

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

O.A. No. 497 of 1991.

Ajay Kumar Tandon

Applicant.

versus

Union of India and others

Respondents.

Shri O.P. Srivastava Counsel for Applicant.


Shri A.K. Chaturvedi Counsel for Respondents.

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Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Deputy Field Officer in the Cabinet Secretariat in the year 1973. According to the applicant he was given various awards and commendations but vide order dated 6.12.80 he was dismissed from service without enquiry and opportunity of hearing. A strike took place and as per allegations the applicant was one of the employees who participated actively and as such in the opinion of the competent authority it was not reasonably practicable to hold a regular enquiry. Admittedly, pen down strike took place and the applicant also participated in the pen down strike. The applicant filed an appeal stating therein the circumstances in which all the employees



proceeded on strike. The enquiry was dispensed with. Similar matter went before the Supreme Court in which the applicants were directed to file appeal. The applicant filed appeal against the same before the appellate authority and the appellate authority, after taking into consideration various facts, allowed the appeal in part; in as much as the dismissal order was set aside and was substituted by punishment of reduction of pay of the applicant from Rs 530- to 425- in the time scale of Rs 425-15-530-EB-15-560-20-600 for a period of three years with the directions that the applicant will not earn increments of pay during the period of reduction which will not have the effect of postponement of future increments of pay on its expiry. The above order dated 29.1.86 was passed keeping in view the applicant's good previous record of service and that the applicant realized his mistake and gave assurance that he would serve the department with the fullest loyalty, sincerity and discipline and would not give scope whatsoever for any complaint of any nature. It was thereupon the applicant moved an application for clarification on 21.3.88 praying that he may be brought at par with those who had also participated in pen down strike but had been subjected to payout of the strike period only and had not suffered any loss, i.e. salary, increments, promotion etc and to release the by- annual increments of the said period i.e. between

6.12.80 to 9.2.86 i.e. the date of dismissal to the date of resumption of duties after reinstatement. The appellate authority passed an order on the application dated 21.3.88 and the following order was passed:

"The order of dismissal dated 6.12.1980 will be deemed to have been set aside with effect from 7.12.1985 and Shri Tandon reinstated in service with effect from that date. The punishment order reducing his pay by seven stages from Rs 530- to Rs 425/- in the time scale of Rs 425-15-530-EB-15-560-20-600 for a period of three years will be effective from the date of his reinstatement in service i.e. from 7.12.1985. It is further directed that Shri A.K.Tandon will not earn his increments of pay during the period of reduction, which will not have the effect of postponing his future increments of pay on its expiry. However, with effect from 1.1.1986 the date on which the recommendations of the Fourth Pay Commission were implemented, the pay of Shri Tandon will be fixed at the minimum of the revised scale i.e. Rs 1640- in the revised scale of Rs 1640-60-2600-EB-75-2900.

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Feeling aggrieved with the above order the applicant filed review application which was also rejected vide

order dated 11.6.91. Thereafter the applicant filed mercy petition before the President of India), in which also no interference was made.

2. The learned counsel for the applicant contended that the punishment order has wrongly been passed ^{the} and the appellate authority while considering/appeal and passing order in appeal, imposed yet another punishment. He also contended that no punishment order would have been passed without holding an enquiry and giving opportunity of hearing to the applicant. The plea of discrimination has also been taken.

For the applicant the enquiry would have been made in the matter and applicant who was in RAW and participated in the Pen Down strike, it was reasonably not practicable to hold the enquiry. Subsequently, the punishment of removal was substituted by reinstatement and placing the applicant at a lower stage of pay and deprivation of the applicant of certain monetary benefits. In the circumstances, it cannot be said that in not holding the enquiry the respondents acted against any constitutional provision ^{or} guarantee. The learned counsel for the applicant contended that a number of other persons who participated in the strike were not punished so excessively but the applicant has been singled out, as they were given salary etc. but the applicant was given maximum punishment. The applicant

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was Secretary of the Union and rather admitted all these facts and for the others it cannot be said that the role was the same, as the applicant took a leading role or instigated the strike and as such the applicant's role was considered higher than others. In the circumstances discrimination cannot be said to be done. It is true that the appellate authority did not give any personal hearing to the applicant. No interference can be made in this order. The learned counsel for the applicant contended that he moved an application for clarification of the earlier order but rather giving clarification, the punishment order was passed, and the respondents, while passing the order did not comply with the provisions of F.R.54. The learned counsel for the applicant contended that the respondents have not been able to point out in what manner the appellate authority reviewed his own decision. May it be so. There appears to be no substantial difference in two orders and it cannot be said that the appellate authority reviewed the order. The applicant wanted to clarify the order and the clarification was given. However, much before that, the applicant admitted his guilt and gave assurance for his good behaviour which was not considered and it is still open for the respondents to reduce the punishment in view of the conduct and guarantees of the applicant and assurances given by him the respondents.

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So far as the deprivation of salary between the years 1980 to 1985 is concerned, it appears that the matter has not been thoroughly gone through. It will be open for the applicant to approach the respondents within a period of one month from the date of communication of this order and the respondents, while considering the matter, can also consider the grievance of the applicant regarding the past and future increments of the applicant, within a period of three months. But for the above observations, the application is otherwise dismissed.

No order as to costs.

A.M.

V.C.

Shakeel/

Lucknow: Dated: 16.11.92.