

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(12)

OA NO.442/91

DATE OF DECISION: 31.3.1992.

SHRI HEMANT KUMAR SHARMA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI P.P. KHURANA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SENIOR  
COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

*Signature*  
(I.K. RASGOTRA)  
MEMBER (A)

*Signature*  
(T.S. OBEROI)  
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO.442/91

DATE OF DECISION: 31.3.1992.

SHRI HEMANT KUMAR SHARMA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI P.P. KHURANA, COUNSEL.

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,  
SENIOR COUNSEL.

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

We have heard the final arguments in this case on 26.3.1992, 30.3.1992 and 31.3.1992.

2 Briefly, the undisputed facts of the case are that the applicant joined the Indian Postal Service as a direct recruit on 30th July, 1979. He was posted as Senior Superintendent Post Offices (SSPO) in Jammu on 21.9.1981. On 17.8.1982 his explanation was called by the Post Master General (PMG) J&K Circle in regard to certain complaints of misuse of authority, received against him. The applicant submitted his explanation on 8.9.1982. Thereafter all these complaints were examined and processed. The PMG, thereafter, came to the conclusion that there are only matters viz (i) purchase of 100 metre curtain cloth on 17.10.1981 costing Rs.3200/- and (ii) appointment of Extra Departmental Branch Post Master; (EDBPM) Sarna, where some

14

irregularities of administrative and procedural nature appear to have occurred. The other complaints, apparently, were found to have no substance or were not found to be worth pursuing. These complaints were further examined on the basis of the detailed report received from the PMG in the office of DG(P&T) New Delhi as per the record of the respondents vide noting at pages 2-4/N file No.18-85/81-Inv.

We have gone through the record pertaining to the processing and the disposal of the various complaints in the Department of Posts at the headquarters and would like to extract the following portion, which is relevant and deals with the case of the applicant herein:-

"There is no mala-fide involved in the financial transactions except that some items were purchased overstepping his financial powers and in some cases perhaps the expenditure split up to keep the amount below Rs.500 (within his competence). I agree with CBI that the expenditure incurred cannot be questioned on grounds of their justification or being on high side:... This was due to lack of knowledge and experience and office also failed to guide him properly.

Similarly the officer has acted hastily in appointing one EDBPM, but he has explained his bonafide in the case.

Thus the irregularities have been of administrative and procedural nature for which PMG may be requested to advise him suitably and keep watch and guide him, as promised at 23/C."

15

After the above assessment of the case was approved by the DDG(V) the matter treated as closed vide confidential letter, issued by the office of the Postmaster General, J&K Circle Srinagar on 26/30 October, 1982 to the applicant where in the ultimate paragraph it is stated that:-

"III. These are some of the advices and guide lines which you may follow in the periphery of the rules and regulation and steps may be taken as laid down in the departmental rules and instructions from the Dte. In case of any doubt on any issue, you are at liberty to write to this office and seek guidance and advice while discharging your duties as Divl. Head."

It is further observed that in the noting at the page 3/N in paragraph-4 it has also been observed that:-

"4. The report of the P.M.G. Srinagar has been received which can be seen at P-23/C. All these complaints were got investigated and have been found pseudonymous. The P.M.G. has not sent the details of the enquiries conducted by the Vigilance Officer... (emphasis supplied)."

Thus even though the complaints were found to be pseudonymous, the department deemed it fit to have them investigated by C.B.I.

3. The matter was thus closed with the issue of the confidential letter dated 26/30 October, 1982 to the applicant after having the investigation

d

(16)

conducted by the CBI and full and detailed examination of the case by PMG, Srinagar and by the office of the Director General, Post, New Delhi. It was in pursuance of DG (Post), New Delhi confidential letter dated 15.10.1982 to the P.M.G., J&K Circle that the applicant was rendered advice and guidance for the future.

The next mile-stone in this case came on 2.4.1984 when the applicant was promoted in Senior Time Scale vide order dated 2.4.1984. This confirmed the bonafide impression of the applicant that the complaints against him have been finally closed and nothing subsists on those grounds against him. However, this was not to be and it was on 18.6.1987 that a chargesheet was issued to him under Rule 16 of CCS (CCA) Rules, 1965 for imposition of a minor penalty. The applicant submitted his detailed reply to the charges framed against him as required under the rules and the matter continued to remain in animated condition resulting in the imposition of penalty of stoppage of two increments without cumulative effect vide order dated 28.6.1991. The said penalty was imposed in consultation with the U.P.S.C. who while recommending the imposition of the penalty dated 16.5.1991 observed that:-

"In the totality of the circumstances the Commission considered that the irregularities in the purchase of curtain cloth and in the appointment made are too obvious to be refuted and the defence put by the charged officer is without any basis. However, nowhere it is established from the record that the officer gained any pecuniary benefits in the transactions pertaining to the purchase of cloth and in the appointment. In

(17)

the view of the Commission lapses and irregularities are procedural in nature and without any malafides. (emphasis supplied.)

