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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No. 2544 of 1990

New Delhi, this the 8th day of July, 1995.

HON'BLE MR J.P.SHARMA, MEMBER (J)
HON'BLE MR B.K.SINGH, MEMBER (A)

Shri R.C.Sharma S/O late Shri. Sadhu Charan
Retired Asstt.Engineer T & D Circle, at New
Delhi and resident of Delhi.

..... Applicant.
(through Mr Sant Lal, Advocate).

vs.

The Union of India
through Secretary, Ministry of Communications,
Department of Telecommunications,
Dak Bhawan, New Delhi. Respondent.
(through Mr N.S.Mehta, Advocate).

ORDER

(delivered by Hon'ble Mr B.K.Singh, Member (A)

This O.A. No. 2544/90 has been
filed against the following orders:

(i) Memo. No.8/12/87-vig.-II dated 25.7.89
issued by the D.G.Telem; and

(ii) Order No.2/20/89-vig.II dated 1st Aug.,
1990 issued by order and in the name
of President.

The applicant joined the service in
P & T Department as Junior Engineer on 16.9.1966 and
was promoted as Assistant Engineer in Group 'B'
w.e.f. 11.10.1984. The D.G.Telem initiated
disciplinary proceedings under rule 14 of the CCS(CCA)
rules, 1965, vide his memo. No.8/12/87-vig. II dated
3.8.1987. The allegation was that the applicant
violated rule 3 of the CCS(Conduct) Rules, 1964.

The imputations of charge were that he signed a letter

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bearing No. H-7/85-86 dated 3.7.1985 to the Director of Estates as Divisional Engineer Telecom, while he was functioning as Deputy Divisional Engineer Telecom with a view to retain the quarter which had been allotted to him while he was functioning as Junior Engineer, Incharge, Bhuvneshwar Secretariat for maintenance of the telecommunication system of the State Government. The second charge was that he tampered with certain D.A. Bills pertaining to himself after the counter-signed the same, his Controlling Officer had had the month of March, 1985 with malafide intention.

The applicant denied the charges and an inquiry was held against him under Rule 14 of the CCS(CCA) Rules, 1965. The Inquiry Officer was appointed and he submitted his report dated 26.12.1988, vide Annexure A-2 of the Paper Book, proving the charges levelled against the applicant. The Disciplinary Authority, after going through the Inquiry Report, agreed with the findings of the Inquiry Officer and vide its memo. No.8/12/97-vig. II dated 25.7.1989, copy annexed as Annexure A-1 to the Paper Book, awarded the penalty of compulsory retirement. The punishment order was issued in the name of the President. Thereafter, the applicant submitted an appeal, vide Annexure A-7 dated 19.9.1989, to the Secretary, Department of Telecommunications, Sanchar Bhawan, New Delhi. The appeal filed by the applicant was disposed of by the President, on the basis of the advice of the U.P.S.C. dated 21.6.1990(Annexure A-4), vide order dated 1.8.1990 (Annexure A-3).

Aggrieved by the order of the disciplinary authority and the appellate authority, this O.A. was filed on 3.12.1990. The reliefs prayed for are as

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under :

" to quash the impugned punishment and appellate orders; and

(ii) to grant the consequential benefits of treating the period from the date of compulsory retirement to the date of actual re-instatement as period spent on duty for all purposes with full back wages;

Heard, the learned counsel Shri Sant Lal for the applicant and Shri N.S. Mehta for the respondents and perused the records of the case.

The two relevant files submitted by the Department relating to the Inquiry Report of the Central Vigilance Commission and a file containing tour ^{were} programme of the delinquent also perused. The main ground taken by the learned counsel for the applicant was that the articles of charge do not make out a case of misconduct, as the Disciplinary Authority had not supplied a copy of the Inquiry Report of the Inquiry Officer before passing the order of penalty of compulsory retirement.

In this connection, he cited the case of Brahm Singh vs. Union of India and others (A No. 1774/88) decided on 2.8.1988) whereby the penalty of compulsory retirement on the sole ground of non-supply of a copy of Inquiry Report before passing the impugned punishment order, was quashed. Further, he argued that the punishment order is a non-speaking order since the disciplinary authority has reproduced the charges against the applicant and did not record any finding of its own, based on evidence in the inquiry report. He further

argued that the applicant vide his application dated 7.4.1988 requested for production of file No. Vig.8-70/85, as additional document besides other documents for inspection under the provisions of Rule 14(12). The Inquiry Officer directed the Presenting Officer to produce the same and make available to the applicant for inspection vide his order dated 6.9.1988 and 23.9.1988, but the same were not produced by the Presenting Officer though these documents were relevant for the defence of the applicant. He further argued that the findings in this case are based on mere surmises, conjectures and presumptions and lastly that the penalty imposed on the applicant is disproportionate to the alleged misconduct.

