

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2128/1993

New Delhi, This the 19th Day of September 1994

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Hon'ble Shri T. L. Verma, Member(J)

Shri Randhir Singh S/O Late Shri Tek Chand
Peon, EMI Office, Pusa
R/O WC/53, IARI Pusa Complex,
New Delhi 110012.

...Applicant

By Shri P T S Murthy, Advocate

Versus

The Delhi Administrative
(Govt of National Capital Territory)
Through:

1. The Lt. Governor
Raj Niwas, Delhi.
2. Director,
Directorate of Employment
15, Rajpur Road, Delhi.
3. The Joint Director(Employment)
Directorate of Employment
No.2, Battery Lane, Delhi.

...Respondents

By Shri Vijay Pandita, Advocate

ORDER(Oral)

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. The applicant was working as a Peon in EMI Office Pusa, Directorate of Employment. He was issued a chargesheet dated 9.10.91 containing five articles of charge. The enquiry officer submitted his findings and the last portion of the findings reads as under:-

"On the basis of the documentry and oral evidence advanced in the case before me and in view of the reasons given above I hold that the article of charge at Sl No.1.2. and 3 against Shri Randhir Singh, Peon, EMI stand proved but in respect of these charges it is informed that the charged official was issued memo No.F.2(127)/EMI/85/3591 dated 18.8.89 in respect of these

charges for taking of action against him under rule 16 of CCS(CCA) rule 1981(p-3) and subsequently he was warned vide letter No.F.2(127)EMI/85/258 dated 12.1.90(p-11) in respect of these charges:

that the charge framed at Sl No.4 against the charged official stands proved:

that the prosecution has failed to prove the charge framed at Sl No.5 against the official."

Based on the enquiry report an order was passed on 9.3.93 imposing the penalty of removal of the applicant.

This OA was filed on 5.10.93 for a direction for quashing the impugned order of removal dated 9.12.93 and for reinstatement with all consequential benefits.

2. Subsequent to filing of the OA the Appellate Authority to whom an appeal was submitted by the applicant on 24.3.93 disposed of the appeal by an order dated 12.11.93. A copy of the Appellate Authority order was produced by the learned counsel for the applicant during argument. The Appellate Authority's order reads as under:-

"Whereas Shri Randhir Singh, Peon was removed from service w.e.f. 9/3/93 vide order No.Emp2(127)/EMI/85/Pt. File/1444-46 dated 9.3.93 on the ground of misconduct and misbehaviour.

Whereas appeal against the said order has been filed by Shri Randhir Singh, Dismissed Peon on 24.3.93 and after carefully considering the entire evidence and the inquiry report, the undersigned find certain infirmities in the procedure followed by Disciplinary Authority and accordingly the appeal is remanded back in the interest of justice.

Now, Therefore, the undersigned hereby Set aside the said order of removal from

service and directs that said Shri Randhir Singh, Peon shall under Sub Rule(4) of rule 10 of the CCS(CCA) Rules 1965, be deemed to have been placed under suspension with effect from 9.3.93 and shall continue to remain under suspension untill further orders. He shall be paid subsistence allowance as per rules.

And further the Disciplinary Authority will decide his case within a period of one month from the date of issue of this order and convey the decision to the charged official as per procedure prescribed. "

In the reply filed by the respondents, it has been stated that this application has become infructuous as the impugned order dated 9.3.93 passed by the disciplinary authority has been set aside by the Appellate Authority in appeal. It was contended by the learned counsel for the applicant who questioned the Appellate Order which actually contains 3 directions namely setting aside the order of removal, suspending the applicant from 9.3.93 and remitting the case back to the disciplinary authority. It was argued that the Appellate Authority under rule 27(2) of the CCS(CCA) rules has powers either to set aside or remit the case to the disciplinary authority. But he cannot exercise both the powers simultaneously. Apart from this argument, at the time of hearing the learned counsel for the applicant also stated that the Appellate Order is a non-speaking order. In the appeal dated 24.3.93 a number of grounds had been raised and these have not been answered in the Appellate order.

3. None appeared on behalf of the respondents.

But we have perused the reply filed by

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the respondents and proceeded to dispose of the case based on the records available. We note that the Appellate Order is not a speaking order. We also note that the intention of the Appellate Authority was to remit the case to the disciplinary authority. Further follow up action has taken place and by further orders dated 9.12.93 and 1.2.94 the disciplinary authority once again confirmed the earlier punishment of removal from service. In the circumstances, the Appellate Order stating that the earlier order of removal was set aside assumes no significance. There is also force in the ground that the Appellate Authority's order cannot set aside the penalty as well as remit the case to the disciplinary authority for reconsideration.

4. In view of the above we hold that the Appellate Order dated 12.9.93 deserved to be set aside.

5. We also note from the enquiry findings that out of 5 articles of charge only article No.4 is sustained since it has been held that article No.5 is not proved and for the first three articles of charge a chargesheet had already been issued which resulted in a warning. A perusal of the article 4 of the chargesheet indicates that the applicant did not clean the table when asked to do so and also did not respond to the calls when he was sitting outside and these were held as acts indicating dereliction of duty un-becoming of a Government servants. For this charge the penalty of removal seems to be out of proportion. It is the established principle in law that the quantum of punishment cannot be interfered by the Tribunals and Courts and wherever the Tribunals/Courts feel

that the punishment is out of proportion to the charges held to be proved the matter is ^{to be} directed to the appellate authority for re-consideration. Accordingly we direct the Appellate Authority to consider afresh the appeal already submitted by the applicant on 24.3.93 and follow the procedure as laid down in the rules for disposing of the appeal. The Appellate Authority shall also bear in mind as to whether the quantum of punishment is commensurate with the charge which has been held as proved. The Appellate Authority is directed to pass the final order within three months from the receipt of this order. With this direction the OA is disposed of. No costs. Later on, Shri Vijay Pandita, the learned counsel for the respondents appeared before the Bench. He was advised of the contents of the above order.

L. L. Verma
(T L VERMA)
Member (J)
19-9-94

LCP

P. T. Thiruvengadam
(P. T. THIRUVENGADAM)
Member (A)
19-9-94