

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

Original Application No. 381/96

Date of decision: 23-11-96

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

Shri Sunil Kumar Bhattacharjee, residing Kodalia Kumarpara
PO Kodalia, P.S. Sonarpur, Dist. 24 Parganas South.
retired AEA from the Office of Calcutta Telephones.

: Applicant.

rep. by Mr. B. Chatterjee: Counsel for the applicant.

versus

1. Union of India service through the Secretary, Ministry of Communications, Department of Telecommunication, Government of India, Dak Tar Bhawan, New Delhi.
2. The General Manager, Department of Posts & Telegraphs Calcutta Telephones, Telephone Bhawan, Calcutta 700 001
3. The General Manager (Operations) Department of Post and Telegraph, Calcutta Telephones, Telephone Bhawan, Calcutta 700 001
4. Additional General Manager, Calcutta Telephones, Telephone Bhawan, Calcutta 700 001
5. Additional General Manager(0), Calcutta Telephones, Telephone Bhawan, Calcutta- 700 001
6. The General Manager (North) Calcutta Telephones, 11, Bhopen Bose Avenue, Calcutta 700 004
7. The Area Manager (North), Calcutta Telephones 11 Bhopen Bose Avenue, Calcutta 700 004
8. The Deputy Area Manager(North), Calcutta Telephones, 11, Bhopen Bose Avenue, Calcutta 700 004
9. The Divisional Engineer, 52, Exchange 78/7A, B.T.Road Calcutta 700 002
10. Shri P.K. Mukherjee, Enquiry Officer, Working for gain as Assistant Engineer(0M)Calcutta Telephones, Telephone Bhawan, Calcutta 700 001

11. The Vigilance Officer, Calcutta Telephones, Telephone Bhawan Calcutta 700 001
12. The Director (D.E.& V) Department of Telecommunications, Telecom Commission, Dak Bhawan, Sansad Marg, New Delhi.
13. The Under Secretary, UPSC, New Delhi.

: Respondents.

Mr. M.S. Banerjee: Counsel for the respondents.

ORDER

Mr. M.K. Misra, Administrative Member.

The applicant, Sunil Kumar Bhattarjee, made a third journey to this Tribunal, through this O.A he seeks the following reliefs:

- a) and order do issue commanding the respondents authority, each one of them and/or their servants and/or their subordinates and or assigns, to forthwith cancel, withdraw and /or rescine the impugned order in the name of the President being No.9-2/94 VIG.III dated 17th August by Shri Sunil Misra, Director, D.E.& V Department of telecommunication, New Delhi thereby withholding the entire pension of the petitioner being Annex. Z/1 to the petition.
- b) An order do issue directing the respondent authoritties, each one of them and/or their servants and/or subordinates and/or their ssigns, to forthwith release all pensionary and of retiremental benefits to the applicant for the entire tenure of service.

2. Briefly, the facts of the case are that the applicant joined as Wireman in Telephone Deptt. on 01.02.52. He got promoted to the post of Mechanic/Technician. *Later on he* was served with a suspension order dated 12.04.79 and was also served with a charge sheet, vide which an inquiry was proposed to be held against the applicant. Vide order dated 18.09.80, the applicant was removed from service. *✓*

with effect from 19.09.1980, and the same was confirmed in appeal by the competent authority vide order 22.01.81. Challenging those orders the applicant filed W.P. before the Hon'ble High Court of Calcutta, which was later on transferred to this Tribunal and re-numbered as T.A.10/91. That was the first journey to this Tribunal. This Tribunal vide its order dated 19.06.92 quashed the orders of the Appellate Authority and Disciplinary Authority with the observation that the principles of natural justice was not followed. However, liberty was given to the authorities to pass fresh order after following the principles of natural justice by providing an opportunity to him. The applicant was also given liberty to challenge the final order of the competent authority in case he ~~feels~~ ^{is} aggrieved.

3. Lateron, the Disciplinary Authority, as well as the Appellate Authority passed another order keeping in view the observations of this Tribunal given in order dated 19.06.92 passed in T.A. No. 10/91. The Disciplinary Authority passed an order of dismissal on 31.12.92 dismissing the applicant from service with effect from 19.09.80. The applicant preferred an appeal to the Appellate Authority on 15.02.93. When the same was not disposed of, he made second journey to this Tribunal by filing O.A. No. 1098/93. This Tribunal vide its order dated 16.11.93, directed the Appellate Authority to dispose of the appeal within two months from the date of communication of that order. Applicant was again given liberty to challenge the entire proceedings if he is aggrieved by order to be passed. Meanwhile a new development took place in the manner that he attained the age of superannuation on 31.03.92. The Appellate Authority dismissed the appeal preferred against the order 31.12.92 on 08.02.94. ^(N)

4. Challenging the orders dated 31.12.92 and 08.02.94, the applicant filed O.A. No. 813/94 before this Tribunal. This Tribunal vide its order dated 30.08.94 held that as the applicant attained the age of superannuation on 31.03.92, the orders passed on 31.12.92 and 08.02.94 are not valid and fresh orders under CCS(Pension) Rules ought to have been passed after obtaining the necessary approval of the President of India. This Tribunal quashed the orders dated 31.12.92 and 08.02.94. This Tribunal further directed the respondents if they want to take action, it should be taken within one month from the date of communication of the order and if they proposes to do so, final orders should be passed within a period of six months thereafter. This Tribunal further observed, that if no decision was taken within one month as aforesaid, the applicant should be paid all his dues including pensionary benefits admissible under the rules.

