CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~NEW DELHI~~

O.A. No. 165 1987
~~T.A. No.~~

DATE OF DECISION _____

Suresh B. Dave _____ Petitioner

S M Pandya _____ Advocate for the Petitioner(s)

Versus

PMG, Gujarat Circle Ahmedabad & another _____ Respondent

V. D. Agmera _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr. N. M Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? ~~No~~ Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? ~~No~~ Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND—12 CAT/86—3-12-86—15,000

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

DATE: 9

PRESENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

&

HON'BLE SHRI M.M SINGH, ADMINISTRATIVE MEMBER

O.A 165/87

Suresh B.Dave
16, Jayprada Society
Behind Harish Kunj,
Vejalpur, Ahmedabad-51. .. Applicant

v.

1. The Post Master General,
   Gujarat Circle,
   Ashram Road, Navrangpura,
   Ahmedabad-380 009

2. Sr.Supdt. of Post Offices,
   Ahmedabad City Division,
   G.P.O Compound,
   Ahmedabad-380 001. .. Respondents

Mr J.M Pandyal .. Counsel for applicant

Mr.J.D.Agmera .. Counsel for the respondents.

J U D G M E N T

PER HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The short question that arises for consideration in this case is whether the impugned order, Annexure-I passed by the Appellate Authority pursuant to the directions of this Tribunal can be upheld in the light of the contentions raised by the applicant.

2. The applicant while working as Postal Assistant at Ellisbridge post office was assigned the works of registered booking, despatch etc. In connection with the duties in the said post office he was served with

a charge memo on 8.9.83 containing the following charges:

" (i) The applicant has removed unauthorisedly the Franking Machine from Ellisbridge Post Office on 14.1.1983 with malafide intention.

(ii) The applicant gave short credit of Rs. 6900/- on 15.1.1983.

(iii) The applicant failed to observe the instruction contained in DG P&T for Franking machine".

3. He filed objections denying the charges. An enquiry was conducted by appointing an enquiry officer. According to the applicant during the enquiry he made a request to the enquiry officer to furnish to him the following documents:

(i) copy of First Information Report

(ii) Rough Account Book of Treasury

(iii) Preliminary Enquiry Report and other connected documents.

The applicant submitted that these documents were not given to him. In the course of the enquiry, he also made a request to examine Shri A.M Vyas as his witness, but this was not allowed by the enquiry officer. The enquiry officer after completing the enquiry on 10.6.1985 submitted the report finding the applicant guilty. According to the applicant the findings of the enquiry officer are perverse and the order was passed on extraneous and irrelevant consideration. He submitted Annexure-E objections to the enquiry report.

4. The Disciplinary authority found the applicant guilty and imposed the following punishment as per order dated 5.11.82:

" It was ordered that Rs.5,400/- will be recovered from the pay of Shri S.B.Dave, PA SAC PO in 36 equal instalments of Rs.150/- that the pay of Shri Dave should be reduced by five stages from Rs.456/- to Rs.396/- in the Time Scale of pay of Rs.260-480 for a period of five years with immediate effect and that Shri Dave will not earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing the future increments of his pay."

5. This order was challenged by the applicant before the Tribunal but it was withdrawn since he found that his remedy is to file an appeal. Annexure-F is the order of the Tribunal dated 12.12.1985. The appeal filed by the applicant was rejected as time barred by order dated 23.6.1986. Then the applicant again approached the Tribunal and the Tribunal by Annexure-H order directed the Appellate authority to take back the appeal on files and decide the same on merits afresh without going into the question of limitation within a period of six months.

