

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 341 of 1996

Date of order : 12.10.2001

( Dictated in Open Court )

R.N.Sinha son of Late Shri Sita Ram Singh, resident of Professor's Colony, North Shashtri Nagar, Police Station- Shashtri Nagar, Town and District-Patna. .... Applicant.

- Vrs. -

1. Union of India, through the Hon'ble President of India, New Delhi.
2. The Chairman, Telecom Commission, Department of Tele-Communication, Sanchar Bhawan, Ashok Road, New Delhi-1.
3. The Secretary to the Govt. of India, Ministry of Communication, Department of Telecommunication, West Block No.1., Wing No.2, Ground Floor, Sector-1, R.K.Pura, New Delhi.
4. The Senior Deputy Director General (BW) Sanchar Bhawan, Ashoka Road, New Delhi-1.
5. The Chief General Manager, Telecommunication, Bihar Telecom Circle, Patna.
6. The Desk Officer (Vig-II), Government of India, Ministry of Communication, Department of Telecom, West Block-1, Wing No.2, Ground Floor, Sector -1, R. K. Pura, New Delhi. ... Respondents.
7. The Secretary, UPSC, New Delhi.

Counsel for the applicant : Shri R.K.Singh

Counsel for the respondents : Shri H.P.Singh, ASC.

C O R A M

Hon'ble Shri Justice B.N.Singh Neelam, Vice-Chairman

Hon'ble Shri M.P.Singh, Member (Administrative)

O R D E R

By Justice Shri B.N.Singh Neelam, Vice-Chairman :-

Heard Shri R.P.Singh, learned counsel for the applicant. By filing this O.A, he has made prayer for grant of relief/reliefs detailed below :-

- (i) To quash the impugned punishment order dated 26.4.1995 (Annexure-9);
- (ii) To issue direction upon the respondents to give all consequential benefits to the applicant and also to consider his case for promotion which had not been done due to the pendency of the aforesaid departmental proceeding and the impugned punishment order dated 26.4.1995;
- (iii) To declare the advice dated 27.3.1995 given by the UPSC as contained at page 107 of the O.A. as perverse mechanical and bad in law as well as on facts on the basis of the facts stated in para-4 and ground taken in para-5 of this application.

2. It is pointed out that the article of charges were so set out against the present applicant, a copy of which is annexed and marked as Annexure-1. The enquiry officer submitted its report (Annexure-5) holding that the article of charges were not proved. The disciplinary authority gave disagreeing report on 19.10.1993, (Annexure-6), differing with the report of the enquiry officer and that the applicant had been given an opportunity as to file representation within ten days of the receipt of the memorandum but only on the basis of evidence adduced during the enquiry. The representation so filed by the

charged officer, i.e. the applicant on 11.11.1993, a copy of which is annexed and marked as Annexure-7 and then on 25.1.1994, the applicant added some facts in support of his representation dated 11.11.1993, a copy of which is annexed and marked as Annexure-8. The disciplinary authority considering the circumstances in totality and on an objective assessment of the entire case, imposed the penalty of withholding of increments of pay for two years without cumulative effect on Shri R.N.Sinha, which was so indicated in the order dated 26.4.1995, after going through the representations dated 11.11.1993 and 25.1.1994 and in response to the advice dated 27.3.1995 so given by the UPSC so called for on 11.7.1994. The appeal preferred was not entertained as detailed in Annexure-10 detailing that as per Rule 22 of the CCS (CCA) Rules, 1965, no appeal shall lie against an order made by the President.

3. The learned counsel for the applicant submitted that because of the penalty so imposed, he has suffered a lot. It is further submitted that on 25.1.1994 also an addendum was filed (Annexure-8), which was not duly considered by the disciplinary authority and order imposing the penalty was passed on the basis of the advice of the UPSC mechanically. The learned counsel for the applicant referred to some of the reported cases, such as AIR 1976 SC 785, 1983 PLJR page 92. His main grievance is that, at the time of passing the orders by the disciplinary authority, the representations so filed particularly, Annexure-8 was not considered.

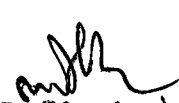
4. Shri H.P.Singh, learned ASC representing the respondents is also heard at length. It has been submitted on behalf of the respondents that there is nothing wrong in the order, which is under challenge and all the due opportunities were given to the applicant prior to imposing penalty as detailed. It is also pointed out that in the background of the charges set out against the applicant, the penalty imposed cannot be said to be severe and shocking to the conscience and further more if the persons junior to the applicant were so promoted, it was nothing but the consequential effect of the departmental proceedings against the charged officer, in which increment of two years was withheld. The learned ASC also pointed out that the applicant, i.e the charged officer <sup>to</sup> was given all due opportunities before imposing penalty, represent and the procedure prescribed was strictly followed. With regard to points raised that Annexure-8 was not considered, it is submitted that such stand so taken by the applicant has no base. While imposing penalty, it has been incorporated in the order dated 26.4.1995 of duly considering also Annexure-8. By looking into Annexure-6, it is further submitted that, it transpires that the disciplinary authority had given opportunity of giving representation. That being the position, it is submitted by the learned counsel for the respondents that the impugned order which is under challenge, cannot be said to be unjust, or against the principle of natural justice.

It is further submitted that the O.A. has thus, no leg<sup>y</sup> to stand.


5. Heard the learned counsel for the parties and also perused the records alongwith annexures thereunder.

6. In our considered opinion , the applicant i.e. the charged officer was given all the opportunities by way of filing representations and which was so duly considered. All the formalities of procedure were also adopted in the instant case. Further the penalty so imposed, in our considered opinion, cannot be said to be unjustified in the background of the facts and circumstances, and in the background of the case that while passing the order to impose penalty, the disciplinary authority duly considered the advice of the UPSC as also the representations of the applicant. The penalty so imposed also cannot be said to be shocking to the conscience. Reported cases so referred are also distinguishable in this case.

7. That being the position, we find much of strength in the argument so advanced by the learned ASC representing the respondents, and since there is no merit in this O.A. <sup>As so filed,</sup> ~~So find~~ the same stands dismissed. No order as to cost.

  
( M.P. Singh )  
Member (Admn.)

MPS.

  
( B.N. Singh Neelam )  
Vice-Chairman