

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 613 of 1989
Transfer Application No.

Date of decision 17.3.97

Bhagirathi Tiwari

Applicant(s)

S. C. P. Chidgaya, & S. S. Dey, &
V. K. Srivastav & S. A. R. B. Ichher

Counsel for the
applicant(s)

VERSUS

OOI & ORS

Respondent(s)

S. N. B. Alings

Counsel for the
respondent(s)

COURT :-

Hon'ble Mr. S. Das, Gupta, & m

Hon'ble Mr. T. L. Verma, & m

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. whether their Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Benches ?


(SIGNATURE)

(Pandey)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Dated Allahabad this the 17/4 day of March, 1997

Coram : Hon. Mr. S. Das Gupta, Member-A
Hon. Mr. T. L. Verma, Member-J A/21

Original Application No. 613 of 1989

Bhaqirathi Tiwari son of Arjun Prasad Tiwari
Assistant Audit Officer, Office of the
Accountant General, U.P. (Audit-I)
Allahabad. - - - - - Applicant
(Counsel Sri C.P. Ghildayal & Sri S.N. Devy)
Sri V.K. Srivastava & Sri A.R.B. Kher)

Versus

1. Union of India
2. Comptroller and Auditor General of India,
1C, Bahadur Shah Zafar Marg, New Delhi.
3. Dy. Comptroller & Auditor General of India,
1C-Bahadur Shah Zafar Marg, New Delhi.
4. Principal Accountant General,
U. P. Allahabad.
5. Accountant General, U.P. (Audit),
Allahabad. - - - - - Respondents.

(Counsel Sri N. B. Singh)

O R D E R

(By Hon'ble Mr. T. L. Verma, Member-J)

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, subject matter of challenge are order dated 29.9.1986 and order dated 26.4.1989. The applicant seeks quashing of the aforesaid orders. The applicant has also sought for setting aside adverse remarks recorded in the A.C.R. of the applicant.,

for the period commencing from 10.6.1986 to 15.10.1986. The applicant further seeks a direction to the respondents to confirm the applicant with effect from 1.3.1987 and to give benefit of his promotion as Assistant Audit Officer with effect from 1.4.1987 with all consequential benefits.

2. That facts of the case of the applicant in short are that the applicant was working as Section Officer in the office of the Accountant General, U.P. Allahabad in 1986. In August, 1986, he was the Incharge of Internal Audit section, which is under the direct control of the Principal Accountant General. On 25.8.86 applicant was served with an order, informing him that he shall not be entitled to any pay and allowance with effect from 11.8.1986 till the date he resumes duty ^{unauthorised} and that the entire period of his absence from duty so determined shall be deemed to cause an interruption and break in his service. The petitioner submitted a representation against the aforesaid order on 28.8.1986 (annexure 2) stating there ~~in~~ ^{that} he had never been absent from duty and requested that order dated 25.8.1986 be withdrawn. After submission of the representation by the applicant, he was served with a memo dated 10.9.1986, asking him to furnish the details of work done by him during the period from 11.8.1986 to 25.8.1986 vide annexure-3. The applicant in pursuance of the aforesaid order, submitted details of the work done by him during the aforesaid period. Thereafter, the applicant was served with another order dated 26.9.1986, informing him that he had not done appreciable work for the period commencing from 11.8.1986 to 25.8.1986 and that his pay for the aforesaid period shall not be paid and that unauthorised absence of the applicant shall

be deemed to cause an interruption and break in his service. The aforesaid order, it is said was suomoto revised by the Principal Accountant General by order dated 29. 9.1986 (annexure 6) whereby salary of the applicant for the period from 11.8.1986 to 8.9.1986 was withheld and the period of his absence from 11.8.1986 to 8.9.1986 was deemed to cause an interruption and break in his service.

3. The further case of the applicant is that after receipt of the order dated 26.9.86, the applicant submitted a detailed representation on 24.10.1986 to the Principal Accountant General, stating therein that he had done his work continuously and without interruption. He requested the Principal Accountant General in the said representation to withdraw order dated 29.9.1986 withholding his pay and causing break in his service. When no action was taken on the representation filed by the applicant against the aforesaid orders, he filed an appeal before the Dy. Comptroller and Auditor General of India, New Delhi, challenging the correctness and validity of the order dated 29.9.1986 (annexure 18). The Dy. Comptroller and Auditor General of India by his order dated 30.7.87 informed the applicant that his appeal against the order dated 29.9.1986 has been dismissed. He, thereafter filed revision against the order passed by the Deputy Comptroller and Auditor General before the Comptroller and Auditor General of India on 4.12.1988. The aforesaid revision is stated to have not been decided so far.

