

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 209/90
T.A. No.

199

DATE OF DECISION 31.8.1990.

Shri J.K. Handa

~~Petitioner~~ Applicant

Shri B.B. Raval

Advocate for the Petitioner(s) Applicant

Versus
Union of India & Others

Respondent

Shri N.S. Mehta

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, 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? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Junior Intelligence Officer, Grade II in the Intelligence Bureau, filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 2nd February, 1990, whereby he was reverted from the post of Junior Intelligence Officer, Grade II to the lower post of Security Assistant until he is found fit by the competent authority to be restored to the higher post of Junior Intelligence Officer Grade II.

2. The application was filed in the Tribunal on 5th February, 1990. On 7.2.1990, the application was listed for admission, when notice was issued to the respondents, returnable on 20.2.1990. An ex parte interim order was

also passed, staying the operation of the impugned order dated 2.2.1990. The interim order has since been continued till the arguments of both the parties were heard on 27.8.1990 and orders reserved on the application.

3. The facts of the case in brief are that the applicant joined Government service in 1977 as Security Assistant in the Intelligence Bureau at S.I.B., Jammu. Thereafter, he has worked in various places, such as Udhampur, Banihal, Rajouri, Amritsar and Delhi.

4. The post of Security Assistant and the post of Junior Intelligence Officer Grade II belong to a decentralised cadre in the Intelligence Bureau. The applicant was transferred to Delhi on compassionate grounds at his request as his father is a T.B. patient and the applicant has to look after him.

5. After he joined duty at Delhi in June, 1982, he has been posted at the Cash Branch under Assistant Director (Admn.). He was shifted to Sub-Despatch under A.D. (Admn.) at T.T. School in June, 1987. He was required to do night duty frequently, which hampered his looking after of his ailing father. He, therefore, requested to be exempted from night duty. This was not agreed to by the respondents and orders were issued to transfer him to Amritsar. The applicant joined the office of the respondents at Amritsar from where he was required to take leave to attend to his ailing father. This led to the issue of a charge-sheet to him by the respondents on 25.2.1988 under Rule 14 of the C.C.S. (CCA) Rules, 1965. Articles 1 and 2 of the charges were as under:-

"Article-I

That the said Shri Jai Kishan Handa while functioning as JIO-II(G) during the period from 19.10.87 till date has failed to maintain

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devotion to duty in violation of Sub-Rule 1(ii) of Rule 3 of CCS (Conduct) Rules, 1964 by being absent from duty without leave or permission from the competent authority and not resuming duty despite repeated warnings/instructions from this office to this effect.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Jai Kishan Handa indulged in an act unbecoming of a Govt. servant in violation of Sub Rule 1(iii) of Rule 3 of CCS(Conduct) Rules, 1964 by insisting on seeking extensions of leave through piecemeal applications without mentioning therein exact dates from and upto which leave is required by him, without caring to carry out the written orders of this office, requiring him to return from unauthorised leave."

6. After holding an inquiry in which the applicant participated, the respondents passed the impugned order dated 2.2.1990, reverting him to the lower post of Security Assistant.
7. The applicant did not prefer an appeal against the impugned order passed by the disciplinary authority and wait for expiry of a period of six months before filing the present application.
8. The respondents have stated in their counter-affidavit that there is a statutory remedy of appeal provided in Rule 23 of the CCS (CCA) Rules, 1965. They have relied upon the decision of the Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 S.C. 10 in support of their contention that an application under Section 19 is not maintainable before exhaustion of the departmental remedies envisaged under Section 20 of the Administrative Tribunals Act, 1985. In the case of Shri S.S. Rathore, the Supreme Court had observed as follows:-

"The purpose of S-20 of the Administrative Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative

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Tribunals Act (Para-16). Therefore, in every such case until the appeal or representation provided by law is disposed of, accrual of cause of action shall first arise only when the higher authority makes its order on appeal or representation, and where such order is not made on the expiry of the 6 months from the date when the appeal was filed or representation was made." (Para-22).

