

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

O.A. 1005/1997

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. N.D. Dayal, Administrative Member.

Bidhu Bhusan Saha, son of Late Manindra Nath Saha,
Ex-AO (South) Area Manager's Office (South)
3A, Gariahat Road, Calcutta-700019, Resident of
10, Ganguly Bagan East Road (Ashok Road)
1st Floor, Calcutta-700 084.

- v e r s u s -

1. Union of India service through the Secretary, Ministry of Communications, Department of Tele-Communications, Sanchar Bhawan, New Delhi-110 001.
2. Chief General Manager, Calcutta Telephones, Telephone Bhawan, Calcutta-700 001.

...Respondents

For the applicant : Mr. B. Chatterjee, counsel.
Ms. B. Mondal, counsel.

For the respondents : Mr. M.S. Banerjee, counsel.

Date of order: 22.01.2004

O R D E R

N.D. Dayal, AM

The applicant joined Central Government as a clerk in the P&T Department on 27.8.1959. Having qualified in the departmental examination he was promoted from time to time and finally as Accounts Officer (South) Calcutta Telephones in Office of Area Manager, (South) Calcutta on 30.6.1988. He was chargesheeted by memo dated 16.9.91 under Rule 14 of CCS (CCA) Rules, 1965 on three articles of charge supported by statement of imputation of misconduct or misbehaviour and a list of documents and witnesses enclosed with the charge memo.

The articles of charge were as below:-

" Article - I

That Shri B.B. Saha while posted and functioning as Accounts Officer, Office of the Area Manager (South), Calcutta Telephones during 1988-89 committed gross misconduct in as much as he failed to apply his mind in sanctioning the L.T.C.,

Advance against no/false LTC applications in favour of 14 employees working under Area Manager (South) and the amounts have been disbursed against forged signature of the purported claimants and thereby caused wrongful monetary loss to the tune of Rs.99565/- to the department.

Article - II

That Shri B.B. Saha also allowed retention of Rs.11230/- remitted by Smt. Jhunu Rani Das to the paying cashier without getting the amount adjusted or reporting the matter to his higher authority as well as vigilance section of the department.

Article - III

That Shri B.B. Saha also failed to exercise proper precaution to ensure safety of the incriminating documents which were segregated and kept with him for ultimate collection.

Shri B.B. Saha therefore failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rule, 1964."

2. Since the applicant retired on superannuation on 31.1.1993 the disciplinary proceedings against him were continued under Rule 9 of CCS (Pension) Rules, 1972. The charges were enquired into and a copy of the enquiry report dated 1.11.1994 was supplied to the applicant by memo dated 15.9.95 of the Deptt. of Telecom, New Delhi giving him an opportunity to make such representation as he wished against the findings of the Inquiry Officer (I.O.). The applicant submitted his representation on 8.11.95 contesting the findings in respect of Article III of the charge since Articles I and II of the charge were held not proved by the I.O. While the disciplinary authority agreed with the findings in respect of Article III, it disagreed with the findings relating to Articles I and II and recorded its own findings holding Articles I and II of the charge also indirectly proved against the applicant as follows:-

" Since the charges contained in Article I & II could not be proved for want of relevant documents lost by the charged officer from his custody and the charged officer has been found guilty for the same, therefore, Article I & II of the charges may also be held indirectly proved against him."

3. By Presidential order dated 3.1.96 the applicant was given an opportunity to make his representation against the findings of the I.O. in the light of the proposed disagreement with the same on the basis of evidence adduced during the enquiry. The applicant sent his representation dated 9.2.96 to the Department of Telecommunication, (DOT) New Delhi. After consideration of his representation the case was referred to the Union Public Service Commission (UPSC) for their recommendations by the DOT. The UPSC in its findings conveyed to the Secretary, DOT by letter dated 9.1.1997 held that Articles I and II of the charge were not proved and that Article III of the charge stood proved against him. In the light of their finding and taking into consideration all other aspects relevant to the case, the Commission considered that ends of justice would be met if 25% of the monthly pension otherwise admissible to the applicant is withheld for a period of three years and advised accordingly. The President by order No.8-38/91/Vig-II dated 16.5.1997, taking into account the findings of I.O. the representations dated 8.11.95 and 9.2.96 submitted by the applicant, records of the case, recommendation of UPSC dated 9.1.97 and on an objective assessment of the facts and circumstances of the case in its entirety ordered imposition of the penalty of withholding of 25% of monthly pension otherwise admissible to the applicant for a period of three years. This was communicated to the applicant by letter dated 4.6.1997.