6. Since the appellate authority did not comply with the order of the Tribunal, the applicant was forced to approach the Tribunal for a third time with the request for taking contempt action against the appellate authority. According to the applicant, on getting information of this contempt petition, the appellate authority disposed of the appeal enhancing the punishment and passed the impugned order Annexure-I without considering the contentions of the applicant or giving him an opportunity of being heard. The following is the operative portion of the order:

" I order that Rs.5,400/- be recovered from the pay of Shri S.B.Dave in 36 equal instalments of Rs.150/-. It is further ordered that the pay of Shri S.B Dave be reduced by 10 stages from

Rs.456/- to Rs.340/- in the Time Scale of pay of Rs.260-8-300-EB-308-340-10-360-12-420-EB-12-480 (pre-revised, before acceptance of the recommendations of the 4th Pay Commission) for a period of five years with effect from the date when the punishment order awarded by the Sr.Supdt. of Post Offices, Ahmedabad city division, Ahmedabad was given effect to. It is further directed that Shri S.B.Dave will not earn increment of pay during the period of reduction in stages and that on expiry of this period, the reduction will have the effect of postponing the future increments of his pay."

7. The learned counsel for the applicant raised the following three contentions at the time of the arguments:

i) The appellate authority did not consider the main issue namely the failure of the enquiry officer to furnish the applicant the relevant documents to frame his defence and to examine the witness cited by him as defence witness which resulted in violation of principles of natural justice and hence the whole proceeding is vitiated.

ii) No satisfactory grounds are made out or stated in the order for enhancing the punishment awarded by the Disciplinary Authority.

iii) No notice was given to the applicant before deciding the case to enhance the punishment as provided under Rule 27 of the CCS(CCA) Rules, 1965.

8. A detailed counter affidavit has been filed by the respondents denying all the allegations and averments in the application.

9. Having heard the arguments and perused the documents I am of the view that the applicant is bound to succeed on the first point itself. There is a specific averment in the application that the three documents required for his defence were not given to him during the course of the enquiry. He was also deprived of the opportunity of examining the crucial witness, Mr.A.M.Vyas, on his side. The relevant portion

in his application is extracted below:-

" During enquiry the applicant requested to furnish relevant documents namely:-

i) Copy of First information Report.

ii) Rough Account book of Treasurer and

iii) Preliminary enquiry report and other documents.

which were not supplied by the respondents. The witnesses were examined by both the sides, marked Annexure 'D' collectively are the - copies of the deposition of the witnesses. During the enquiry the applicant requested for examination of one witness Shri A.M Vyas which was not permitted by the Enquiry Officer."

Hence according to him there is denial of opportunity. He further submitted that the findings are based on irrelevant and extraneous considerations. He has also submitted that the appellate authority had not adverted to any of the contentions urged by the applicant and passed the order mechanically without application of mind and considering the evidence on record solely relying on the enquiry report.

10. In the counter affidavit though there is general denial of these contentions, there are statements which tantamount to admission that Shri Vyas was not examined and the relevant copies of the documents requested for by the applicant were not furnished to him. The relevant portion in para 19 of the counter affidavit reads as follows:

" The applicant has failed to prove the necessity to examine Shri Vyas. Regarding copies of documents, it is submitted that the same was demanded in original, and it is respectfully submitted that the applicant is not entitled to have the same in original. It is submitted that the right of applicant is only for taking of the extracts from the relevant documents, and for which the applicant did not make any request."

11. The respondents have not produced any evidence to show that even extracts or copies of the relevant documents were supplied to the applicant before the enquiry. When the applicant had requested for the documents required for shaping up his defence, the respondents are duty bound to supply them either through the copies or extracts. They can deny the documents on the ground that the applicant has only requested for the original of the documents and not for the extracts. It is clear violation of principles of natural justice. The Supreme Court in U.P Govt. vs. Sabir Hussain, AIR 1975 SC 2045 held as follows:-

> " In view of these stark facts, the High Court was right in holding that the plaintiff(respondent) was not given a reasonable opportunity to show cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making proper representation." (emphasis supplied)

The observations of Justice Gajendragadkar, as he then was, is more emphatic, when is said in State of Madhya Pradesh vs. Chintaman, AIR 1961 SC 1623 :

> "10. Mr Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent tne enquiry officer was merely exercising his discretion, and as such it was not open to the High Court to consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of the Patna High Court in Dr. Tribhuwan Nath v. State of Bihar, AIR 1960 Pat 116. In that case the public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made by it against the said officer; and the enquiry officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument, and held that the officer was not entitled to a copy of the report unless that report formed part of the

(5)

> evidence before the Enquiry Commissioner and was relied upon by him. "When, however, the report was not at all exhibited in the case, nor was it referred to, nor relied upon by the Commissioner", said the High Court,"there was no meaning in contesting it, and consequently absence of opportunity to meet its contents involved no violation of constitutional provisions". In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him."

