

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 837 of 1992

Ashok Kumar Srivastava Applicant.

Versus

Union of India
and others Respondents.

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Hon. Mr. Maharaj-Din, Member (J.)
Hon. Mr. S. Das Gupta, Member (A)

(By Hon. Mr. S. Das Gupta, Member (A))

In this O.A. No. 837 of 1992 filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed that the order of penalty imposed on the applicant (Annexure A 17) be set aside with consequential benefits and the period during which he was under suspension be treated as on duty with full pay and allowances.

2. The grounds on which the applicant has assailed the impugned order of penalty are;

(i) The charges against the applicant are not maintainable on the basis of evidence on record.

(ii) The applicant was initially charge-sheeted by the authority not competent to do so which was subsequently cancelled and a fresh charge-sheet on the same charges was issued by the competent authority without mentioning therein that this was in cancellation of the earlier charge-sheet. The petitioner contends that this is procedural lacuna rendering entire proceedings void.

(iii) The impugned order of penalty (Annexure-A 17) and the appellate order (Annexure- A 1) are non-speaking orders.

(iv) The petitioner was not afforded reasonable opportunity to defend himself during the course of departmental enquiry.

3. The brief facts of the case are that the applicant has been working as Senior Draftsman in the pay scale of Rs. 1400-2300 in the office of D.R.M. Northern Railway, Allahabad w.e.f. May, 1982. A criminal case under Section 498-A I.P.C. was registered against the applicant on the complaint of his wife, who was later divorced and he remained in custody from 31.7.1985 to 16.8.1985. On his release from custody, he wrote a letter dated 19.8.1985 to the D.R.M. (Annexure- A 2) wherein he inter alia informed that he was in custody from 31.7.1985 to 16.8.1985 on account of his involvement in a false case. The applicant was thereafter placed under suspension vide order dated 21.8.1985 (Annexure- A 3) with retrospective effect from 31.7.1985. Vide his representation dated 5.6.1987 (Annexure- A 4) the applicant prayed for revocation of suspension stating therein that he had succeeded in the divorce petition and maintenance suit and that there was no case pending against him in any court of law. The suspension was revoked vide order dated 5.6.1987 (Annexure- A 5) with immediate effect. Subsequently, on the basis of recommendation of the S.S.P. Allahabad that till the decision of the court case against the

applicant, he should be kept under suspension. He was again placed under suspension vide order dated 10.8.1987 (Annexure- A 6). Subsequently, the applicant was given a charge-memo dated 12.10.1988 under the signature of A.E.N. (G). Since the officer signing the charge-sheet was not competent to do so, the said charge-memo was cancelled vide order dated 15.1.1990 (Annexure- A 8) and a fresh charge-memo dated 15.1.1990 (Annexure- A 9) signed by an officer competent to do so was served on the applicant. The charge basically was of suppression of material fact in his application dated 5.6.1987 (Annexure- A 4) inasmuch as he had concealed the fact of his involvement in a criminal case which was still pending in the court of Chief Judicial Magistrate, Allahabad. On ^{complaint} of the disciplinary proceedings, the penalty of reduction of pay, postponing future increments for a period of 2 years was imposed on the applicant vide order dated 25.3.1991 (Annexure-A 17). The petitioner submitted an appeal and the appellate authority initially issued a notice dated 26.7.1991 (Annexure- A 19) asking him to show cause why the penalty already imposed should not be enhanced. Subsequently, the appellate authority passed an order dated 27.4.1992 (Annexure- A 1) upholding the penalty already imposed. The applicant had, meanwhile been exonerated from the criminal charges against him by the Additional Chief Judicial Magistrate, Allahabad

vide judgment and order dated 11.3.1991 (Annexure-A 21).

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

5. From the facts of the case narrated above, it would be clear that the initial suspension cannot be faulted since the criminal proceedings had been initiated against the applicant and he had already been in custody for more than 48 hours. The second spell of suspension also cannot be assailed since the criminal proceedings were still pending against the applicant and it was the view of the police authorities that he should be placed under suspension during the pendency of the proceedings. It was entirely at the discretion of the disciplinary authority to place him under suspension and unless it is shown that such discretion was not exercised in proper manner, we cannot interfere in the matter. The main issue before this Tribunal is, therefore, whether the disciplinary proceedings leading to imposition of major penalty on the applicant suffers from any infirmity.



