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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 20 OF 1995
Cuttack this the 5th day of September/2000

Radhamohan Panda

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunal or not ?

Sumnath Som
SUMNATH SOM
VICE-CHAIRMAN

5.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 20 OF 1995
Cuttack this the 5th day of September/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Radhamohan Panda
aged about 45 years
Son of Sri Bhagaban Panda,
Administrative Officer
All India Radio
Gulbarga

...

Applicant

By the Advocates

M/s.Ganeswar Rath
S.Dash
A.K.Rath
M.K.Sahoo

-VERSUS-

1. Union of India
represented through the
Secretary, Ministry of
Information & Broadcasting,
New Delhi
2. Director General
All India Radio, New Delhi
3. Station Director,
All India Radio, Cuttack
4. Shri A.K. Padhi
Station Director,
All India Radio, Sambalpur
Dist - Sambalpur

...

Respondents

By the Advocates

Mr .S.B. Jena,
Addl .Standing Counsel
(Central)

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O R D E RMR. G. NARASIMHAM, MEMBER (JUDICIAL):

1. In this Application, by order dated 9.12.1994 (Annexure-A/8) of Director General, All India Radio (Res.2) in a disciplinary proceeding ordered for compulsory retirement of the applicant with immediate effect. The applicant preferred this Original Application on 10.1.1995 praying for quashing Annexure-8 and for stay of the operation of the impugned order (Annexure-8) as an ad interim measure. On 11.1.1995, the then Member (Administrative) presiding over as Single Bench admitted this Original Application and ordered stay of the operation of the orders under Annexure-8. This order of stay is still continuing. This Original Application was filed without preferring the departmental appeal available to the applicant. The applicant preferred the departmental appeal on 6.2.1995. However, by detailed order dated 16.11.1995, the then Division Bench of this Tribunal, while taking the view that this Tribunal has jurisdiction to entertain the petition directed the appellate authority to dispose of the appeal within a stipulated period. After the departmental appeal was disposed of through a rejection order, the Original Application was amended with further prayer for quashing the appellate order dated 17.3.1996 (Annexure-A/10) rejecting the appeal.

2. The disciplinary proceeding initiated against the applicant was on account of an incident that had taken place in the Stationery room of the Office of the Station Director, All India Radio, Cuttack (Respondent No.3) on 27.3.1992 at about 1.30 P.M. By then the applicant was actually serving as Headclerk in that office. The incident, as alleged in the

charge memo dated 13.4.1992 (Annexure-1) is that on 27.3.1993 at about 1.30 P.M., the applicant, while functioning as Head Clerk asked the lady Clerk Mrs. X (name withheld by us) of that office to come to the stationery room on the pretext of discussion regarding her typing test. When Mrs. X went inside the stationery room and no one else was present, the applicant Radhamohan Panda asked sexual favour from her. When She refused Shri Panda forcibly dragged her saree which in the process had torn and physically molested her in spite of her resistance. Charges under six heads were framed centering round this incident, viz., moral ~~torpitude~~, commission of gross misconduct, mis-utilisation of letter received from the Office of the Director General, A.I.R., New Delhi, concerning the type test of Mrs. X, negligence of duty in leaving the chair without any official work and putting reputation and good image of the Establishment to the prejudice of the public.

3. The charges were framed by the Station Director, A.I.R., Cuttack (Respondent No.3). After the applicant submitted the written statement denying the allegation and charges, Respondent No.4, Station Director, another Station Director was appointed as Inquiring Officer. The matter was also reported to Police, who registered G.R. Case No.520/92, against the applicant. The applicant moved this Tribunal in Original Application No.280/92 for quashing the charges and stay of the proceedings as an ad interim measure, but stay was not granted. In this way, the proceeding progressed. After completion of inquiry and giving opportunity to the applicant for submission of representation, Respondent No.3, the Station Director, A.I.R.,

