

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2255/93

Date of decision 12.2.1997

Sh. K.L. Guwalani Petitioner

Sh. M.L. Ohri Advocate for the Petitioner

Vs.

VOI & Ors' Respondents

Sh. Madhav Panikar Advocate for the Respondents

CORAM

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

Hon'ble Shri R.K. Ahooja, Member (A)

(1) To be referred to the Reporter or not? *Y*

(2) To be circulated to all Benches of the Tribunal? *X*

L.Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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Central Administrative Tribunal
Principal Bench.

O.A. 2255/93

New Delhi this the 12 th day of February, 1997.

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

Hon'ble Shri R.K. Ahooja, Member(A).

K.L. Guwalani,
S/o Shri Lal Chand,
R/o D/3, STC Colony,
Sh. Arvindo Marg,
New Delhi.

...Applicant.

By Advocate Shri M.L. Ohri.

Versus

1. Union of India,
(Through the Secretary,
Ministry of Information & Broadcasting)
Shastri Bhawan,
New Delhi.
2. Director General,
All India Radio Akashvani Bhawan,
Parliament Street,
New Delhi.
3. Shri R.D. Gupta,
Superintending Engineer AIR (Retd.),
H-235, Naraina Vihar,
New Delhi.
4. Engineer-in-Charge,
High Power Transmitters (All India Radio),
Kingsway,
Delhi.
5. Dy. Director General (Adm),
AIR Akashvani Bhawan,
Parliament Street,
New Delhi.
6. Shri Manohar Lal,
Chief Engineer,
Room No. 301, Akashvani Bhawan,
Parliament Street,
New Delhi.

...Respondents.

By Advocate Shri Madhav Panikar.

ORDER

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

The applicant is aggrieved by the penalty order passed by the
appellate authority dated 2.11.1992 compulsorily retiring him from
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service taking a lenient view. This order had been passed modifying the earlier order passed by the disciplinary authority dated 2.11.1992 which had dismissed him from service with immediate effect.

2. The applicant had filed an earlier case, Civil Writ Petition No. 921/85 in the Delhi High Court, which was later transferred to the Tribunal as TA 1112/85 and disposed of by order dated 14.5.1992 (Annexure-IX). In that application, the applicant had raised a number of grounds including the ground that the appellate order was not a speaking one, which ground was accepted by the Tribunal and the case was remitted to the appellate authority to dispose of the appeal after giving a personal hearing to the petitioner. The Tribunal had noted that they had not expressed any opinion on the other contentions namely, that the inquiry was initiated on account of bias, Inquiry Officer's report was not furnished to him and that the inquiry had not been held in accordance with the rules, thus prejudicing in his case.

3. One of the charges levelled against the applicant was that while functioning as Caretaker with the respondents, he had absented himself from duty and unauthorisedly visited Bangkok (Thailand) without Government's prior permission as he had no valid 'No Objection Certificate' for such a visit. According to the applicant, shortly after his transfer as Caretaker to HPT (AIR) at Kingsway Delhi in 1981, Respondent 3 Shri R.D. Gupta, had made a demand on him for supply of official transport for his personal use, deputing class IV staff like sweepers, security guards, etc. at his residence. The applicant submits that he had informed Respondent 3 about his limitations in these matters. Instead of appreciating, Respondent 3 got annoyed and threatened/ with dire consequences. He further

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submits that as a result of this, 15 memos on false and frivolous grounds were served on him. He also submits that he had applied for leave to visit Bangkok for the period between 7.10.1981 and 24.10.1981 with permission to prefix and suffix holidays, and that the Assistant Station Engineer had informed him that the leave had been recommended and the sanction will follow. Since he had not been informed till 6.10.1981 that his leave has been rejected, he had acted on the verbal understanding given to him that his leave would be sanctioned and, therefore, he proceeded to Bangkok on 7.10.1981 and returned on 14.10.1981 and resumed duty on 17.10.1981. The chargesheet was issued to him by memo dated 20.2.1982. Shri Ohri, learned counsel for the applicant, has submitted that the chargesheet has been issued on the instructions of Respondent 3 who has also appointed the Inquiry Officer whose report, therefore, is also biased. The disciplinary authority was Respondent 3 himself, who had passed the penalty order of dismissal from service. According to him, therefore, the entire inquiry proceedings have been initiated on account of bias of Respondent 3. He relies on the judgement in the case of Dr. Pratap Singh Vs. State of Punjab, AIR 1964 SC 72, Delhi Transport Corporation Vs. Delhi Transport Corporation Mazdoor Congress and Anr., 1991 SCC (L&S) 1213. He submits that merely because the Inquiry Officer is a highly placed officer does not necessarily mean that he will act impartially as he was required to do, as according to him, the Inquiry Officer, was himself appointed by Respondent 3 who was, as mentioned above, biased against the applicant. He has also drawn attention to the evidence of DW-1, Shri Ishwar Dass, who was a Head Clerk in the Monitoring Unit of the A.I.R. In his deposition, he has stated that when a person applies for leave, the leave is either refused or granted by the office. As per practice leave is refused before hand if it is not to be granted. In majority of cases, leave is sanctioned and person concerned receives the leave sanctioning order even after availing the full spell of leave. It depends upon the working from office to office. He states that it is evident that when the leave is not granted due to exigencies of services of otherwise the refusal is conveyed to the applicant before the date of his proceeding on leave. The applicant relies on this evidence to show that since the applicant had not been communicated by any order prohibiting him from going on leave, he assumed that in the normal practice, he can proceed on leave and the normal sanction will follow.

