

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 532/88

Transfer Application No: ----

DATE OF DECISION 18-8-93

Mukesh Hari Tillu Petitioner

Mr.D.V.Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr.V.S.Masurkar Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri/ Ms.Usha Savara, Member(A)

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

M.S.D
(M.S.DESHPANDE)
VC

NS/

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.532/88

Mukesh Hari Tillu,
8, Londhe Mahal,
Opp. Jai Ganesh Talkies,
Mulund (East)
Bombay - 400 081.

.. Applicant

-versus-

1. Union of India,
through
Secretary,
Ministry of Science &
Technology,
Govt. of India,
New Delhi.
2. Director General of
Meteorology,
Govt. of India,
New Delhi.
3. Director,
Meteorology Department,
Colaba Observatory
Bombay Regional Centre,
Colaba, Bombay - 400005.
4. Shri R.K. Mishra,
Director,
Colaba Observatory,
Bombay Regional Centre,
Colaba, Bombay - 400005. .. Respondents

Coram: Hon'ble Shri Justice M.S. Deshpande,
Vice-Chairman.

Hon'ble Ms. Usha Savara, Member(A)

Appearances:

1. Mr. D.V. Gangal
Advocate for the
Applicant.
2. Mr. V.S. Masurkar
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 18-8-1993
(Per M.S. Deshpande, Vice-Chairman)

By this application the applicant challenges the order of dismissal passed against him as a result of departmental enquiry.

2. The applicant was employed as Senior Observer at Bombay Airport. He claims to have brought several irregularities in the working of the department in the notice of the authorities and on some of them action was taken. The applicant wanted to go abroad

Verdict

...2/-

but as he could not get permission to obtain the passport he obtained the passport by mentioning that he was in private service. Thereafter without letting the Government know he accepted an appointment in the Sultanate of Oman from 2-6-83 to 14-5-87. Certain other officials, whose names were mentioned in para 6.6 of the application, also worked during the abovesaid period at Muscat.

The Respondent No.4, P.K.Mishra, Director of India Meteorological Department, Bombay Regional Centre instituted police enquiries against the applicant and ^{had} been told about his engagement at Muscat singled him out for victimisation. One of the Officers S.C.Saha who was also employed in Muscat returned to India at the instance of P.K. Mishra as a promise was doled out to him that he would be reinstated without any punishment.

Chargesheets were issued to 5 of the officials but the applicant was the only person who was charged with having suppressed that he was not in Govt. service and had obtained the passport by representing that he was in private service and remained absent from duty during engagement in Sultanate of Oman. An enquiry was instituted upon a chargesheet dtd. 22-4-1987 against the applicant. The applicant admitted the charge and then an order dismissing him from service came to be passed on 10-11-1987. Applicant's appeal against that order was dismissed.

3. Though the learned advocate for the applicant ~~had raised~~ addressed several points in the application, the only one pressed at the hearing was that the applicant was singled out for discrimination in the matter of conduct of the enquiry and punishment. No reference was made to any of the alleged irregularities in the matter of

holding the enquiry. In fact the charges were admitted by the applicant and not much could be made about the manner in which the enquiry came to be held. The grounds on which the plea of discrimination was sought to be based were that Shri Mishra instituted police enquiry only against the applicant though he was aware of the fact that everybody was working at Muscat, that the chargesheet against the applicant alone alleged that the applicant was working at Muscat, while in respect of others it was said that they were absconding, that the other employees had made false statement to the knowledge of Shri Mishra, that they were either ill or had some other reasons for their unauthorised absence and it was only on the basis of the applicant's admission that he worked at Muscat the punishment came to be imposed on him and finally while all others were posted at Bombay after their return from Muscat the applicant was transferred out of Bombay.

4. The contention of the respondents was that they were not aware of the five of the officers taking up employment in Oman but disciplinary action had been completed against them also i.e. against S.C.Saha, M.B.Alam, S.K.Mane, G.B.Rebello, and K.Chandrasekhar for their unauthorised absence and the penalties of stopping their increments for various periods were imposed on them. There was evidence against 5 others viz. B.P.Singh, N.S.Manral, K.Rajagopalan, Y.S.P.Rao, and P.M.Dodhi that they had taken up employment with foreign government and B.P.Singh and P.M.Dodhi came to be dismissed from service by the disciplinary authority while disciplinary proceedings continued against N.S.Manral, Y.S.P.Rao and K.Rajagopalan.