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Cuttack passed order dated 5.8.1993 (Annexure-A/2) reverting the applicant as Clerk Gr.I. The applicant, then preferred departmental appeal dated 23.8.1993 to the Director General, All India Radio, vide Annexure-A/3. By order dated 1.9.1993 (Annexure-A/4), D.G. appointed him as Administrative Officer with effect from 27.2.1992 in temporary capacity and posted him at A.I.R., Gulbarga. In view of this promotion order with retrospective effect from 27.2.1992, the Director General noticed technical legal difficulties, while dealing with the appeal memo dated 23.8.1993 and in his capacity as disciplinary authority over the officers of the cadre of Administrative Officers, remitted the case for further inquiry. After conducting further inquiry, the Inquiring Officer submitted inquiry report vide Annexure-A/6 holding the charges proved. In response to this inquiry report the applicant submitted representation dated 20.9.1994 (Annexure-A/7). By order dated 9.12.1994 (Annexure-A/8) the Director General held the charges proved and ordered for compulsory retirement with immediate effect. The applicant preferred departmental appeal under Annexure-A/9 to the Secretary, Ministry of Information & Broadcasting. After consultation with the U.P.S.C. the appellate authority dismissed this appeal in order dated 7.3.1996 (Annexure-A/10).

These facts are not in controversy. At this stage, we may observe that Original Application No.280/92, on the submission of the learned counsel for the applicant stood dismissed as having become infructuous in order dated 18.8.1999.

4. The applicant, while denying this allegation and consequently the charges as baseless takes the plea that the entire proceedings initiated under Annexure-A/1 by Respondent

No.3, viz., Station Director, A.I.R., Cuttack, stands vitiated, because of his retrospective promotion as Administrative Officer, w.e.f. 27.2.1992, ~~and as such~~ Respondent No.3 was no longer his disciplinary authority. Further, he was not supplied with copy of the preliminary inquiry report and ~~this~~ principles of natural justice have been grossly violated. Evidence unearthed during inquiry has not properly been appreciated inasmuch as the ~~deposed~~ stationery clerk in charge of the stationery room ~~deposited~~ that the stationery room during the relevant time was under lock and key. The Director General, as disciplinary authority, passed the impugned order under Annexure-A/8, without consulting the U.P.S.C. and as such his order is contrary to law. He also takes the stand that punishment of compulsory retirement is disproportionate to the charges framed.

5. The Department in their counter take the stand that orders passed by the disciplinary authority under Annexure-A/8 and the appellate order under Annexure-A/10, do not suffer from any legal infirmity. The principles of natural justice have not been violated and no prejudice caused to the applicant. The findings are based on evidence on record, including the evidence of the stationery clerk. The punishment of compulsory retirement, according to Department, is in no way disproportionate to the gravity of the charges framed against the applicant.

6. The incident occurred on 27.3.1992 and the charge memo dated 13.4.1992 (Annexure-A/1) was framed by Respondent No.3, the Station Director, A.I.R., Cuttack. Even after completion of the inquiry and considering the representation of the applicant, Respondent No.3 by order dated 5.8.1993 passed the earlier punishment order. On all these dates the applicant was in fact

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serving as Head Clerk directly under Respondent No.3. It is only by order dated 1.9.1993, he was promoted as Administrative Officer w.e.f. 17.2.1992 and that too in temporary capacity. Be that as it may, Respondent No.2, Director General, assuming the role of disciplinary authority, remitted the case for further inquiry ~~on his~~ noticing certain technical legal difficulties. Even if, viewed from this technical angle, Res. No.3 though not the disciplinary authority of the applicant w.e.f. 27.2.1992, the fact cannot be denied that from 27.2.1992, till the applicant left Cuttack to join at Gulbarga as Administrative Officer pursuant to order dated 1.9.1993, Respondent No.3 was well the controlling authority of the applicant. Law has been settled by the Apex Court that a Controlling Officer can even issue charge sheet even if powers not specially delegated to him, vide E.S.I. vs. T.Abdul Razak reported in 1996 SCC (L&S) 1061; Steel Authority of India vs. Dr.R.K.Diwakar 1998 SLJ 57; and Commissioner of Police v. Jayasuria 1997 SCC (L&S) 1649. Hence we do not see any illegality or irregularity in Res.3 issuing the charge memo and initiating the disciplinary proceedings by appointing the Inquiring Officer and so on. There is also no illegality or irregularity in Res. 2 ordering further inquiry. This is permissible under Rule 15(1) of CCS(CCA) Rules 1965. On the other hand there is no provision for ordering de novo inquiry as has been held by the Apex Court in the cases of K.R.Dev vs. Collector, Central Excise and Board of Trustees, Fort of Bombay vs. Dilip Kumar reported in AIR 1971 SC 1447 and AIR 1983 SC 109 respectively. We observe so, because in the pleadings at one stage the applicant averred that de novo inquiry afresh should have been ordered.