9. On merits, the respondents have contended that the applicant was given a reasonable opportunity to defend himself in the inquiry and that the impugned order has been passed after observing the provisions of the C.C.S. (CCA) Rules, 1965.

10. We have carefully gone through the records of the case and have heard the rival contentions.

11. The learned counsel for the applicant drew our attention to the proceedings of the inquiry held on 13.9.1988 and 28.9.1988, copies of which have been annexed at Annexures A-6 and A-7, pages 24-28 of the paper-book. On 13.9.1988, the Inquiry Officer asked the applicant whether he had brought the Outdoor Tickets of his father in support of his illness, issued by the concerned hospital authorities, as promised by him during the last hearing. The applicant submitted the photostat copies duly attested by him of the Outdoor Tickets of his father for his treatment dated 3.4.1986, 22.4.1986, 27.5.1986, 17.6.1986, 6.11.1986, 17.7.1986, 18.11.1986, 3.3.1987, 16.4.1987, and 28.4.1987. He also submitted a certificate issued by Dr. Madan Mohan of Haryana Hospital, Sonapat dated 7.9.88, certifying that the father of the applicant is under his treatment w.e.f. 1.8.1987, who is suffering from Pulon Tuberculosis.

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12. On 28.9.1988, the Inquiry Officer told the applicant that he had maintained in the proceedings of the inquiry that his father was under treatment in Delhi T.B. Hospital and that he had been applying for leave due to the same. However, as per the Outdoor Slips submitted by him in the form of photocopy, the last consultation from Delhi T.B. Hospital was had on 24.5.1987. He enquired whether it meant that his father did not take any treatment thereafter. The applicant's reply to this was that he took medical treatment for his father from Delhi till his financial position permitted. When his financial position did not permit, he started consulting Haryana Hospital at his native village, Kharkhoda from 1.8.1987 onwards and a photocopy of a certificate dated 7.9.1988 given by the said Hospital, had also been submitted by him.

13. Referring to the aforesaid order-sheets recorded during the employment, the learned counsel for the applicant stated that the remarks of the disciplinary authority in para.10 of the impugned order that his claim of having produced the prescription slips of the Hospital in regard to the sickness of his father during the course of enquiry, is not confirmed from the record of proceedings of inquiry, is not factually correct. The order sheets mentioned above, were very much part of the relevant file of the respondents who had conducted the inquiry.

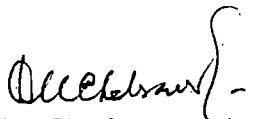
14. We do not wish to express any view one way or the other about the merits of the respective contentions of the parties at this stage. A Full Bench of this Tribunal

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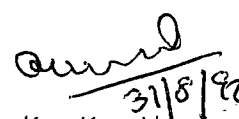
has held in B. Parameshwara Rao Vs. the Divisional Engineer, Telecommunications, Eluru and Another (OA-27/90 decided on 12.4.1990) that where the law requires that the applicant should exhaust his statutory remedies for redressal of his grievances under the relevant service rules, it is incumbent on the applicant to file an appeal/revision/representation, whichever is permissible under the rules, to the authorities concerned and then wait for six months' time for the latter to decide the matter.

15. The applicant in the instant case did not do so. As we are bound by the judgement of the Full Bench, we hold that the present application filed by the applicant is premature. We, therefore, direct that the applicant may prefer an appeal to the competent appellate authority against ^{the} impugned order dated 2.2.1990 passed by the disciplinary authority within a period of one month from the date of receipt of this order. The Appellate Authority shall consider the appeal preferred by the applicant on merits and pass a speaking order thereon as expeditiously as possible, but in no event, later than 30th November, 1990. The applicant may also be given a personal hearing, if he so desires. The applicant will be at liberty to file a fresh application in the Tribunal if he is aggrieved by the decision given by the Appellate Authority.

16. The application is disposed of with the aforesaid directions. The interim order, staying the operation of the impugned order dated 2.2.1990, will continue till 30th November, 1990. There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member

31/8/90


(P.K. Kartha)
Vice-Chairman (Judl.)