12. It is the statutory duty of the appellate authority to consider the entire evidences in the case and enter into a finding on the question as to whether the findings of the disciplinary authority were warranted by the evidence on record. The Supreme Court in R.P.Bhatt vs. Union of India and others, AIR 1986 SC 1040 held as follows:-

> "4. The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in Cls. (a), (b) and (c) thereof."

In the same volume of the AIR there is another decision of the Supreme Court at page 1173(Ram Chander vs. Union of India and others) in which the Court held as follows:-

> "5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the

(16)

> disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the attendant circumstances and the past record of the apellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

Considering the same issue the Cuttack Bench of the Central Administrative Tribunal in Patitpaban Ray vs. Union of India and others,(1987(2) ATC 205) held as follows:-

> " We are of opinion that non-supply of documents to the petitioner is violative of the principles of natural justice thereby prejudicing the interest of the petitioner to properly defend himself."

13. Though this point was specifically raised, the appellate authority did not consider this issue in the impugned order Annexure I. The order is unsupportable and I am of the view that there is clear violation of principles of natural justice in this case. The appellate authority miserably failed to examine these aspects raised by the applicant in the appeal.

14. On the facts and circumstances of this case I hold that there is substance in the first contention and it requires a detailed examination by the appellate authority.

15. Regarding the second contention it will be pertinent to read the relevant portion in the appellate order. The relevant portion dealing with the discussions about the enhancement of the punishment reads as follows:-

(16)

" Considering the seriousness of the malpractice, which is of the nature of moral turpitude, I consider that the quantum of punishment is not adequate and enhancement of punishment is amply justified. In this case an enquiry under Rule 14 of CCS(CCA) Rules 1965 was held and reasonable opportunities were provided to Shri Dave. Under Rule 27(2)(c)(iii), no further opportunity is required to be given to Shri Dave."

16. In fact there is no discussion as to how the punishment imposed by the disciplinary authority is inadequate and not sufficient for compensating the alleged guilt. Of course in the light of the decision of the Supreme Court the jurisdiction of the Tribunal to go into the quantum of punishment is limited, but the Tribunal can examine the appellate authority's order in this behalf and decide as to the appellate authority's flaw in the approach and dealing about the issue. The Tribunal's power to do substantial justice to the party has not taken away by the Supreme Court. The Court held "if the penalty impugned is apparently unreasonable and uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for re-consideration...." (1989(10)ATC 30 at p/44)(emphasis supplied). In this case the appellate authority did not say any valid reason for enhancement of punishment except observing as follows:

" Considering the seriousness of the malpractice, which is the nature of moral turpitude ".

There is no discussion or finding giving any legal and valid reason for enhancing the punishment. This is very unsatisfactory approach and dealing of the issue. The appellate authority is bound to give reasons to enhance

the punishment. It is true that the appellate authority has written a lengthy order discussing about the allegations and the evidences for sustaining the order passed by the disciplinary authority. The applicant has complaines about it as in ground (A) which reads as follows:-

> "(A) The impugned order is based upon the enquiry. The enquiry had been conducted with bias and prejudiced mind. Reasonable opportunity is not afforded by enquiry officer as applicant was not permitted to produce defence witness Shri A.M Vyas, Inspection of the first information report is not given by enquiring authority."

As indicated above the appellate authority did not answer this contention of the applicant in the long order. He has also not given any sufficient and satisfactory reason for enhancing the punishment imposed by the disciplinary authority.

17. In this connection, it will be relevant to consider one aspect highlighted by the applicant at the time of hearing. The applicant has assailed the action of the appellate authority and repeatedly approached the Tribunal. This caused concern for the appellate authority to take a vindictive approach in this matter. In the first occasion he attacked the appellate authority's order of the dismissal of the appeal as time barred. Second time he came with the allegation that the appellate authority has not complied with the directions of this Tribunal within the time. On the third occasion it appears he has also initiated contempt proceedings against the appellate authority. Under these circumstances, he has a case that the appellate authority passed the impugned order Annexure I as a vindictive measure in a hasty manner

when he received the information regarding the filing of the contempt application. Whether these allegations are correct or not, the circumstances are telling enough. The fact remains that the appellate authority has enhanced the punishment without giving any cogent and convincing reasons so as to support that part of the order challenged in this case.

