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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.722/91

NEW DELHI THIS THE 4TH DAY OF MAY, 1995.

MR.JUSTICE S.C.MATHUR,CHAIRMAN
MR.P.T.THIRUVENGADAM,MEMBER(A)

Shri R.K.Gaur
S/o Shri Anand Gaur
R/o 4/2934, Bhola Nath Nagar
Shahdra
Delhi. .... APPLICANT

(BY ADVOCATE SHRI B.S.CHARYA)

Vs.

Union of India through

1. The Secretary,
Ministry of Telecommunication
Government of India
Sanchar Bhawan
New Delhi.

2. The Divisional Engineer(Telex)
Indian Posts & Telegraph Deptt.
Delhi Telecommunication
Office of Divisional Engineer
Kidwai Nagar
Janpath
New Delhi.

3. The Area Manager(Long Distance)
Indian Posts & Telegraph
(Department of Telecommunication)
Kidwai Bhawan
Janpath
New Delhi-1. .... RESPONDENTS

(BY ADVOCATE SHRI V.K.RAO,
PROXY COUNSEL FOR SH.A.K.SIKRI,ADVOCATE)

ORDER(ORAL)

JUSTICE S.C.MATHUR:

The applicant R.K.Gaur is aggrieved by the punishment awarded to him in disciplinary proceeding which started with chargesheet dated 4.3.1982. The final punishment as reduced by the President of India is thus:

> " reduction by 13 stages in the time scale of pay for a period of 7 years with further direction that he would not earn increments of his pay during the period of reduction and that on expiry of this period,the reduction will not have effect of postponement the future increments of his pay."

The punishment earlier imposed provided that the reduction will have effect of postponing the future increments of his pay.

2. In the discsiplinary proceeding, the charge against the applicant was of misbehaving with two lady officials of his department and manhandling them. The detailed allegation made against the applicant was that he was posted as Technician,Telex Workshop on 3.11.1981 and while on duty from 1000 hrs.to 1800 hrs under the influence of liquor he had entered the Instrument Room of the Central Telegraph Office unauthorisedly and misbehaved and manhandled Ms.Manda Bakde, Short duty Telegraph Assistant and Ms.Prem Lata Bhola, Short duty Telegraphist and created a scene dislocating the general discipline and the Telegraph Communication. On these facts, it was alleged that the applicant acted in a manner unbecoming of a Government servant and had failed to maintain devotion to duty.

3. In his defence the applicant did not completely deny the incident. He stated that he had gone to the Central Telegraph Office to deliver a repaired receiver unit of the teleprinter. He denied that he was under the influence of liquor. He stated that he was suffering from a mental disease and was using medicines under the advice of doctor. While he was passing through the Instrument Room, he felt giddy and was not in a position to recollect what happened to him afterwards. The applicant pleaded that it was because of the mental illness that he lost balance and could not behave as a normal man.

4. In support of the charge, the department examined 8 witnesses including the two lady officials who were the victims of the alleged misbehaviour.

5. In support of his defence, the applicant produced S/Sh.R.A.Rai and R.C.Malhotra.

6. On an appraisalment of the evidence, the inquiry officer held that there was no reliable evidence to support the applicant's plea of mental illness and use of medicines therefor. So far as the actual incident of misbehaviour is concerned, the inquiry officer observed that there was hardly any denial thereof by the applicant. The inquiry officer further observed that if the applicant was, in fact, suffering from mental disease, it must be in the knowledge of the disciplinary authority who was his controlling officer and due weightage could be given thereof if there was solid proof known to the controlling officer. In the absence of such proof being available with the disciplinary authority, the inquiry officer held that the charge of misbehaviour was fully established.

