

(12)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 25/86
~~XXXXXX~~

p9x

DATE OF DECISION 11-8-1989

Shri Parshottam B.Solanki Petitioner

Mr. M.R .Anand Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin Advocate for the Respondent(s)

CORAM.

The Hon'ble Mr. P.H. Trivedi : Vice Chairman

• Vice Chairman

The Hon'ble Mr. P. M. Joshi :: Judicial Member

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 Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

13

(Adv : Mr. M. R. Anand)

Versus

1. Divisional Personnel Officer,
D.R.M.'s Office, Western Railway,
Bombay Central,
BOMBAY.
2. Senior Divisional Signal
Telecom. Engineer,
D. R. M.'s Office,
Western Railway,
Bombay Central,
BOMBAY. And
3. Union of India
(Representing Western
Railway, having its office
at Churchgate, Bombay). RESPONDENTS.

(Ad. M.F. R.M. Vin)

JUDGMENT

OA/25/86

Date : 11-08-1989.

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman.

The petitioner has applied under Section 19 of the Administrative Tribunals Act, 1985 for quashing and setting aside the impugned order dated 1.7.1986 reverting him to the post of Junior Clerk in the scale of Rs.260-400 for a period of five years from the post of Senior Clerk and order dated 19.8.1987 by which the appellate authority reduced this punishment to limiting the reversion to the post of Junior Clerk initially given for a period of five years to one year with future effect. According to the respondents the order impugned by the petitioner dated 1.7.1986 is not the order of punishment but of posting the petitioner consequent to the

order of reversion dated 24.6.1986. The main challenge of the petitioner relevant for deciding the questions in this case is that he was not furnished a copy of the complaint with the signature of all the complainant but only the complaint without signature was furnished to him. Since the charges against the petitioner are of non-cooperative and rude behaviour with the staff and of his inefficient working, the petitioner considers that he was prejudiced in his defence for the names of the signatories not having been supplied to him. He has contended that the complaint was not signed by 62 complainant and that it was bogus. Only two persons who had signed were examined and he could not represent his case ~~regarding~~ ^{who} the other complainant ~~are~~ were bogus. Because their names were not supplied to him, the copy of the complaint cannot be regarded as complete. His appeal-petition had also included this ground but the appellate authority did not erroneously consider it in his favour. The petitioner has dwelt at length that he is a member of the Scheduled Caste and is active in the association for safeguarding the rights of the Scheduled Castes and the respondents have, therefore, borne a grudge against him. He has also challenged the orders on the ground of discrimination as no notice for imposing punishment was given to him as was issued in one case which he has annexed at Annexure 'E'. He has also challenged the competence of the authority imposing the order of punishment claiming that DSTE(II) is his disciplinary authority while DCT a sub-ordinate authority has issued the punitive order. The respondents' case for reverting, the petitioner is that on receiving the complaint from the staff signed by 60 members, the petitioner was charged and articles supporting the charges were set out in detail regarding rude behaviour and harassment and the petitioner's continued ^{in it} for which he was warned a number

of times and for which the staff had also made the complaint in the complaint book from 24.3.1963. At the request of the petitioner the enquiry officer was even changed. The petitioner was given every facility for conducting his defence according to the rules. In his statement he was particularly asked whether he was satisfied with the facilities in the enquiry. He has replied that he was satisfied with the enquiry and all reasonable facilities have been extended to him to defend himself. In the order of the appellate authority, it was held that the complaint was from 60 employees and the claim made by the petitioner that it was only from 2 employees was not accepted. The fact that the staff had taken the unusual step of recording the complaint in the complaint book was given weightage as such a step was taken only when the behaviour of the delinquent officer was experienced to be unbearable.

2. The charge of harassment by creating delay in issue of passes was held to be proved on the testimony of witnesses examined and on the basis of the reply of the petitioner that he had accepted that he had made mistakes.

3. Learned advocate for the petitioner has vigorously contended that it is unusual and unjust to subject the performance of a higher officer who has to scrutinise the work of his juniors on the basis of complaints of the staff which he is supposed to supervise and to hold the charges as proved on the testimony of a very limited number of that staff. He has stated that the nature of the charges of the rude behaviour and harassment becomes important only because the complaint is not with reference to one or two members of the staff but

to the generality of the staff and the examination of two witnesses is not sufficient for the conclusion that the majority of the staff was harassed. In fact not only should the petitioner have been afforded the names of the complainants but the respondents should have examined a large number of the staff signing the petition to establish that the petitioner's behaviour was rude and that he has harassed the majority of the staff. Instead, the petitioner has not been furnished with a full copy of the petition including the names of the staff who had signed it. Without this information the documents supplied to the petitioner are to be regarded as incomplete and selective and prejudicial to the petitioner by depriving him of his right to cross examination ^{of} those who were the complainants to establish that such complainants were bogus or that complainants had signed it under force or duress. The fact that the petitioner has generally expressed satisfaction in answer to a specific question does not estop him from raising this plea. Having asked for the names of the complainants and being denied the same, he was under no obligation to make a specific complaint in answer to this question by the enquiry officer. The appellate authority had very casually dismissed the petitioner's ground in this regard in his appeal memorandum, without appreciating the significance of not supplying the information viz. the list of names of complainants and the effect of it on the petitioner's defence. The respondents have cited 1986(3)SCC 229 Kashinath Dikshita V/s. Union of India & Others in which not giving copies of the documents on which the reliance was placed was held to be sufficient to prejudise the delinquent