The learned counsel for the respondents rebutted the arguments that the articles of charge framed against the applicant do not constitute misconduct. 'Conduct' according to Black's Law dictionary means personal behaviour dependent on mode of action, any positive or negative act.

The Supreme Court in Kamal Kishore Lakshman vs. Pan American World airways, 1987(1) S.C.C. 148 on page 150 observed as follows:

"As was pointed out in "Robles vs. Green(1995) (2) 315", the employee is expected to promote the employer's interests in connection with which he has been employed and a necessary implication which must be engrafted on such a contract is that the servant undertakes to serve his master with good faith and fidelity.

This view has been accepted by many High Courts and meets with our approval."

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The obligation to serve with 'good faith and fidelity' is thus an implied term in civil contract of service. The implied terms may be related to;

(i) Control over the manner of doing work.

The master has a right to exercise control over the manner, in which the work is being done.

(ii) Capacity

The employee must possess capacity to perform the duties of employment himself.

(iii) Obedience.

The employee must obey every lawful order of his master relating to his share of employment.

(iv) Good faith and fidelity

The servant must act faithfully and safeguard the interest of the master.

(v) Proper care of property entrusted to his charge.

(vi) Responsibility to render accounts

(vii) Honesty.

(viii) Good Conduct.

For instance, even though the rule of unbecoming conduct was added to Rule 3 on 29.8.1964, it does not mean that employee could not be punished for similar misconduct for instance prior to that date (Dr. K. Palit vs. Govt. of India, 1971 Lab I.C. 1548).

(ix) Punctuality.

It has been held by the Hon'ble Supreme Court that if a servant conducts himself

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in a way inconsistent with the faithful discharge of his duties in the service, it is misconduct. It is sufficient if it is a conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master and master will be justified not only if he discovers it at that time but also if he discovers it afterwards, in dismissing that servant (Govind Menon vs. Union of India/ATR 1967 SC 1274 at page 1278). Thus, it would be seen that the two articles of charge framed against the applicant that he signed on behalf of Divisional Engineer Telecom, who was away on tour and that he had no authority to do this, particularly when it is meant to give an advantage to do this, particularly when it is meant to give an advantage to the applicant, since in the aforesaid letter addressed to the Director (Estates) Government of Orissa, a request had been made to allow the applicant to continue in the quarter, which was allotted to him for maintenance of telecommunication system when he was working on deputation with the Govt. of Orissa to take care of the State Secretariat and that quarter was meant only for such a person. This request should have been made by the Divl. Engineer if he so liked but since his successor Sh. Bisheshwar Das had already arrived and the applicant wanted to usurp the aforesaid quarter, he transgressed his jurisdiction and tried to derive benefit by writing a letter to suit his interest. He had written the letter at the back of the Divisional Engineer and without approval or post-facto approval and the benefit, if the request had been acceded would have accrued to him and from that angle, it is certainly a misconduct.

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Therefore, the contention that it is not a misconduct is untenable. It was argued that the report of the Inquiry Officer, before passing the order of penalty of compulsory retirement was not supplied. It is admitted by both the parties that the matter related to 1987 and furnishing of inquiry report was made mandatory as a result of ruling given by the Hon'ble Supreme Court in Union of India v. Mohd. Ramzan Khan (1991(1)ATJ-175 CAT P.B.). This judgment was delivered on 20.11.1990 and a Constitution Bench of the Hon'ble Supreme Court held that it will have prospective application and will not apply to cases decided prior to 20.11.1990. This law laid down by the Constitution Bench of the Supreme Court does not make the contention of the applicant tenable.

If compulsory retirement is passed under F.R.56-J, Article 311 of the Constitution is excluded and so are the principles of natural justice. The law regarding compulsory retirement has been laid down by the Hon'ble Supreme Court in a catena of judgments. In Baikuntha Nath Dass and anr. v. Chief Distt. Medical Officer Baripada & Anr. JT-1992(2) SC 1 it has been held that:

- i) an order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed

on the subjective satisfaction of the
Government.

iii) The principles of natural justice have no place in the context of an order of compulsory retirement. The Court is not to function as an appellate Court. It can interfere only if it is satisfied that the order is passed;

a) malafide;

b) that it is based on 'no evidence'.

c) that it is arbitrary in the sense that no reasonable person could form the requisite opinion on the given material: in short if it is a perverse order.