1. We also do not see any force in the pleading of the

of the applicant that he has not been supplied with copy of the preliminary inquiry report. It is true that he has not been supplied with a copy of such report. In the counter it has been averred that preliminary enquiry report has not been introduced as an evidence during inquiry. Hence non supply of preliminary inquiry report in no way caused prejudice to the applicant. In *Bijay Kumar Nigam v. State of M.P.* 1997 (1) SCC (L&S) 489, the Apex Court held that non supply of copy of preliminary inquiry report will not violate the principles of natural justice as the report is only to decide and assess whether it would be necessary to initiate disciplinary action. Thus, this point pleaded by the applicant has no legal sanctity.

8. As to the evidence unearthed during inquiry, it is true that Stationery Clerk, H.K. Swain (S.W.3) deposed that the stationery room could not have been used because he had locked the room at 12.50 P.M. and proceeded to Kalinga Printers, Bamphi Sahi, Cuttack to bring some stationery items and returned at 2.00 P.M. on the date of occurrence. This evidence dealt in Para-5.8 of the inquiry report was not relied upon. Because admittedly in the criminal case instituted against the applicant during investigation he was arrested as an abetter on 27.4.1992 and he could not answer if there could be a duplicate key of the stationery room, and if available, where it could be ? We therefore, do not think any authority enquiring an incident of this nature would not be unreasonable in not placing reliance on this sort of evidence vis-a-vis evidence of other witnesses of the Department. The improbability part sought to be introduced by the applicant taking advantage of evidence of this Stationery Clerk fails.

9. It is no doubt true that in the pleadings as well as

in his representation dated 29.9.1994 (Annexure-A/7) in response to the report of the Inquiry Officer and in his appeal Memo under Annexure - A/9, the applicant pointed out some discrepancies in the evidence of witnesses. All these have been examined and dealt exhaustively by Respondent No.2 as disciplinary authority in order dated 9.12.1994 (Annexure-A/8) and the appellate authority in order dated 17.3.1996 under Annexure-A/10. Law is well settled that Court/Tribunal does not sit as an appellate authority over the factual findings recorded during departmental proceedings and while exercising the power of judicial review, Court cannot normally speak substitute its own conclusion with regard to guilt of the delinquent for that of the departmental authorities. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process. In other words, judicial review not being an appeal from a decision, but a review of the manner in which the decision was arrived at. The Court, while exercising powers of judicial review must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction that authority (Vide Apparel Export Promotion Council v. A.K.Chopra reported in 1999 AIR SCW 274).

In view of this legal position, we cannot assume the jurisdiction of an Appellate Court and reappraise the evidence and if necessary come to a different conclusion. Even then we

exhaustive

have carefully gone through the orders of the Inquiry Officer, disciplinary authority and the appellate authority and we do not come across any instance of wrong appreciation of evidence by them. The findings arrived at by them are based on evidence on record.

10. In the pleadings applicant has averred that Res. 2, viz. Director General, A.I.R., as disciplinary authority passed the impugned order under Annexure-A/8, without consulting the U.P.S.C. and this, according to him is contrary to law. However, his pleading is silent under what provision of rules/law/instructions, such consultation in his case is warranted.

Admittedly the applicant is a Group B Officer. In Para-2 of additional counter filed by the Department, it is pointed out that such consultation in case of Group B Officer is not necessary under U.P.S.C. (Exemption of Consultation) Regulations, 1958. This Regulation finds mention at Pages 152-153 of Swamy's Complete Manual on Establishment and Administration (7th Edition) and it is clear from such Regulation that only in cases where the President of India either is a disciplinary authority or is an appellate authority has to deal with a departmental proceedings only then such consultation is necessary. Even in cases dealt by the President such consultation is not necessary when the officer under charge belongs to Defence Services(Civilian) and where the President proposes to make an order of dismissal/removal/reduction in rank after being satisfied that such action is necessary in the interest of security. It is for this reason the President in this case is the appellate authority before confirming the order of the disciplinary authority sought the advice of the U.P.S.C. For Group B Officer the President of India is not the disciplinary authority. Hence, validity of the order of the disciplinary authority under Annexure-A/8 cannot be questioned, on this ground.

