

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Date: 4.1.1991.

I. OA-1966/90

Shri S. S. Ray Applicant

Versus

Union of India through
Secretary, Ministry of
Finance & Another Respondents

II. OA-2056/90

Ms. Bharati Mandal Applicant

Versus

Union of India through
Secretary, Ministry of
Finance Respondents

For Applicant in No.I ^a Shri R. B. Misra, Counsel with
Shri Govinda Mukhatey,
Senior Counsel

For Applicant in No.II Shri R. Kapoor, Counsel

For the Respondents Shri R. S. Aggarwal, Counsel

CORAM: Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D. K. Chakraverty, Administrative Member.

1. Whether Reporters of local papers may be allowed to
see the judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement to be delivered by Hon'ble
Mr. P. K. Kartha, Vice-Chairman)

An important question as to what constitutes
conduct unbecoming of a Government servant within the
meaning of Rule 3 of the C.C.S. (Conduct) Rules, 1964,
has arisen in these two applications filed under
Section 19 of the Administrative Tribunals Act, 1985.
The applicants in both these cases are members of the
Indian Revenue Service. The applicant in OA-1966/90
is working as Commissioner of Income Tax, while the
applicant in the other application is working as a

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Deputy Director of Income Tax (Investigation). Both of them are under the administrative control of the Central Board of Direct Taxes (C.B.D.T.). As common questions of fact and law arise for consideration, it is proposed to dispose them of in a common judgement.

2. The facts of the case are not in dispute. Shri Roy was working as Deputy Director of Investigation during 1978-83 at Calcutta. Ms. Mandal was also working there as Assistant Director of Investigation. She was working under Shri Roy. Both of them were sent on official tour to Port Blair in 1982 to probe into a complaint made to the then Chairman, C.B.D.T. implicating Forest Department Wimco Ltd. and Andaman Wood Products, etc. The Chief Commissioner of Income Tax had also asked Shri Roy to locate, with the assistance of the Andaman & Nicobar Administration, accommodation for the proposed Income Tax office and staff quarters there.

3. The passage of both of them from Calcutta to Port Blair and their accommodation at Port Blair had been arranged through the authorities of the Andaman & Nicobar Administration. They travelled by ship from Calcutta to Port Blair and stayed at the Circuit House there. There was only one Deluxe cabin in the ship, S.S. Harshavardhana, with only two berths. Both of them were allotted these

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berths and they stayed there during their voyage from Calcutta to Port Blair for four days (26.9.1982 to 30.9.1982). ^{as} On reaching Port Blair, they ^{as} stayed in a double-bedded room in the Circuit House for 12 days (from 30.9.1982 to 12.10.1982). It appears that there was some entry in the Circuit House register to the effect that Shri Roy and Ms Mandal were 'husband and wife'.

4. Some time thereafter, certain allegations were made against Shri Roy in respect of his travelling together with Ms Mandal from Calcutta to Port Blair and for staying together with her in the Circuit House at Port Blair. On 27.12.1982, Shri Roy wrote to the Chief Commissioner of Income Tax, Calcutta, denying these allegations.

5. Shri Roy thought that the matters ended there, for, he did not hear anything further about it for nearly four years.

6. However, on 20.11.1986, the Under Secretary to the Govt. of India, Ministry of Finance, wrote to Shri Roy about that incident and asked for his version. On 12.12.1986, he ^{as} ~~applyant~~ informed him that the tour was undertaken with proper sanction, that the tickets for the

journey were purchased from the Shipping Corporation of India Ltd. and his accommodation in the Circuit House was arranged by the Andaman & Nicobar Administration. He further stated that he knew Ms Mandal and her family members very well and that the idea that some eye-brows could be raised, never crossed his mind. As regards the imputation of entry in the Circuit House register, Shri Roy maintained that the Andaman & Nicobar authorities were fully aware of the credentials of both, Shri Roy and Ms Mandal. However, he added that if further clarification was required, he requested that he may be allowed to see the records. Incidentally, he added that the I.T.O., Project Circle, then camping at Port Blair, had also called on them several times. He felt that some "disaffected" persons might have distorted and blown up a normal thing to blemish his reputation. He added, "It is really unfortunate and demoralising to see that a normal and healthy working relationship between two trusting colleagues is visualised with suspicion in the enlightened working environment of the end of twentieth century when colleagues are accepted as just colleagues."

