

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1539/93
T.A. No.

199

DATE OF DECISION 9.2.98

Sh.Narinder Singh

Petitioner

Sh G.D.Gupta

Advocate for the Petitioner(s)

Versus

Railway Board through
its Chairman and others

Respondent

Sh.J.D.Jain Sr.Counsel with
Sh.O.P.Kshtriya

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R.Adige, Vice Chairman(A)

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

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal *X*

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

31

30

Central Administrative Tribunal
Principal Bench

O.A. 1539/93

New Delhi this the 9 th day of February, 1998

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Narinder Singh,
S/o Shri Kartar Singh,
R/o D-182, Anand Vihar,
Delhi.

...Applicant.

By Advocate Shri G.D. Gupta.

Versus

1. The Railway Board,
through its Chairman,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.

...Respondents.

By Advocate Shri J.D. Jain, Sr. Counsel, with Shri O.P.
Khastriya, Counsel.

O R D E R

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

This is the second round of litigation in which the applicant has filed the application u/s 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the appellate authority's order dated 30.6.1992 confirming the penalty of dismissal from service imposed by the disciplinary authority on the grounds that it is void, discriminatory and unconstitutional.

2. The applicant while working as Assistant with the respondents was chargesheeted vide memo dated 20.8.1982 and a departmental inquiry was held under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules'). After the

18

conclusion of the departmental inquiry, the disciplinary authority by order dated 12.4.1984 dismissed him from service. However, on appeal the appellate authority in his order dated 24.9.1984, after taking into account all the circumstances of the case reduced the penalty to one of compulsory retirement from service. He had also ordered that the pension admissible to the applicant be reduced by 1/3rd but the DCRG will not be reduced. The applicant filed CW No.664/85 in the High Court of Delhi against these penalty orders which was later transferred to this Tribunal as TA 1103/85 and disposed of on 28.4.1992. The Tribunal, following the judgement of the Supreme Court in **Ram Chander Vs. Union of India** (AIR 1986 SC 1173), held that the appellate authority has not discharged his functions in accordance with Rule 22 of the Rules. It was found that the appellate authority had not dealt with several contentions raised by the petitioner in his appeal and it was held that the appellate authority's order should contain the reasons while dealing with the grounds of appeal. In the circumstances, the Tribunal set aside the appellate authority's order and remitted the case for fresh disposal. It was also held that the order of the disciplinary authority stands revived and it becomes the duty of the appellate authority to dispose of the petitioner's appeal afresh after giving an oral hearing to the petitioner with utmost expedition. In pursuance of the Tribunal's order dated 28.4.1992, the impugned order has been passed by the appellate authority after giving an oral hearing to the applicant, taking into account the appeal filed by him by giving a detailed order. The appellate authority has confirmed the disciplinary authority's order of penalty and dismissed the applicant from service.

13/

3. Shri G.D. Gupta, learned counsel for the applicant, has challenged the penalty order of dismissal on a number of grounds, namely;

(i) That in the first instance, the department after considering the departmental inquiry came to the conclusion that the applicant should be punished only with reduction in grade for a period of 5 years. However, when the case was referred to the Central Vigilance Commission (CVC), it recommended dismissal from service. The disciplinary authority also changed its mind as it was recommended by the CVC. He has, therefore, submitted that the CVC being a recommendatory body, the disciplinary authority should not have in the first instance awarded dismissal from service by abandoning its own independent decision to impose only a punishment of reduction in rank. He has relied on **Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office Manipal and Anr.** (1991(2) SLR 784).

(ii) That the original appellate authority's order dated 24.9.1984 had imposed two punishments, namely; (1) compulsory retirement from service; and (2) reduction of 1/3 rd pension, which are against the rules..