4. Aggrieved by the punishment order dated 16.5.1997, the applicant has prayed that it should be stayed and quashed and the respondents directed to make payment of regular pension, D.C.R.G. and all other retiral benefits to the applicant as admissible to him with interest at the rate of 18% from 1.2.93, (the date of retirement is 31.1.93) within a stipulated period. Incidentally, the applicant had filed O.A. No.1389/96 before this bench of the Tribunal prior to issue of the punishment order. That O.A. was disposed of by order dated 28.8.97 for non-prosecution as the petitioner did not want to proceed with the case.

5. The applicant has contended that since the charges against him do not fall within the types of offences listed under instruction no.3 at page 44 of Swamy's CCS (CCA) Rules, 19th edition his case did not merit action for imposition of major penalty. Apart from questioning the validity of proceedings against him under Rule 9 of CCS (Pension) Rules, 1972, he has raised some of the issues connected with the material before the I.O. that led to the findings on Article III of the charge against him. The applicant has placed reliance on the under-mentioned orders of Hon'ble Supreme Court and CAT to buttress the various grounds taken by him.

Judgment of Apex Court in

- State of Punjab & Ors. Vs. Ram Singh, Ex. Constable (1992 (2) ATJ 290) dated 24.7.92
- A.L. Kalra Vs. The Project and Equipment Corporation of India Ltd. (AIR 1984 SC 1361) dated 1.5.84
- N. Rajarathinam Vs. State of Tamil Nadu and Anr. (1997 (1) ATJ 143) dated 6.9.96

Judgment of CAT in

- E. Vedavyas Vs. Govt. of Andhra Pradesh (1989 (2) ATJ 584) dated 6.7.89
- Vijay Kumar Vs. UOI and Ors. (1996 (1) ATJ 391) dated 13.10.95
- V.N. Saxena Vs. UOI ad Ors. (1995 (2) ATJ 458) dated 22.9.95
- Shri Osihar Vs. UOI and Ors. (1995 (2) ATJ 136) dated 29.3.95
- Rashiklal Vaghajibhai Patel Vs. Ahemadabad Municipal Corporation and Anr. (SC SLJ Vol-II 273 -citation incomplete)

6. In their reply the respondents have denied and disputed the averments made by the applicant asking for the punishment order dated 16.5.97 to be quashed. It is stated that the grounds put forward are neither cogent nor valid and the decisions of the Apex Court have no manner of application in the present case. It is further denied that the conclusion of the Inquiry Officer finding the applicant responsible for the loss is not based on facts and evidence adduced during the enquiry.

7. In his rejoinder, the applicant has reiterated the assertions made in the application and renewed his prayer.

8. At this stage it may be noted that the statutory provisions contained in Rule 11 of CCS (CCA) Rules, 1965 provide for imposition of major penalty on a Govt. servant for good and sufficient reason subject to the further provisions in these rules. Under Rule 14(4) a statement of imputation of misconduct and misbehaviour along with other prescribed documents is required to be delivered to the Govt. servant with the copy of articles of charge, as has been done in the present case initiating the departmental proceedings. The right of the President to withhold or withdraw pension is expressed in Rule 9(1) of CCS (Pension) Rules, 1972 which reads,

"The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement."

The first proviso thereunder provides that the Union Public Service Commission (UPSC) shall be consulted before any final orders are passed. Further as per Rule (2) (a) the departmental proceedings referred to in sub-rule (1) if instituted while the Govt. servant was in service, shall after his final retirement be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Govt. servant had continued in service.

9. We have heard the Id. counsel for both parties and perused the pleadings. Apart from contesting the justification for the disciplinary action taken, the Id. counsel for the applicant vehemently argued that the punishment of withholding of 25% of monthly pension for a period

of three years would imply that after the period of three years the withheld amounts of pension would be released to the applicant in addition to the full pension to be paid to him thereafter. After reference to the statutory provisions of Rule 9(1) of the CCS Pension Rules, 1972 and the dictionary meanings as well, it was concluded during the hearing that there could be no such implication.

10. From page 45 in Swamy's Compilation of CCS (CCA) Rules, 1965 Twenty-Sixth Edition-2001, it is observed that the Govt. of India's instruction No.3 referred to by the applicant was in fact D.G.P. & T., letter No. 6/19/72-Disc. I, dated 29th November, 1972 regarding nature of disciplinary action and quantum of punishment to be commensurate with the gravity of the offence committed. The various types of offences listed by the applicant were contained in the annexure to this letter and the letter itself cautioned that the list was only illustrative and not exhaustive and intended to serve as a guide. As such the plea against major penalty based on this list of offences which are only illustrative, does not stand scrutiny.

