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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 409 of 1991
~~T.A. No.~~

DATE OF DECISION 20.09.1994.

Shri Mohmed Adam Bhabha Petitioner

Shri K.C.Bhatt Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.K.Ramamoorthy : Member (A)

The Hon'ble Mr. Dr.R.K.Saxena : Member (J)

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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Shri Mohmed Adam Bhabha,
Section Supervisor,
O/O C.T.O.,
Vadodara - 390 001.

..... Applicant

(Advocate : Mr. K.C. Bhatt)

Versus

1. Union of India,
Through the Director General
Telecommunication,
Department of Telecommunication,
New Delhi.
2. Area Manager,
Telecommunication,
Vadodara Area,
Kareli Baug,
Vadodara - 390 001.
3. Senior Superintendent Telegraph
Traffic,
Vadodara Division,
Nivrut Colony,
Kareli Baug,
Vadodara - 390 001.
4. Superintendent I/C
C.T.O.,
Vadodara - 390 001.

..... Respondents

(Advocate : Mr. Akil Kureshi)

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J U D G M E N T

O.A. NO. 409 OF 1991

Date : 20.09.1994.

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

The present application has been filed against the punishment order passed against the applicant under order dated 23-12-1988 whereby a penalty of withholding of increment for 1½ years without future effect, was imposed on the applicant. The said order was also upheld by the appellate authority vide order dated 25-7-1990. This order was subsequently modified to withholding of increment for one year only vide order dated 1-9-1992 of Adviser (Human Resources Development) O/O Ministry of Communication, Deptt. of Tele., New Delhi. The appellate order has also been challenged by the applicant.

2. The short facts of the case are as under. The applicant was working as Section Supervisor at C.T.O., Vadodara. During one of the visits of SSTT, Vadodara, the applicant was found to be *lax* ⁱⁿ ~~lapse~~ in his supervisory duties whereby it was seen that some telegraphic messages had got delayed in delivering. The applicant was 'severely

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warned' under letter dated 16-2-1988. However, SSTIT found that this was not an adequate punishment and, therefore, directed that formal disciplinary action should be taken against the responsible supervisor. Accordingly, charge-sheet was issued on 10-5-1988. After receiving the reply thereto, Senior Superintendent, TT, Vadodara vide his order mentioned earlier, imposed a punishment of withholding of increment for 1½ years which order was also upheld by the appellate authority. In his arguments, the applicant has stated that necessary action had already been taken against him for his laps^e in supervision when he was 'severely warned' vide letter dated 16-2-1988. He cannot, therefore, be issued a second charge-sheet for the same event. Moreover, the impugned order also suffered from the vice that it was issued by ~~Area Manager~~ ^{SSTIT} ~~an~~ authority different from the one who issued the charge-sheet. It was also contended that the appellate order also suffers from the same deficiencies in as much as it has not taken into account the basic illegality of the impugned order. In the written reply, the basic argument adduced by the respondents is that order dated 23-12-1988 was ^{only} ~~basically~~ an order issued under the revisionary powers available to the appellate authority under, ^{rule 297} CCS (CCA) Rules, Sec⁴ 29. It was found by the appellate authority that warning letter issued on 16-2-1988 was no punishment at all in as much as it did not fall

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within any of the prescribed penalties, minor or major. In fact, the lapse observed in non-delivery of telegraphic message in time is of a serious nature for which a severe punishment was necessary and, therefore, the order was issued on 14-4-1988 to initiate disciplinary proceedings.

3. We have gone through the averments in his case. It is not disputed that the CCS (CCA) Rules do provide for revisionary powers. However, in the proceedings, the procedure actually adopted has been mixed up in confusion. If the appellate authority was of the opinion that the punishment should be enhanced, it should have taken action as such and issued notice for such a proposed action. Instead of that, it seems to have ^{issued} some administrative instructions to the disciplinary authority. The latter in turn have again gone about ^{with} the issue of a formal charge-sheet for an event for which he has already been punished. It was contended by the counsel for ^{respondents} the ~~applicant~~ that memorandum issued on 10-5-1988 cannot be considered to be a second charge-sheet as no earlier charge-sheet was formally served. This argument cannot be accepted since the order of 16-2-1988 specifically refers to an explanation offered by the applicant which was found 'not at all convincing'. There is merit in the argument of counsel for the applicant by quoting the verdict of Karnataka High Court that 'there is no merit in the word charge-sheet' (R.K.Singhal Vs. General Manager, IOB, Madras, SLJ 1992(3) P. 20.

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4. Even thereafter, the disciplinary authority seems to have merely forwarded the explanation offered to the higher authority and the Senior Superintendent, TT has gone ahead to pass the order of withholding of the increment on 23-12-1988. Though in the order, the authority has chosen to state that it is a case of review by the higher authority, it will be seen that the order is in effect based on the explanation offered on the charge-sheet issued on 10-5-1988 and not an order passed by way of review to enhance the punishment earlier given. The argument that the earlier order was no penalty within the meaning of Discipline and Control Rules has no merit since the revisionary powers can be exercised even when no penalty has been imposed. The case cannot also fall within the ambit of a 'remit case falling within sec.29(1)(c)'.

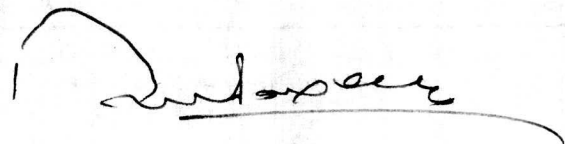
5. The counsel for the respondents in the arguments stated that the deficiencies, if any, are deficiencies in procedure and since there were inherent powers to review a punishment given, the Department should be allowed to exercise this power after removing any deficiencies in procedure. We are unable to find ourselves in agreement with this formulation. After all, the matter pertains to an event which happened in 1987. The punishment imposed is also a minor punishment only whether of warning or whether it be one of stopping of increment for one year without future effect. To

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continue to pursue such a matter, albeit to remove the procedural error, is not called for in this kind of the case.

6. Under the circumstances, since the impugned order has been passed without following the proper procedure and therefore, the order dated 23-12-1988 is hereby quashed. The appellate order passed on 25-7-1990 and the revisionary order passed on 1-9-1992 also therefore, become null and void.

7. No order as to costs.



(Dr. R.K.Saxena)
Member (J)



(K.Ramamoorthy)
Member (A)