7. A similar show-cause notice was issued to Ms Mandal and she also had given her explanation, denying the allegations. After considering their explanations,

They have also alleged that "the official tour does not authorise the applicant to commit irregular acts".

✓ In our opinion, ~

10. L the impugned memoranda of warning issued to the applicants in both these cases are liable to be set aside and quashed on more than one ground. Recordable warning is nothing but censure which is one of the minor penalties enumerated in Rule 11 of the C.C.S.(CCA) Rules, 1965.

11. In Nadhan Singh Vs. Union of India & Others, 1969

SLR 24, the Delhi High Court has held that a warning placed in the C.R. dossier and intended to be taken into consideration for assessing the official career of an employee, is nothing but censure.

12. In V.K. Gupta Vs. Union of India, 1989 (9) ATC

577, the Principal Bench of this Tribunal has held that recordable warning is tantamount to censure and cannot be awarded through an administrative memo. outside Rule 16 of the CCS(CCA) Rules, 1965.

13. The recordable warning, which is kept in the

confidential dossier of a Government servant, will be

looked into by the Departmental Promotion Committee at

the time of his promotion and may otherwise adversely

affect his service prospects. In view of this and

having regard to the aforesaid rulings, we have no doubt

in our mind that the impugned memoranda dated 4.3.1987

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the C.B.D.T. passed two separate orders on 4.3.1987 (in identical terms except for their names). The operative part of the impugned memoranda is as follows:-

"The Board is of the view that in view of the facts narrated in para.1 above, Shri Roy/Ms. Mandal has exhibited a conduct unbecoming of a Government servant and involving moral aberration. He/she is, accordingly, hereby warned to be more careful in future in such matters.

A copy of this memorandum is being placed in the A.C.R. folder of Shri Roy/Miss Mandal."

(Vide Annexure IV to OA-1966/90; Annexure I to OA-2056/90).

8. The representations submitted by both of them to the President of India were rejected.
9. The respondents have filed their counter-affidavit wherein they have taken the stand that "the act of travelling in a cabin with two berths only and stay in a double-bed room for more than 10 days with a young junior lady officer who was not his wife, is by itself an act which is unbecoming of a Government servant". They have contended that it would have served little purpose to issue charge-sheet before issuing the impugned memoranda of recordable warning, that in view of the admitted facts, the question of inspection of records did not arise, and that recordable warning is not a penalty as per Rule 11 of the C.C.S.(CCA) Rules, 1965.

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16

issued to the applicants in both cases, is liable to be set aside and quashed on the ground of non-compliance with the provisions of Rule 16 of the CCS(CCA) Rules, 1965 which lays down the procedure for imposing a minor penalty on a Government servant. The applicants had sought for the records relating to the entry in the Circuit House register, which were never supplied to them. Neither of them was informed that the show-cause notice issued was as contemplated under Rule 16 of the C.C.S. (CCA) Rules.

14. To our mind, the more fundamental infirmity in the whole episode is that the respondents proceeded upon a misapprehension that the act of travelling together by a male and female officer while on official duty, constitutes an act which is unbecoming of a Government servant. The applicants before us are majors. The charge levelled against them is not that they travelled in non-entitled class or that they claimed false TA/DA from the Government. The question arises whether travelling together in Deluxe Cabin having only two berths and staying in a double-bedded room per se constitute misconduct within the meaning of the C.C.S. (Conduct) Rules, 1964. Rule 3(1) (iii) of the C.C.S. (Conduct) Rules provides that every Government servant shall, at all times, do nothing which is unbecoming

