

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2838/92

New Delhi, this 9th day of January, 1998

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri S.P.Biswas, Member(A)

(10)

Shri Subhash Chander  
s/o Shri Jai Bhagwan  
c/o Shri Sant Lal  
C-21(B), New Multan Nagar, Delhi-56 .. Applicant

(By Advocate Shri Sant Lal)

Versus

Union of India,

1. Secretary  
Department of Posts  
Ministry of Communication  
Dak Bhawan, New Delhi
2. Chief Postmaster General  
Delhi Circle  
Meghdoot Bhavan, New Delhi
3. Senior Manager  
Mail Motor Service  
NIE, New Delhi-110 028  
(by Shri S.M.Arif, Advocate) .. Respondents  
ORDER  
Hon'ble Shri S.P. Biswas

The applicant, a Motor Vehicle Driver in the Mobile Motor Service in the department of posts, is aggrieved by A-1 to A-6 orders by which he has been punished with reduction in pay by three stages and the period of suspension has been treated as dies-non, instead of being on duty. The applicant has challenged the aforesaid series of orders on the basis that the disciplinary authority (DA for short) did not give him any notice about his intention to disagree with the findings of the inquiry officer (IO for short) and make use of the charges against him despite the fact that he was exonerated by the IO. The applicant challenges this action of respondents by drawing strength from the decision of the Hon'ble Supreme Court in the case of Narayan Misra Vs. State of Orissa (1969 SLR 657). In

of  
17

the aforesaid case, their Lordships held that if the IO exonerates the charged official but the DA disagrees with the findings of the IO, the delinquent officer must be given notice before any conclusion adverse to him is taken. The applicant has also taken the plea that it is a case of no evidence, that the duty list of staff to perform duty on 6.6.85 was in fact prepared on 5.6.85 showing the applicant as absent, that the job card produced in the enquiry showing particulars of repairs to be carried out as "tyre puncture" are all dated 1/6, 3/6 and 4/6/85 while the alleged incident giving rise to the charges was dated 5.6.85, that the said job card did not bear the signature of any responsible person or supervisory officer and that no evidence (eye witness) as to who had seen puncturing of the tyre as alleged has been produced.

2. Respondents have contested the claim and submitted that for reasons recorded both appellate and revisional authorities have rejected applicant's prayer. The memorial in the name of President (A-6) was duly considered and was also rejected.

3. The issue that falls for determination is whether there has been any violation of the procedures laid down in dealing with the subject.

4. We find that the DA initiated proceedings under Rule 14 of CCS(CCA) Rules, 1965 vide his letter dated 18.9.88. The charges against the charged official (applicant) related to unauthorised absence from his essential driving duty on the scheduled date of illegal strike on 6.6.85 and indulging in illegal activities of

deflating the tyre of the departmental vehicle. In terms of Rules, the applicant has been charge-sheeted alleging violation of Rule 62 of of P&T Manual Volume III, 31(iii) and 7(ii) of CCS(Conduct) Rules, 1964. IO vide his report dated 30.3.88 exonerated the applicant of both the charges. The DA after going through the report did not agree with the findings of IO and concluded that:

"Shri Subhash Chander participated in illegal wild cat strike of RMS and MMS Employees Union Class III (NFPTE) and took active part in the strike on 6.6.85 by absenting himself from his essential driving duties and without caring for the interest of service as well as also by deflation of tyres intended to paralyse the essential service and cause loss to Govt. property"

5. The basis on which the DA came to the above conclusion has been recorded in the impugned A-1 order dated 26.5.88 and he decided to impose punishment of reducing the pay of the applicant as Motor Vehicle Driver from Rs.1150 to Rs.1090 in the scale of Rs.950-1500 for a period of three years with immediate effect with cumulative effect. It was also decided that the period of suspension of the applicant from 7.6.85 to 19.1.85 will be treated as absence for all purpose. The appeal of the applicant dated 5.7.88, revision petition dated 5.9.89 and memorial to the President dated 19.9.90 were all rejected by orders dated 31.3.89, 26.4.90 and 17.6.92 respectively.

6. We have carefully considered the pleadings and submissions made by learned counsel for both parties. The IO after analysing of the facts and evidence placed before him in the departmental proceedings held against the applicant came to the conclusion that none of the

charges were established. The DA while disagreeing with the findings issued the order dated 26.5.88 imposing penalty aforequoted.

(3)

7. From a perusal of the records, it is evident that the DA has recorded reasons for disagreeing with the findings of IO and mentioned that "The undersigned having gone through the enquiry report carefully, do not agree (disagree) with the findings of enquiry officer. Indeed the inquiry officer has failed utterly in establishing the facts/reality. It appears as if he had already made up something in his mind while submitting enquiries. As such, it is based on oral observations and he had not adjudged the case taking into account the factual witnesses and documentary evidences". The applicant has taken the plea that copy of the inquiry report was not submitted to him. We hold the view that enquiry being prior to 20.11.90, non-supply of the report did not vitiate the proceedings in terms of law laid down in UOI Vs. Mohd. Ramzan (AIR 1991 SC 471). Applicant has also taken the plea that DA did not give any notice about his intention to disagree with the findings of the IO and that this action was unfair and illegal in terms of law laid down by the Hon'ble Supreme Court in the case of Narayan Misra (supra). In the said case it was held as follows:

"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to

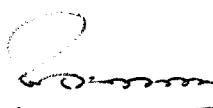
18

use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them".

1/A

8. We find that the DA has not given any prior notice about his intention to disagree with the findings and make use of the same for the purpose of imposing penalty. In other words, A-1 order should have been preceded by a formal notice to the applicant to satisfy the principles of natural justice. In the result the OA succeeds and is allowed as follows:

9. DA's order dated 26.5.88 and appellate authority's order 26.4.90 are quashed and set aside. The case is remitted back to the DA with the direction to reconsider applicant's case after giving him show cause notice in accordance with law and affording the applicant reasonable opportunity to reply to the intended decision of the DA. In other words, the DA shall have the liberty to re-open the case from the stage of issuing fresh notice to the applicant containing the charges, obtain applicant's reply and dispose of the matter expeditiously alongwith reasons. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

  
(S.P.Biswas)

Member(A)

  
(Dr. Jose P. Verghese)

Vice-Chairman(J)

/gtv/