

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 97 OF 1988.
~~T.A. No.~~

DATE OF DECISION 2.2.1990.

HASMUKHLAL MOHANLAL SHAH, Petitioner

MR. KARTIKEY RAWAL Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s.

MR. M.R. BHATT FOR MR.R.P.BHATT, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.V. HARIDASAN, JUDICIAL MEMBER

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE 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?

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Hasmukhlal Mohanlal Shah,
Age 54, residing at
Thakore Sheri, Near Bodiwala
Maternity Home,
Navrangpura,
Ahmedabad.

.... Petitioner.

(Advocate: Mr. Kartikey Rawal)

Versus.

1. Union of India
(Notice to be served through
Mr. Bhuvanendra Nigam and/or
his successor in office,
Commissioner of Income Tax,
Gujarat-III, Ahmedabad.

2. Mr. S.S.P. Singh,
Inspecting Assistant Commissioner
and/or his successor in Office,
Income Tax, A.R. VIII,
Ahmedabad.

.... Respondents.

(Advocate: Mr. M.R. Bhatt for
Mr. R.P. Bhatt)

J U D G M E N T

O.A.NO. 97 OF 1988

Date: 2.2.1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

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The applicant, an ex-peon in the Income Tax Department, filed this application under section 19 of the Administrative Tribunals Act challenging the order by which he was dismissed from service and the appeal order which confirmed the order of his dismissal.

2. The applicant's case is that a disciplinary enquiry was initiated against him and a charge sheet (Annexure-I) was served on him alleging contravention of sub rule 1 of rule 3 of CCS(Conduct) Rules, 1964. The background to the charge sheet is that the applicant had appeared in the clerks grade examination of Group D staff held by the Staff Selection Committee, New Delhi, in 1977. The applicant had filed a Special Civil Application No. 3250/83 before the Gujarat High Court



for redressal of his grievances arising from this examination. As the decision and direction of the Gujarat High Court in this Special Civil Application was allegedly not implemented, the applicant had filed Contempt Application and when he met the Inspecting Assistant Commissioner Mr. Mohanlal in this connection, he allegedly demanded Rs. 3000/- by way of illegal gratification to remove his grievances. The applicant claims that he informed the Chief Commissioner of Income Tax about the demand. His such actions allegedly prejudiced the Inspecting Assistant Commissioner who initiated disciplinary action under Rule 14 of the CCS(CC&A) Rules, 1965 which led to his dismissal from service.

3. The final order and the appeal order are challenged on seven grounds five of which question the facts and the appreciation of the evidence by the disciplinary and appellate authority and only two, namely alleged non-compliance of Rule 15(4)(1)(b) and violation of Article 311 of the Constitution of India, are challenges on grounds of law. The application has articulated the challenge on ground of law in the following words.

"That the respondent No.1 and 2 has not at all consider Rule 15(4)(i)(b) of the Central Civil Service (C.C.S.) Rules 1965.

Rule 15(4)(1)(b): If the disciplinary authority having regard to its findings on all or any of the articles of charge, is not the opinion that any of the penalties specified in Clause (v) to (ix) of Rule 11 should be imposed on the Government Servant, it shall

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(b) give the Government a notice stating the penalty proposed to be imposed on him and calling upon him to submit within 15 days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 14.

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4. It appears that the applicant is, in his above challenge on grounds of law, still under the (wrong) belief that the second notice is mandatory. Sub rule(4) of rule 15 of CCS CCA Rules was amended by G.I., M.H.A., (Dept. of Personnel and A.R.) Notification No. 11012/2/77-Ests.(A) ., dated the 16th August, 1978, published as S.O. No.2465 in the Gazette of India, dated the 2nd September, 1978. The present sub rule is as follows:

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.

5. The implications of Constitution (Forty-Second Amendment) Act, 1976 and the consequential amendment brought about in Rule 15(4) of CCS (CC& A) Rules, 1965, were perceived and succinctly summed up by the Supreme Court of India in The Secretary, Central Board of Excise & Customs & others. V/s. K.S. Mahalingam, A.I.R. 1986(2) S.C. 4. The relevant portions from this judgment are reproduced below:-

"The only question that is involved in this appeal is whether it is necessary to give a second show cause notice against the punishment before the same was imposed on the respondent and to furnish him with a copy of the report of the Inquiry Officer in view of the amendment of clause (2) of Article 311 of the Constitution of India by the Constitution (Forty-Second Amendment) Act, 1976 and the consequential change brought about in Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

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"Both the Division Bench and the learned Single Judge of the High Court have completely overlooked

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the fact that the Constitution (Forty-Second Amendment) Act, 1976 has deleted from clause (2) of Article 311 of the Constitution the requirement of a reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided inter alia in the first proviso to clause (2) that "it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. "After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. In the instant case, such an opportunity has been given to the respondent. It is also not disputed that after the order of dismissal was passed, the respondent was supplied with a copy of the report of the Inquiry Officer which enabled him to prefer an appeal to the Appellate Authority against the order of dismissal."