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of a Government servant. The Rules themselves do not explicitly state that members of different sexes should not travel together or stay together in the same cabin or in the same room, while on ^{or} official tour and that if they do so, it would amount to a conduct unbecoming of Government servants. The Department of Personnel & Training, which is the administrative Ministry of the Government of India concerned with the implementation of the C.C.S. (Conduct) Rules, have not issued any Office Memorandum or memoranda in this regard. A somewhat unique case had come up before the C.B.D.T. and one would have expected it to seek from the Department of Personnel their interpretation of the Rules before proceeding with the issue of the impugned memoranda dated 4.3.1987. There is nothing to indicate that the respondents did so in the instant case.

15. During the hearing of the case, we enquired from Shri Gobinda Mukhotay and Shri Kapoor, learned counsel for the applicants, and Shri R.S. Aggarwal, learned counsel for the respondents, as to whether there is any civil or criminal law in our country prohibiting a male and female, who have attained the age of majority, from travelling together, sharing the same cabin in a ship or coupe in a railway compartment, or staying in a double-

bedded accommodation. The answer of the learned counsel was in the negative. We have also not come across any such civil or criminal law in India containing any such prohibition.

16. We then enter the arena of customs or conventions observed in a given society at a given point of time.

Ms. Mandal, who is a responsible officer in the Govt., has not alleged that Shri Roy assaulted her or misbehaved with her during the journey from Calcutta to Port Blair and their stay at Port Blair. Instead, she has poured out her anguish against the respondents for having humiliated and defamed her by suspecting her character and conduct and giving adverse publicity to the same.

The following extracts from her representations bear this out:-

Extracts from her letter dated 16.12.86
addressed to the Under Secretary to the
Government of India:

"It appears that just because I travelled together with the then DDI (Investigation), for whom I have high personal regard and trust, an unbecoming aspersion has been cast on my conduct, causing great mental agony. At the close of the twentieth century, which is a far cry from the Victorian era of prudery, when large number of ladies are participating in all walks of life and interacting with their male counterparts on equal footing, it is really painful to see that someone can even construe a healthy and normal working relationship as obscene. The then DDI (Inv.) is, to my estimation, one of the finest officers I have come across whom I knew also at family level right from probationary days and, therefore, I (or my family) had no reservation. As a matter of fact, it never occurred to me for a moment

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that people could view such tour from a different angle. Incidentally, there was the wish to see a new place in course of work, as I did go to Srinagar to participate in searches earlier..... I have a strong suspicion that the insinuations are off-shoots of malicious campaign determined to tarnish my reputation.....

It is easy to cast aspersion on reputation, which is very brittle and vulnerable, more so in the case of a lady, while it takes years to build up and nurture it....."

(Vide pages 17-A and 17-B of the paper-book in OA-2056/90)

Extracts from representation dated 10.7.1989 addressed to the President

"The fact that two colleagues went on official tour together, does not amount to conduct unbecoming of a Government servant and much less, 'moral aberration' merely because one of them is a lady and this is not the first time that the petitioner went on tour. Among other places, the petitioner went to Srinagar in 1981 and suffered indignity when Income Tax officials were attacked by searched parties. It is strange that when a large number of lady officers have joined the work force and are competing with their male colleagues on equal terms, anyone can even perceive in the enlightened work milieu of the late twentieth century, an official tour as anything but normal and cast aspersion on personal conduct and thereby thoughtlessly hurt dignity and sensibility of a lady officer.

(Vide Annexure IV, pages 18-19 of the paper-book in OA-2056/90)

Extracts from representation dated 14.7.1987 addressed to the President

"Now coming to the Board's finding that I exhibited a conduct unbecoming of a Government servant and involving moral aberration (Annexure-III), the pertinent point is whether the fact that two colleagues travelled together, especially when such tour was undertaken on the instructions and with prior approval of two senior officers of the department, amounts to moral aberration merely because one of the two officers happened to be a lady. It is really unfortunate

that even in an enlightened work environment of late twentieth century, when lady officers are interacting with their male colleagues on equal footing, the Board could perceive a normal and healthy working relationship as obscene just because one of the two officers was a lady. This finding of the Board smacks of discrimination on the basis of sex and of prejudice. Will the Board make such an insinuation if two male colleagues were similarly placed?