11. As to the quantum of punishment it has been averred that the same is highly disproportionate to the charges framed. On the other hand, the case of the Department is that punishment of compulsory retirement is in no way disproportionate to the

gravity of the charges established. In B.C.Chaturvedi's case reported in (1995) 6 SCC 749 the Apex Court observed that Court/Tribunal normally cannot substitute its own conclusion of penalty and impose some other penalty. If the punishment imposed shocks the conscience of the Courts/Tribunal, it would appropriately mould the relief either directing the authority to reconsider the penalty or to shorten the litigation, in exceptional and rare cases impose appropriate punishment with cogent reasons. Further, in Bijay Kumar Raghbir Prasad case reported in 1999(2) All India Services Law Journal 75, the Apex Court held that no interference in quantum of punishment is warranted if the misconduct proved involves criminal offence. In the case before us the misconduct proved verily establishes ^a ~~the~~ criminal offence. In fact for the same incident a criminal case was also registered against the applicant. Further the punishment of compulsory retirement ~~is~~ in no way shocks our conscience, because the facts leading to misconduct amount to sexual harassment. In this connection it is profitable to refer to ^{the} land-mark decision of the Apex Court in the case of Apparel Export Promotion Council v. A.K.Chopra (Supra). In that case the concerned ^{employee} ~~Respondent~~ was removed from service in a disciplinary proceedings because he tried to molest a ^{woman} lady employee in that office, who was at the relevant time working as Clerk-cum-Typist, by sitting close to her in an isolated place and touched her despite her objection. Though the Delhi High Court set aside the punishment order and ordered reinstatement, with the finding that the employee only tried to molest and in fact had not molested, the Apex Court set aside the order of the High Court and upheld the punishment of removal imposed by the departmental authority by holding that the High Court fell into patent error in interfering with the finding.

of the facts recorded by the departmental authorities and interfering with the quantum of punishment, as if the High Court was sitting as an appellate jurisdiction. The Apex Court further observed that the entire episode reveals that the respondent (charged employee) had harassed, pestered and subjected ~~to~~ Miss X by a conduct which is against moral sanction and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances. Such an action on the part of the respondent would be clearly covered by the term "sexual harassment". The Apex Court, further referring to earlier decisions in ^{Vishaka} ~~Vishaka~~ v. State of Rajasthan reported in 1997 AIR SCW 3043 held sexual harassment includes sexual harassment includes such unwelcome sexually determined behaviour, (whether directly or by implication) as under :

- "(a) Physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) any other unwelcome physical, verbal or non-verbal conduct of sexual nature "

At this stage it is also profitable to quote the observations of the Apex Court in Para-26 of the decision as hereunder :

" An analysis of the above definition shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidation or hostile working environment for her ".

In Para-27, the Apex Court further held that each incident of sexual harassment at the place of work, results in violation of Fundamental Right of Gender Equality and the Right

to Life and Liberty - the two most precious Fundamental Rights guaranteed by the Constitution of India. The Apex Court also observed in Para-29 that in a case involving charge of sexual harassment or attempt to sexually molest, the Courts are required to examine the broader probability of the case and not get swayed by insignificant discrepancies or narrow technicality or dictionary meaning of expression 'Molestation'. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case and such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance.

In the case before us the nature of misconduct established against the applicant is deplorable than the misconduct established against the ~~applicant~~ ^{delinquent} in the Apparel Export Council case (Supra). While in the Apparel Export Council case the delinquent tried to molest the lady employee by sitting close to her and touching her, the applicant before us forcibly dragged Mrs. X demanding sexual favour from her and even physically molested her inspite of her resistance. Going by the observations of the Apex Court in Apparel Export Council case (Supra) the applicant should ~~thank~~ ^{envy} himself lucky that punishment of dismissal or removal from service was not imposed on him. We feel that the Department was sympathetic enough towards the applicant by imposing punishment of compulsory retirement. Thus the punishment imposed needs no interference at all.

12. In the result, O.A. is dismissed with the above observations, but without any order as to costs.

Interim stay order stands vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO//

5-9-20
(G. NARASIMHAM)
MEMBER (JUDICIAL)