

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 196/93
T.A.NO.

DATE OF DECISION 27-4-1998

Mr. R.S. Gupta **Petitioner**

Mr. S. Tripathy **Advocate for the Petitioner(s)**
Versus

Union of India and others **Respondent**

Mr. Akil Kureshi **Advocate for the Respondent(s)**

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The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

} NO

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Shri R.S. Gupta,
Postmaster General,
Rajkot Region,
Head Post Office Building,
Rajkot - 360 001.

... Applicant

(Advocate: Mr. S. Tripathy)

VERSUS

1. Union of India
(Notice to be served through
Secretary,
Ministry of Communication,
Department of Posts,
Dak Bhawan,
Parliament Street,
New Delhi - 110 001.)
2. Director General of Posts,
Directorate of Posts,
Dak Bhawan,
Parliament Street,
New Delhi - 110 001.

... Respondents

(Advocate: Mr. Akil Kureishi)

JUDGMENT

O.A./196/93

Dated: 27-4-98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (a) The Hon'ble Tribunal may be pleased to quash and set aside the order of the Government of India imposing the penalty of censure and further be pleased to quash and set aside the order of the Government of India rejecting the Revision Application of the applicant.
- (b) declare that the initiation and holding of the depart-

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mental inquiry was uncalled for as no misconduct on the part of the applicant is involved in this case and grant any other and further relief as would be deemed just and proper in the interest of justice."

2. The applicant is an officer of Indian Postal Service and was posted as Director of Postal Services (HQ), UP Circle, Lucknow in the year 1981. He was the disciplinary authority of certain officers. He was issued a charge-sheet on 25.7.86 (Annexure A-1) under Rule 14 of the CCS (CCA) Rules, 1965 alleging that while he was working as Director of Postal Services (HQ), UP Circle, Lucknow, during the years 1981 to 1984 instead of imparting justice to Shri L.N. Verma, Dy. Manager, RLO by timely issuance of chargesheet, delayed the same thereby causing of harassment to him which also resulted in non-finalisation of the disciplinary case in time and it further caused delay in release of pensionary benefits to Shri Verma and that by his above act, the applicant has failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3 (i) (ii) and (iii) of the CCS (Conduct) Rules, 1964. The departmental inquiry ended in the awarding the punishment of Censure (Annexure A-7). The Revision Petition filed against the punishment of censure was also rejected by the Competent Authority vide order dt. 9.10.92 (Annexure A-9). The applicant therefore preferred this O.A. and challenged the action of the Respondents mainly on the ground that the views of the Inquiry Officer that there was no malafide on the part of the applicant and if there was a delay in issu-

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ance of charge sheet, the same was on account of inadver-
tence has not been appreciated by the competent authority
and no reasons were recorded as to why such finding of the
Inquiry Officer should be ignored. In the circumstances,
the conclusion of the guilt on the part of the applicant
was an act of arbitrary decision and is violative of Arti-
cle 14 of the Constitution. The applicant also submitted
that assuming but not admitting, the allegations of the
Govt. of India are true, the same disclose mere negligence
and not misconduct.

3. The Asst. Postmaster General (P), Office of the PMO,
U.P., Lucknow had recommended action against S/Shri L.N.
Verma, Dy. Manager, RLO; Jagdish Narain Jadav, Packer,
and Nathu Ram, Manager, RLO. The case was thereafter sub-
mitted to the then Director of Postal Services (HQ), Shri
Gautam Gupta. He agreed with the proposal and suggested
initiation of common proceedings against these officers
under Rule 18 of CCS (CCA) Rules. The applicant thereafter
assumed charge of Director of Postal Services (HQ) on
5.5.81. The applicant received a file (Vig/M-11/2/81/4)
on 3.7.81 relating to the disciplinary action against three
officials viz. S/Shri Nathu Ram, Manager RLO, L.N. Verma,
Dy. Manager, RLO and J.N. Jadav, Packer RLO. The file was
submitted for approval of the draft charge sheet. The
applicant approved the draft charge sheet. However, when
fair copies were put up on 14.8.81, the applicant found
that he was competent to impose penalty of dismissal only
against two officials and the Asst. PMG (Staff) was compe-
tent to impose the penalty of dismissal of Shri Jadav,

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Packer, RLO. He was therefore of the view that the earlier order of the former Director was bad and therefore he was referred the matter to DG, P&T, New Delhi for clarification on 4.11.81. The DG, P&T vide their communication dt.