(iii) That there is legal mala fide in the second appellate authority's order passed by the appellate authority in pursuance of the

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Tribunal's judgement dated 28.4.1992 as it is vindictive. His argument is that the appellate authority could not have enhanced the punishment that was given earlier, namely, compulsory retirement to that of dismissal from service merely because the applicant had approached the Tribunal in TA 1103/85. His contention is that the appellate authority was not dealing with the matter as if it was dealing with it for the first time and could not, on the same facts and circumstances, ignore the conclusions arrived at by the earlier appellate authority that it would be sufficient to impose the punishment of compulsory retirement. Relying on the judgement of the Supreme Court in **B.C. Chaturvedi Vs. Union of India & Ors.** (1995(6) SCC 749), he has submitted that the Tribunal, under the powers of judicial review, can interfere in this case on the ground that the applicant could not be penalised by a more severe punishment than what was awarded to him by the first appellate authority against which he had come to the Tribunal. He has also submitted that the judgement of the Supreme Court in **Union of India Vs Parma Nanda** (1989(2) SCC 177) has to some extent been modified by the judgement in **B.C. Chaturvedi's case (supra)** and accordingly as the punishment awarded in the present facts and circumstances is shocking and arbitrary the same ought to be set aside. He has submitted that the applicant would be satisfied if the Tribunal would, therefore, modify the appellate

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authority's order confirming the punishment of compulsory retirement awarded by the earlier appellate authority's order dated 24.9.1984, but without reductionn of 1/3 rd pension which cannot be done unless action had been taken under Rule 9 of the CCS (Pension) Rules, 1972. The applicant has superannuated from service, after the punishment was imposed by the impugned order dated 30.6.1992.

(iv) He has also submitted that when Mangal Parsad against whom also inquiry has been held has been let off he could not have been punished as there was then no question of connivance.

4. The respondents in their reply have controverted the above facts and we have also heard Shri J.D. Jain, learned Senior counsel. The respondents have submitted that the inquiry has been held in accordance with the rules and the impugned appellate authority's order has been passed also in accordance with the rules and in pursuance of the judgement of the Tribunal dated 28.4.1992. According to them, they have also not held common proceedings in the case of the applicant and Shri Mangal Prasad. The authority had also given a personal hearing to the applicant before passing the order and given detailed reasons. They have, therefore, submitted that there is no ground for quashing the order passed by the appellate authority which considered the appeal afresh as per the directions of the Tribunal dated 28.4.1992. In particular, Shri J.D. Jain, learned counsel has submitted that since the earlier order passed by the appellate authority no

28.

longer exists there is no question of any enhancement of the penalty when the appellate authority has passed the subsequent order of dismissal from service. The respondents have also submitted the original records for our perusal. In the circumstances, the respondents have submitted that the application may be dismissed as the appellate authority has fully complied with the directions of the Tribunal.

5. The applicant has filed a rejoinder more or less reiterating the averments in the application.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties as well as the records submitted by the respondents.

7. In **Nagaraj Shivarao Karjagi (Supra)**, the Supreme Court had noted that the respondents had issued instructions on 8.9.1986 that all the disciplinary/appellate authorities must refer all vigilance cases to the Chief Vigilance Officer (CVO) and consult him on such cases and act upon his advice (Emphasis added). In the circumstances, the Supreme Court held that under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Ministry of Finance/Government of India, has no jurisdiction to issue the impugned directions to Banking institutions, which they could only regulate. It was also observed that under Regulation 20 applicable to the Bank, they were not required to consult the CVC in every case, but wherever necessary in respect of disciplinary cases having a vigilance angle. In this context, the Supreme Court held that even if the Bank has

18

made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. Reference was also made to Article 320(3) of the Constitution, which is similar to Regulation 20, regarding consultation with the UPSC or the State Public Service Commission on all disciplinary matters affecting a senior civil servant. The Supreme Court has held that the Commission's function is purely advisory (See **A.N. D'Silva Vs. Union of India**, 1962 Suppl. (1) SCR 968) and the advice tendered by it is not binding on the Government nor is it obligatory upon the punishing authority to accept the advice of the CVC.

8. In the present case, it is not the contention of the learned counsel for the applicant that there were binding instructions which have been issued by the Government to the respondents that they must accept the CVC advice. However, his contention is that when the disciplinary authority, in the first instance, had come to a conclusion that it was sufficient to impose a penalty of reduction to the next lower grade for a period of 5 years, it should not have gone back on that decision and accepted the recommendations of the CVC to impose on the applicant a penalty of dismissal from service. In the circumstances of the case, therefore, it cannot be stated that the observations of the Supreme Court in **Nagaraj Shivarao Karjagi (Supra)** that the mere acceptance of the advice of CVC tendered to the disciplinary authority would vitiate his decision in this case. We have also seen the relevant notings in the file submitted by the respondents. After the submission of the Inquiry Officer's report holding that

