

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 476/91.

Date of decision: 22-3-95

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri R.S. Saini,
S/o Sardar Rajinder Singh,
R/o R-1/101, Haus Khas Enclave,
New Delhi. ... Applicant

(By Advocate Shri S.K. Bisaria)

versus:

1. Union of India through
Secretary, Ministry of Railway,
Rail Bhawan, New Delhi.

2. General Manager,
Central Railway,
Bombay VT.

3. Shri K.C. Govil,
Director,
Indian Railway Institute of
Electrical Engineering,
Nasik Road,
Maharashtra. ... Respondents

(By Advocate Dr. B.N. Mani)

O R D E R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant, being aggrieved by the punishment order dated 23.12.1988 as modified by order dated 26.4.89 (Annexure 1) reducing his pay by five stages from the stage of Rs. 4125/- to Rs. 3500/- in the scale of Rs. 3000/- to Rs. 4500/- till his superannuation i.e. 30.4.1989, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the impugned order. The impugned punishment orders had been passed as a result of the disciplinary proceedings

1

held against the applicant.

2. The circumstances in which the disciplinary proceedings were held against the applicant are as follows.

3. The applicant, while posted as Assistant Personnel Officer at Jhansi, was allotted official residential accommodation in 1975. According to the applicant, at the instance of respondent No. 3, some time in 1981, his premises were checked by the staff of the Electrical Meter Department and without his knowledge and consent the electric meter installed at his premises were removed. He was subsequently issued with the charge-sheet dated 14.7.1986 which reads as follows :-

" That the said Sh. R.S. Saini while in occupation of Railway quarters No. C/93 of Jhansi during May/June 1975 illegally tampered with and damaged electric meter No. J/84 fixed by the railway in that he had arranged to get two holes drilled in the meter parallel to the disc with the deliberate intention of stopping the function of the meter by inserting pieces of sticks as and when desired so that consumption of power did not get registered in the meter. By this method, the said Shri Saini had pilfered electric energy and thereby caused pecuniary loss to the Railway Administration.

Thus Shri A.S. Saini had contravened the provisions of Rule 3(1) of the Railway Services (Conduct) Rules, 1966."

The statement of imputations of misconduct along with supporting documents and witnesses were also supplied to the charged official which are placed at Annexure A-4, pp.30-45.

4. The applicant submitted a reply to the chargesheet.

PS

(4)

The Enquiry Officer in his report dated 31.10.1988 (Annexure 4), after referring to the evidence adduced before him in detail, came to the conclusion that the charge framed against the applicant is proved. The applicant also filed detailed appeals on 5.3.1989 and 8.5.1989 to the Appellate Authority (Annexure 5), which have been rejected by the order dated 12.4.1990 in which a copy of the UPSC's letter dated 28.2.1990 was also enclosed, which has considered the evidence and other materials produced in the disciplinary proceedings, before the appeals were rejected.

5. We have heard the learned counsel for the applicant, Shri S.K. Bisaria and the learned counsel for the respondents, Dr. B.N. Mani and perused the records in the case.

6. The main grounds taken by Shri Bisaria for assailing the punishment order and the appellate order are -

- (i) That there has been delay of 5 years in filing the charge-sheet against the applicant for the alleged tampering with the meter which relate back to the earlier period from May-June, 1975. He relies on the judgment of the Supreme Court in the State of Madhya Pradesh v. Bani Singh & Another (1990(2) ATLT 239), J. Albert v. Inspector General of Police (1990 (Vol.II) ATLT (CAT) 68; and Mohanbhai Durgarbhai Parmar v. Y.B. Zala and another (1980 S1J 477).
- (ii) That neither the disciplinary authority order or the appellate authority's order are speaking orders which are, therefore, bad in law. He relies on the decision of the Supreme Court in S.N. Mukherjee v. UOI (AIR 1990 SC 1984).

(9)

- (iii) Since the allegation against the applicant is with regard to tampering in the electric meter installed in his house, the rules framed by the U.P. State Electricity Board ought to have been followed, which has not been done;
- (iv) That the whole case against the applicant has been done at the initiative of respondent No. 3 who has acted with mala fide intention and ulterior motives against the applicant being a rival candidate in the election to the post of Honorary Secretary in the Railway Officers' Club at Jhansi during the elections held in July, 1981; and
- (v) Because the punishment order was passed on 23.12.1988 on the verge of his retirement on 30.4.1989, it has affected his pension for which no show cause notice was given to him which is again arbitrary and against the principles of natural justice.
- (vi) The applicant's counsel had also relied on the letter dated 9.12.1980 issued by one Shri V. Paul Devadatham to the applicant in which it is stated that the electrical instalments in the applicant's quarter were examined by the respondent's staff and found to be normal. The learned counsel, therefore, submits that in view of this letter, the electric meter installed in the applicant's quarter having been found normal on 9.12.1980, the charge framed against him is without any basis.

7. The respondents in their reply have contended that the punishment orders have been passed by the competent authority in accordance with the rules. On the ground of delay taken by the applicant, the learned counsel for the respondents has referred to the reply given in para B. They have admitted that the disciplinary proceedings were instituted in 1986 for a misconduct

detected in 1982. The investigation report was received in January, 1985. These investigations covered the conduct of two other railway employees. The disciplinary authority, after examination of the investigation report, came to the conclusion that a disciplinary proceedings should be initiated against the applicant and the same was accordingly done in September, 1985, which was followed by the formal charge-sheet on 14.7.86. According to Dr. Mani, therefore, there has been no unreasonable delay in initiating the disciplinary proceedings against the applicant. The applicant has been given ample opportunity to meet the charge and neither any rule or the principles of natural justice have been violated. Further, he submits that the electricity supply to the applicant's quarter was done by the railway and hence, the rules relating to UP State Electricity Board in regard to supply of electricity and checking of electricity meter etc. are not applicable in this case.

