

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A. No. 90 of 1993

New Delhi, dated this the 30<sup>th</sup> September, 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

shri Y.L. Rangra,  
S/o Shri R.L. Rangra,  
R/o D-191, Moti Bagh,  
New Delhi.

.... APPLICANT

By Advocate: Shri Shyam Babu

VERSUS

Union of India through  
the Secretary,  
Ministry of Labour,  
New Delhi.

...RESPONDENTS

By Advocate: Shri K.R. Sachdeva

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant prays for setting aside the Enquiry Report dated 31.1.89 (Ann. E) or alternatively to quash the impugned punishment order dated 24.12.92 (Ann. J) removing him from service and to grant him consequential benefits.

2. Applicant while working as Assistant, Emigration I Section, Labour Ministry was proceeded against departmentally vide O.M. dated 10.11.85 (Ann. B) on the charge that during 1983 he colluded with one Shri M.C. Srivastava, Research Officer, DGET, Labour Ministry in transmitting fake telegrams/telex messages to the Protector of Emigrants, Bombay purporting to convey the clearance from Controller General, Emigration, New Delhi for deployment of workers/labourers

abroad in lieu of illegal gratification/ consideration to be received from the firms, and that in pursuance of the said collusion he committed various acts of omission and commission which have been stated in Article of Charge.

3. Shri M.C. Srivastava was also proceeded against departmentally in respect of the same alleged misconduct.

4. Separately a complaint was also lodged in CBI on 7.11.83 in regard to the same matter, which was investigated into by them.

5. In the Enquiry Officer's detailed report dated 31.1.89 (Ann. E), it was noted that the charges against the applicant could be divided into two components, namely

(a) colluding with Shri M.C. Srivastava Research Officer in the Scheme to send fake telegrams/telexes in lieu of illegal gratification/ consideration;

(b) transmitting fake telegrams/telex messages to the Protector of Emigrants, Bombay purportedly containing clearance for immigration of workers/labourers abroad.

It was held that the charges stood proved except for the portion relating to receipt of illegal gratification.

6. A copy of Enquiry Report was furnished to the applicant vide O.M. dated 28.8.89 (Ann. F) for representation, if any. Applicant submitted his representation on 15.9.89 (Ann. G) and submitted a supplementary representation also. Thereafter respondents sought advice of UPSC in the matter who in their letter dated

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4.11.92 (Annexure-I) recommended applicant's removal from service. In the same letter UPSC also recommended Shri M.C. Srivastava's dismissal from service. Respondents accordingly issued impugned order dated 24.12.92 removing applicant from service against ~~the~~<sup>which</sup> this O.A. has been filed.

7. We have heard applicant's counsel Shri Shyam Babu and respondents' counsel Shri K.N. Sachdeva. We have also perused the materials on record and given the matter our careful consideration.

8. At the outset it is important to note that unlike in a criminal case, where<sup>^</sup> the guilt has to be established beyond all reasonable doubt, in a departmental enquiry it is sufficient to establish the misconduct of the charged official on the basis of preponderance of probability.

9. In the present case admittedly applicant was posted as Assistant, Emigration I Section from Sept. 82 to 1.11.83 (approx.) and for approximately four months of this period from Sept. 82 onwards he worked under Shri M.C. Srivastava. Applicant has also admitted that he was dealing with the subject matter of M/s Pasha Enterprises at the relevant time. That a fake telegram dated 19.9.83 was got issued to the Protector of Emigrants, Bombay from the Section where applicant was working, conveying emigration

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clearance to M/s Pasha Enterprises, Bombay for deployment of 25 workers to Saudi Arabia, purportedly in reply to POE, Bombay's telegram dated 9.9.83 and similarly a fake telex message dated 29.9.83 was got issued from that same section to POE, Bombay conveying emigration clearance in respect of 62 workers to Yemen purportedly in reply to his telex message dated 27.9.83 is not disputed. The fact that those who had a hand in sending these fake messages were equipped with inside information supplied by the concerned parties in Bombay, is borne by the fact that both the fake telegram as well as the fake telex message refer to the relevant file numbers of the POE's office although this information was not available in the Labour Ministry itself. As pointed out in the E.O.'s report, applicant in his written submissions as well as during evidence in the D.E. tried to lay the blame for sending these false messages at the door of Shri Sushil Kumar, S.O., SW-7, and Shri Venkatnarasimhan, Telex Operator, SW-3. In this connection as many as 18 State Witnesses were examined in the D.E. but none of them have as much as even whispered that Shri Sushil Kumar or Shri Venkatnarasimhan were responsible for the same. On the other hand the E.O. concluded that the persons behind the transmission of the fake messages were (a) aware of the notings in the POE's file; (b) POE's File Number had been provided to them and (c) the contents of the File Number

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in which the subject was dealt with was also known. Apart from Shri M.C. Srivastava in respect of whom the evidence tendered in the the E.O. noted that D.E. was very damaging, /these conclusions point an obvious finger to a person who was working in Emigration I Sec. and was dealing with the subject matter, namely the applicant.

