

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 30.3.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 68/1989

C. Ravindranathan

Applicant

vs.

1. Union of India represented by
Secretary, Ministry of
Communication, New Delhi

2. Post Master General, Kerala
Circle, Trivandrum

3. Director of Telecommunications
(North) Trichur Circle,
Trichur

4. Telecom District Manager,
Calicut and

5. Enquiring Authority
(V. Mukundan)
Lecturer, RTTC, Trivandrum

Respondents

M/s. M. K. Damodaran, C. T. Ravikumar & K. S. Saira Counsel for the applicant

Mr. K. Narayana Kurup, ACGSC

Counsel for the respondents 1-4

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

This is the second time the applicant approaches this Tribunal for quashing a punishment of compulsory retirement imposed on him. Absence from duty, abuse and assault of Junior Engineer are the offences charged against the applicant. Are they so serious

enough for compulsorily retiring an officer? We are not to decide that issue in this case.

2. Originally when he was working as the Technical Supervisor the punishment of compulsory retirement was passed on 20.12.1985. It was confirmed by the appellate authority by his order dated 4.7.1986. He filed O.A. 841/86 mainly on the ground that he was not offered an opportunity to have the assistance of another government servant. This contention was found favour with the Tribunal. Punishment was quashed by Annexure-II judgment dated 25.11.1987. The operative portion reads as follows:

"We quash the order of the third respondent dated 20.12.1985 as confirmed by the order of the second respondent by his order dated 4.7.1986 and direct the third respondent to hold an enquiry afresh after affording an opportunity to the applicant to take the assistance of another Government servant to present the case on his behalf, in the light of what has been stated in this order. Since the applicant is out of service, we also direct that the enquiry shall be conducted expeditiously and at any rate concluded within a period of six months from the date of receipt of copy of this order."

(emphasis ours)

3. The applicant filed M.P. K.365/87 in O.A. 341/86 for direction to reinstate him or in the alternative to issue a clarification that he is entitled to be reinstated in service pending a fresh enquiry. This Tribunal dismissed his ~~petition~~ on 11.1.1988 making it clear that no direction for reinstatement was made in the final order passed on 25.11.1987.

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4. When fresh enquiry commenced as directed in Annexure-II judgment, the applicant again raised before the enquiry officer in his sitting on 18.2.1988 that no enquiry could be proceeded against under Rule 10(4) of the CCS(CCA) Rules since he is out of service. This matter was referred to the Divisional Engineer, Telecom., Calicut, who passed an order on 26.2.1988 clarifying the position in the following manner:

"The petition submitted by the ex-official to the Tribunal to issue a direction to the department to reinstate him in service before the enquiry is started afresh, has been dismissed by the Hon'ble Tribunal on 11.1.88. Hence it is not necessary to reinstate Sri C. Raveendranathan, in the department at present to conduct the enquiry. It is therefore requested that the enquiry may be proceeded further and completed within six months i.e. before 7.6.1988; as stipulated by the Hon'ble Central Administrative Tribunal in the above order."

5. The applicant also filed a separate petition on 12.3.1988 before the Divisional Engineer, Telecom., Kozhikode to reinstate him and pass order under Rule 10(4) of the CCS(CCA) Rules. This was rejected as per proceeding, Ext. R-4(a) No. Q. 1992/DISC/11/14 Calicut, dated 15.3.1988, informing him that the department is not in a position to reinstate him in service at present and that he may co-operate with the enquiry proceedings so as to complete it before 7.6.1988 itself.

6. Thereafter the enquiry was completed and Annexure-IV report was submitted finding the applicant guilty of

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both the charges shown in Annexure-I memo of charges viz: (i) On 26.8.1983 applicant was not available for duty at about 19.00 hours, he has not marked relief in the log book and he was found playing cards in the line staff rest room, and (ii) he used vituperative language to and assaulted Shri P. Kuttan, Junior Engineer (Indoor), Tirur. Accepting the findings the disciplinary authority passed Annexure-III order which was confirmed in appeal by Annexure-VI order. He is challenging both these orders in this application.

7. The applicant raised the following grounds:

- (i) the enquiry is bad, illegal and against Rule 3 of the CCS(CCA) Rules and Rule 136 of the P & T Manual because of the failure of reinstatement of the applicant after Annexure-II judgment;
- (ii) The copy of the enquiry report was not given to the applicant and hence the punishment is illegal and unsustainable; and
- (iii) This is a case of no evidence at all to prove the charges levelled against him.

