

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

TR.A.NO. 150/86

Mr.P.S.Nair,
7, Sangam, Pestom Sagar,
Chembur,
Bombay 400 089.

APPLICANT

V/S.

The Head of Personnel Division,
Bhabha Atomic Research Centre,
Department of Atomic Energy,
Trombay, Bombay 400 085.

2. The Controller,
Bhabha Atomic Research Centre,
Department of Atomic Energy,
Trombay, Bombay 400 085.

3. Union of India
through
the Secretary,
Department of Atomic Energy,
C.S.M.Marg, Bombay 400 039.

RESPONDENTS

CORAM : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member (A) J G Rajadhyaksha

APPEARANCE :

Mr.S.K.Menon
Advocate
for the Applicant

Mr.J.D.Desai (for Mr.M.I.Sethna)
Advocate
for the Respondents

JUDGMENT

Dated: 23.2.1988

(PER: B.C.Gadgil, Vice Chairman)

Writ Petition No. 2617 of 1983 of the file of
the High Court of Judicature at Bombay is transferred
to this Tribunal for decision.

2. At this stage we may mention that there are certain undisputed facts. The applicant (Original Writ Petitioner) is serving as Scientific Assistant in the Radio Chemistry Division of the Bhabha Atomic Research Centre under the Department of Atomic Energy, Government of India. A Departmental Enquiry was held against him in 1980-82. The charge and statement of allegation was that the applicant borrowed an amount of Rs.10,000/- on interest at the rate of 15% P.A. from his personal friend Shri K.P.Mohan Chandran who was staying within his local limits (of the authority of the applicant) and he took such a loan without obtaining prior permission of the Government. At the conclusion of the Departmental Enquiry, the applicant was dismissed from service on 3.4.1982. He preferred an appeal. It was partly allowed. On 18.2.1983 the penalty of dismissal was reduced to that of removal from service. The applicant filed the above mentioned writ petition in the High Court challenging this order. At the same time he had also preferred a Review Petition which in fact is revision application to the Director, Bhabha Atomic Research Centre. On 12.10.1984 the said Authority confirmed that the applicant's guilt was proved. However, the penalty of removal from service was reduced and it was directed that the next increment of the applicant should be withheld with cumulative effect. Thus the applicant was reinstated in service with this stoppage of increment. He resumed duty on 19.10.1984.

3. The contention of the applicant is that the allegation as mentioned in the charge and statement of article would not constitute any misconduct and that therefore the imposition of penalty after holding him

guilty was bad. The respondents contended that the said penalty is quite legal and proper.

4. According to the respondents, taking the above mentioned loan would be against the provision of Rule 16 (4) (i) (a) of the CCS (Conduct) Rules, 1964. It would be convenient to refer to that part of the rule. It reads as follows :

Rule 16. (4) (i)

"No Government servant shall, save in the ordinary course of business with a bank or a public limited company, either himself or through any member of his family or any other person acting on his behalf, -----

(a) lend or borrow or deposit money, as a principal or an agent, to, or from, or with, any person or firm or private limited company within the local limits of his authority or with whom he is likely to have official dealings or otherwise place himself under any pecuniary obligation to such person or firm or private limited company." -----

Thus, the meaning of this rule is that a Government servant should not incur any loan from a person (i) within the local limits of his jurisdiction (ii) with whom the officer has official dealings. It is not the contention of the respondents that the said Mohan Chandran had any official dealings with the applicant or his office. However, the respondents contend that Mohan Chandran was residing within the local limits of the applicant's authority and that taking a loan from such a person is not permissible. The term "within the local limits of his authority" has been clarified and explained by the Government.

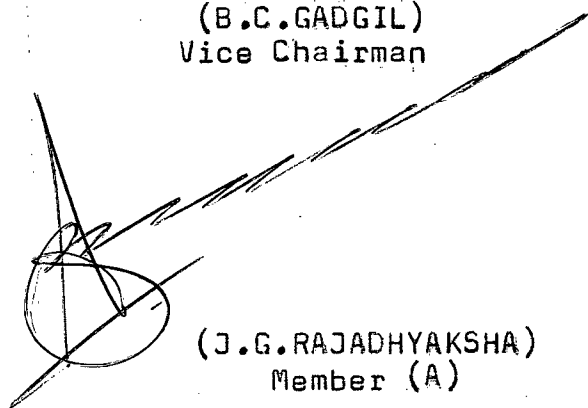
The said clarification (Min. of W.H. & S., Circular No. A.V.(2)/7, dated the 26th October, 1964) states that in the case of officers who do not have a definite territorial jurisdiction, the term persons "within the local limits of his authority" would mean the persons with whom the officer has official dealings. We are told that the applicant was working as a Scientific Assistant in Radio Chemistry Division of the BARC and the main duty of the applicant was to carry out some tests in Laboratories. It cannot be disputed that with such a nature of employment, the applicant could not have any local limits of his authority, inasmuch as he has no definite territorial jurisdiction with local limits of authority. Such territorial jurisdiction is available to an employee who has to perform executive functions in an area under his jurisdiction, For example, a Superintendent of Police would have territorial jurisdiction over the district in which he would be working in that capacity. It is in this background that the Government has explained and clarified that the term "within the local limits of his authority" with respect to the person having no territorial jurisdiction would mean a person with whom the said officer had official dealings. Thus, the above mentioned Rule 16(4)(i)(a) as clarified by the Government would mean that so far as applicant is concerned, he is expected not to take a loan from a person with whom he had official dealings. It is not alleged before us that the said Mohan Chandran had any official dealings with the applicant. Consequently, it will not be possible for the respondents validly to contend that incurring such a loan by the applicant would be in breach of Rule 16(4)(i)(a) so as to constitute misconduct.

5. Mr. Desai for the respondent relied upon another clarification given by the Government, whereunder temporary loans of small amounts and that too free of interest can be taken by a Government servant from personal friends or relatives even if they reside within the local limits of his authority and that no sanction of the Government is necessary. In our opinion this clarification has nothing to do with the case in hand and it would be very difficult for the respondents to contend that the loan in question taken by the applicant offends the rules particularly when the Government has itself issued clarification as mentioned above. The net result therefore, is that the applicant succeeds. The applicant has already been reinstated in service by order dated 12.10.1984. We order that the penalty of stoppage of one increment with cumulative effect is set aside. To be specific, there would not now be any stoppage of increment in pursuance of the said order of 12.10.1984. Therefore, the increment that was withheld will now be released on due date.

Parties to bear their own costs.



(B.C. GADGIL)
Vice Chairman



(J.G. RAJADHYAKSHA)
Member (A)