officer in presenting his defence and it was held that the enquiry, therefore, is vitiated and the orders of punishment arising from it are illegal and void. The petitioner has also cited AIR 1986 SC 872 Express Newspapers Pvt. Ltd. V/s. Union of India & Others fro his contention that there was non-application of mind on the part of the authorities who had issued the order of punishment and rejected the appeal.

4. We find that there is considerable force in those contentions of the learned advocate for the petitioner. To say the least, it is unusual for the respondent authorities to hold an enquiry against a higher officer merely on the basis of the complaint of the staff supervised by him. The normal procedure in such case is that a fact finding enquiry is held and charges are framed on the basis of such an enquiry. However, if the enquiry is held on the basis of the complaint of the staff, the officer who is charged with rude behaviour or for causing harassment to the staff and for habitually making mistakes, needs to be informed, clearly of the terms in which the charges and the articles are framed and ^{which} need to be considered to decide whether they were with reference to specific persons to whom such harassment was caused or who were subject to rude behaviour. Similarly the charge regarding mistakes cannot be held to be proved on the testimony of the persons subordinate to the petitioner ~~unless~~ an officer senior to the petitioner who had supervised him ~~had~~ had examined the complaints in this regard and reported that the mistakes had been committed. The charges are as under :

1) P. B. Solanki, Senior Clerk is charged with non-cooperative and rude behaviour with the staff under SI-IC-ST.

.....6.

2) P. B. Solanki, Senior Clerk is charged with inefficient working.

Articles are as under :

Article I :- It is reported that Shri P. B. Solanki, Sr.Clerk under SI-IC-ST is a man of total non-co-operative rendency and often use to harass the staff in office matters such as issue of free passes, PTO's information regarding payment on other matters. His behaviour with staff remains always rude and negatived. He every now and then tries to keep the staff away from their privilege such as to delay in issue of passes, PTO's card passes, loan applications or cheque of loans sanctioned by J.C. Bank as well as to add NDA, sanctioned TA or OT Bills in regular **paysheet**. Also he refuses to supply leave passes, PTO's loan, PE withdrawal forms and applications and other stationery.

Moreover his attitude towards the staff in general is rude and far from satisfactory for which he has been repeatedly asked by his CSI to improve his attitude and earn the goodwill of the staff. He is thus charged with non-co-operative and rude behaviour with the staff.

Article II:- It is also reported that Shri P. B. Solanki is habituated of committing mistakes in preparing paysheets, passes, PTOs, bills, Memos, letters etc. for which he has been instructed number of times to be very careful while preparing the above documents. Staff had complained in complaint book on 24.3.84 in this regard,

He is thus charged with inefficient working.

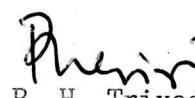
It is clear, therefore, that the charges are with reference to behaviour to the bulk or the majority of the staff and do not refer to specific instances of rude behaviour or harassment

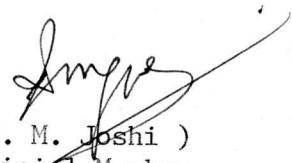
(19)

or inefficient working with reference to specific persons or detection of such mistakes by any specific supervisory officer. In these facts and circumstances the names of the complainants i.e. the signatories withheld from the petitioner becomes a material circumstance prejudising the petitioner in putting up his defence and must be held to render the enquiry a nullity and the order of punishment to be null and void. We do not propose to labour our conclusions by examining whether the order of reversion referred to by the petitioner is an order of posting because, clearly, the order of reversion has been challenged. The order of reversion dated 24.10.1986 is disputed to have been served upon the petitioner. It is also not disputed by the respondents that the petitioner asked for the names of the signatories and was denied the same as it is clearly evident on the record in the case.

5. Accordingly we hold the petition to have merit and find that the impugned order reverting the petitioner dated 1.7.1986 and the appellate authority's order dated 19.8.1987 are illegal and invalid. The respondents are at liberty to hold a proper enquiry on furnishing a copy of the complaint with the names of the signatories if they prefer to pursue the petitioner regarding the charges.

6. With these observations the case is disposed of with no order as to costs. The petitioner is protected. The impugned orders are quashed and set aside. Rule made absolute.


(P. H. Trivedi)
Vice Chairman


(P. M. Joshi)
Judicial Member