19.11.81 clarified that in terms of Rule 18 of the Rules, the highest disciplinary authority in the common proceedings may itself issue an order with the consent of the other disciplinary authority. The applicant, however did not agree with the clarification and ordered on 22.12.81 to make further reference to DG, P&T for appointment of adhoc disciplinary authority by the President. Thereafter the file remained in the custody of the Confidential Clerk from 29.12.81 to 2.3.84. When the file was again submitted, the applicant directed that the proposed reference to the DG, P&T need not be issued and approved the charge sheet. Thus the chargesheet was issued only in 1984. It was stated that Shri L.N. Verma, Dy. Manager, RLO was to retire on 31.7.84 and the delay in issue of charge sheet in his case, resulted in the non-finalisation of the case against Shri Verma before his retirement causing delay in the release of pensionary benefits.

4. The Applicant stated that the file remained in the custody of Shri Srivastava, the Confidential Clerk from 29.12.81 to 2.3.84. The said Confidential Clerk was also charged for not submitting the file from 30.12.81 to 14.11.82 and that the penalty of censure was imposed against him. The applicant submitted that no proper investigation was made regarding the custody of the file from 30.12.81 to 2.8.84. He alleged certain interpolation by the Confiden-

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tial Clerk by his note dated 15.11.82 on the file and on that basis, the respondents jumped to the conclusion that the file was in his custody from 30.12.81 to 15.11.82. The applicant further alleged that there was no evidence regarding the delay caused in the release of pensionary benefits to Shri Verma. The applicant also relied upon Para 6.18 of the Inquiry Report in which it was stated that the file was misplaced by the applicant inadvertently. The applicant also challenged the various findings of the Inquiry Officer and also the evidence of the Confidential Clerk.

5. The respondents in their reply stated that the applicant instead of imparting justice to Shri Verma, Dy. Manager RLO, by timely issuance of charge sheet, delayed the issue of charge sheet from November, '81 to 2.3.84. The applicant even after receiving the necessary clarification from DG, P&T, vide their communication in Nov. '81, did not issue the charge sheet. The Respondent also referred to the following findings of the Inquiry Officer to prove the charge against the applicant.

(i) The applicant ought to have returned the file in question to the Vigilance Section of the Circle Office after completion of his notings. However, the main file was in his custody till 1984 (i.e. in the custody of the Confidential Clerk) and the applicant was well aware of it (Para 6.10 of the Report);

(ii) A representation dt. 13.11.82 from L.N. Verma was submitted to him on a loose file. The applicant on 14.11.82 directed his PA on the loose file that the main file should be linked. When both these files originated

from the Vigilance Section of the Circle Office, the fact that the applicant instead of calling for the main file from the Vigilance Section asked his PA to link up the main file. Thus the applicant was well aware that the main file was in the custody of his PA. (Para 6.7 and 6.11 of the Report)

(iii) Shri L.N. Verma complained about the non-initiation of the disciplinary proceedings in 1982, even after 1½ years of the orders of common proceedings and stated that it caused inconvenience to him. The applicant never challenged the same in the inquiry proceedings. (The disciplinary case against Verma was finally decided on 20.9.85.)

(iv) The applicant was well aware that the file was with his Confidential Clerk. He therefore cannot plead ignorance.

6. The Respondents submitted that the charge against the applicant was about lack of devotion to duty and an elaborate inquiry was conducted for the purpose. The Inquiry Officer after taking into consideration all the material facts of the case, held that the charge against the applicant was proved. The Respondents further submitted the question of malafide was not an issue and the observations in this regard by the Inquiry Officer were uncalled for. Hence the disciplinary authority rejected the observations of the Inquiry Officer in this regard. The Respondents submitted that the application is misconceived and untenable.

7. We have heard Shri Tripathi, counsel for the applicant and Shri Kureshi for the respondents. Shri Tripathi

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referred to the following judgments in support of the applicant.

(i) UOI vs. J.A. Ahmed - AIR 1979 SC 1022

(ii) UOI vs. R.K. Desai - 1993 (2) SCC 49

Shri Tripathi referred to the judgment of the Supreme Court in the case of UOI vs. J. Ahmed in which it was held that lack of efficiency, failure to attain highest standards of administrative ability etc. may not constitute mis-conduct in the particular facts and circumstances.