7. The disciplinary authority in its order dated 21.7.1983 did not appreciate the attitude of the inquiry officer in passing the onus in respect of mental disease on the disciplinary authority. He observed that the inquiry officer should have gone into the matter further instead of passing the onus on the disciplinary authority. In other words, the disciplinary authority did not utilise his personal knowledge in respect of the applicant's plea of suffering from mental disease. After making this observation, he observed in paras 7.2 and 7.3 as follows:

> " 7.2 For the above mentioned reasons, whereas the mis-behaviour of the official towards the staff of CTO is established, the gravity of the said mis-behaviour is not established beyond reasonable doubts.
>
> " 7.3 Benefit of doubt is given to the charged official regarding drunkenness and mental sickness and he is warned to be careful in future and avoid recurrence of such mis-behaviour while on duty especially towards ladies. The warning is not recordable."

This order was passed by the Divisional Engineer(TLX).

8. The Area Manager(LD) apparently did not agree with the order of the disciplinary authority and felt that the applicant deserved a major penalty. He accordingly issued notice dated 8.12.1983 under Rule 29(1)(v) of the Central Civil Services(Classification, Control & Appeal) Rules, 1965(hereinafter referred to as the Rules) proposing to review the decision of the disciplinary authority and to impose the penalty of removal from service. He required the applicant to make representation against the proposed action within 15 days from the date of receipt of the notice.

9. The applicant submitted his reply challenging the legality of the notice.

10. The Area Manager in his order dated 11.1.1984 observed that the non-recordable warning against the applicant was not commensurate with the gravity of the applicant's lapse. He did not agree with the applicant's contention that the notice dated 8.12.1983 was made beyond the scope of Rule 29(1)(v). In respect of the applicant's plea of being mentally sick, he observed that it was a weak attempt of the applicant to defend his action. The Area Manager examined the personal record of the applicant and found that it did not contain any indication of the applicant being mentally sick on any occasion. The Area Manager has observed that the applicant had not taken any leave for treatment of the alleged mental sickness. The sum and substance of the finding recorded by the Area Manager on the basis of the evidence available on record is that the applicant had failed to give any justification for his behaviour. In para 7 of its order dated 1.11.1984,

he recorded postive finding in these terms:

> " It is, therefore, concluded that the behaviour of Shri R.K.Gaur was deliberate and such a behaviour is untenable and will have to be viewed very seriously. The act of misbehaviour with Govt.servants on duty and that too, with ladies deserve to be awarded the extreme penalty."

In para 8, he has observed:

> " However, in coming to a final decision, the undersigned is also guided by humanitarian grounds more for the sake of Shri R.K.Gaur, a middle aged man with a family to support."

On humanitarian grounds,therefore, instead of imposing the proposed penalty of removal from service, the Area Manager imposed penalty in these terms:

> " It is, therefore, ordered that the pay of Shri R.K.Gaur.....be reduced by 13 stages from 372 to Rs.260/- in the time scale of pay of Rs.260-480 for a period of seven years..."
>
> It is further directed Shri R.K.Gaur will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay."

10A. Against the punishment imposed by the Area Manager through his order dated 11.1.1984, the applicant preferred appeal to the General Manager, Telephones, New Delhi. The appellate authority rejected all the pleas raised by the applicant, legal as well as factual, and came to the conclusion that the punishment awarded did not suffer from the vice of excessiveness. He, therefore, did not interfere with the order of the Area Manager.

11. The applicant thereafter approached the Member (Personnel), Department of Telecommunication, Government of India, New Delhi, who also did not interfere with the punishment imposed by the Area Manager.

12. Undaunted by earlier failures, the applicant addressed representation to the President of India which came to be disposed by order dated 24.1.1991. Before passing this order, the President consulted the Union Public Service Commission. The President did not upset the finding of misbehaviour recorded by the Area Manager. On taking further merciful view, the President modified the order of punishment to the extent mentioned hereinabove. The only modification made by the President is that the reduction will not have the effect of postponing the future increments of the pay of the applicant. The Area Manager had provided that the reduction will have the effect of postponement of future increments of pay. Still dissatisfied, the applicant approached the Tribunal.

13. In support of the application, we have heard Shri B.S.Charya, counsel and in support of the defence, we have heard Shri V.K.Rao, counsel.

