

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~SECRET~~

NEW BOMBAY BENCH, NEW BOMBAY 400614

OKAXXXX
T.A. No. 1/86

198

DATE OF DECISION 12.11.1987

SHRI E. BASHYAM

Petitioner

SHRI P.S. VARADAYYA

Advocate for the Petitioner(s)

Versus

THE HEAD, BARC, BOMBAY-85

Respondent

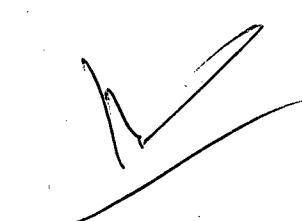
SHRI J D DESAI (FOR SHRI M.I. SETHNA) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. L.H.A. REGO, MEMBER (A)

The Hon'ble Mr. M.B. MUJUMDAR, MEMBER (J)

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? *Yes*



(13)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

TRANSFERRED APPLICATION NO. 1/1986

Shri E. Bashyam
Flat No. 68
Bhawani
Anushaktinagar
Bombay 400094

Applicant

V/s.

1. The Union of India
through the Secretary
Old Yacht Club
Department of Atomic Energy
Chhatrapati Shivaji Maharaj Marg
Bombay 400039.
2. The Head
Personnel Division
Bhabha Atomic Research Centre
Central Complex, Trombay,
Bombay 400085
3. The Controller
Bhabha Atomic Research Centre
Central Complex, Trombay,
Bombay 400085.
4. Director
Directorate of Estate Management &
Estate Officer, Dept. of Atomic Energy,
Bhagirathi, Anushaktinagar,
Bombay-400094

Respondents

Coram: Hon'ble Member(A) L H A Rego
Hon'ble Member(J) M B Mujumdar

Appearance:

Shri P S Varadayya
Advocate
for the applicant

Shri J D Desai
(for Shri M I Sethna)
Advocate
for the respondents

ORAL JUDGMENT

[Per: M B Mujumdar, Member(A)]

Dated: 12.11.1987

The applicant E. Bashyam had filed the suit
in the City Civil Court at Bombay on 16.2.1985. Along

with the suit, a petition for permission to file the suit as an indigent person was also filed. The petition was numbered as Pauper Petition No. 2/85. But before the enquiry of that petition could be completed the suit is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985 by an order dated 23.12.1985.

2. The essential facts for the purpose of this judgment are these. The applicant was initially taken on the Workcharged Establishment of the Bhabha Atomic Research Centre (BARC) on 1.7.1960. He was appointed as a Helper with effect from 1.2.1962. He was promoted from time to time, to higher posts and when he was removed from service he was working as Tradesman(C). Along with the memorandum dated 4.8.81, nine articles of charge with necessary accompaniments were served on him. The charges were as under:

Article-I

Shri E. Bashyam while functioning as Tradesman 'C', Central Workshops, has acted in a manner unbecoming of a Government Servant in that on November 20, 1980, he pasted posters indicating "Demands day 20th November 1980, for bonus and other demands of Co-ordination Committee, Central Government Employees and Workers', Bombay", on the notice board of Civil Engineering Division Canteen and on the wall of the main entrance near the time office of Central Workshop without obtaining permission of the competent authority to do so.

By his aforesaid conduct, the said Shri Bashyam has contravened the provisions of sub-rule (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-II

The said Shri Bashyam while on duty at Central Workshops, on November 20, 1980, entered into arguments with V N K Pillai, Assistant Security Officer on duty on the latter having got the posters pasted by Shri Bashyam at Civil

Engineering Division Canteen and near Central Workshops entrance removed and also took away the latter's spectacles lying on security desk at Central Workshops uttering that he will not return it unless the posters are returned to him.

By this aforesaid conduct, the said Shri Bashyam has acted in a manner unbecoming of a Government servant in contravention of sub-rule (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-III

The said Shri Bashyam while on duty at Central Workshops participated in a 'Dharna' at Central Workshops on March 25, 1981, and as Shri C N Gopalan, Tradesman 'C', Central Workshops did not participate in the dharna the said Bashyam removed the bi-cycle valves of Shri Goipalan and punched the tubes and tyres of the cycle.