10. It is on this basis that the E.O. has held that M.C.Srivastava got the fake telex message regarding clearance of 62 workers for Yemen typed out by Chander Bhan, SW-5 (who admits having typed out that message) with the complicity of applicant, who was in a position to supply the relevant details about the subject matter, by virtue of his working in Emigration I Sec., and then through Shri Baljit Singh, SW-4 (who subsequently retracted his statement made before CBI) got the message transmitted by Shri Venkatnarasimhan, SW-3.

11. We can see no flaw in the E.O.'s reasoning on the basis of the available evidence that with the inside information supplied by applicant to Shri M.C.Srivastava who was the contact man with the recruiting agency, the latter caused the telex message dated 29.9.83 to be sent, when on 28.9.83 upon receipt of POE's telex message, Shri Sunil Kumar, SW-7 recorded an adverse noting rejecting clearance. This telex message

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dated 29.9.83 was sent to preempt any rejection advice reaching the Bombay Office; and the POE, Bombay's office file number must have been communicated to Shri Srivastava by Shri Govardhan Das during the telephonic conversation on 28.9.83 and as Shri Govardhan Das prior to his becoming a partner in M/s Eagle Travels was a partner in M/s OTS, Bombay it is in the name of M/s OTS, Bombay that the emigration clearance was actually communicated by the fake telex message dated 29.9.83.

12. There is also substance in E.O's reasoning that if Shri Sunil Kumar, SW-7 and Shri Venkatanarasimhan, Telex Operator SW-3 were the persons responsible for the despatch of the fake telex messages why should Shri Govardhan Das have telephoned Shri M.C.Srivastava, and if the latter was not indeed the contact man, why should Jayant Garde have complained against <sup>him</sup> specifically in his letter to Shri H.P. Das which forms part of the record.

13. In so far as the issuance of a fake telegram on 19.9.83 to POE, Bombay conveying emigration clearance to M/s Pasha Enterprises, Bombay for deployment of 25 workers, with M/s Obaid Al Mulla Construction Co., Saudi Arabia is concerned here also the modus operandi appears to be similar and points to the complicity of a person having inside information. M/s Pasha Enterprises had come to adverse notice nearly a year earlier and CGE in his telex message dated 4.8.82 itself

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had informed POE, Bombay that no further clearance should be given till he heard from the Ministry. Applicant has not denied knowledge of this fact who on his own admission was dealing with the case of M/s Pasha Enterprises. However, on 5.9.83 that firm applied to POE, Bombay for recruitment of persons for deployment with M/s Obaid Al Mulla Construction Co. Ltd., Riyadh, Saudi Arabia. POE, Bombay sent a telegram to CGE, Delhi on 9.9.83 seeking instructions, with reference to which the fake telegram was sent on 19.9.83 conveying the requisite clearance for three months only "without insisting on attestation as a special case". POE's office file number was also referred to although this number had not been indicated in POE's telegram, but was indicated only in the post copy, and it was on the basis of that telegram which was subsequently discovered to be fake that POE issued the clearance on 27.9.83. Although applicant has denied meeting the representative of M/s Pasha Enterprises Shri Louis in Lodhi Hotel on the evening of 3.8.83, in his representation against the findings of the E.O., <sup>he</sup> has not denied that he met Shri E. Louis in the room of U.S. Shri Tangi <sup>when</sup> when the latter had called for the

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file of M/s Pasha Enterprises that day, or denied the possibility of having met Shri Louis subsequently outside the room of Shri Tangi.

14. It is in this background that we have to examine the grounds taken in this O.A.

15. The first ground taken is that neither of the two charges namely receipt of illegal gratification by applicant and his collusion with Shri Srivastava on sending fake telex messages were found substantiated by the E.O. This ground has no merit because while the charge of acceptance of illegal gratification was indeed not found substantiated, the other charges namely of collusion with Shri Srivastava were found by the E.O. to have been substantiated. Hence this ground fails.

