

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No.

520/87

198

DATE OF DECISION 3.1.1990

Dr. A. S. Khanra

Petitioner

Advocate for the Petitioner(s)

Versus

The Director, NCL, Pune & Another

Respondents

Mr. Anil Kumar (for J. S. Cama)

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M. B. Mujumdar, Member (J),

The Hon'ble Mr. P. S. Chaudhuri, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

(M. B. MUJUMDAR/
MEMBER (J)).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 520/87.

Dr. A.S. Khanra.

... Applicant.

V/s.

The Director,
 National Chemical Laboratory,
 Pashan,
 Pune & another.

... Respondents.

Coram: Hon'ble Member (J), Shri M.B. Mujumdar,
 Hon'ble Member (A), Shri P.S. Chaudhuri.

Appearances:-

Applicant in person.
 Respondents by Mr. Anil Kumar
 (for Mr. J.P. Cama).

Oral Judgment:-

(Per Shri M.B. Mujumdar, Member (J)) Dated: 3.1.1990

In view of the final order we are proposing to pass in this case, we will state only the relevant facts.

2. The applicant is a highly qualified Scientist. He joined the National Chemical Laboratory (NCL) as Junior Scientific Assistant in 1971. In 1976 he was promoted as Senior Scientific Assistant. In 1980 after his return from U.S.A. he was selected for the post of Scientific 'B' in the National Chemical Laboratory. He joined that post on 31.10.1980. Thereafter, he continued to work in the Organic Synthesis Division under Dr. A.V. Ramarao, Scientist 'F' who was Deputy Director of the National Chemical Laboratory.

3. Along with memorandum dt. 25.1.1982 a statement containing three articles of charge was served on the applicant. The charges were as under:

" Article I

That Dr. A.S. Khanra while functioning as Scientist 'B' during the period from 31.10.1980 to date committed misconduct in as much as he

failed to comply with the directives contained in the office note dated 1st December, 1981, of Dr.A.V.Rama Rao, Scientist 'F', and Head of the Division of Organic Chemistry (Natural Products), and Office Memorandum No.NCL-65(9)/AO/81 dated 11th December 1981, and contravened provisions of Rule 3 (1)(ii) of the Central Civil Services (Conduct) Rules, 1964 as made applicable to the employees of the Council of Scientific and Industrial Research.

Article II

That Dr.A.S.Khanra, while functioning in the aforesaid office and during the aforesaid period committed misconduct in as much as he conveyed threats of physical and/or mental harm as also inducement to Dr.A.V.Rama Rao with a view to further his service interests and thereby acted in a manner unbecoming of a Council employee and thus contravened provisions of Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 as made applicable to the employees of the Council of Scientific and Industrial Research.

Article III

That Dr.A.S.Khanra, while functioning in the aforesaid office and during the aforesaid period committed misconduct in as much as he used intemperate and offensive language in his communications dated 7.12.1981, 12.12.1981 and 14.12.1981, and thereby acted in a manner unbecoming of a Council employee and thus contravened provisions of Rule 3 (1)(iii) of the Central Civil Services (Conduct) Rules, 1964 as made applicable to the employees of the Council of Scientific and Industrial Research."

4. As the applicant denied the charges, Shri S.P. Kaushik, Administrative Officer of the Regional Research Laboratory, Bhopal was appointed as Inquiry Officer (IO) and Mr.G.Narsing Rao, Finance and Accounts Officer of the National Chemical Laboratory was appointed as Presenting Officer(PO). Dr.A.V.Rama Rao, Scientist 'F' NCL, Mr.S.Venkataraman, Sr.Stenographer, NCL and Mr.S.A.Nair, another Senior Stenographer were examined before the IO on 31.5.1982 and 1.6.1982. They were cross-examined by the applicant. Some relevant documents were also produced before IO. The applicant did not examine himself before IO nor did he lead any oral evidence. He however,

produced some documents. He submitted a written defence statement on 1.6.1982 itself. After considering the evidence, IO submitted his report dt. 2.8.1982 holding that all the three charges framed against the applicant were established.

5. The Disciplinary Authority, i.e. the Director of NCL, agreed with the findings of IO and held that the charges were established and imposed the penalty of removal from service on the applicant by order dated 17.8.1982.

6. The applicant had preferred an appeal dt. 27.9.1982 but it was rejected by the Appellate Authority, i.e. the Joint Secretary (Administration) of the Council of Scientific and Industrial Research, New Delhi by his order dt. 12.3.1983. The order needs to be quoted here and it reads as under:-

" O R D E R

WHEREAS Dr.A.S.Khanra, ex-Scientist 'B', National Chemical Laboratory, Pune, submitted an Appeal dated 27.9.82 against the orders dated 17.8.1982 of the Director, NCL, Pune, imposing upon him the penalty of 'removal from service';

AND WHEREAS the Director-General,SIR, has examined the said Appeal of Dr.A.S.Khanra;

NOW THEREFORE, the DGSIR has been pleased to order as under:

'I have considered the appeal dated 27.9.82 of Dr.A.S.Khanra against the orders of Director, NCL imposing upon him the penalty of 'removal from service'. I have also perused the charge sheet, the inquiry report and all other connected record.