4. In the O.A. before us the applicant has challenged the order dated 28.6.1991, imposing the penalty and has prayed for the following reliefs:-

- a) a writ of Certiorari or an order in the nature of Certiorari quashing the charge-Memo dated 18.6.1987;
- b) a writ of Mandamus or an order, direction in the nature of Mandamus directing the respondents to grant the Junior Administrative Grade to the applicant with effect from the date the immediate junior of the applicant was granted the said Grade.

5. Shri P.P. Khurana, learned counsel for the applicant urged that the case against the applicant had been closed in 1982 and thereafter there was no occasion, particularly, after a lapse of over 4 years to punish the applicant by issuing a chargesheet for minor penalty, basing the charges on the same set of complaints which had been earlier investigated/disposed of vide letter dated 26/30.10.1982. In this context the learned counsel cited **AIR 1980 Privy Council 37 R.G. Ragacharya v. Secretary of State.** He further urged that various charges framed against the applicant were fully explained by him in his explanation to the satisfaction of the concerned authorities and yet a penalty of stoppage of two increments has been imposed on him, relying upon the statement of one Shri Magarmal whose name appears in the statement of imputations of misconduct only in the context of the

(18)

applicant having handed over the bills for processing memo to said Shri Magarmal, SPM for further processing. There is no indication in the statement of imputations that Shri Magarmal's statement was recorded and that the applicant was to be crucified on the basis of his evidence alone as evidenced from the advice of the UPSC. Had this fact been brought to the notice of the applicant he would have had an opportunity to refute the allegations made in the statement by Shri Magarmal. The learned counsel submitted that imposition of the penalty on the applicant without showing him the statement of Shri Magarmal and without giving him an opportunity to refute/cross examine him was violative of the principles of natural justice. To fortify his case the learned counsel referred to **S. Govinda Rasu v. Supdt. of Posts 1989 (10) ATC 986** where the Tribunal had held that the previous statement given by certain persons are not to be used for the purpose of arriving at the guilt of the Govt. servant. Copies of such statements must be furnished to the Govt. servant to afford him adequate opportunity to meet the points made in such statements. Shri Khurana, the learned counsel further submitted that an error of judgement or innocent action does not constitute misconduct and relied on **AIR 1979 SC 1022 U.O.I. v. J. Ahmed.** He also relied on the Principal Bench decision in **G.V. Jhabakh Vs. Secy. Deptt. of Revenue, Ministry of Finance decided on, 11.1.1991**, wherein it is held that "if there was no malafide and "no loss is suffered by the revenues" it would not amount to lack of devotion to duty. A mere caution to be careful in future would suffice in such cases. "In our opinion a censure entry is a punishment even though treatment is a minor one. It can affect his future promotion."

2

(19)

6. Shri P.H. Ramchandani, Sr. counsel for the respondents on the other hand urged that the disciplinary authority is constituted under the statutory provisions and is free to exercise his quasi-judicial power conferred on him in accordance with the statute. Judicial authority according to him should ordinarily not interfere with matter exclusively falling in the domain of the disciplinary authority. Further the Tribunal cannot undertake appraisal of the evidence adduced in the process of enquiry etc. conducted by the administrative authority. In response to our query as to what happened between 1982 and 1987 that made the respondents reopen the closed case, the learned Senior counsel for the/ fairly conceded that admittedly there has been inordinate delay in reopening the case and in serving the chargesheet but the delay was explainable keeping in view the fact that the complaints against the officer continued to persist. Even a Member of Parliament had taken up this issue sometime in 1986. The delay in the handling of the case was further compounded by the applicant who submitted an explanation which ran into over 100 pages, including the annexures.

\* The learned Sr. counsel further submitted that the Tribunal cannot adjudicate upon the quantum of punishment imposed by the disciplinary authority as held by the Supreme Court in **UOI v. Permananda AIR 1984 SC 1185**. He also submitted for the perusal of the Court the file dealing with the case of the applicant in 1982.

7. We have considered the submissions made by the learned counsel for both the parties and perused the record very carefully. In our view, after the matter was closed in 1982 there was apparently no bonafide reason to reopen the matter again in 1987 when a chargesheet was served on the applicant based

2

(20)

on the same set of complaints which had been earlier investigated departmentally and also through the independent agency of the CBI and the matter closed after processing at the appropriate level by giving a letter of advice and guidance to the applicant. In **Audhraj Singh v. State of MP AIR 1967 (MP) 284** the learned judges held "A master cannot impose any punishment on a servant for a misconduct which he has condoned. If the lapse or misconduct is one which is known to the authority before the person is promoted and not one which comes to light subsequent to the promotion and if the authority concerned knowing of this lapse servant or misconduct promotes the civil/without any reservation then it must be taken that the lapse or misconduct has been condoned and thereafter the servant cannot be punished for his lapse or misconduct."