16. The second ground taken is that there is no evidence to establish the charge that applicant met Shri E. Louis in his room at Lodhi Hotel, New Delhi on 3.8.83, who in any case was not produced as a witness in the inquiry. As pointed out by applicant himself in his first ground, the charges against him were mainly of accepting illegal gratification and colluding with Shri Srivastava in sending fake messages. Under the circumstances even if applicant did not meet Shri Louis in his room at Lodhi Hotel on 3.8.83 that does not disprove the charge of collusion with Shri Srivastava if the same is established by other materials.



17. The third ground taken is that Shri Baljit Singh who was produced as PW denied that he had been given a slip containing a file number by applicant for handing over to Shri Srivastava and had also denied that when he had gone to Shri Srivastava's room he had found applicant sitting there. Here again it must be remembered that the charges against applicant were mainly of acceptance of illegal gratification and colluding with Shri Srivastava in sending fake messages, and the denials of Shri Baljit Singh in the D.E. do not disprove the charge of collusion with Shri Srivastava if the same is established by other materials. As held by the E.O., some one from the Section was supplying inside information to the co-accused Shri Srivastava, and the E.O. has drawn the logical conclusion that this person could only have been the applicant who was the only Assistant dealing with the subject and who also opened the file. Further more Shri Venkatnarasimhan, SW-3 and Chander Bhan, SW-5 confirmed what Baljit Singh, SW-4 had said during investigation before CBI which he later retracted. Hence this ground fails.

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18. The next ground taken is that there is no evidence that the fake telex message dated 29.9.83 was transmitted by applicant to Bombay office and the same was not produced during the D.E. It is not a fact that the fake telex message was not produced during the inquiry because a clearance reference to its being exhibited <sup>is</sup> available in the E.O.'s report, and in any case it is not disputed that a fake telex message was sent on 29.9.83. Even if applicant did not transmit the fake telex message dated 29.9.83 himself, it does not disprove the charge that applicant colluded with Srivastava in causing the same to be sent. Hence this ground also fails.

19. The next ground taken is that Shri Venkatanarasimhan, SW-3 had stated in evidence that S.O. Shri Sushil Kumar and applicant had come to the telex room on 29.9.83, and if the S.O. Shri S. Kumar who is the competent authority to send telex message, accompanied applicant to the Telex Room on 29.9.83, the charge levelled against applicant itself is demolished. As pointed out earlier applicant has tried to throw the blame on S.O. , Sushil Kumar, SW-7 and Shri Venkatnarasimhan, SW-3 but none of the other witnesses have as much as suggested that either of them had a role in transmitting the fake message. On the other hand, on the basis of the preponderance of probability the available evidence points towards the guilt of applicant in colluding with Srivastava by supplying inside information to him, in the transmission of fake telex message

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dated 29.9.83. Hence this ground also fails.

20. The next ground taken is that the charge against applicant is further falsified by the fact that the telex message dated 29.9.83 was sent to M/s OTS and not to M/s Al Adani. The reason why the name of M/s OTS and not of M/s Al Adani was mentioned in the fake telex message dated 29.9.83 has been explained in the E.O's report, namely that Shri Govardhan Das was representing M/s OTS from whom co-accused Shri M.C. Srivastava was charged with having received illegal gratification. As pointed out by respondents it is on record that Shri Govardhan Das was the contact man between co-accused M.C. Srivastava and Jayant Garde partner of M/s Al Adani Enterprises. Hence applicant's contention that this aspect of the matter has been ignored is not correct.

21. The next ground taken is that there is sufficient evidence on behalf of prosecution that applicant came to know of the fake telex message, if at all, only on 30.9.83, and if that be so, there is no question of applicant having transmitted the fake telex message on 28.8.83. This is a matter which directly involves reappraisal of evidence which we are precluded from doing.

22. The next ground taken is that there is no evidence on record to show that the telex message was sent by applicant or that

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he was connected in any way with its transmission. As discussed above the charge against applicant is of connivance with co-accused M.C. Srivastava in the transmission of the fake telex message and in our view this charge is established on the basis of pre-ponderance of probability.