By his aforesaid conduct, the said Shri Bashyam has acted in a manner unbecoming of a Government servant in contravention of sub-rule (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-IV

The said Shri Bashyam while not on duty on April 15, 1981, on account of his weekly off, entered Central Workshops premises and punched his duty card for both incoming and outgoing on the said date, with ulterior motive.

By his aforesaid conduct, the said Shri Bashyam has acted in a manner unbecoming of a Government servant in contravention of sub-rule (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-V

The said Shri Bashyam has shown indiscipline and insubordination in that on April 14, 1981,

at about 1450 hours, he shouted at and abused Shri B V Somayaji, Scientific Officer (SE), Central Workshops, while the latter was discussing the progress of work with Shri J S Uppin, Scientific Officer (SB), near punching machine at ground floor of Central Workshop.

By his aforesaid conduct, the said Shri Bashyam has acted in a manner unbecoming of a Government servant in contravention of sub-rule (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-VI

The said Shri Bashyam has again shown indiscipline and insubordination in that on April 18, 1981, at about 1100 hours, he stood in the way of Shri B V Somayaji, Scientific Officer (SE), Central Workshops, and shouted at him saying that he should not come to the Maintenance Section.

By his aforesaid conduct, the said Shri Bashyam has acted in a manner unbecoming of a Government servant in contravention of sub-rule (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-VII

The said Shri Bashyam refused to do the work of grinding of grid and marking of MHD magnet plates allotted to him by his superior continuously from June 1, 1981 to June 3, 1981.

By his aforesaid conduct, the said Shri Bashyam has shown lack of devotion to duty and insubordination in contravention of sub-rule (1)(ii) and (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-VIII

On July 4, 1981, the said Shri Bashyam refused to do the work of grinding on MHD block gas cut plates allotted to him by his superior.

By his aforesaid conduct, the said Shri Bashyam has contravened the provisions of sub-rules (1)(ii) and (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-IX

Again on July 6, 1981, at about 1230 hours, the said Shri Bashyam refused to carry out the work allotted to him by his superior.

By his aforesaid conduct, the said Shri Bashyam has contravened the provisions of sub-rules (1)(ii) and (1)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

3. On 22.9.81 one Shri G Sethuraman, Secretary of the Trombay Council and Trombay Scientific Committee, Personnel Division, was appointed as Enquiring Authority (EA) and one U N Mitra, Security Officer, was appointed as the Presenting Officer. The applicant had nominated P K Sensharma, an employee of the Central Railway as Defence Assistant, but his services could not be spared.

In all eleven witnesses were examined before the EA. The record shows that the applicant was present when the witnesses were examined but he refused to cross-examine them. At a later stage the applicant nominated Shri Umeshchandra Vidhyarthi, an employee of the BARC, as his Defence Assistant. He requested the EA to allow him to cross examine the witnesses, but that request was turned down. After completing the enquiry, the EA submitted is report on 29.7.82 holding that all the charges were proved.

4. The Disciplinary Authority ie., the Head Personnel Division, accepted the findings of the EA and imposed the penalty of dismissal from service with immediate effect by his order dated 6.9.1982. The applicant had preferred an appeal against that order on 18.10.1982. The Appellate Authority i.e., the Controller of the BARC considered the appeal on merits and upheld the findings given by the EA but reduced the sentence of dismissal from service to removal from service with

effect from the forenoon of 9.9.1982 by its order dated 8.5.1985.

5. We may point out that the applicant was in occupation of the quarters of the BARC, but after the order of penalty the Estate Officer passed an order dated 12.12.1984 evicting him from the quarters. The applicant had preferred Miscellaneous Application No. 3/85 against that order. However, on 21.2.1985, the Learned Principal Judge of the Civil Civil Court dismissed the appeal. He, however, continued the operation of the stay order against eviction of the applicant from quarter till 23.3.1985. In the meanwhile, the applicant filed the suit in City Civil Court at Bombay and obtained stay against the evicting order. Even after transfer of the suit to this Tribunal, the stay is continued till the decision of this application.