 The allegation of discriminatory treatment is therefore baseless and no special favour were shown



to any of the officers. With regard to other charges it is also alleged that ^{while} the applicant had admitted having taken up employment in Oman there was no evidence in the possession of the Regional Director that some of the others had taken up employment there and so the charge of unauthorised absence alone be framed against them.

5. The ultimate position with regard to the enquiries against several officers has been ~~set~~ ^{set} out in the chart annexed as R-2 and it is apparent that Shri C.V.V.S.Rao was dismissed from service for unauthorised absence and accepting of foreign assignment without obtaining approval of the authorities. The position with regard to M.K.Rao, S.K.Gupta, B.P. Singh, P.M.Dhodi, Y.S.P.Rao, K.Rajagopalan and K. Chandra Kumar ~~were~~ also the same. Mr.N.S.Manral who was charged ~~of~~ ^{with} unauthorised absence from duty and joined foreign service was compulsorily retired as a major penalty.

6. Considerable criticism was offered by the learned counsel for the applicant on the omission on the part of respondent No.4 against whom specific allegations of bias against the applicant ~~has~~ ^{were} made out. He filed a ~~separate~~ ^{joint} reply in his individual capacity as well as on behalf of all the respondents under his signature denying all the allegations of bias.

7. With regard to discriminatory treatment we have already pointed out that the applicant had not been singled ~~out~~ ^{for being} proceeded against on the charge of obtaining a passport by showing that he was in private service and obtaining employment in Oman. There were several others who faced with charges

and were dismissed. The submission was that S.C.Saha was given a more favourable treatment and the charge of having accepted employment abroad had not been framed against him and so he escaped with a comparatively minor punishment of stoppage of increment and was allowed to continue in service.

8. We gave due consideration to this aspect. The contention of the respondent was that applicant had accepted that he had accepted employment in foreign country whereas there was no material to show that S.C.Saha had also accepted employment abroad and therefore the enquiry against Saha did not proceed on the charge of accepting employment abroad. It would be ultimately for the authorities to determine on the basis of the material they have what charges should be framed against the delinquent and which of the charges they would be in a position to substantiate. If the authorities objectively take a particular view in respect of one of the several officers against whom enquiries had been initiated, the action taken on the basis of the material and upon the admission made by the applicant cannot be viewed as an instance of discriminatory treatment.

9. Reliance was placed on the observations in Sengara Singh and others vs. State of Punjab and others, reported in 1983(3)SLR 685. There all the 1100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the appellants and if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, Supreme Court held that there was no justification

in so

(LH)

in treating the appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. It was under those circumstances the respondents were held to have failed to explain the distinguishing features and put all of them in the same bracket. In the present case, as already pointed out, the majority of the officers against whom enquiries were initiated faced identical charges and met with punishment of dismissal. This is not a case therefore where the applicant can be said to have been discriminated against. The distinguishing features in the case of Saha have been pointed out by the respondents in their reply. We, therefore, find it difficult to hold that the applicant was subjected to any discriminatory treatment in the matter of holding of the enquiry or the imposition of penalty.

10. We must, however, record our displeasure about the manner in which the respondents drafted the sur-sur rejoinder and sought to obtain the directions of the Tribunal to the applicant to disclose the material which he had in his possession in respect of the other employees so that further action can be taken against them. The advisors of the respondents had completely lost sight of the position that they were before a Tribunal and that the Tribunal is not a part of investigating department and has the duty of only adjudicating upon material which is placed before the Tribunal. The sooner the respondents disabuse themselves of their notions the better it would be for all concerned and it would go a long way to save the precious time of the Tribunal and enable the Tribunal to concentrate on

15

- : 7 :-

the matters really before the Tribunal.

11. In result we see no merit in the application which is dismissed.

M. Savarkar
(M.S. SAVARKAR)

Member(A)

M. S. Deshpande
(M.S. DESHPANDE)
Vice-Chairman