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all the 4 articles of charge against the applicant ³⁷ were established by the Joint Secretary's note dated 21.2.1984, it was considered whether it would be sufficient to impose a penalty of compulsory retirement which does not entail disqualification for pensionary benefits. The fact that the applicant had put in about 27 years of service and had 11 years more to go in service was considered. It has also been stated in the note of 21.2.1984 that in case of compulsory retirement, the case will be referred to the CVC for reconsideration of the advice as they had recommended dismissal from service. The ADV(R) in his note dated 22.2.1984, after briefly noting the nature of the allegations against the applicant which have been held proved has, however, opined that penalty of dismissal advised by the CVC may not be considered unjustified. After that, the competent authority has examined the evidence in the departmental inquiry proceedings. In the Secretary's note dated 5.3.1984, while noting that the CVC had recommended dismissal from service, that the Inquiry Officer had held the 4 charges proved, ^{that} although there is no direct evidence but there was circumstantial evidence that weighs heavily and probability, therefore, exists of mala fide intentions, but taking into account the service rendered by the applicant, his record, and the fact that his family dependants will suffer, he has stated that the penalty of dismissal from service will be too harsh and the ends of justice will be met if he is reduced to the next lower grade for a period of 5 years. But it is relevant to note that he had again wanted the opinion of D.V. before further action is taken. The D.V. in his note dated 6.3.1984 has further analysed the facts and circumstances of the case in detail and recorded as follows:

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"All these taken collectively would tend to indicate that Shri Narinder Singh has got involved in fraudulent practices, blatant lies, manipulation of records and committings forgeries/fraud all the way. Being a person, as would be projected from the above, the word of totally lacking in loss of character, he is not fit to be retained in service and we have no strong case to disagree with CVC's recommendation of dismissal from service. I would, therefore, request Secretary to reconsider this.

If the family of Shri Narinder Singh has to suffer as a consequence of the punishment, it is out of his own making and not out of the making of Railway Board or any of its officers.

In case the punishment imposed is anything other than dismissal from service, as advised by CVC, the case will have to be remitted to CVC for a reconsideration".

The Secretary in his note dated 9.3.1984 had directed reference back to CVC for reconsideration who by their note dated 5.4.1984 reiterated their earlier advice, namely, dismissal from service. Thereupon, the Secretary has recorded on 15.4.1984 that action may be taken accordingly.

9. Shri G.D. Gupta, learned counsel, had argued that as the disciplinary authority had not given any reasons to accept the CVC's recommendation on

reconsideration but had simply accepted the same without application of mind and, therefore, the decision was vitiated.

10. The above notings show that the disciplinary authority, while passing the impugned order dismissing the applicant from service has indeed considered and reconsidered the matter carefully in consultation with the concerned officials in the department and CVC ^{and 12} _{merely} because finally, the disciplinary authority agreed with the recommendations of the CVC does not ipso facto mean that he felt that it was an obligation on his part to accept the advice of the CVC as there was no such compulsion on him. In the circumstances of the case and in the absence of materials on record to warrant the conclusion urged by the learned counsel for the applicant, we cannot agree that the decision of the disciplinary authority to order dismissal of the applicant from service was a decision without application of mind on the dictates of the CVC. We are also unable to accept the contention that the decision was, therefore, vitiated by mala fides. See the observations of the Supreme Court in another case **Jatinder Kumar and Anr. Vs. State of Punjab** (AIR 1984 SC 1850) where it was held that 'the allegations about mala fides are more easily made than made out'. Therefore, in the facts and circumstances of the case, the first contention of the applicant is rejected.

28

11. The second contention regarding the appellate authority's order dated 24.9.1984 is of academic interest at this stage, having regard to the quashing of this order by the Tribunal's order dated 28.4.1992. Therefore, we do not consider it necessary to again deal with the original appellate authority's order dated 24.9.1984.