8. Having gone through the records of the enquiry and after considering the arguments addressed by the counsel we are inclined to take the view that this Tribunal while passing Annexure-II judgment adverted to the fact that the applicant 'is out of service' and hence xxx directed the enquiry to be completed within a fixed period of six months presumably giving freedom to the respondent to conduct the enquiry without passing any order of reinstatement of the applicant. Penalty order alone was set aside merely

on technical ground relegating the parties to the original stage at which the enquiry started so as to enable them to complete the enquiry in accordance with law after complying with all statutory formalities. The Tribunal took the same stand when M.P. No. K-365/87 for direction for reinstatement or a clarification was filed by the applicant. Accordingly on the basis of the order of the Tribunal the Divisional Engineer, Telecom. Kozhikode passed Ext. R-4(a) order dated 15.3.88 rejecting the request of the applicant for reinstatement and this order remains unchallenged.

9. The legal position regarding the right of reinstatement of delinquent employee during fresh enquiry as laid down by the Supreme Court is as follows:

"We find no substance in either of the points urged on behalf of the appellant. The earlier order was quashed on a technical ground. On merits a second enquiry could be held. It was rightly held. The order of reinstatement does not bring about any distinction in that regard. The Government had to pass that order because the earlier order of reversion had been quashed by the High Court. Without reinstating the appellant, it would have been difficult, perhaps unlawful, to start a fresh enquiry against the appellant. The observations of this court in the last paragraph of the judgment in State of Assam v. J. N. Roy Biswas (1976) 2 SCR 128 are not applicable to the facts of the present case and do not help the appellant at all."

This was followed by Kerala High Court in the decision reported in A. K. Balakrishnan Nair v. The Supdt. of Post Offices, Ernakulam, 1982 KLJ 149:

"This observation is brought to my notice to contend that if rule 10(4) is not applicable a fresh enquiry is permissible only after reinstating the petitioner in service. I hold that this submission is well founded, on the principles enunciated in the two Supreme Court decisions, which means that the deemed suspension in the peculiar circumstances of this case cannot be sustained in law."

10. The Supreme Court in *Khem Chand V. Union of India and others* (AIR 1963 S.C. 687) held as follows:

"There is therefore no difference worth name between the effect of Rule 12(4) on a government servant the penalty of dismissal removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon and the effect of R.12(4) on another government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both the cases the government servant will be deemed to be under suspension from the date of the original order of dismissal, except that where in a departmental enquiry a government servant was not placed under suspension prior to the date when the penalty was imposed, this result will not follow as R.12(3) would not then have any operation."

11. A case of compulsory retirement appears to be distinguishable from dismissal and removal from service. The Supreme Court held as follows in *Chief Justice of Andhra Pradesh v. A. Dikshitulu* (AIR 1979 SC 193):

"It is well settled that compulsory retirement simpliciter, in accordance with the terms and conditions of service, does not amount to dismissal or removal or reduction in rank under Article 311 or under the Service Rules because, the Government servant does not lose the terminal benefits already earned by him."

But in a case of compulsory retirement involving an element of punishment, of course Article 311 would be attracted. However, when a decision taken for compulsory retirement of an

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officer is set aside by a Court or Tribunal, he can be deemed to be in service unless he has already attained the age of superannuation unlike in the case of an order of dismissal or removal from service in which case a separate order to put him back in service is unavoidable.

12. Without going into these niceties or examining the decisions on the peculiar facts and circumstances of this case we can come to the conclusion that the Tribunal was of the view ^{that} when the penalty order ^hs was set aside by Annexure-II judgment, ^h that the respondent could very well proceed with the enquiry without passing any order of reinstatement of the applicant. However, ⁴³ we are holding ^h that so long as the order Ext. R-4(a) passed by the Divisional Engineer, Telecom. remains unchallenged, the applicant cannot rely on these decisions and contend that the enquiry is wholly void simply on the ground of failure of his reinstatement in service.