14. The first attack of the learned counsel for the applicant against the punishment is that the show-cause-notice dated 8.12.1983 was incompetent. It was submitted by the learned counsel that the said notice could be issued only when an order of punishment had been passed and no such notice could be issued where no punishment had been imposed. It is submitted that the punishments are prescribed in Rule 11 of the Rules and non-recordable warning is not prescribed as a punishment under the said rule. The notice dated 8.12.1983 was issued under Rule 29(1)(v) which reads as follows:

> " 29(1)(v) Notwithstanding anything contained in these rules; the appellate authority, within six months of the date of the order proposed to be revised, or may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any

order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consulation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit."

The above rule does not confine the jurisdiction of the appellate authority to a case where an order of punishment has been passed. All that the rule requires is that the order sought to be reviewed should have been passed under the Rules or under the Rules repealed by Rule 34. Disciplinary proceeding was taken against the applicant under the Rules. The disciplinary authority passed the order in that proceeding. Therefore, the order of the disciplinary authority was an order passed "under these Rules".

15. No appeal lies against the order of exoneration. If the order of the disciplinary authority is treated to be one exonerating the applicant, it may be possible to urge that no appeal was maintainable against that order before the authority which issued the show cause notice. However, maintainability of an appeal is also not a condition prescribed in Rule 29. The appellate authority is competent to issue notice where the order sought to be revised is appealable or not. Once the jurisdiction to issue the show cause notice is upheld,

the power to pass appropriate order is unlimited. It is not confined to confirming, modifying or setting aside; it extends to passing "such other orders as it may deem fit."

16. In view of the above, we are unable to uphold the submission of the learned counsel that the notice dated 8.12.1983 was beyond the scope of Rule 29.

17. The next submission of the learned counsel is that the appellate authority has jumped to clause(d) of Rule 29(1) while passing the final order. According to the learned counsel under the scheme of Rule 29, resort to clause reading"pass such other orders as it may deem fit" could be taken only after considering the earlier clauses and rejecting use thereof. We are unable to sustain the argument. Each clause is followed by the word "or". Accordingly, the appellate authority had jurisdiction to pass one or the alternative orders referred to in the clauses. The appellate authority can also pass an order which may be attracting one or more clauses. Thus when he substitutes a punishment awarded by the disciplinary authority by his own punishment, it involves modification of the order and also passing an order as he deems fit.

18. It is also submitted by the learned counsel for the applicant that the revisional authority in its order dated 11.1.1984 did not record reasons for taking a view different from the one taken by the disciplinary authority. It is submitted by the learned counsel that for a proper exercise of jurisdiction under Rule 29 it was necessary for the revising authority to indicate reasons for the difference of opinion. We are unable to agree with the submission that the revising authority has not given reasons. The reason is contained in para

3 of the order dated 11.1.1984 in which it is mentioned:

> " The undersigned was of the opinion that the decision to warn, is not commensurate with the gravity of the lapse."

Reason is also contained in para 7 where it is stated:

> " It is, therefore, concluded that the behaviour of Shri R.K.Gaur was deliberate and such a behaviour is untenable and will have to be viewed very seriously. The act of misbehaviour with Govt.servants on duty and that too, with ladies deserve to be awarded the extreme penalty."

19. With reference to **J.N.Saigal Vs.D.G.,All India Radio and others(1986(2) S.L.R.502)**, the learned counsel submitted that the revising authority could take action against the applicant only after applying its mind in respect of factual allegations but in the present case, the revising authority has not applied its mind to the question whether the alleged misconduct had been established or not. We are unable to accept the submission of the learned counsel that the revising authority has not applied its mind to the factual controversy involved in the case. It needs to be pointed out that even before the inquiry officer, the applicant had not seriously disputed the occurrence. He had tried to explain the occurrence by pleading that it was not a conscious act but it had been as a reaction of drugs on his mind. In respect of this plea, the revising authority has observed:

> " The plea of being mentally sick put forward during the detailed enquiry without producing any material evidence can at best be considered as a weak attempt of the delinquent to defend himself."