17. It is entirely within the discretion of the statutory punishing authority to impose punishment on the delinquent Govt servant having regard to the gravity of the delinquency. But when once the very premise or basis on which the punishment is resting is attacked by the delinquent Govt. servant or the reasons which induct the punishing authority are challenged on the ground that the enquiry was conducted not consistent with the prescribed rules or principles of natural justice, the orders are justiciable and the penalty is open to review. The Supreme Court in State of Orissa vs. Bidyabhusan Mahapatra, AIR 1963 SC 779 held that the Court has jurisdiction to direct the authorities to reconsider the order when the findings of the Enquiry Officer or Disciplinary authority are against the procedure and violative of the principles of natural justice, but on the other hand, a prima facie case of misdemeanour is made out the Court would be reluctant to interfere. In the instant case the case of violation of principles of natural justice has been raised by giving facts and figures; but the appellate authority

had not even adverted to the same. It also failed to give convincing reasons for the enhancement of the punishment. The flaws thus committed by the appellate authority warrant interference by this Tribunal. So there is considerable force in the second ground also.

18. Lastly, the learned counsel for the applicant brought to our notice the fourth proviso to sub rule 2 of Rule 27 of CCS(CCA) Rules, 1965 and contended that the appellate authority ought to have issued notice to the applicant before taking a decision to enhance the punishment which has been imposed by the disciplinary authority. He has also cited a decision reported in S.Subba Rao vs. Union of India and others (1987 2 ATC 903).

19. The learned counsel for the respondents on the other hand contended that after the amendment of Rule 27 in 1979, it is not necessary for the appellate authority to issue a notice to the applicant and hear him while proposing to enhance the punishment specified in clause (v) to (ix) of Rule 11, when already an enquiry under Rule 14 has been conducted. The learned counsel for the respondent is correct in his submission that the appellate authority is not bound to issue notice before enhancing the punishment strictly in terms of Rule 27; but justice and fair play demands due intimation to the delinquent employee before enhancing the punishment already imposed by the Disciplinary authority. More so on the facts and circumstances of this case because the applicant has a case that the entire

disciplinary proceedings initiated against him are vitiated and illegal because of the violation of principles of natural justice. The Government of India had issued instructions after the amendment of Rule 27 as per GI, Dept. of Per. & Trg, O.M No.11012/20/85-Est.(A),dated 28th Oct, 1985. The relevant portion reads as follows:-

> " The principle of right to personal hearing applicable to judicial trial or proceedings even at appellate stage is not applicable to departmental inquiries, in which decision by the appellate authority can generally be taken on the basis of the records before it. However, a personal hearing of the appellant by the appellate authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the appellate authority in deciding the appeal quickly and in a just and equitable manner."

As Rule 27 of the CCS(CCA) Rules does not preclude the grant of such a personal hearing in suitable cases, the appellate authority may follow such procedure even if the penalty to be imposed would be minor punishments and they cause less hardship to the delinquent employee. Giving of such notice is in consonance with equity and fair play.

20. Having regard to the facts and circumstances of the case I am fully convinced after going through the records and the impugned order that the appellate authority has committed a grave error in not having considered the aforesaid three grounds urged by the learned counsel for the applicant even though he has written a lengthy order. According to me justice requires a reconsideration of the matter and I am inclined to set aside the appellate order Annexure-I and remit the matter to the

appellate authority for a de novo detailed consideration, in the light of the above observations and in accordance with law. The appellate authority shall dispose of the appeal within a period of four months from the date of receipt of a copy of the judgment after giving an opportunity of being heard to the applicant. In the result, the application is allowed.

21. There will be no order as to costs.

(N.DHARMADAN)
JUDICIAL MEMBER