12. The third argument which has been stressed by Shri G.D. Gupta, learned counsel, is that there is legal mala fide in the second appellate authority's order which has been impugned here. He has very vehemently argued that the appellate authority could not have enhanced the punishment from compulsory retirement to dismissal from service. In this connection, we have to see the Tribunal's order in TA 1103/85. The Tribunal had following the decision of the Supreme Court in **Ram Chander's case (supra)**, come to the conclusion that the appellate authority must not only give hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. In the circumstances, the Tribunal held:

"....We, therefore, have no hesitation in holding that the appellate authority has not discharged his functions in accordance with law in as much as he has not given the petitioner a personal hearing and has not dealt with the contentions raised by him in the grounds of appeal in the appellate order. It is no doubt true that when the appellate authority passes an order on merits, the decision of the disciplinary

12

authority stands merged in that order but when a superior court or tribunal sets aside the order of the appellate authority, what stands removed is only the order of the appellate authority. Once the order of the appellate authority is removed by allowing the appeal, the order of disciplinary authority stands restored.....We, therefore, have no hesitation in taking the view that when the order of the appellate authority is set aside on the ground that it has not been made in accordance with law and the case is remitted for fresh disposal, the order of the disciplinary authority stands revived and it becomes the duty of the appellate authority to dispose of the appeal against the said decision".

(emphasis added)

13. From the above decision, it is clear that what has been set aside by the Tribunal's order dated 28.4.1992 is the original order passed by the appellate authority dated 24.9.1984 and the order of the disciplinary authority dated 12.4.1984 dismissing the applicant stands restored. Therefore, in the facts of the case it will be erroneous to consider that the impugned second appellate authority's order imposing on the applicant punishment of dismissal from service is enhancement of the punishment but, is, in fact, confirmation of the punishment order imposed on him by the disciplinary authority. A perusal of the appellate authority's order also shows application of mind and that it has been passed after taking into account the grounds of appeal, in terms of the directions of the Tribunal. Since

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the first appellate authority's order does not survive in this case, the submission of the learned counsel for the applicant that there has been enhancement of the punishment by the second appellate authority's order, is not tenable because what exists is only the disciplinary authority's order and the appeal filed thereon by the applicant. The applicant has also been admittedly granted an oral hearing before the order was passed by the appellate authority. The Supreme Court in **Union of India Vs. Parma Nanda** (supra) has held that the Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. They have also held that if the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. This principle has been reiterated in a catena of judgements by the Supreme Court (see for example, **Govt. of Tamil Nadu Vs. A. Raja Pandian** (AIR 1995 SC 658), **Upendra Singh Vs. Union of India** (JT 1994(1) SC 658) and **N. Rajarathinan Vs. State of Tamil Nadu** (1997(1) SLJ 10)). However, Shri G.D. Gupta, learned counsel, has very forcefully submitted that by virtue of the judgement in **B.C. Chaturvedi's case** (supra - see paragraph 25 Hansaria, J) that while exercising the power of judicial review under Article 226 of the Constitution, the Tribunal has inherent power to question the probability of punishment/penalty if the decision of the executing authority was either perverse or arbitrary. In this case, the charges levelled against the applicant which have been held proved in the disciplinary proceedings relate to, inter alia, allotment of fictitious file numbers, forgery of official documents, tampering and destruction of official documents in the

section where he was working and showing exceptional interest in the case of one Shri A.D. Kadam, DIWT in his transfer, which are of a serious nature. In the circumstances of the case, therefore, we are unable to persuade ourselves to hold that the punishment awarded by the appellate authority was either disproportionate, perverse or arbitrary considering the nature and gravity of the charges which justifies our exercise of the powers under judicial review to reduce the punishment order. Therefore, we see no good ground to direct modification/rejection of the appellate authority's order dismissing the applicant from service which has otherwise been validly passed under the rules and directions of the Tribunal dated 28.4.1992.

14. The last ground taken by the learned counsel for the applicant is that since Shri Mangal Prasad has been let off, therefore, the applicant could not be punished. The respondents have submitted that they have held the inquiry against the applicant where Shri Mangal Prasad has been examined as a witness. In the facts and circumstances of the case, we find that merely because Shri Mangal Prasad has been let off, is no good ground that the applicant should not be punished when the charges have been otherwise held proved against him in the departmental inquiry. Therefore, this plea also fails.

15. We have also considered the other grounds taken on behalf of the applicant, but do not find substance in them to allow the application. Therefore, in the facts and circumstances of the case, having found no infirmity in the impugned order passed by the appellate authority on

18

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30.6.1992, confirming the penalty of dismissal from service on the applicant warranting any interference in the matter, the application is dismissed. There shall be no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

'SRD'