6. The respondents have resisted the application by filing their exhaustive written statement. The applicant has also filed a detailed rejoinder and copies of a number of relevant documents.

7. In view of the order which we are passing it is not necessary to state other facts or the rival contentions taken by the parties. However, relying on a judgment of the Full Bench of this Tribunal, in the case of Premnath K Sharma Vs. Union of India & Others (Transferred Application No. 2/86 decided on 6.11.1987), Shri P S Varadayya, the Learned Advocate for the applicant, submitted that the order of penalty passed by the Disciplinary Authority is liable to be quashed and set aside. One of the points referred to the Full Bench for decision was whether the finding of the Disciplinary Authority is bad in law because the applicant was not given a copy of the EA's report and was not heard before arriving at the finding. After considering the relevant provisions and the case law at length, the Full Bench has answered the points in affirmative by holding 'that the findings of the Disciplinary Authority are bad in

law because the applicant was not given a copy of the enquiry report by the EA and was not heard (giving a opportunity of making his representation) before arriving at the findings'. The Full Bench has further held that "hearing of course does not mean 'oral hearing'. An opportunity to make a representation to the Disciplinary Authority against the report in writing would constitute hearing and would amount to a reasonable opportunity to the charged officer."

8. The record of this case shows that the Disciplinary Authority had not supplied a copy of the EA's report to the applicant and given him an opportunity of making a representation against the report before passing the impugned order of penalty. This position was not disputed before us on behalf of the respondents. We are, therefore, constrained to hold in view of the Full Bench judgment cited above, that the impugned order of penalty passed by the Disciplinary Authority on 6.9.1982 is liable to be quashed and set aside. The respondents will, however, be at liberty to take up the enquiry from the stage of vitiation, if they so want. As the applicant was under suspension with effect from 8.7.81 the respondents will also be at liberty to continue that suspension under rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

9. We may point out that even the order passed by the Appellate Authority i.e., the Controller on 8.5.85 suffers previously because that order was not passed after affording a personal hearing to the applicant. The Supreme Court in the case of Ram Chander V. Union of India & ors. reported in ATR 1986(2), 252, has observed as follows:

"It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel case

unequivocally lays down that 'the only stage at which a government servant gets 'a reasonable opportunity of showing cause against 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 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. We wish to emphasise that reasoned decision by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. 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. Consideration of fair play and justice also require that such a personal hearing should be given."

10. In the present case though the Appellate Authority has passed a reasoned order it had not given a personal hearing to the applicant and hence his order is bad in law. Of course in this case that aspect is immaterial because we are required to set aside the first order of penalty passed by the DA.

11. In result we pass the following order:

ORDER

- 1) The order passed by the Disciplinary Authority (Head, Personnel Division, BARC) on 6.9.1982 as well as the order passed by the Appellate Authority (Controller) passed on 8.5.1984 are hereby quashed and set aside.
- 2) The respondents shall reinstate the applicant with effect from 6.9.82 with all back wages and consequential benefits.
- 3) The respondents, however, will be at liberty to complete the enquiry after supplying a copy of the Enquiry Authority's report to the applicant, giving him an opportunity to make his written representation and if he so desires ~~to hear~~ ^{hearing} him in person.
- 4) The respondents will also be at liberty to continue the suspension of the applicant by passing an order under rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with effect from 6.9.1982. If the respondents pass an order continuing the suspension of the applicant under rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, they shall give the subsistence allowance to him with arrears according to rules. In that case they need not pay the backwages to the applicant as directed in clause (2) of this order.
- 5) As we are quashing the order of penalty the applicant will be entitled to retain the quarters in his possession till orders for his eviction are passed according to law.
- 6) Parties to bear their own costs

12. At this stage Shri J D Desai, the Learned Advocate for the respondents requested us to stay the opera-

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tion of the above order for four weeks, with a view to enable the respondents to consider whether they want to approach the Supreme Court by way of an appeal. We grant the request and stay the operation of the above order up to 10.12.1987.

(M.B. Mujumdar)
Member (J)

(L.H.A. Rego) 12.12.87
(Member (A))
