

13

CAT/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 367/87

198

~~TXXXXXX~~

DATE OF DECISION 27.10.1989

Shri P. Anand Raj Petitioner

Shri V.G. Rege Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent s

Shri M.I.Sethna Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

[Signature]

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 367/87

Shri P. Anand Raj
T/5/5, Cement Line,
JCO's Quarters,
Kirkee, Pune 411 003.

.. Applicant

V/S.

1. Union of India through
the Secretary to Govt. of India,
Ministry of Defence, New Delhi.

2. The Commandant,
512, Army Base Workshop,
Kirkee, Pune 411 003.

.. Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances:

Mr.V.G.Rege
Advocate
for the Applicant

Mr.M.I.Sethna
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 27.10.1989

(PER: M.B.Mujumdar, Member (J))

The applicant, Shri P.Anand Raj, was appointed as Lower Division Clerk (LDC) in the Office of the Commandant, Army Base Workshop at Kirkee, Pune i.e. Respondent No. 2, in 1955. He was promoted as Upper Division Clerk in 1971, as Office Superintendent Gr.II in 1975, as Office Superintendent Gr.I in 1982 and as Electrical Mechanical Engineer Officer (Civilian) on 1.12.1983 on probation of 2 years. He was holding the same post when he was compulsorily retired from service by impugned order dated 24.11.1986.

2. In January, 1982 he submitted an application for Leave Travel Concession (LTC) for himself and his four family members for going to Srinagar from Pune and back by

first class and obtained Rs.2500/- as advance. However, without performing the journey he submitted a claim in April along with a stamped receipt for Rs.2500/- showing that he and members of his family had travelled from Pune to Srinagar by taxi. On investigation, it was found that the applicant had not travelled at all and he had produced a forged and bogus receipt from the owner of the taxi. For this offence, a charge-sheet was submitted against him under Sections 467, 471 and 420 read with 511 of the Indian Penal Code. Owner of the taxi Shri Panadi was shown as accused No. 2 in the charge-sheet and he was charged under Sections 471 read with 511 and 109 of the Indian Penal Code. The Charge-sheet was numbered as Criminal Case No. 52/83 and after trial, the Chief Judicial Magistrate, Pune held the applicant and Shri Panadi guilty of the offences of which they were charged. However, after considering the report of the Probation Officer, Pune both of them were released on probation of good conduct on each executing a surety bond of Rs.2000/- for a period of two years and to appear and receive sentences when called upon during that period and in the meantime to keep peace and be of good behaviour. The Govt. of Maharashtra had preferred criminal appeal No. 12/85 in the High Court of Bombay against the order of releasing them on probation of good conduct, but that appeal was dismissed on 10.9.1985.

3. However, the Under Secretary to the Govt. of India in the Ministry of Defence issued a memorandum dated 18.3.1985 to the applicant informing that the President after carefully considering the judgment of the Chief Judicial Magistrate, Pune was of the opinion that his conduct exhibited dishonest motive and behaviour unbecoming of a Government servant and had formed a view that applicant is not a good person for retention in Government service. Hence, the President proposed

: 3 :

of dismissal

to impose a penalty to ~~dismiss~~ him from service in terms of Rules 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The applicant was called upon to make a representation against the proposed penalty within a period of 15 days from the date of receipt of the memorandum. Accordingly, he submitted his representation dated 13.4.1985 but the explanation given by him was not accepted by the President and the penalty of compulsory retirement from service w.e.f. the date on which the order would be served on him was imposed on the applicant. The order was received by the applicant on 5.12.1986 and since then he is not in service. However, he has received all the retirement benefits and is also getting pension according to rules. The applicant had preferred a revision against the order of compulsory retirement but it was rejected on 19.1.1987.

4. On 20.5.1987 the applicant has filed the present application under Section 19 of the Administrative Tribunal Act for setting aside the order dated 24.11.1986 as well as the order dated 19.11.1987 by which his revision application was rejected. He has also prayed for reinstatement and all consequential benefits including arrears of wages.

5. The respondents have resisted the application by filing the affidavit of Brig. K.K.Sehgal. He has given all the facts and circumstances of the case.

6. We have just now heard Mr.V.G.Rege, learned advocate for the applicant and Mr.M.I.Sethna, learned counsel for the respondents.

7. At the fag end of his argument Mr. Rege submitted that the penalty of compulsory retirement imposed on the applicant be reduced to some lesser penalty.

8. Before deciding whether the penalty imposed on the applicant should be reduced or not, we may refer to the points which were urged before us. Relying on the recent judgment of the Supreme Court in Union of India v. K.S. Subramanian 1989 (10) Administrative Tribunals Cases 513, Mr. Rege submitted that the Central Civil Services (Classification, Control and Appeal) Rules 1965 are not applicable to the applicant because he was serving as Electrical Mechanical Engineer (Civilian) in the Defence Services. There cannot be any doubt that the Supreme Court has held in that case that these Rules are not applicable to the civilians drawing salary from Ministry of Defence, like the applicant. However, as the respondents have passed the impugned order under Rule 19 (1) of these very Rules, we are proposing to decide this case on the basis of these Rules. To hold otherwise at this stage, will create more complications.

9. Secondly, it was urged by Mr. Rege, at one stage, that Rule 19(1) of these Rules will not apply to the facts of this case because the learned Chief Judicial Magistrate has not awarded any penalty but released him on probation of good conduct and behaviour. Rule 19(1) lays down that notwithstanding anything contained in Rule 14 to Rule 18, where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. Mr. Rege laid stress on the words, "penalty is imposed" and submitted that as no penalty was imposed on the applicant by the learned Chief Judicial Magistrate, this provision was wrongly applied by the respondents. But the Supreme Court has considered this aspect in Divl. Personnel Officer, Southern Railway v. T.R. Challappan, AIR 1975 SC 2216

and held that the view that where the Magistrate convicting an employee of a criminal charge releases him on probation under the Probation of Offenders Act, no penalty is imposed on him within Rule 14(1) of the Railway Servants(Discipline and Appeal) Rules 1968, is not correct. This rule is analogous to Rule 19(1) of the CCS(CCA) Rules, 1965 with which we are concerned in this case. Hence, it cannot be said that the respondents have wrongly applied the provisions of Rule 19(1) of the Rules.

