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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1448/90

New Delhi, 2.9. 1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Garpatram Sharma S/O Baldev Singh,
R/O H. No. RZ-28-D, Gali No.5,
Main Sangan Pur,
New Delhi - 110040.

... Applicant

By Advocate Shri Rakesh Luthra

Versus

1. Delhi Telephones,
Mahanagar Telephone Nigam Ltd.,
through the Chief General Manager,
Khurshid Lal Bhawan,
New Delhi.

2. Union of India through the
Secretary, M/O Communications,
Deptt. of Telecommunications,
Sanchar Bhawan, Sansad Marg,
New Delhi - 110001.

... Respondents

By Advocate Shri A. K. Sikri

O R D E R

Shri S. R. Adige, Member (A) -

In this application, Shri Garpatram Sharma, Store Keeper, Delhi Telephones has impugned the penalty order dated 17.4.1989 (Annex. VIII) reducing his pay by three stages for one year w.e.f. 1.5.1989 during the course of which he would not earn increments and as a result of which, his future increments would be postponed.

2. The applicant was proceeded against jointly along with S/Shri M. K. Ghosh, DET, S. K. Gambhir, ADET, G. L. Chawla and Inder Singh, Technicians, on the charge that while functioning as Store Keeper of the Sub-Divisional Store of the Installation Division of Delhi Telephones in 1974, he along with the abovenamed

persons colluded in committing the following irregularities :-

*1.1 Eight indents were issued by Shri S. K. Gambhir, ADET for PVC cables against A&P Estimates No. FF 21102-D(b) and No. FF 16233-D(b) in respect of Lok Sabha Sectt. Exchange and Shahdara East Exchange respectively. Shri Ganpat Ram obtained PVC cables against the said estimates and issued them to Shri G. L. Chawla, Technician and Shri Inder Singh, Technician on the basis of requisition slips which did not bear estimate numbers and the particulars of the work for which PVC cables were required.

1.2 He failed to maintain account of the stores properly and also failed to strike correct balance of stores.

2. The aforesaid irregularities committed by Shri Ganpat Ram suggest that the PVC cables received by him were misappropriated or allowed to be misappropriated thereby he caused pecuniary loss to the Government.

2.1 Shri Ganpat Ram by his above acts committed grave misconduct and failed to maintain absolute integrity and exhibited lack of devotion to duty thereby contravening the provisions of rule 3(1)(i) and (ii) of the CCS (Conduct) Rules, 1964."

3. The Inquiry Officer (Commissioner for Departmental Inquiries) in his detailed report dated 30.6.1986 (Annex. VI) held that in respect of article 1.1 the charge that requisition slips did not bear estimate numbers and the particulars of the work, stood substantiated. As regards article 1.2 and 2, he held that the charge about improper maintenance of accounts of stores stood substantiated to the extent of the specific instances discussed in paragraph 16 of the report. There was no direct evidence about precise shortage of stores, but in the light of the totality of evidence the probability of misappropriation could not be ruled out.

4. The Union Public Service Commission (UPSC) to whom the matter was referred agreed with the findings of the I.C. and held that the charge that the applicant had obtained PVC cables against estimates and issued them to S/Shri G. L. Chawla and Inder Singh, Technicians on the basis of requisition slips which did not bear estimate numbers and the particulars of the work for which the PVC cables were required, stood proved. The UPSC further observed that the instances quoted by the disciplinary authority clearly showed that the applicant had not maintained the stock registers correctly and noted that the applicant had himself admitted the mistakes in regard to the two entries in the stock register. The UPSC held that the charge about improper maintenance of stores account stood substantiated, but considered that the charge of misappropriation of stores or of allowing misappropriation thereof did not stand substantiated.

5. In the light of the I.O.'s report, materials on record, the UPSC's advice, and the facts and circumstances of the case, the respondents passed impugned order, against which the applicant has filed this O.A.

6. The main grounds taken by the applicant are that there are no rules, procedure or practice by which requisition slips must have estimate numbers or particulars of the work to which the material is required; no shortage in stores was detected in spite of an arithmetical mistake in stock register either during audit or during physical verification; no pecuniary loss was caused to the respondents because

of this arithmetical mistake; and the PWS themselves themselves had stated that the errors were found only after checking the record in which the applicant fully cooperated and there was no direct evidence of the end destination of the cables.

7. We have heard Shri Rakesh Luthra for the applicant and Shri A. K. Sikri for the respondents, and have gone through the matter carefully.

8. In Union of India & Ors. vs. Upendra Singh : (1994) 27 ATC 200, the Hon'ble Supreme Court held that the jurisdiction of the Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charge or into the correctness of the findings recorded by the disciplinary authority or the appellate authority, as the case may be. The function of the court/tribunal is one of judicial review, which in H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal vs. Gopi Nath & Sons : 1992 Supp. (2) SCC 312, affirms the following principle :-

*Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the

examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

9. None of the grounds taken by the applicant allude to any flaw or infirmity in the conduct of the proceedings. This is not a case where there was no evidence against the applicant or where the findings were based on conjunctures and surmises or were arbitrary or perverse or otherwise violative of Articles 14 and 16 of the Constitution. Shri Luthra has argued that in the light of the ruling of the Hon'ble Supreme Court in Union of India vs. R. Vedappa : 1993 (4) SCC 269, it is well within the competence of the Tribunal to interfere with the penalty order, but in the light of the ruling in Upendra Singh's case (supra), we are not persuaded to accept this view. In this connection, the Hon'ble Supreme Court's ruling in Union of India vs. Parma Nanda : AIR 1989 SC 1185 is also extremely relevant, wherein it has been held that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or the competent authority where they are not arbitrary or

utterly perverse. The Tribunal has no power to substitute its own discretion for that of the competent authority, and the adequacy of the penalty unless it is mala fide is not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

10. In the facts and circumstances of this case, therefore, and in the light of the rulings cited above, the impugned order warrants no interference and this application is dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

/as/