Again in **AIR 1970 SC 2086 The State of Punjab v. Dewan Chuni Lal**, their Lordships in the Supreme Court observed that "In our view reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the Efficiency Bar in that year. It is unthinkable that if the authority took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942, they could have overlooked the same and recommended the case of the officer as one fit for crossing the Efficiency Bar in 1944..."

It, therefore, appears to us that the applicant could not have been taken up for the charges framed on the same set of facts which had been earlier disposed of at the appropriate level vide confidential letter dated 26/30.10.1982 sent to the applicant. The act of the respondents in promoting him to Senior Time Scale further confirms that there was nothing against him in 1984. The fact nevertheless remains that the

case was reopened and we cannot but express our dismay and concern that a matter where at worst only minor penalty could have been contemplated was allowed to linger on right from 1987 to 1991. In fact taking a total view of the situation the minor penalty proceedings can be said to have continued with an interruption (shall we say Dies-non) from 1982 to 1986 right from 1981 to 1991 as against the period of three months in which the respondents are required to finalise the minor penalty proceedings in accordance with the Disc-II dated 21.4.1975. OM No.6/8/72-INV/ The delay may be explainable, as urged by the learned counsel for the respondents but we are not persuaded to accept that the delay was justifiable, particularly when the minor penalty proceedings held up the career progression of the applicant. We also cannot ignore the anguish and harassment that the "explainable" delay caused to the applicant. The learned Sr. counsel for the respondents had referred us to **UOI v. Permananda** (supra). We have assuredly no intention to alter/reduce or increase the quantum of punishment imposed on the applicant. On the other hand, we are convinced that there was little justification for reopening the case in 1987 when it had been closed in 1982 at the appropriate level, more so when the charges framed against the officer were the same which had been earlier investigated and closed. We further consider that the inordinate delay in finalising the case, has rendered the punishment imposed as perverse and unwarranted in 1991, when the complaints related to the year 1981. There is also evidence that the axe fell on the applicant, substantially under the shadow of evidence of Shri Magarmal/ which the applicant was not given an opportunity to refute in violation of principles of natural justice.

21

In the above conspectus of the case we set aside the charge Memo dated 18.6.1987 and the order, imposing penalty of stoppage of two increments without cumulative effect dated 28.6.1991. We had passed an interim order on 21.3.1991, ordering the respondents:-

"After carefully considering the rival contentions of the parties on the question of interim relief we are of the view that a direction needs to be issued to the respondents, as an interim measure, to the effect that if the final order in the disciplinary proceedings initiated vide memorandum of charge dated 18.6.1987 is not passed within 45 days from today, the sealed cover(s) in which recommendations of the DPC(s) in regard to the applicant for promotion to the post of JAG are kept shall be opened and the applicant shall be given promotion to the junior administrative grade if he had been found fit for such promotion, on a provisional basis and from prospective effect and this will be subject to the outcome of this O.A. Action in this regard should be taken expeditiously but not later than 15 days from the date of expiry of 45 days referred to above. However, if orders in the aforesaid disciplinary proceedings are passed within the aforesaid period of 45 days, this interim order will become inoperative."

This order, however, could not be implemented and culminated in the applicant filing a CCP. The said CCP, however, was disposed of vide order dated 3.12.1991 noting that:-

"We are not satisfied that the respondents made any special effort to contact the Minister

(23)

or send the file to the Minister of State concerned for obtaining his opinion/approval.

The Secretary, Department of Posts having processed the case, sent it to the office of the Minister of State and left it there.

We think in a case like this both the officers, viz. Shri Kailash Prakash, Secretary Department of Posts, Respondent No.1 and Shri B. Parabrahmam, Deputy Director General (Vigilance), Respondent No.2 should appear before the Tribunal on 4th November, 1991 and give such explanation as they think fit. We order accordingly. Final orders on the CCP will be passed thereafter. Registry is directed to send copy of this order to the above two officers forthwith."

The said order, however, could not be implemented as explained in our order dated 3.12.1991 in the CCP No.126/91. However, in view of the setting aside and quashing of the charge Memo dated 18.6.1987 and the order dated 28.6.1991, imposing the penalty of stoppage of two increments without cumulative effect, the applicant shall be entitled to all consequential benefits specifically by way of promotion to the JAG (which was due to him and for which he had been found fit as per the recommendations of the DPC but which was not implemented) w.e.f. the date his next junior was promoted. He shall also be entitled to back salary and allowances etc. from the date of his promotion, as ordered above.

We further direct that these orders shall be implemented as early as possible, but preferably within 4 weeks from the date of their communication.

No costs.

*S. Rastogi*  
(I.K. RASTOGI)  
3/8/92  
MEMBER(J)

*S. Oberoi*  
(T.S. OBEROI)  
MEMBER(J)