11. The applicant has stated that in Ram Singh, Ex. constable (Supra) the Hon'ble Supreme Court has clarified what constitutes 'misconduct' and on that basis claimed he is wrongly charged for misconduct. We have gone through the judgment and find that the applicant has referred only to the middle portion of the complete decision in the case. The full text of the decision is as under:-

" Held that thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, willful in character forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

(Middle portion underlined)

It is noticed that apart from quoting from the judgment the applicant has not explained how the charge made against him is at variance. Further in this case the issue related to dismissal of a Police constable for drunkenness and in that condition abusing the Medical Officer. Various provisions of rules contained in Punjab Police Manual were involved as well as the fact that high standard of discipline and conduct is expected from the Police Force. Therefore, reliance on this judgment is, in our view, of no assistance to the applicant.

12. The applicant has also quoted the Apex Court in A.L. Kalra (supra):

"Where misconduct when proved entails penal consequences it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct, AIR 1984 SC 505 Rel.on. (Para 22)"

He submits that no such specification or definition of misconduct is forthcoming in the instant case. In that case the employee was removed from service after enquiry on ground that the violation of the rules for granting House Building Advances amounted to not maintaining absolute integrity and thus he was found guilty of misconduct. His entire salary was also withheld before initiation of the enquiry. These were the Project and Equipment Corporation of India Ltd. employees (Conduct, Discipline and Appeal) Rules (1975). The Apex Court held that-

"... The Rules granting advance themselves provided the consequence of breach of condition. Therefore there was no ground for initiating disciplinary inquiry as the breach of the Rules did not constitute misconduct. Moreover, by withholding the salary and then removing him from service would expose him to double jeopardy."

Since the facts and circumstances do not square with those of the present case, reference to this judgment does not support the plea of the applicant.

13. It has been stated that the charge alleged to have been proved against the applicant does not come under misconduct let alone grave misconduct and the continuation of disciplinary proceedings against him under Rule 9(2) of the CCS Pension Rules, 1972 was illegal also because the charge against him did not fall within the types of offences listed in Swamy's Compilation of CCS (CCA) Rules. This argument is not tenable in view of the statutory rules already noticed and our observations in para 10 above.

14. The applicant has brought to notice that in this case the incident for which chargesheet was issued, took place in April 1989 and the presidential order imposing punishment was communicated to him by letter dated 4.6.97, after lapse of more than eight years, whereas for a delay of five years in the absence of satisfactory reason and the delay being attributable to Government, the departmental enquiry was quashed by the Hyderabad Bench of this Tribunal in E. Vedavyas (supra). In that case, the applicant was an IAS officer subject to a set of Disciplinary rules separate from the CCS (CCA) Rules, 1965 relevant to the applicant. Besides, the fact that the applicant retired on 31.1.93 and the proceedings were required to be converted into those under Rule 9 of the CCS Pension Rules, 1972 is also peculiar to the present case. In the case referred by the applicant the disciplinary action was only at the enquiry stage and as many as 13 charges had been framed about 6 to 7 years after the event. Thereafter over a period of nearly 5 years there were 116 hearings and 55 adjournments. Three Enquiry Officers and two Presenting Officers were changed. These features are not amenable to comparison with those in the present case. Further, the applicant here was working as Accounts Officer with Calcutta Telephones and the Disciplinary Authority was vested in the President as represented by the Ministry of Communications, Department of Telecommunication in New Delhi. Consultation with the UPSC at Delhi was also a statutory obligation. We are, therefore, of the considered view that the facts and circumstances in the case relied upon by the applicant are different from those in the present case.

15. The applicant has also raised arguments similar to those placed before the I.O. and alleged that the conclusion of the I.O. was perverse and not based on facts and evidence adduced during enquiry. It is seen from the Inquiry Report that I.O. had taken note of the evidence before him in coming to the conclusion that the documents which were in the custody of the applicant were lost because of his negligence and as such he was responsible for this. The applicant has further contended that the I.O. has held the charge as proved on mere suspicion whereas he should have taken into account the principle of preponderence of probability. The applicant has relied on the decision of this Tribunal in Vijay Kumar (supra) to assert that suspicion cannot be held as proof. That was a case in which production of false casual labour card at the time of appointment was alleged and the applicant had expired during the pendency of the O.A. Certain lacunae in the conduct of enquiry were also pointed out. It was held that no evidence at all was tendered to establish that the applicant had produced a fake casual labour card. However, it is an admitted fact in the present case that the incriminating documents were kept in the custody of the applicant in his almirah from which they were lost. As such in our considered view, it would not be correct to say that there were no facts before the I.O. and his conclusion was based on mere suspicion.