It is thus clear that the applicant's challenge to the final and appeal order on grounds of law has no substance after the amendment of the Constitution of India as above.

6. Regarding challenge to the final and appeal orders on grounds of facts and appreciation of evidence, we have perused the record carefully including the case file of the departmental enquiry and heard the advocates for the parties. We find that the applicant's challenge in these regards is also baseless.

7. With regard to the three articles of charges framed against the delinquent the Inspecting Assistant Commissioner of Income Tax Range-II Raipur (Inquiry Officer) has gone into the details of evidence and with regard to each Article of charge given his conclusions. It is relevant here to reproduce these conclusions :-

ARTICLE - I

"I have already held that the delinquent official claimed promotion on wrong premises of fact with motive of getting advancement in career and financial benefit thereof. In doing so he did not maintain absolute integrity and conducted himself in such a manner which is unbecoming of a Government Servant.

In doing so he violated Clause(i) and Clause(iii) of sub-rule 1 of Rule 3 of CCS(Conduct) Rules, 1964. Thus Charge-I, stands proved against the delinquent official."

ARTICLE - II

"It is pertinent to go through the evidence filed by the delinquent official on 30/10/86 where he has



reiterated the fact that he has passed the Clerk's Grade Examination conducted by the Staff Selection Commission and department is denying him lawful benefit. But it is not out of place to note here that the communication from the Staff Selection Commission that the delinquent official has not passed the Clerk Grade Examination was conveyed to the delinquent official on 18th June, 1985. Even after getting the correct information the delinquent official has persisted in his illegal claim. There can not be a greater display of lack of integrity and manners unbecoming of a government servant than this ill considered action. By persisting on the wrong claim after knowing it to be incorrect the delinquent official has violated clause (i) and Clause (iii) of sub-rule 1 of Rule 3 of C.C.S. conduct rules, 1964. Charge-II, stands proved against the delinquent official."

ARTICLE - III

"It has already been proved that the delinquent official by providing wrong information tried to further his career prospect and in the process getting some financial benefit. Thus Charge-III, is automatically proved."

On such enquiry report and evidence, the disciplinary authority, namely Inspecting Assistant Commissioner of Income Tax A-VI, Ahmedabad, gave his findings and imposed the penalty of dismissal from service making the order effective from the date of its service.

8. The applicant preferred appeal to the Chief Commissioner of Income Tax which was disposed of as dismissed by a detailed speaking order dated 5.1.1988.

Para-7 of the appeal order is reproduced below :-

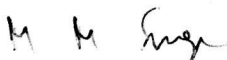
"On the facts and in the circumstances of the case and considering the evidence on record, I do not find any reason, ground or factor to interfere with the order of the Disciplinary Authority. The charges levelled against Shri H.M. Shah have been duly proved and established. Shri Shah has been held guilty of the serious charge of making a wrong claim of passing the Clerk's examination when he knew that he had failed in the examination. He has persisted in this wrongful claim to such an extent that he thought fit to raise allegation against the Disciplinary Authority, involving moral turpitude. A wrong entry was also surreptitiously interpolated into the Service Book, from which Shri Shah tried to derive support in furthering his wrongful claim. I have carefully considered the seriousness of the charges proved against Shri Shah and the facts available on record. I am satisfied that the penalty of the charges proved against Shri Shah."

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9. The key facts are seen to be based on documentary evidence which has been properly inducted in the disciplinary inquiry. The appreciation of evidence and the conclusions of the disciplinary authority and the appellate authority are such as sustained by reasonable and objective appreciation of the evidence on record.

10. Another ground for examining the order of punishment can be from the angle of suitability of punishment. However, with regard to the quantum of punishment, it has been held in Parma Nanda's case, A.T.R. 1989 SC 1185, that the Tribunal cannot substitute the disciplinary authority's decision about quantum of punishment with its own.

11. In view of our above findings, the application has no merits and is liable to be dismissed and is hereby dismissed accordingly. The parties to bear their own costs.



(M.M. SINGH)
ADMINISTRATIVE MEMBER.



(A.V. HARIDASAN)
JUDICIAL MEMBER