8. In reply to the allegation made against respondent No. 3, the learned counsel for the respondents submits that respondent No. 3 was neither the Enquiry Officer nor the disciplinary authority and the disciplinary proceedings are valid as no mala fide has been proved.

9. As regards the letter relied upon by the applicant dated 9.12.1980 (Annexure 4), this letter refers only to electrical installations working in the applicant's quarter and not to the electric meter, which is the subject matter of the charge.

18/

..

10. Next, the learned counsel for the respondents also submitted that the ground taken by the learned counsel for the applicant that the UPSC had not been consulted before the punishment order has been passed, has nowhere been taken by the applicant in his appeal or in the D.A. In any case, the advice of the UPSC in their letter dated 28.2.1990 on the appeal filed by the applicant has considered the case in detail and for reasons given therein it was advised that the appeal should be rejected. .

11. In the course of the arguments, Dr. B.N. Mani, learned counsel for the respondents stated that the contention of the applicant that the meter had been removed from his house without his knowledge cannot be accepted because of the applicant's own admission in his statement dated 17.7.1982 that the front verandah where the meter was fixed is enclosed and no outsider could have access to it (Annexure 2). He states that the judgment of the Supreme Court in S.N. Mukherjee v. UOI (AIR 1990 SC 1984) is not relevant to the facts in this case as both the impugned orders are speaking orders and have been passed by the concerned competent authority after due application of mind.

12. We have carefully considered the pleadings in this case, arguments of both the learned counsel and perused the records.

13. Having regard to the facts and circumstances of

(10)

the case and the nature of allegations made against the applicant, we are satisfied that there has been no unreasonable delay in instituting the disciplinary proceedings against the applicant in 1986 for a misconduct which was detected in 1982. In the case of State of Madhya Pradesh v. Bani Singh (Supra) relied upon by the applicant, the Supreme Court has specifically referred to the facts that it was not the case of the department that they were not aware of the said irregularities, if any, which occurred between the years 1975 to 1977 and came to know of it only in 1987 but they were actually aware of it even in the year 1977. However, they instituted the disciplinary proceedings more than 12 years later which was held to be unreasonable in the facts of the case. Similarly, in the case of Mohanbhai Dunderbhai Parmar v. Y.B. Jhala (Supra), the Gujrat High Court held that the delay of 1½ years was unreasonable in instituting the chargesheet in the context of the charge, which was failure to attend a parade on time. The High Court observed that it would be asking for the impossible to expect the constable concerned to explain satisfactorily the reason which occasioned the delay in reporting for duty after a lapse of time. These cases show that the delay in each case has to be determined in the facts and circumstances of each case. In the case before us, the charge-sheet is based on the record of the electric meter readings for the relevant period and we are satisfied that there has been no

18

(13)

unreasonable delay in carrying out the

investigations and institution of the disciplinary proceedings against the applicant. The plea of the applicant to the contrary is, therefore, rejected.

14. The reliance of the applicant on the U.P. State Electricity Board Rules & Procedures for checking and verification of electric meter readings are irrelevant as the supply of electricity has been done by the respondents and not by the UPSEB. This plea of the applicant is also rejected.

15. The applicant's attempt to allege mala fide against respondent No. 3 at the source of the disciplinary proceedings against him is without any basis. The learned counsel for the respondents has rightly pointed out that respondent No. 3 is neither the Enquiry Officer or the disciplinary authority and this ground also fails.

16. The applicant has relied on the judgment of Supreme Court in S.N. Mukherjee v. UOI (AIR 1990 SC 1984) to show that the impugned punishment order and the appellate order are bad in law as they are non-speaking orders. In this case, while the Supreme Court has, no doubt, stressed on the need for reasons to be recorded by administrative authorities exercising quasi judicial functions, the court has also observed as follows :-

It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons

(14)

are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

The punishment order dated 23.12.1988 clearly mentions the reasons as to why the order has been passed against the applicant and the appellate order dated 12.4.1990 also shows that the competent authority had applied its mind in accepting the advice of the UPSC dated 28.2.1990, which gives detailed reasons for the conclusion. Therefore, taking into consideration the observations of the Supreme Court in S.N.Mukherjee v. UOI case(Supra) and the impugned orders, we are satisfied that there has been no violation of the principles of natural justice and the impugned orders are legally valid.

17. We have also considered the other submissions made by the learned counsel for the applicant but find no force in the arguments. Once the punishment orders are held valid and his pay has been reduced this will naturally affect his pension, but that does not afforded him a fresh opportunity for hearing. Similarly the plain reading of the letter dated 9.12.80, relied upon by the applicant, refers to electrical installations and not the electric meter under consideration.

18. It is settled law that the jurisdiction of

13

this Tribunal to interfere with the disciplinary matters or punishment order cannot be equated with an appellate jurisdiction in the garb of judicial review. We find that in this case enquiry has been held consistent with the rules and in accordance with the principles of natural justice and it is not tainted. Therefore, we find that this case does not warrant any interference with the conclusion of the competent authorities in the imposition of the penalty. Hence, this OA is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member(J)

S.R. Adiga
(S.R. Adiga)
Member (A)

sk