He further stated that the applicant as the disciplinary authority exercised certain quasi-judicial powers under the CCS(CCA) Rules. A decision taken by the applicant in exercise of such quasi-judicial function may constitute misconduct only when such decision was taken in pursuant to corrupt or improper motive. In this connection, he referred to the judgment of the Supreme Court in the case of UOI vs. R.K. Desai (1993(2) SCC 49).

8. Shri Akil Kureshi submitted that subsequent to the decision of the Supreme Court in the R.K. Desai's case, the Supreme Court further elaborated regarding the exercise of the powers of the Government to take disciplinary action against officers exercising such quasi-judicial functions. In this connection, he referred to the judgment of the Supreme Court in the case of UOI vs. K.K. Dhawan (AIR 1993 SC 1478). In this connection he referred to certain observations of the Court in Para 28 of the judgment.

"Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person

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is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- iii) if he has acted in a manner which is unbecoming of a Government servant;
- iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- v) if he had acted in order to unduly favour a party;
- vi) if he had been actuated by corrupt motive however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault

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is great."

With regard to the observations of the Supreme Court in Ahmed's case, Shri Kureshi submitted in that case, the Supreme Court was considering the question of initiating disciplinary action against an officer of Indian Administrative Service. The officer concerned was under suspension even after the date of his retirement which fell on 1.2.62. In that case, the Governor of Assam by his order dated 31.1.62 directed that the respondent under suspension should be retained in service for a period of three months from the date of his retirement which fell on 1.2.62 or till the termination of departmental proceedings. However the charge against the officer was that due to lack of efficiency and failure to attain highest standards of administrative ability etc. he proved himself completely unfit to hold any responsible position. Keeping in view the particular facts and circumstances of the case, the Supreme Court inter alia held that even though the personal qualifications like lack of leadership, might be relevant considerations on the question of retaining him on the post or for promotion, but such lack of personal quality could not constitute misconduct for the purpose of disciplinary proceedings. He submitted that this case is required to be distinguished with the facts and circumstances of the present OA in which the applicant was charged with the negligence which resulted in non-finalisation of the disciplinary case in time thereby causing delay in the release of pensionary benefits to Shri Verma. By this Act, the applicant failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 2(i), (ii) and

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(iii) of the CCS (conduct) Rules.

9. We have carefully considered the submissions made by the counsel, the judgments referred to by the applicants and also examined the records. The applicant was the disciplinary authority against certain persons and when the file was submitted to him for issue of certain clarifications to the Director General, P&T, vide their on 4.11.81. The Director General, P&T vide their communication dt.

19.11.81 clarified the matter and advised him to issue the chargesheet. The applicant however did not proceed with the matter further and kept the file with himself from 29.12.81 to 2.3.84. The explanation offered by the applicant was for certain periods, the relevant file was in the custody of the Confidential Clerk. When the concerned officer Shri L.N. Verma complained about non-initiation of the disciplinary proceedings even after 1½ years of the orders of common proceedings caused inconvenience to him, the applicant did not take any steps to locate the file and issue the chargesheet. The Enquiry Officer adversely commented on this conduct. The Enquiry Officer also after an elaborate enquiry came to the conclusion that the applicant was well aware that the file was with the Confidential Clerk and therefore he cannot plead ignorance in the matter.

We have also considered the judgments referred to by the applicants and by the respondents. The facts of the case reported in the case of UOI vs. J.A. Ahmed and other cases are different and have no application to the facts of the present OA. These cases are therefore distinguishable to the facts of this case. Assuming that the applicant has

exercised certain quasi-judicial functions then, the competent authority is empowered to proceed against him under CCS (CCA) Rules on the ground that he acted negligently in a manner which is unbecoming of a Government servant in the light of the judgment of the Supreme Court in the case of UOI vs. K.K. Dhawan, referred to above.

10. We therefore hold that the order of imposing the penalty of 'Censure' is not vitiated or liable to be quashed. The application therefore fails and is accordingly dismissed. No costs.

P. Kannan

(P.C. Kannan)
Member (J)

V. Ramakrishnan
27/4/1971

(V. Ramakrishnan)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, DELH

Application No.

04/196/93

of 19

Transfer Application No.

Old Writ. Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated: 01/6/93

Countersigned.

8/4/94


Signature of the Dealing
Assistant

Section Officer/Court Officer.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE

04/19693

NAME OF PARTIES

Mr. R. S. Gupta

VERSUS

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