact the order passed by the Appellate Authority dated 9/10.6.1987 observed in para II that the charges framed against the applicant stands proved, in fact there was only single charge and further this charge-sheet about the misappropriation of Government money, which is totally a different matter then submitting a false reimbursement claim of LTC by the delinquent official regarding his daughter Anita Rami, the Appellate Authority upon only passed a general order instead of touching ^{upon} the grounds taken in the memo of appeal dated 28.1.1987. The Appellate Authority was required to consider the grounds taken by the delinquent official and to scrutinize the order of the disciplinary authority in the light of those grounds. (See Ram Chander Vs. U.O.I. (1986) 3 S.C.C. p.103)

8. In view of the above discussion, the framing of the charge totally vitiated the enquiry proceedings and the non-application of mind to the report of the Enquiry Officer framing of the charge itself including the charge by disciplinary authority/further vitiated the enquiry in its entirety.

9. The learned counsel for the applicant further

been pointed out that no report of Enquiry Officer had/ submitted to him before the decision was taken of awarding punishment by the disciplinary authority. In fact, the disciplinary authority should have made it convenient to supply a copy of the Enquiry report so that the delinquent official may know what is the finding of the Enquiry Office and how the matter had been dealt with in the enquiry proceedings. This short-coming on the part of the respondents also vitiate the finding in view of the case reported in 1983(3)SLJ CAT 449, Prem Nath K.Sharma Vs. Union of India.

10. The learned counsel for the applicant further argued that the punishment awarded is not commensurate with the accusation made against the applicant. It is said that even if there was a false claim for his daughter which was not paid by the respondents, the punishment of compulsory retirement is unwarranted. This Court knows its limitation in going through the merit or degree of the punishment awarded to a delinquent official. However, the punishment by itself appears to be excessive.

11. The learned counsel for the applicant also challenged the finding of the Enquiry Office contending that the finding arrived at is without any basis or readable evidence and the conclusion drawn is based only on surmises and conjectures.* It appears from the Enquiry Report that Enquiry Officer was moved by the fact that the verification of the list of passengers from the Delhi Transport Authority shows that Kumari Anita Rani did not go with her parents, brother and sister to Kanyakumari. While the applicant filed a photo-stat copy showing her name in the list of passengers. In fact, unless the document are got summoned in original and the and cross-examined person preparing those documents is examined/as a witness, it cannot be said that the photo-stat copy of the list of passengers filed by the applicant which also bears the signature

* See AIR 1952 Tripura P.15 Sukhendra Chand Vs, Union Territory of Tripura.

of the Inspector of Motor of State Transport Authority (Annexure-III) is not correct. There cannot be any presumption that the name of Kumari Anita Rani was wrongly added or subsequently added or that has been forged by the applicant unless direct evidence oral or documentary duly proved is taken on record. There is no evidence before the Enquiry Officer except the verification got done by the Enquiry Officer on the back of the applicant from the Delhi Transport Authority, which cannot be made basis for the proof of the charge.

12. In view of the above, ^{the} findings arrived at by the Enquiry Officer are based on inference drawn from such documents which are not readable in evidence without proof and such finding is perverse finding that is, finding that could not be arrived at by a reasonable man. The Disciplinary Authority as well as the Appellate Authority have also ignored this aspect.

13. In view of the above discussions and after giving patient hearing to the learned counsel for the respondents, neither who could not make any dent on the contentions raised by the applicant the learned counsel for not could nor make out any substantial attack on any of the grounds taken by the learned counsel we feel that for the applicant, the punishment awarded to the applicant by the impugned order has to go, and the Appellate order is to be quashed.

14. In view of the above, the application is allowed. The orders dated 19.12.86, 10.6.87 and 24.9.87 are quashed we direct that ^{stand} and the applicant shall be treated in service and shall be reinstated forthwith within a period of three months from the date of receipt of this order treating the applicant to be on duty with all monetary benefits of service including promotion as well as back wages for the period from 19.12.1986 till the date of his superannuation i.e.

31.1.1990. The revised pensionary benefits also be calculated in the like manner. The applicant shall also be entitled to reimbursement of LTC Bill in accordance with law.

15. In the circumstances, we leave the parties to bear their own costs.

J.P. Sharma
(J.P. Sharma) 28.9.90
Member (Judl.)

S.P. Mukerji
(S.P. Mukerji) 28.9.90
Vice-Chairman