13. We have no hesitation to hold that the further contention of the applicant that the enquiry is against Rule 136 of the P & T Manual is also without any substance. Rule 136 of the P & T Manual is quoted in Ext. R-4(b) which contemplates certain procedural formalities which are to be ^{completed} ~~completed~~ with only when the applicant is in service. For the reasons already stated a fresh order of reinstatement of the applicant

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presumably not found was necessary on the facts of this case in the light of Annexure-II judgment. Moreover the procedure in Rule 136 of the P & T Manual contemplates a case of original disciplinary enquiry and not an enquiry which is occasioned due to the direction of the Tribunal as in this case after setting aside the penalty order already passed against the applicant. Hence, there is no substance in the first ground raised by the applicant.

14. The next contention raised by the applicant is that the copy of the enquiry report was not given to him before imposing the major punishment of compulsory retirement. So the penalty is null and void. Such a contention had not been taken by the applicant either in Annexure-V appeal memorandum filed before the appellate authority or before this Tribunal in this application. Presumably this is based on the decision in Premnath Sharma's case (1988 (6) ATC 906) but it has been stayed by the Supreme Court. However, we are not inclined to interfere in this case at this stage merely on this technical plea especially when there is no evidence before us either to substantiate or disprove this contention. Accordingly, we hold that there is no merit in this second ground.

15. Finally it was urged that this is a case of no evidence and the charges cannot be sustained on the

evidence relied on by both the enquiry officer and the disciplinary authority. This is factual and we are not sitting in appeal over the disciplinary proceedings. The Supreme Court in several cases while dealing with the review jurisdiction of Tribunal over the factual finding in an enquiry held 'when once a conclusion is adduced from the evidence, it is not permissible to assail it even though it is possible on evaluation of the same evidence by some other authority to arrive at a different conclusion.' If authority is needed, the following cases do establish namely this principles, Khardah & Co. Ltd. v. Workmen (AIR 1964 SC 719), Benaras Light Electric and Power Co. Ltd. v. The Labour Court II, Lucknow and others (1972 SC 2182).

16. One important aspect which really escaped the notice of ~~by~~ both the disciplinary authority and appellate authority on the facts and circumstances of this case is whether the punishment of compulsory retirement imposed consistently ~~xxxxxxxxxxxxxxxxxx~~ by all the authorities on the facts of this case and before and after Annexure-II judgment really warranted in the interest of justice. No reason is given for the award of compulsory retirement in this case. The punishing authority should apply its mind to the nature and gravity of the offence, as well as the facts of the case as held in Hardayal Singh v. State of Himachal Pradesh, 1977 (1) SLR 327. A mechanical determination of the quantum of punishment is always bad.

17. The charge alleged and proved in this case appears to be comparatively not of a very serious nature. On 26.8.83 when the supervisor inspected the place of duty at 19.00 hours the applicant was found playing cards in the nearby staff rest room and he also used vituperative language and assaulted the Junior Engineer on the mere asking about his absence. This being a first offence in his service a lesser punishment would have been tried to make him more efficient and a disciplined officer in the interest of justice. We have a feeling that the penalty imposed in this case is excessive and disproportionately high and it requires a reconsideration.

Really the penal portion of the disciplinary proceedings in this case is disturbing our mind but our jurisdiction is very much limited after the verdict of the Supreme Court in Parma Nanda's case (1989 SC (L&S) 303). We cannot pass any order in this case except directing the applicant to file a review petition before the statutory authority raising this question. The applicant could have raised this question before the revisional authority by filing a properly prepared review petition or revision. He has no explanation why he failed to do so after Annexure-VI order of the appellate authority.

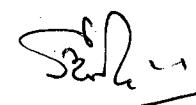
18. In the result we dismiss this application, but with the observation that this is a fit case for

reviewing or revising authority to reconsider the quantum of punishment, in case the applicant thinks it fit and proper to approach such authority by filing a review or revision. If he files such a petition within ten days from today it shall be disposed of by the concerned authority considering the quantum of penalty according to law within a period of three months from the date of receipt of such petition.

19. We think it would be fair and proper on the facts and circumstances of the case and in the light of our decision on the question of reinstatement to direct the respondents to pay subsistence allowance to the applicant at the rate admissible under law from the date of compulsory retirement of the applicant viz. 20.12.1985. Accordingly we do so. The respondents shall make the payment within a period of three months from the date of receipt of a copy of this judgment.

20. The application is disposed of with the above directions but without any order as to costs.


(N. Dharmadan)
30.3.90
Judicial Member


30.3.90
(S. P. Mukerji)
Vice Chairman

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