4. The applicant further states that by letter dated 19.2.1987, adverse entry in his character roll for the period commencing 10.8.1986 to 15.10.86 were communicated to him. He filed representation for expunging the adverse entry on 23.4.1987 (annex.23). The representation of the applicant for expunction of the adverse entry was rejected by order dated 1.11.88 (annexure 24). He, thereafter, represented against the rejection of his representation with regard to the expunction of remark vide annexure-25. The representation filed by the applicant remains to be disposed of.

5. The further grievance of the applicant is that though he is the senior most among the Section Officers, ~~but~~ on account of order dated 29.9.1986 and adverse remarks communicated to him by letter dated 19.2.1987, his case for confirmation was not considered whereas his juniors have been confirmed as Section Officers with effect from 1.3.1987. The Section Officers who were junior to the applicant have not only been confirmed w.e.f 1.3.1987, have also been promoted to the post of Assistant Audit Officer w.e.f 1.4.1987. It is further alleged that through order dated 20.6.88 the applicant was designated as Asstt. Audit Officer ^{W.M.A.} and ^A he has been performing duties as such, he is not being paid emoluments of the post of Assistant Audit Officer. Hence this application for the reliefs mentioned above. Various orders referred to above are impugned on the ground of malafide, arbitrariness and violation of principles of equity and natural justice.

6. In the counter affidavit filed on behalf of the respondents, it has been stated that the applicant passed Section Officer grade examination (Civil) Part II in December, 1979 and was promoted to the said post of Section Officer w.e.f 15.12.1980 on restructuring of the cadres for I.A. & A. D. with effect from 1.3.1984. The applicant opted for the Audit department. As he was junior in Section Officers cadre of the combined office, he was placed in the waiting list in accordance with the provision of Manual of restructuring of cadres in I.A. & A.D. and was transferred to Audit on 10.9.1987 in the Section Officer cadre of the A & E office. The applicant was due for confirmation with effect from 1.2.1987. He was, however, not considered fit for confirmation as Section Officer on the said date.

7. On his transfer to Audit in September 1987, he could not be considered for confirmation as Section Officer as no permanent vacancy was available in the Section Officer Cadre. However, after change in the procedure for confirmation introduced by the Comptroller and Auditor General's Circular dated 20.7.1988, confirmation is to be made only once in the entry grade. As the applicant had already been confirmed as Auditor with effect from 1.3.1975, further confirmation as Section Officer was not necessary.

8. The respondents have denied to have designated the applicant as Assistant Audit Officer. It has been stated that by mistake his personal number has been indicated as 02/119 instead of 03/1199, in the office order dated 20.6.1988 transferring him from Lucknow zone (Civil) to Lucknow Zone (Works). Group no. 02 pertains to the Assistant Auditor Officer, while 03 pertains to Section Officer in pay bill. Taking advantage of the aforesaid mistake, the applicant, it is said, is claiming to have been designated as Assistant Audit Officer. It is stated that similar mistake was committed in tour programme of the applicant for the period April '89 to June '89, wherein the applicant has been mentioned as Assistant Audit Officer instead of Section Officer. The applicant, it is stated, has been promoted as Assistant Audit Officer on 11.7.1989 and that he has taken over charge of the said post with effect from 17.7.1989.

9. The further case of the respondents is that confidential report for the period 10.6.1986 to 15.10.1996 was made by the Reporting Officer Viz Audit Officer and was approved by the Reviewing Officer viz Principal Accountant General. The remarks, it is said, were communicated to the petitioner by Deputy Accountant General. The representation for expunction of these remarks has been rejected by the concerned authority and as such no case for expunction of the remarks recorded in his ACR has been made out.