I find that:-

- (a) the procedure laid down under CCS(CC&A) Rules, 1965 has been complied with,
- (b) Dr.Khanra has been given full opportunity to defend himself,

(c) the findings of Disciplinary Authority are warranted by the evidence on record, and

(d) the penalty of removal from service imposed upon Dr.Khanra is adequate.

I, therefore, confirm the penalty of 'removal from service' imposed upon Dr.Khanra". "

7. The applicant had preferred a review petition dt. 25.8.1986 to the President of the Council of Scientific and Industrial Research but it was not disposed of.

8. Before coming to this Tribunal the applicant had filed Regular Civil Suit No.2525/82 in the Court of Civil Judge, Senior Division at Pune, challenging the order of removal from service on various grounds.

The defendant i.e. the Director of NCL, resisted the suit by filing a written statement. The learned Civil Judge who heard the suit held that the suit was not maintainable as proper parties were not made parties to the suit and the learned Civil Judge dismissed it on 14.2.1986. Thereafter, the applicant had also filed a Writ Petition No.1607/87 in the High Court of Judicature at Bombay, but on 17.7.1987 the High Court allowed it to be withdrawn as the petition for the reliefs claimed lay with this Tribunal.

9. Thereafter on 11.8.1987 the applicant has filed the present application under section 19 of the Administrative Tribunals Act, 1985 for quashing and setting aside the order of removal from service dt. 17.8.1982 as well as the appellate order passed on 12.3.1983.

10. The respondents have filed an exhaustive written statement challenging the application. We have heard the applicant in person at length. He has given his written arguments also twice. We have also heard Mr.Anil Kumar (for Mr.J.P.Cama), learned advocate for the respondents.

11. The applicant attacked the order of removal from service as well as the order of the appellate authority on various grounds. But the scope of the jurisdiction of this Tribunal is limited. The scope is explained by the Supreme Court in a recent judgment in *Union of India v. Parmananda*, A.I.R. 1989 S.C. 1185. We may quote para 27 of the Judgment which reads as under:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

12. Thus it is clear that we cannot sit in appeal against the judgment of the disciplinary authority who has awarded the penalty of removal from service to the applicant or against the judgment of the appellate authority who confirmed the order of the disciplinary authority. The appellate authority can decide whether the penalty awarded is adequate or not and even if it finds that there is no flaw in the proceedings but is

of the view that the penalty is excessive it can reduce it, But that cannot be done by this Tribunal.

13. We have already quoted the order of the appellate authority. It is clear from it that the various points raised by the applicant in his appeal memo were not decided at all by the appellate authority. It was passed without hearing the applicant. The points required to be decided under Rule 27(2) of the CCS(CC&A) Rules are lifted from the rules just for negativing them. This procedure is held to be illegal by the Suprme Court in Ramchander v. Union of India A.I.R. 1986 S.C. 1173. In para 24 of the Judgment the Supreme Court has observed as follows:

"The majority in Tulsiram Patel's case (AIR 1985 SC 1416) unequivocally lays down that the only stage at which a Government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal..... An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

14. The appellate authority has passed the order without affording a personal hearing to the applicant. It is not at all reasoned, dealing with the contentions raised

by the applicant in the appeal. Hence we are constrained to set it aside. In Ramchander's case the Supreme Court allowed the appeal and directed the appellate authority i.e. the Railway Board to hear and dispose of the appeal after affording a personal hearing to the applicant on merits by a reasoned order in conformity with the relevant rules. We propose to pass a similar order in this case.

15. It is necessary to point out that we are not deciding this application on merits because the views which we may take are likely to prejudice the appellate authority while disposing of the appeal on merits.

16. Lastly, we may point out that the disciplinary authority i.e. the Director of the NCL has passed the impugned order of penalty before supplying a copy of the Inquiry Officer's report to the applicant and without giving him an opportunity of making a representation against the findings of the Inquiry Officer. This is held to be bad by a Full Bench Judgment of this Tribunal in P.K.Sharma v. Union of India, 1988(6) ATC 904. But the operation of that judgment is stayed by the Supreme Court and the matter is now pending in the Supreme Court. The cases in which that point arises are stayed by us till the Supreme Court decides the appeal against that judgment. Still we could hear this application because the applicant stated on 3.8.1988 that he does not want to rely on the judgment of the full bench in P.K.Sharma's case. He has also given a written statement to that effect.