4. Another contention submitted by the learned counsel for the applicant is that the disciplinary authority is himself an interested party and, therefore, he cannot act as Judge (See judgement in Registers x Cooperative Societies &

Registrar Cooperative Societies & Ors. Versus F.X. Fernando, 1994

SCC (L&S) 756 and Indirani Bai Vs. Union of India & Ors., 1994 SCC (L&S) 981. He submits that justice should not be only done but seen to be done and he had requested for changing the Inquiry Officer which ought to have been allowed on the ground of bias also.

5. The next ground taken by the applicant was that certain copies of documents were not given to him and the punishment awarded was not commensurate with the alleged misconduct even if it was proved.

6. The respondents have filed their reply and we have also heard Shri Madhav Panikar, learned counsel. In the reply, they have stated that the allegations made by the applicant against Respondent 3, Shri R.D. Gupta, are false and not substantiated by any documentary evidence. They have stated that as per the relevant rules, the Superintending Engineer was the disciplinary authority and Respondent 3 held that post during the relevant period, who has since retired in 1986 whereas the O.A. has been filed only in 1993. They have denied that the disciplinary authority had any personal bias against the applicant or that he was victimised. They have also submitted that his objection for Shri R.D. Gupta, continuing to be disciplinary authority had been considered and rejected and Respondent 3 had been directed to continue on that capacity in accordance with the Rules. They have also submitted that 'No Objection Certificate' had to be issued by the Director General of All India Radio, who is the competent authority to issue such a certificate. As such a certificate had not been issued by the Director General of All India Radio, he was refused leave. They have also submitted that in accordance with the judgement of the Tribunal in TA 1112/85 dated 14.5.1992, the applicant had been given a personal hearing on 2.11.1992, by the appellate authority who had passed the impugned order after taking into consideration the facts and provisions of the CCS (CCA) Rules, 1965. Since the appellate authority came to the conclusion that

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the charges of unauthorised absence from duty and unauthorised visit to Bangkok were proved beyond doubt, he had passed the penalty order of compulsory retirement. They have also submitted that as the Inquiry Officer was in the rank of Senior Class-I officer, he had not been influenced by any factor other than the merits of the case. They have, therefore, submitted that since the impugned order has been passed in accordance with the rules and principles of natural justice, the application may be dismissed. Shri Madhav Panikar, learned counsel for the respondents, relies on the judgement in State Bank of India and Ors. Vs. Samarendra Kishore Endow & Anr., 1994(27) ATC 149.

7. On a careful perusal of the facts in this case, it is seen that the applicant has himself admitted that he has proceeded on leave to Bangkok without obtaining prior permission, presuming that he will be granted leave and the formal sanction will follow in due course. The only evidence on which/relies is of DW-1 Shri Ishwar Dass, who is a Head Clerk in the Monitoring Unit of the A.I.R. who seems to have suggested in his evidence before the Inquiry Officer that ^{the} majority of cases, leave is sanctioned and person concerned receives the leave sanctioning order even after availing the full spell of leave. However, this is not the correct rule position as it was necessary for the applicant to obtain sanction before proceeding on leave outside India which he failed to do. ^{as} The contentions ^{of the} ~~other~~ of the applicant based on certain practice as mentioned by a Head Clerk cannot override the rules and are, therefore, rejected.

8. This charge having been proved against the applicant by his own admission and record, the next question arises whether the penalty of compulsory retirement awarded to him by the appellate authority is harsh and not called for by the appellate. Having regard to the judgement in Samarendra Kishore Endow's case (supra), we do not

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find any justification for interference in the quantum of punishment in this case as the appellate authority has already watered down the punishment and taken a lenient view and imposed punishment of compulsory retirement in place of dismissal from service.

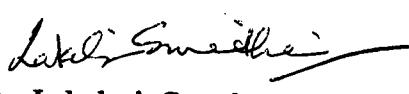
9. The allegations of bias made against Respondent 3 who was the disciplinary authority and against the Inquiry Officer have not been supported by any evidence. It is settled position that mere allegation of bias is not sufficient to vitiate the order which is otherwise passed in accordance with the Rules. Respondent 3 did not have to approach the applicant for supplying of the Car and other facilities to him and we do not, therefore, find that the allegations of bias are proved against Respondent 3. We do not also find any force in the allegation of bias or exercise of arbitrary power in respect of the Inquiry Officer also which justifies any interference.

10. The judgement of the Supreme Court in Registrar Cooperative Societies(supra) relied upon by the applicant will not assist him in this case. As already mentioned above, when the applicant has himself admitted some of the charges levelled against him which are also based on the records, it cannot be stated that the finding of either the disciplinary authority or the appellate authority is bad in law. We do not also find any force in the other arguments advanced by the learned counsel for the applicant which justifies interference in the matter.

11. In the result, this application fails and it is accordingly dismissed. No order as to costs.


(R.K. Ahuja)
Member(A)

'SRD'


(Smt. Lakshmi Swaminathan)
Member(J)