23. The next ground taken is that none of the PWS substantiated the charge against applicant and the findings of the E.O. are arbitrary, perverse and without any evidence on record. As pointed out earlier, in a DE it is sufficient to establish the misconduct of the charged official on the basis of the preponderance of probability. In the present case in the light of the aforesaid discussion, respondents cannot be faulted for concluding on the basis of the preponderance of probability that the charge of misconduct against applicant stands established to the extent of colluding with co-accused Shri Srivastava in sending fake messages purportedly conveying clearance for deployment of workers/labourers abroad.

24. The next ground taken is that even assuming without admitting that the charges have been proved against applicant, the punishment of removal from service is utterly arbitrary and perverse. We can see nothing in the removal order which can be categorised as arbitrary or perverse. The charges against the applicant were grave and there is



no doubt that in the light of the available evidence the charges relating to colluding with co-accused Shri M.C.Srivastava stands established on the basis of the preponderance of probability. that being so; the quantum of punishment to be levied is a matter entirely within the jurisdiction of the Disciplinary Authority as has been held by the Hon'ble Supreme Court in UOI Vs. Parmananda AIR 1989 SC 1185.

25. The next two grounds namely that copies of relevant documents were not supplied during the DE and the O.M. dated 18.11.85 was not issued by the competent authority is wholly without merit. Applicant has not referred to any specific document/material for his defence which was not supplied to him and the O.M. dated 18.11.85 is perfectly valid.

26. The next ground taken is that the impugned order dated 24.12.92 states that applicant got issued a fake telegram on 19.9.83 to POE conveying emigration clearance to M/s Pasha Enterprises, Bombay for deployment of 25 workers to M/s Obaid Al Baini Construction Co., Saudi Arabia, but this was not even a charge levelled against applicant, which shows non-application of mind.

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As mentioned above, the charge against the applicant is that during the relevant period he colluded with Shri M.C. Srivastava in transmitting fake trlegrams/telex messages to the POE, Bombay purporting to convey the clearance from Controller General of Emigration, New Delhi for deployment of workers/labourers in view of consideration/illegal gratification. Even if receipt of illegal gratification was not established the foregoing analysis shows that on the basis preponderance of probability, applicant did collude with Shri M.C. Srivastava in transmitting fake telegrams/telex messages to POE, Bombay and under the circumstances it cannot be said that the impugned order dated 24.12.92, which refers to applicant's involvement in the issuance of fake telegram dated 19.9.93 to POE, Bombay referred to above was not a charge levelled against him. Hence this ground also fails. Similarly applicant's contention that the reference in the impugned punishment order dated 24.12.92 that he supplied the inside information to Shri M.C.Srivastava was not a charge levelled against him, is without merit because the charge against



the applicant is specifically one of collusion with M.C.Srivastava which clearly includes supply of relevant information.

27. Similarly the ground that the UPSC's advice dated 4.11.92 amounted to framing of fresh charge against the applicant cannot be accepted because the UPSC gave its advice on the basis of the existing charges and after analysing in depth the E.O's report. We see no contradiction between the E.O's advice and the UPSC's advice.

28. During arguments Shri Shyam Babu contended that a copy of the UPSC's report was not supplied to the applicant which was required to be supplied under Rules 15(4) and 17 of CCS (CCA) Rules before the Disciplinary Authority passed the impugned dismissal order. A perusal of the above Rules nowhere require the Respondents to furnish a copy of the UPSC's report before the Disciplinary Authority passes orders. Rule 15(4) requires the Disciplinary Authority to consult the UPSC in all cases where such consultation is necessary, while Rule 17 provides for a copy of the UPSC's advice to be supplied along with the Disciplinary Authority's order.

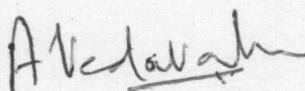
29. In U.O.I. & Ors. Vs. Upendra Singh (1994) 27 ATC 200 the Hon'ble Supreme Court while quoting the decision in H.B.Gandhi's case 1992 Supp. (2) SCC 312<sup>has</sup> affirmed the following principles:

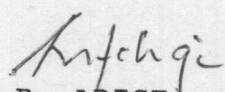
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" Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

30. In other words, the purpose of judicial review is to ensure that the individual has been given full opportunity to defend himself and to further ensure that the <sup>making process</sup> decision <sup>is</sup> not arbitrary or illegal but is in accordance with the procedure prescribed by law. In the present case the foregoing discussion makes it clear that the applicant was given full opportunity to defend himself and we can detect no infirmity in the decision making process, which would warrant our intervention.

31. In the result the O.A. is dismissed.  
No costs.

  
(DR. A. VEDAVALLI)  
Member (J)  
/GK/

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