10. The further case of the respondents is that the applicant had not been attending to regular office work from Aug 11, 1996. He had been merely

signing the attendance register and thereafter had been taking part in mass demonstration and meeting, slogan shouting in addition to making inciting speeches. He was, therefore, issued notice by the competent authority under FR 17 and 17-A to show cause as to why his pay and allowances for August, 1986 onwards till he resumed duty be not withheld and the entire period be ~~not~~ treated as unauthorised absence from duty resulting in interruption and break in service. The applicant submitted show cause notice dated 28.8.1986. The competent authority after considering the ~~show cause~~ notice ordered that the applicant will not be ~~is~~ entitled to pay and allowance with effect from 11.8.1986 to 25.8.1986 and that the entire period for unauthorised absence shall be deemed to cause interruption and break in service. This order, however, was modified by order dated 29.9.1986 to the effect that that applicant shall not be entitled to any pay and allowances for a further period from August 26, 1986 to September 8, 1986 also and ~~August 11, 1986~~ shall be ^{the} deemed to cause interruption and break in his service. Appeal filed against the order dated 29.9.86 has been rejected. Since the impugned order of withholding pay and treating the period of unauthorised absence as break in service has been passed by the competent authority after giving reasonable opportunity, it is stated, this Tribunal cannot interfere with the same in exercise of its review jurisdiction.

II. We have heard the learned counsel for both the parties and perused the records carefully.

The applicant has, sought the following relief:

- i). "Quashing the orders dated 29.9.86 and 26.4.89.
- ii) direction to the respondents to confirm the applicant with effect from 1.3.1987 and to give effect to his promotion with effect from 1.4.1987.
and;
- iii) to expunge the adverse remarks recorded in A.C.R for the period from 10.6.1986 to 15.10.1986."

The aforesaid reliefs as claimed by the applicant do not appear to have either any nexus with the main relief, or ~~that~~ flow from the main relief. The respondents, however, have not questioned the maintainability on the ground of multi- plicity of reliefs.

We will, first address ourselves to relief No.III. The applicant seeks expunction of the remarks recorded in his Annual Confidential Report on the ground that the remarks were recorded by an officer who was not the reporting officer. This assertion of the applicant has been denied by the respondents in the counter affidavit. It is stated that these remarks were recorded by the Accounts Officer, who was authorised to record the Confidential remark on the work and conduct of the applicant. The Deputy Accountant General has, it is stated, simply communicated about the said remarks. The applicant in reply to the above averments of the respondents in para 35 of the counter affidavit states in the rejoinder affidavit that neither the name and designation of the Reporting Officer was ~~not~~ mentioned in the letter dated 19.2.1997, nor the copies of the A.C.R. entries were furnished to him. The applicant has not denied that he was working under the direct supervision of the Accounts Officer/I.T.A. from 10.6.1986 to 15.10.1986. The Reporting Authority who had an opportunity to

had an opportunity to watch the work and conduct of the officer for a period of 3 months or more, is competent to write the Confidential Report. We, therefore, find no fault with the confidential report of the Accounts Officer regarding the applicant. The adverse remarks as stated by the respondents were approved by the Reviewing authority viz., the Principal Accountant General since the remarks were recorded by the officer competent to do so, and have been approved by the reviewing authority. In the absence of material to show that the remarks are malafide, or are not based on objective assessments of the work and conduct of the applicant, We find no justification to interfere with the same.

13. Coming to the prayer of the applicant for issuing of direction to the respondents to confirm him as Section Officer with effect from 1st March, 1987, it may be stated that the respondents have, in paragraph 6 of the counter affidavit averred that the applicant was considered for confirmation with effect from 1.2.1987, but was not so confirmed as he was not considered fit in the year 1987. On his transfer to Audit, he was not considered for confirmation as no permanent vacancy was available in the Section Officer's cadre. We have no materials before us to show that any vacancy in the Section Officer's cadre was available at the relevant time against which his confirmation could be made. In the absence of the materials to show that a vacancy was available at the relevant time, ~~and~~ the directions as prayed for, to confirm the applicant with effect from 1.3.1987 can not be issued. Not only that, the procedure for confirmation (in paragraph 6 of the counter affidavit) has been changed with effect from 1.4.1988 vide CAG's Circular Letter No.

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2536-NGE-III/43-88 dated 20.7.88. According to the changed procedure confirmation has to be made only once which will be in the entry grade. The applicant has not disputed change in procedure of confirmation has been brought about. That ^{the} applicant has been confirmed in the entry grade, with effect from 1.3.1975 has also not been disputed. In the aforesaid context the question of his confirmation again ~~as~~ in Section Officer's grade was not necessary. In this view of the matter we find that no case for issuing directions to confirm the applicant with effect from 1.3.1987 also has ~~not~~ been made out.