16. The applicant is aggrieved that two witnesses listed at items 27 and 28 in Annexure-IV to the chargesheet were not called for examination and re-examination and that this failure vitiated the enquiry. He has relied on decision of this Tribunal in V.N. Saxena (supra) wherein the order of removal was challenged inter-alia on the grounds that material witness to unfold the narrative was not examined. In fact, there were other grounds also on the basis of which the enquiry was found to suffer from infirmity. This is, however, a point which would relate to the appreciation of evidence on record and in Secretary to Government, Home Department & Ors. Vs. Srivakundathan,

1998 (9) SCC 553 (para 3) the Hon'ble Supreme Court has held:-

" The Tribunal was not sitting in appeal over the findings of the Enquiry Officer, nor was the Tribunal required to examine the nature of the evidence which was led as if it were a criminal trial. Unless the findings were perverse, or unless it was found that there was no evidence whatsoever before the Enquiry Officer, the Tribunal could not have set aside the findings of the Enquiry Officer merely by expressing dissatisfaction with the evidence which was led."

We, therefore, do not find any force in the contention of the applicant.

17. It is submitted by the applicant that the Public Service Commission is supposed to scrutinise the decision of the I.O. to see whether it is tenable according to law, but it has simply recorded what I.O. decided and acquiesced in the conclusion of the I.O. based on mere suspicion. The Commission is also not supposed to decide the quantum of punishment and/or advise the Disciplinary Authority in this regard as such advice would prejudice the Disciplinary Authority, which should consider the nature of punishment itself as decided by the Supreme Court in the case of N. Rajarathinam (supra). The UPSC tenders advice in disciplinary matters to the competent authority under Art. 320 (3)(c) of the Constitution of India. As brought out by this Tribunal in A.M. Bhardwaj, IAS Vs. UOI and Ors., (2003 (3) SLJ 389) the object is to give assurance to the services that an independent body has considered the action proposed to be taken against a particular person and also to afford the Government an unbiased advice on matters affecting morale of the Public Services. In N. Rajarathinam (supra) relied upon by the applicant, the Tamil Nadu Public Service Commission had recommended a lenient view in a matter of demanding and acceptance of illegal gratification which was not agreed to. The present case relates to consultation with the UPSC under a specific Article of the Constitution of India and the facts and circumstances of the two cases being different, in our view the decision of the disciplinary authority here cannot be contested on the basis of that case.

18. Lastly, it is alleged that the Disciplinary Authority was biased as evident from the fact that it held the Articles of charge I and II as also indirectly proved whereas there is no such proof recognised in legal jurisprudence. He contends that the heavy punishment awarded reflects non-application of mind on the part of the disciplinary authority and suggests that the Tribunal would be justified in interfering with the penalty as per the order of this Tribunal in Shri Osihar (supra) wherein it was held that the Tribunal would not interfere in the penalty unless the quantum is so disproportionate to the gravity of the misconduct that the order would appear to be of a vindictive nature. In the present case it is noted that the disciplinary process followed has been in consonance with statutory rules and cannot be faulted as illegal or arbitrary. An independent statutory authority such as the UPSC with expertise in the matter has tendered its advice on withholding of 25% of monthly pension for three years based on their finding and after taking into consideration all other aspects relevant to the case. The reasoned and speaking presidential order imposing the punishment upon the applicant took into account the finding of the I.O., the representations of the applicant, records of the case and recommendations of the UPSC as well as an objective assessment of the facts of the case in its entirety. We, therefore, do not consider that the applicant's proposition is justified. However, the competence of the disciplinary authority to decide upon the nature and quantum of punishment is well recognised. The Apex Court in UOI and Ors. Vs. Upendra Singh (1994) 27 ATC 200) has in para 6 quoted the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons (1992 Suppl (2) SC (312):-

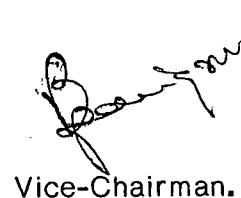
" Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

Further, in Secretary to Govt., Home Department and Ors. Vs. Srivaikundathan, 1998 (9) SCC 553, at para 4, it has been held by the Hon'ble Supreme Court that:-

" The Tribunal was also not justified in interfering with the punishment which was imposed on the respondent. It is for the disciplinary authority to consider the punishment which should be imposed."

19. Therefore, in the facts and circumstances of the case, we are not inclined to intervene in this matter. The application is dismissed. No costs.

Member (A)



Vice-Chairman.