6. From a perusal of the imputation of charges, it appears that the applicant was charged with concealment of fact inasmuch as he did not mention in his representation dated 5.6.1987 that a criminal case was pending against him in the court of Chief Judicial Magistrate, Allahabad. We may at this stage refer to the contents of the applicant's representation dated 5.6.1987. Paras 8 & 9 are relevant in this regard. These read as follows:

*8. The the applicant has informs to the Administration that applicant has succeeded in his cases of Divorce petition and Maintenance Suit and now there is no case pending against applicant in any court of law.

9. That it is a pertinent to mention here that it appears the applicant was put under suspension on the basis of facts relating to these cases of the above litigations and facts involved therein related to the spouse amounting to family funds.*

It is quite clear from the above that the applicant did not disclose the fact that a criminal proceedings under Section 498-A was pending against him. The petitioner has taken a plea that this fact was not know to him at the time of submitting the representation dated 5.6.1987. This hardly belieble since much before this, the petitioner was taken in custody in connection with this criminal charge and he should have been aware that the criminal proceedings were still pending against him at the time he submitted the representation dated 5.6.1987.

There is no doubt that the authority revoking the suspension was aware of the fact that the criminal case was still pending against him but taking cognizance of the fact that there is shortage of draftsman in drawing office ~~as~~ and the criminal case is lingering in the court and there is no expectation of early decision, revocation of suspension of the applicant was ordered. However, the fact that the authorities did have the knowledge of the criminal case pending against him^{u. cannot absolve} the applicant ~~cannot~~ ^{u. b.} absolved of the

of the charge of concealment of this fact.

7. We have carefully gone through the records and did not find any specific procedural irregularity in the disciplinary proceedings, the order of penalty and the appellate order cannot also be called non-speaking as in both the orders, the reasons have been recorded. One more plea which the applicant had taken is that the order of penalty was not issued by the disciplinary authority inasmuch as the same was issued by D.S.E./S.P.L./Allahabad and not by D.E.N./G who was disciplinary authority.

8. In their counter affidavit, the respondents have brought out that D.S.E./S.P.L./Allahabad was higher in grade than D.E.N./G and as such, no irregularity has been committed in issuing the order of penalty under signature of the former.

9. We are inclined to agree with this view. A reference to Schedule-II to the Railway Servants (Discipline & Appeal) Rules, 1968 indicates that officers at different levels are competent to impose penalty of reduction in pay on group-C employees.

10. As regards the plea that the cancellation of earlier charge-memo was not communicated in the subsequent charge-memo issued to the applicant, we find that it has no merit since the earlier charge-memo having been issued by an authority not competent to do so is a non est and therefore, there is no need to mention the cancellation thereof.

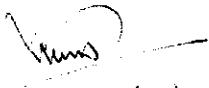
in the subsequent charge memo issued by the competent authority.

ii. In view of the foregoing discussions, we find that all the grounds on which the applicant has challenged the order of penalty and the appellate order are devoid of merits. One issue, however, is still to be considered. This is regarding the manner in which the periods of suspension are to be treated on exoneration of the applicant in the criminal proceedings. It is an admitted fact that both the periods of suspension are relatable to the fact of the criminal proceedings pending against the applicant and not to the disciplinary proceedings initiated against him. Since the criminal proceedings have now come to a conclusion and the applicant has been fully exonerated from the charges, the department must now take a view whether or not the periods spent on suspension should be treated as period spent on duty. The petition is, therefore, disposed of with a direction to the respondents that they shall consider whether or not the periods spent on suspension should be treated as period spent on duty, in view of the fact that the applicant has been fully exonerated in the criminal case and communicate a decision by a reasoned and speaking order to the applicant within a period of 3 months from the date of this order.

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12. In the circumstances of the case,
there will be no order as to costs.


Member (A)


Member (J)

Dated: 94 December, 1993

(n.u.)