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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW Circuit Bench

Registration T.A. No.1336 of 1987
(W.P. No.1403 of 1987 of the High Court)
(of Judicature at Allahabad, Allahabad)

Sri G.I. Punwani .... Petitioner

Versus

Union of India & Others ..... Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr.K.Obayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

Writ Petition described above is before us under Section 29 of the Administrative Tribunals Act, 1985 for quashing an order dated 18.8.82, Annexure-15 whereby the petitioner G.I.Punwani was ordered to be compulsorily retired from service; there is a consequential prayer to direct the respondents to treat the petitioner to have continued in service till 31.1.83 when he would have attained the actual age of superannuation and also be paid difference of Pay & Allowances etc.

2. The facts of the cases are not in dispute. The petitioner was an Assistant Controller of Imports and Exports when he was considered to have committed certain acts of misconduct in issuing thirteen licenses for import of spare parts of certain machinery in violation of the Import Policy of the Govt. of India. A chargesheet dated 16.4.80, Annexure-11 was served upon him. He made representa-tion in defence. The Inquiry Officer conducted the proceedings and ultimately on 2.2.81 he submitted

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the enquiry report, Annexure-16 to the disciplinary authority. The disciplinary authority, respondent No.2, Chief Controller of Imports and Exports found one of the charges not proved, agreed with the findings of the Inquiry Officer in respect of other charge and considereditsappropriate to direct the retirement of the petitioner compulsorily by the impugned order dated 18.8.82, Annexure-15. Counter and Rejoinder have been exchanged and we have been taken through the record by Shri R.N.Trivedi, the learned counsel for the petitioner and Shri Ashok Mohiley for respondents.

3. Shri Trivedi has raised two points. It is urged, firstly, that the first charge related to the alleged violation of paras 18, 19 and 21 of the Import Policy of the Govt. of India but the Inquiry Officer did not find those paragraphs to be violated and nevertheless recorded a finding that the petitioner had violated the spirit of para 78 of that Policy. The disciplinary authority agreed with that finding. The argument is that once the charge of violation of paras 18,19 and 21 of the Import Policy was found not substantiated, it was not open to the Inquiry Officer/disciplinary authority to hold that there was a violation of the spirit of para 78 of the Policy. Shri Ashok Mohiley, however, refers to the charge as drafted and contained in the Inquiry Officer's report as well as in the memorandum of charges and points out that there is no mention in the Article of charge that the petitioner had violated paras

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18, 19 and 21 of the Import Policy. Annexure-11A contains the article of charges and having set out the value of the spare parts imported, mentions that import licenses have been issued "against the laid down policy of the Govt. to various parties....". True enough this article does not state in terms that paras 18,19 and 21 of the Import Policy had been violated. Shri Trivedi however emphasized that there can be no valid statement of charge unless it is specific and definite as required by Rule 14(3)(i) of the C.C.S.(CCA) Rules. Clause (i) of Rule 14(3) unmistakably requires that " the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge"has to be drawn up. It is plain enough that a bare statement that the license had been issued "against the laid down Policy of the Government" does not contain definiteness which is essential according to this clause. In that sense that article of the charge could also be characterised as vague which is a vitiating feature. Even so, the article of charge has to be read alongwith imputations of misconduct and misbehaviour. Clause (ii) of Rule 14(3) requires a statement of the imputations of misconduct or misbehaviour"in support of each article of charge" also be drawn up in addition to the definite and distinct article of charge under clause (i) of that Sub Rule. In other words, for a proper understanding and appreciation of the charges one may go to the imputations of misconduct or misbehaviour. This

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statement of imputations is contained in Annexure-11B. This document unmistakably mentions that the relevant provisions of the Import Policy which had been violated by the issue of the import licenses were contained in paras 18,19 and 21. A composite consideration of the statement of imputations of misconduct and the Articles of charge thus leave no manner of doubt that the disciplinary enquiry had been held for violation of the policy as contained in paras 18,19 and 21. The Inquiry Officer's report makes it absolutely clear, and it is not disputed, that violation of those paragraphs of the Import Policy was not proved. That being so, it was not permissible to rely upon para 78, much less upon the "spirit" of para 78 of the Policy as a substitute for paras 18,19 and 21.

4. In this connection Shri Ashok Mohiley referred to the explanation to Rule 14 (23)of the C.C.S.(CCA) Rules. That Sub Rule lays down the contents of the report which may be prepared by the Inquiry Officer. Among them are the findings of each article of charge and reasons therefor. The explanation 1 is as follows :-

"If in the opinion of the inquiring authority the proceedings of the enquiry establish any Article of charge, different from the original article of charge, it may record its findings on such articles of charge". Shri Mohiley contends that

in view of this explanation it was permissible for the Inquiry Officer to record a finding of violation of para 78 of the Import Policy even if the violation of paras 18,19 and 21 was not established. However, before the Inquiry Officer could do so he was bound to ensure that a reasonable opportunity was given to the petitioner of defending himself against the new article of charge in view of the proviso added to the explanation which runs as follows :-

"provided that the findings on such article of charge shall not be recorded unless the Govt. servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge".

5. The expression "such article of charge" signifies the new article of charge which is not contained in the article of charge or the statement of imputations of misconduct. It is not shown that the petitioner had a reasonable opportunity of defending himself against the alleged violation of para 78 of the Import Policy.

6. Shri Trivedi further contends in this connection that what the Inquiry Officer thought to be proved was not a violation of para 78 of the Policy but ~~that~~ was the spirit of that para. There is worth in this contention that there is nothing like a spirit of a para of a Policy in the context of disciplinary enquiry which is required to be held on definite charges. We are of the opinion, therefore,

that it was not open to the Inquiry Officer to hold that the petitioner had violated the spirit of para 78 of the Import Policy.

7. Shri Ashok Mohiley has also invited our attention to Rule 15(4) of the C.C.S. (CCA) Rules to contend that the disciplinary authority need not give an opportunity to the delinquent employee for a proposed penalty. That question has not arisen in this case. All that we have to see is whether the disciplinary authority had arrived at a valid and legal finding of misconduct for which the petitioner had been chargesheeted. Since the disciplinary authority concurred with the findings of the Inquiry Officer on the article of charge of violation of paras 18,19 and 21 of the Import Policy, he obviously fell into the same error into which the Inquiry Officer had fallen; he confirmed a finding of violation which was not open for him to do.

8. The second point correctly urged by Shri Trivedi is that although the Inquiry Officer found another article of charge to be established namely of the petitioner's being in possession of assets disproportionate to the known sources of his income, the disciplinary authority held that charge to be not proved. That being the position, there could be no basis on which the disciplinary authority passed the impugned order, Annexure-15 dated 18.8.1982 of compulsory retirement.

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9. For reasons recorded above, this petition succeeds. We quash the impugned order dated 18.8.82, Annexure-15 retiring the petitioner compulsorily from service and direct that the respondents shall consider the petitioner to have continued in service till he might have attained the age of superannuation in the natural course of things. We also direct that the respondents shall pay the difference of Pay and Allowances etc. and other pecuniary benefits which the petitioner may have been entitled but for the impugned order of compulsory retirement. Parties shall bear their costs.

Member (A) Vice Chairman

Dated the 14th Dec.,1990.

RKM