Again, it is with dismay and anguish I visualise the pernicious implications of demeaning insinuation contained in the Board's Memo. of warning dated 4.3.87 (Annexure III). It is disconcerting to see that the Board has applied the 19th Century Victorian standards of morality in judging personal conduct of educated and "mature" officers on the eve of the 21st Century. No less disturbing is the fact that in the process the Board has trampled on the humanistic values of trust and concern for the dignity of individual. This lack of concern for dignity and sensibility of an individual officer on the part of the Board is no less evident from the fact that the memo. of warning was not even marked "Confidential" and that it was sent "Open" without a cover even. The Board has denied me elementary courtesy and propriety to which I am entitled and further violated even instructions of the Government in this respect."

(Vide Annexure V, pages 20-22 of the paper-book in OA-2056/90).

17. Apparently, the respondents applied a yardstick to measure morality and good conduct for which there is no basis in the C.C.S. (Conduct) Rules proper, or the instructions issued by the Department of Personnel thereunder. The real mischief of the impugned memoranda dated 4.3.1987 issued to the applicants in both these cases, is to cast aspersions on their character and

15

conduct without affording them a reasonable opportunity to defend themselves. The question whether the Government will be within its rights to pass its judgement on the private life of its officers, might also arise in this context, but we do not propose to go into the same, as we have otherwise found the action of the respondents unsustainable in law. For the same reason, we also do not propose to deal with the numerous authorities cited before us and various other contentions raised before us by the learned counsel for the applicants.*

18. In the conspectus of the facts and circumstances, OA-1966/90 and OA-2056/90 are disposed of with the following orders and directions:-

(i) In the absence of any statutory provision or rule prohibiting the act of travelling in a cabin with two berths only and staying in a double-bed room for more than 10 days by two officers belonging to different sexes

* Rulings cited by the learned counsel for the Applicants:

1980 (1) SLR 324; 1976(1) SLR 133; 1990(1) SLJ (CAT) 173; 1984 (1) SCC 125; 1990 (13) ATC 156; 1989 (9) ATC 849; 1989 (10) ATC 203; AIR 1967 SC 1219; AIR 1979 SC 150; 1982 (1) SLJ 207; 1987 (5) ATC 658; 1984 (1) SCC 694; 1989 (1) SCC 764; 1990 (2) SCC 48; 1987 (4) SCC 431; AIR 1984 SC 1361; AIR 1984 SC 505; ATR 1989 (2) CAT 233; and 1989 (10) ATC 565.

(Such act)

while they are on official tour, / does not
per se amount to a misconduct or is not
acting in a manner unbecoming of Government
servants within the meaning of Rule 3(1) (iii)
of the C.C.S. (Conduct) Rules, 1964.

- (ii) We set aside and quash the impugned memoranda
dated 4.3.1987 issued to the applicants in
both the cases. The respondents are directed
to remove from the A.C.R. of the two applicants
the copies of the impugned memoranda placed
therein. No reference should be made to the
said warning in the papers to be placed before
the Departmental Promotion Committee/Appointment
Committee of the Cabinet or in any other manner
having a bearing on the service prospects of
the applicants.
- (iii) The interim orders passed on 28.9.1990 in
DA-1966/90 and on 11.10.1990 in DA-2056/90
are made absolute.
- (iv) Let a copy of this order be placed in both
the case files.

D.K.C.
(D.K. Chakraverty)
Administrative Member
4-1-1991

4/1/91
4/1/91
(P.K. Kartha)
Vice-Chairman (Judl.)