14. The applicant seeks a direction to the respondents to give effect to his promotion as Assistant Audit Officer with effect from 1.4.1987. The respondents have admitted that the applicant was due for promotion as Assistant Audit Officer in the A & E Office with effect from 1.4.1987. His case for promotion was considered by a duly constituted Departmental Promotion Committee and he was not found fit for promotion. The applicant has not filed any order passed by the Competent Authority, promoting him to the post of Assistant Audit Officer. It is a matter of common knowledge that when an officer is promoted from the lower grade to the higher grade, a formal order of promotion is issued by the competent authority. The applicant seeks reliance on Annexure (A-28) whereby, the Accountant General has ordered transfer of Section Officers including the ^A applicant to various places. By this order the applicant has been transferred from Lucknow Zone (Civil) to Lucknow Zone (Works). The personal number noted against the name of the applicant is 02/1199. The group No: is 02, as stated by the respondents, is that of the Assistant Accounts Officers. The respondents have specifically mentioned in paragraph 13 of the counter affidavit that the

personal number by mistake has been mentioned as 2/1199, in place of 03/1199. The applicant, it seems, is trying to take the benefit of the aforesaid mistake. The other documents which the applicant seeks to rely ^{on} in support of his claim ^{is the} Tour programme for the period from April 1989 to June 1989 (Annexure-1). In the tour programme, the applicant has been described as Assistant Audit Officer instead of Section Officer. The mistake in the tour programme has been corrected by letter dated 26th April, 1989 vide Annexure (A-29). By this letter the applicant was informed that in the Tour Programme for the period April 1989 to June 1989 by mistake Assistant Audit Officer has been written in place of Section Officer against his name. A corrigendum has been issued immediately after the tour programme was issued. Admittedly, no order was issued by the Competent Authority promoting the applicant to the post of Assistant Audit Officer. That being so, the transfer order (Annexure-A 26) and the tour programme relied upon by the applicant in support of his claim of promotion to the post of Assistant Audit Officer with effect from 1.4.87 are of no consequence. The applicant has, however, been promoted as Assistant Audit Officer as stated by the respondents in para 14 of the counter affidavit by orders 11.7.1987 and that he has taken over charge with effect from 17.7.1989. The higher grade promotions become effective on the date of taking over charge. In the instant case the applicant has not disputed that he had taken over charge as an Assistant Audit Officer on 27.7.1989. He, therefore, cannot claim his promotion with effect from 1.4.1987. He should have, if he was aggrieved by his supersession in the matter of promotion to the Assistant Audit Officer challenged the same by filing an Original Application within the period of limitation.

This not having been done he cannot now be permitted to say that his promotion be given with effect from 1.4.1987.

15. The main relief claimed by the applicant in this O.A. is for quashing order dated 29.9.1986 whereby, the applicant had been debarred from pay and allowances for the period from August 1986 to September 1986 and also the aforesaid period shall be deemed to cause interruption and break in his service. The allegations against the applicant was that during the aforesaid period, he merely signed the attendance register and, thereafter, took part in mass demonstrations, meetings, shouting slogans, threatening the authorities in addition to making speeches in utter disregard to his duties. The competent authority therefore, in exercise of powers conferred under FR 17 and 17-A passed the impugned order dated 26.9.1986. We have perused all these rules and we are satisfied that FR-17 has no application to the facts of the present case. The provision of FR-17A may be applicable to the facts of the present case provided it is established that the all ged commission and omission of the applicant come with the meaning 'Strike' as provided in FR-17A. FR-17 A reads as follows :

" WITHOUT PREJUDICE TO THE PROVISION
OF RULE 27 OF THE CENTRAL CIVIL SERVICES
(PENSION) RULES, 1972, A PERIOD OF AN UN-
AUTHORIZED ABSENCE -

(i) in the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law

for the time being in force ;

(ii) in the case of other employees as a result of action combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of, the competent authority ; and

(iii) in the case of an individual employee, remaining absent unauthorisedly or deserting the post,

shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in the departmental examination, for which a minimum period of continuous service is required.

EXPLANATION 1 :-- For purpose of this rule, "Strike" includes a general, token, sympathetic or any similar strike, and also participation in a bandh or in similar activities.

EXPLANATION 2 :-- In this Rule, the term "Competent authority" means the Appointing Authority. .