This shows that the inquiry officer did not believe the applicant's plea of being mentally sick at the time of occurrence on the ground that there was a lack of evidence in support of the plea. The applicant's plea had been rejected also on the ground that he never took leave for undergoing treatment for the alleged mental sickness. The authority cited is, therefore,

of no avail to the applicant. In the authority cited, the appellate authority had proceeded to pass the order of punishment against the delinquent finally who had been exonerated of charge by the disciplinary authority without giving him opportunity of representation. No such situation arises in the present case as the revising authority passed order after issuing show cause notice to the applicant; the order is not ex-parte.

20. It was also submitted by the learned counsel for the applicant that the revising authority should have remanded the case to the disciplinary authority instead of proceeding to impose the punishment itself. Remand may be necessary where facts are in dispute and where fresh evidence is required to be recorded. Where only a fresh order is to be passed on the basis of evidence already on record, remand is not at all necessary. In the present case, evidence is already on record and both the parties had ample opportunity to adduce evidence in support of their respective pleas. If the applicant failed to avail of the opportunity by producing positive evidence of his alleged mental illness, no one else is to be blamed except the applicant himself. No fault on that basis could be found with the order of the revising authority. It also needs to be pointed out that the jurisdiction of the appellate authority is as wide as of the trial authority. The appellate authority is not debarred from recording fresh evidence. However, in the present case, the applicant did not seek opportunity to adduce further evidence in support of his plea of mental illness. Accordingly, we are unable to find any fault with the order of punishment now imposed on the ground urged by the learned counsel.

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21. The learned counsel for the applicant took exception to the consultation of the applicant's record of service by the revising authority. According to the learned counsel, the show cause notice did not indicate that the revising authority intended to rely upon the evidence shown in applicant's service record. Permission to consult the service record was contained in the report of the inquiry officer itself. The inquiry officer has observed "evidence on record did not establish the applicant's plea of mental sickness, however, the applicant's record of service may also be consulted in order to find whether the plea of mental illness was substantiated therefor." From this, it is apparent that maximum benefit was sought to be given to the applicant. When he failed to establish his plea of mental sickness, it was sought to be ascertained from the applicant's service record. Inquiry officers are not debarred from taking note of obvious things. If a person is suffering from a serious mental illness of the nature suggested by the applicant, it is reasonable to infer that at least on some occasions, he will take leave for treatment of that illness or the service record may contain evidence of such illness. Inquiry officer was obviously of the opinion that such a serious mental sickness might have affected the applicant's discharge of official duty. The service record was consulted in order to give maximum benefit to the applicant. Unfortunately, the applicant's service record also did not improve his case. In view of the fact that the inquiry officer had given opportunity to the disciplinary authority to consult the applicant's service record, it cannot be urged that the applicant did not have notice of the fact that his service record could be consulted either by the disciplinary authority or by the higher authorities.

22. The learned counsel for the applicant has submitted that the finding of misconduct cannot be sustained as it is based on the evidence of the complainants alone and there is no corroboration from independent witnesses. Our attention has not been invited to any law which debars the inquiry officer from recording a finding of guilt on the basis of the evidence of victims of misconduct. It was not the case of the applicant that victims of his misbehaviour had any animosity against him. Further, as observed by the inquiry officer, the applicant had not seriously disputed the incident itself. When the applicant himself did not dispute the incident, there was no necessity of corroboration. In fact, the corroboration, if one was required, was contained in lack of postive denial by the applicant.

23. The learned counsel alleges violation of clause (18) of Rule 14. This clause requires the inquiring authority to question the delinquent official on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. This procedure is required to be followed by the inquiry officer and not by the revising authority. It is not the case of the learned counsel that the procedure prescribed in this clause was not followed by the inquiry officer.

24. The next submission of the learned counsel is that the show cause notice dated 8.12.1983 does not make reference to clause(d) of Rule 29(1) of the Rules and, therefore, it cannot be assumed that the said authority intended to exercise power under that clause. On this basis, it was submitted that remand of case to the disciplinary authority was the only appropriate action. We have already discussed the scope of Rule 29. No further observation is required to be

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made on this argument.

25. In view of the above, the application lacks merit and is hereby dismissed but without any order as to costs.

(P.T.THIRUVENGADAM)
MEMBER(A)

(S.C.MATHUR)
CHAIRMAN

sns