5. The Disciplinary Authority/Appellate Authority while complying with the directions of this Tribunal dated 30.08.94 in O.A. No. 813/94, passed an order dated 17.08.95 with the approval of the President of India, withholding the entire monthly pension on a permanent basis. The said order was served on the applicant on 28.08.95. UPSC's advice was also taken in the matter before obtaining the approval of the President of India.

6. Through this O.A the applicant is challenging the order dated 17.08.95, on the ground that CCS(Pension) Rules were not followed by the Disciplinary Authority. It was further alleged that whether the approval of the President was taken or not is not clear and for this purpose a request was

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made to direct the respondents for production of relevant records before this Tribunal.

7. The learned counsel for the applicant submitted that Disciplinary Proceedings under CCS(Pension) Rules, 1972 viz. under Rule 22 (b) (ii) and (iii) shall not be instituted without the sanction of the President and in this case no sanction of the President was taken before initiating the proceedings against the applicant under CCS(Pension) Rules. The learned counsel also reiterated that the alleged offence having taken place on 12.12.79 and the applicant having been superannuated on 31.03.92, and as the offence took place more than four years before the date of retirement i.e. more than 13 years before the date of retirement, such proceedings are wholly illegal and barred by limitation. Hence the entire proceedings are vitiated. It was further submitted that under Rule 69 of the CCS(Pension) Rules, the applicant should have been granted provisional pension after retirement.

8. This Tribunal vide its order dated 29.07.2002, directed the respondents to produce the records connected with the case.

9. In reply, the respondents submitted that the approval of the President was taken for withholding the entire pension of the applicant after his retirement. Regarding the payment of ^{the} provisional pension it was stated that provisional pension for the period from 01.05.91 to 30.09.95 was paid to the applicant on 13.07.95. In the affidavit filed on behalf of the respondents through the Under Secretary, Ministry of Communication, it was submitted that the advice of the UPSC
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was taken and the approval of the President of India was also taken. It is indicated from the details that the file No. 9-2/94-Vig. III, was submitted to the then Minister of State(Communications) for approval on behalf of the President and the orders were obtained on 17.08.95. The proceedings were closed on 21.08.95 and the same was destroyed on 26.03.2002 after review. The relevant extract of the affidavit dated 09.07.2004 reads as under:

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7. I further state that chronology of the events of the case is pointer to a fortified assumption that there was no reference in the said file indicating that Sri Sunil Kr. Bhattacharjee has approached Hon'ble Central Administrative Tribunal, Calcutta Bench once again by filing O.A. No. 381 of 1996 and hence the said file was marked for destruction after review. It would also not be out of place to mention that the Vigilance Department had all along fully complied with the earlier Orders dated 19th June 1992, 16th November 1993 and 30th August 1994 passed in T.A. No. 10/91, O.A. No. 1098/93 and O.A. No. 813/94 respectively by the Calcutta Bench of the Central Administrative Tribunal and Vigilance Department had no intention at all to defy any further order of the Hon'ble Central Administrative Tribunal. Since Vigilance Department was not aware of filing of O.A. No. 381/96 by Sri Sunil Kr. Bhattacharjee, the file was destroyed on 26th March, 2002. Relevant document showing that the file was destroyed on 26th March 2002 is annexed herewith and marked as Annexure X-4 to this affidavit.

8. That the records of the disciplinary proceedings of Sri Sunil Kr. Bhattacharjee which were dealt with in File No. 9-2/94-Vig.III have been weeded out as the Vigilance Department was not aware about filing of O.A. No. 381/96 by Sri Sunil Kr. Bhattacharjee. "

10. In the light of the above fact, the respondents were unable to produce the record before this Tribunal as directed above. However, the extract of the order sheet and copy of the file movement register had been enclosed with the affidavit to indicate that the file was sent for approval and advice of the President of India. As the

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Tribunal directed the concerned authority to file an affidavit to the effect of weeding out of the relevant record and in compliance with the above direction, the above affidavit was filed by the competent authority.

11. We heard the learned counsel for the parties and also perused the material available on record and gone through the affidavit filed by the competent authority as discussed above. We observe that the directions of this Tribunal issued earlier in T.A./O&S and M.A have been complied with by the concerned authorities including the Disciplinary Authority as well as the Appellate Authority. It is also observed by us that the approval of the President was taken in this case before passing the order by the competent authority in respect of withholding the monthly pension on a permanent basis. We also observe from the affidavit filed by the competent authority that the relevant records had been weeded out on the ground that no action was considered pending in the case of the applicant.

We further observe from the Annex. enclosed with the affidavit i.e. ~~One~~ that a copy of the order sheet/note sheet as well as file movement register that the file was sent to the President of India and the directions of this Tribunal has been complied with. From the charge sheet it is clear that it is a case of bribery and impersonification as Telephone Inspector. // In the light of the discussion above, we are of the considered opinion, that the impugned order dated 17.08.95 had been passed with the prior approval of the President of India and the same is legal in nature and does not suffer from any infirmity.

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