16. A plain reading of the provisions of FR-17 A indicated above makes it clear that if an employee during a strike acts in combination or in a concerted manner alongwith other employees without any authority from, or valid reason to the satisfaction

of the competent authority, the said act shall be deemed to cause an interruption or break in service of the employee. These provisions also authorise the Employer to deny wages of the employee who remains absent from duty during strike. In order to justify the action of the respondents ~~in~~ in denying pay and allowance to the applicant for the period from August 11, 1986 to September 8, 1986 and deeming the said period as break in service, it is to be established that the applicant was absent owing to his participation in strike. The applicant has denied the allegation of the respondents that he had not performed any duty during the aforesaid period and indulged in slogan shouting and attending demonstration. He also submitted details of work he claims to have done during the aforesaid period.

17. The break in service of an employee has far reaching consequence inasmuch as the same may affect the pension and ~~other~~ other retiral benefits and also eligibility for ~~in~~ appearing in the departmental examination for which minimum period of quantum of service is required. Therefore, such an order should be passed only after giving ^{re} asonable opportunity of representation and being heard ~~in~~ in person, if so desired to the person concerned. Sri N.B.Singh Senior Standing Counsel appearing for the respondents submitted that the applicant was given a notice to show cause before the impugned order was passed and as such the requirement of principles of natural justice of giving reasonable opportunity has been fully satisfied. We have given our anxious consideration to this submission of the learned counsel for the respondents and we find it difficult to persuade ourselves to accept the same.

18/ Admittedly the applicant put his signature in the attendance register. He also submitted details of work done by him from 11.8.1986 onwards. There is no material on record to show whether any out-turn of work has been fixed for the Section Officers. If so, what is the quantum of work a Section Officer is required to perform in normal course of his duty. In absence of the material to show the above, it is not possible for us to determine whether the work done by the applicant during the period in question was adequate or not. This is a question of fact and can be ascertained by holding an inquiry, in which the Officer charged is given an opportunity to show that he had done ~~any~~ adequate work. The Hon'ble Supreme court in Bank of India V/s T.S.Kelawala (1991) SCC (L & S) page 171 has held that:

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" It is not enough the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid. For the same reason, if the employees put in the allotted work but do not, for some reason--may be even as a protest-- comply with the formalities such as signing the attendance register, no deduction can be effected from their wages. When there is a dispute as to whether the employees attended the place of work or put in the allotted work or not, and if they

have not, the reason therefor etc, the dispute has to be investigated by holding an inquiry into the matter. In such cases, no deduction from the wages can be made without establishing the omission and/or commission on the part of the employees concerned. *

19. The ratio of the decision of the Hon'ble Supreme court referred to above, therefore, requires that an enquiry should be held whenever there is dispute regarding the fact whether the employee has performed his duty or not and whether he has participated in the strike or not. The respondents do claim to have held the enquiry by issuing notice to the applicant to show cause and also by asking him to submit details of work done by him. We have perused the records with reference to the arguments advanced by the learned counsel for the respondents and we find that there is hardly any evidence except the letter annexure 7 to show that there was any strike in the office of the Principal Accountant General or that the applicant had participated in any such strike. The letter annexure A-7 issued by the office of Principal Accountant General to the applicant indicates that the applicant, who was one of the member of the Negotiating Committee of employees had attended office of the Principal Accountant General between 26.8.1986 and 5.9.1986 in his capacity as such and then failed to turn up at the final meeting fixed for Sept 8'86 in the chamber of the Principal Accountant General.

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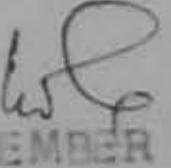
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20- In the said letter, the applicant had also been asked to refrain from holding meeting within the office Campus and indulging in slogan shouting and vituperative speech making. Except the above letter there is no other material to show that any agitation or strike was going on in the office of Principal Accountant General and that the applicant had been actively participating in the same.

21. In the facts and circumstances of the case, we are of the considered view that the respondent should hold a confronted enquiry and if after such enquiry in which the applicant shall be given opportunity to defend himself it is established that he had merely signed the attendance register and thereafter participated in demonstration, slogan shouting and other related activities, this application shall stand dismissed without any further orders. If, however, such allegation is not established in the enquiry the impugned order dated 26.9.1996 shall stand quashed with all consequential benefits to the applicant. We further direct that this enquiry be completed within a period of 3 months from the date of communication of this order.

22. The parties shall bear their own costs.


MEMBER (J)


MEMBER (A)