10. However, in view of the facts of this case, we are inclined to accept the last submission of Mr. Rege for reducing the penalty. The relevant portion from the judgment of the learned Chief Judicial Magistrate was read over to us. After holding the applicant guilty of charges framed against him, he was asked by the Chief Judicial Magistrate about the sentence. The applicant stated that he is the only earning member in the family consisting of himself, his wife and 5 school going children. The advance which was given to him towards LTC was recovered from his pay from July 1982 onwards and if any sentence of imprisonment was awarded to him, he would be out of service. In view of these circumstances his advocate had urged that he should be given benefit of the provision of the Section 4 of the Probation of Offenders Act 1980. Thereafter report of the probation officer was called for. The probation officer recommended that the benefit of Section 4(1) of Probation of Offenders Act should be given to the applicant. After considering the report and other circumstances, the learned Chief Judicial Magistrate released the applicant on probation of good conduct for two years on his executing a bond of Rs.2000/- for a period of 2 years, as stated earlier. In our view, the disciplinary authority should not have lost sight of all the circumstances while imposing the penalty of compulsory retirement on the applicant.

11. In Shankar Dass v. Union of India, 1985 SC cases (L&S) 444, also the applicant, Shankar Dass, was convicted under Section 409 of the Indian Penal Code on the charge of breach of trust in respect of a sum of Rs.500/- only and released under Section 4 of the Probation of Offenders Act. However, as a result of the conviction, he was dismissed from service in April 1964. In 1966 he filed a suit in the court of Sub-Judge, First Class, Delhi for setting aside the dismissal from service mainly on the ground that since he was released on probation, it was not permissible to the authorities to award him the penalty of dismissal from service. The suit was dismissed holding that he was liable to be dismissed under clause (a) of the second proviso to Article 311(2) of the Constitution. That decision was confirmed by the First Appellate Court. However, his second appeal was allowed by a Single Judge of the High Court, but the Government's Letters Patent appeal (LPA) against that judgment was allowed by a Division Bench of the High Court on 10th October 1972. The Supreme Court allowed the appeal against that decision of the Division Bench. In para 7 the Supreme Court has observed that :

"It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him insofar as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

In result, the Supreme Court set aside the judgment of the Delhi High Court ^{dated} on 10.10.1972 and directed that the appellant shall be reinstated in service forthwith with full back wages from the date of his dismissal until reinstatement. Hence, though we are not holding that the respondents were not justified in awarding some penalty to the applicant either because the CCS(CCA) Rules are not applicable or because Rule 19(1) of these rules is not applicable, still we hold that in view of the facts and circumstances of the case, the penalty imposed on the applicant ^{is} ~~was~~ too harsh.

12. In a recent judgment in Union of India v. Parma Nanda, ^{the Supreme Court} the Supreme Court 1989 (1) SCALE 606 has held that this Tribunal has ordinarily no power to interfere in punishment awarded in departmental proceedings on the ground of it being excessive or disproportionate to the misconduct proved, if the punishment is based on the facts and is not mala fide. But at the same time the Supreme Court has carved out an exception to this proposition, viz. in cases where the penalty is imposed under clause (a) of the second proviso to Article 311 of the Constitution. Thus, according to the Supreme Court, where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. As we are of the view that the penalty is unreasonable in view of the facts of the case and especially taking into account the fact that the applicant was released on good conduct by the learned Chief Judicial Magistrate, we are inclined to interfere in the punishment and reduce it to one of reduction to the lower post of Office Superintendent Gr.I.

13. We, therefore, pass the following order :-

(i) The penalty of compulsory retirement from service imposed on the applicant by the impugned order dated 24.11.1986 (at Ex.1 to the application) is hereby set aside and in its place, the following penalty is imposed on the applicant :-


(a) The applicant is reduced to the lower post of Office Superintendent Gr.I and he should be placed at the bottom of the scale of that post w.e.f. 5.12.1986. He should be given increments due to him in that scale but he should not be given promotions. He will also not be entitled to restoration to any higher grade.

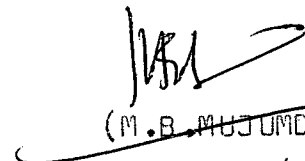
(ii) The respondents should reinstate the applicant on the above basis. The applicant shall have to refund the pension and other retirement benefits which he has received and the same should be adjusted against the arrears due to the applicant on the basis of above directions. However, if some amount is still found due from the applicant to the respondents, the applicant should refund it.

(iii) The directions in clause (ii) should be complied with within three months from the date of receipt of a copy of this order.

(iv) The applicant is in occupation of Government quarters allotted to him while he was holding the post of Electrical Mechanical Engineer in view of the interim order passed by this Tribunal. The respondents should recover the rent or licence fee from him on the basis of his pay which he drew in November 1986 of the post of Electrical Mechanical Engineer which he was holding then. If the respondents feel that he is not entitled to that quarter because of his reduction to the post of Office Superintendent, they may give him some civilian quarter befitting the post of Office Superintendent Gr.I and thereafter the applicant shall have to vacate the military quarter which is in his possession at present.

(v) Parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J)

M.P.No. 158/90 for
extension of time
fixed on 9/3/90.

486
8/3/90