However, in the instant case, the compulsory retirement has been imposed by way of penalty. The law laid down in Baikunthanath Dass case (supra) applies to only those cases where it is not by way of punishment or penalty but under 56-J of F.R.

In the instant case, Union of India vs. Tulsiram Patel, AIR 1985 SC 1416, will be more relevant, since the order of compulsory retirement has been passed by way of penalty and therefore it amounts to removal from service and the provisions of Article 311 of the Constitution will be attracted and the corollary is that the principles of natural justice come into play.

Further, having said so, it may be pointed out that a perusal of the departmental inquiry file placed before us, B indicates

that the principles of natural justice have been followed. The requirement of the principle of natural justice are:

- i) that the charge should not be vague. It should be clear and precise;
- ii) that the applicant will be given adequate opportunity to state his case;
- iii) the disciplinary authority will pass a speaking orders as regards the articles of charge and there should be no ambiguity involved in the charges levelled against the applicant.

The proceedings of D.E. clearly show that the applicant was given full opportunity to state his case. The Inquiry Officer, after going through the documentary evidence, submitted his report vide Annexure A-2. A perusal of the departmental file, on the subject will indicate that the on articles of charge (i) and (ii) an oral inquiry was held by Shri S.K.Rao, Commissioner of Departmental Inquiry working under the Central Vigilance Commissioner. The Inquiry Officer submitted his report dated 26.12.1988, copy of which is annexed with the O.A. After examining the documentary evidence, the Inquiry Officer proved the charges against the applicant as will be seen from the departmental file and also a detailed analysis of the documents which had been marked and exhibited and the extracts of which were supplied to the applicant. Therefore, the inquiry report cannot be faulted with. The inquiry report is based on documentary evidence pertaining to the letter written by the applicant on behalf of his superior for retention of the house, which was allotted to him

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by the Government of Orissa when his successor had already arrived and the quarter was earmarked for him. Even the post-facto approval was not obtained by the applicant. The misconduct of interpolation has been proved against the applicant.

In the case of Government of Tamil Nadu vs. Raja Pandian JT 1994(4)(J) SC 492, it has been held that the Tribunal has no jurisdiction to sit as an appellate authority and appreciate the evidence of the Inquiry Officer or to sit as an appellate authority over the findings of the disciplinary authority. In that judgment, it was held that the administrative Tribunal fell into a patent error in appreciating and going into the sufficiency of evidence. The Hon'ble Supreme Court observed:

"it has been authoritatively settled by a string of authorities of this Court that the administrative Tribunal cannot sit as a Court of appeal over a decision based on the findings of the Inquiry Officer in disciplinary proceedings. Where there is relevant material, which the D.A. has accepted and supports which material/the conclusion reached, it is not the function of the administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority. While giving a judgment in the aforesaid case, the Hon'ble Supreme Court has also referred to the case of Union of India vs. Parma Nanda JT 1989(2) SC 132 and Union of India vs. Sardar Bahadur 1992(2) SCR.

The same view has been reiterated in State Bank of India and others vs. Samarandra Kishore Endow and another JT 1994(1) SC 217. The Court referred to regarding non-supply of copy of inquiry report and held that the order of punishment prior to

20.11.1990, after the date judgment was delivered in Mohd. Ramjan Khan's case(supra) will not vitiate the inquiry proceedings on the ground of non-supply of Inquiry Officer's report. As regards the quantum of punishment, it was held that appropriate punishment is within the discretion and judgment of the disciplinary authority. The appellate authority may interfere with the same but not the High Court or the Administrative Tribunal. It was further held that while exercising the power of judicial review it is none of the business of the High Court or the Tribunal to question the punishment or penalty which can be lawfully imposed on the proved misconduct of the employee. In Samarendra Endow's Kishore's case(supra) the Hon'ble Supreme Court held that the Tribunal or the High Court has no power to substitute its own decision for that of the disciplinary authority. The High Court or the Tribunal has no jurisdiction to impose any punishment to meet the ends of justice. Only the Hon'ble Supreme Court exercises the equitable jurisdiction under Article 136 and the High Court and the Tribunal has no such power or jurisdiction. This has been clearly stated in paras 10 to 15 of the aforesaid judgment. Thus, the punishment of compulsory retirement is harsh or is not commensurate with the proved mis-conduct is not for the Tribunal to look into and accordingly the contentions raised by the learned counsel for the applicant are untenable in the light of the various observations of the Supreme Court in the afore-sated judgments and accordingly this O.A. fails and is dismissed, leaving the parties to bear their own costs.

/sds/

(B. K. Singh)
Member(LA)

(J. P. Sharma)
Member(LA)