CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

~~Original Application No:~~

Transfer Application Nos. 243/86 & 245/86

DATE OF DECISION 1.12.1992

Sh.T.G.Harale & Sh.S.C.Chandwani ---------- Petitioners

Sh.S.Natarajan with Sh.G.K.Masand ---------- Advocate for the Petitioners

Versus

Union of India & Ors. ---------- Respondent

Sh.A.I.Bhatkar for Sh.M.I.Sethna ---------- Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? Ys
2. To be referred to the Reporter or not ? Ys
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

(S.K.Dhaon)
Vice Chairman

NS/

(23)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

Tr.A.NO. 243/86

Shri T.G.Harale ... Applicant
V/S.
Union of India & Ors. ... Respondents

Tr.A.NO. 245/86

Shri S.C.Chandwani ... Applicant
V/S.
Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Miss Usha Savara

Appearance

Shri S.Natarajan with
Shri G.K.Masand
Advocate
for the Applicants

Shri A.I.Bhatkar
for Shri M.I.Sethna
Advocate
for the Respondents

ORAL JUDGEMENT Dated: 1.12.1992

(PER: S.K.Dhaon, Vice Chairman)

These Writ Petitions have been transferred to this Tribunal from the High Court of Bombay. They involve a similar controversy. They have been heard together and they can be conveniently disposed of by a common order. The two applicants were employed as Appraisers in the Department of Customs and Central Excise. Disciplinary Proceedings were initiated against them. They were given different charge-memos. A common Enquiry Officer was appointed. A joint departmental enquiry was held. By separate orders they were punished. Each of them were reduced to two lower stages. They preferred separate appeals to the President of India. The appeals were not accepted, instead, the President passed orders enhancing the punishment awarded to them in so far as they were compulsorily retired from service. In both the petitions the orders passed by the punishing authority as well as by the President are being impugned in the present application.

.. 2/-

2. The facts in brief are these. In the case of the petitioner S.Chandwani, an order dated 3.11.1977 was passed by the punishing authority whereas in the case of Shri T.G. Harale, the order of punishment was passed on 11.8.1977. They preferred appeals on 16.12.1977 and 4.9.1977 respectively. On 31.5.1983 the Union Public Service Commission renderred a common advice to the President that the punishment awarded to the petitioners may be enhanced to that of compulsory retirement. On 9.2.1984 separate show-cause notices were given to the petitioners asking them to explain as to why the punishment awarded to them may not be enhanced. They submitted separate replies. Finally, on 12.2.1985 the President passed the impugned orders enhancing the punishment of the two petitioners.

3. These petitions came up before us for hearing on 3.11.1992. We heard the matter for some time. We felt that it was desirable to examine the relevant record which contained the orders passed by the President. Shri Sethna, the learned senior Advocate who appeared on behalf of the respondents, undertook to produce the relevant record on 13.11.1992. On that date the relevant record could not be produced. We, therefore, directed that the matter should be listed today(1.12.92).

4. The record is before us. We have perused the same. It appears that after the receipt of the memorandum of appeal of the petitioners by the President, the papers were sent to the Union Public Service Commission (hereinafter referred to as the Commission). The Commission on 31.5.1983, as already indicated, sent a common opinion relating to the two petitioners before us. Thereafter on 24.12.1983 an order was passed that notices may be issued to the petitioners so as to give them a reasonable opportunity of making a representation against the enhanced penalty of compulsory retirement proposed to be awarded to them.

(27)

After service of notice, the petitioners, as stated, submitted their respective explanations. There is a noting of some official dated 2.6.1984 to the effect that the replies to the show cause notices received may be sent to the Commission for consideration and tendering the final advice. Then the noting of 8.6.1984 indicates that it was felt that before the matter was sent to the Commission, para-wise comments on the representations of the petitioners may be obtained and the connected documents of the case which had been sent to CCE,Bombay may be sent for. Again there is a noting of 15.6.1984 which goes to show that it had been decided to refer the case to the Commission for recommendation since the representations of the petitioners have been received. Then the noting of 22.1.1985 indicates that the Commission had reminded the Department regarding the orders on their recommendations for enhancement of the penalty against the petitioners. Thereafter, it appears from the perusal of the file that neither the matter was sent to the Commission nor did the Commission make any recommendations. We find that on 11.2.1985 the proposal that enhanced penalty may be imposed upon the petitioners was accepted. We are, therefore, satisfied that neither a copy of the show cause notice given to the petitioners nor the replies sent by the petitioners were sent to the Commission. We are also satisfied that the orders enhancing the punishment were passed without consulting the Commission after the receipt of the explanation given by the petitioners.

5. Rule 27 of the CCS(CCA) Rules (hereinafter referred to as Rules) deals with the consideration of appeal. Sub-Rule(2) provides, inter-alia, that the appellate authority shall consider whether the penalty or the enhanced penalty imposed is inadequate or severe and pass orders confirming, enhancing, reducing,or setting aside the penalty. The proviso to sub-rule

(2) has four parts. The first is that the Commission shall be consulted in all cases where such consultation is necessary. We are not concerned with the second part. The third part provides, inter-alia, that if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an inquiry under rule 14 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity as far as may be, in accordance with the provisions of sub-rule (4) of rule 15, of making a representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit.

6. We may at this stage consider the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. Regulation 5(1) provides that it shall not be necessary to consult the Commission in regard to the making of any order in the disciplinary case other than — (b) an order by the President on an appeal against an order imposing any of the said penalties made by a subordinate authority; (c) an order by the President overruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the said penalties made by the President or by a subordinate authority. The aforesaid Regulation, therefore, answers the question as to whether in accordance with sub-rule (2) of Rule 27 consultation with the Commission was necessary in the case of the petitioners. We have already indicated that soon after the receipt of the memorandum of appeals of the petitioners and even before any tentative opinion could be formed as to whether the appeal should or should not be accepted, the papers were sent to the Commission for consultation.

7. We may now read sub-rule (4) of Rule 15, a reference to which has been made in the third part of the proviso to sub-rule (2) of Rule 27. Sub-rule (4) has three parts. The first

(29)

part, as relevant to the present controversy, emphasizes that if the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall give the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 14. The second part is important to the present controversy. In substance, it lays down that in every case in which it is necessary to consult the Commission, the record of the inquiry, together with a copy of the show cause notice and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the commission for its advice and thereafter the disciplinary authority shall after considering the representation, if any, made by the Government servant, and the advice given by the Commission, determine what penalty, if any, should be imposed on the Government servant and make such order as it may deem fit.

8. The scheme as evidenced from a combined reading of Rule 27, Rule 15(4) and the Regulations clearly demonstrate that the Commission should have been consulted by the President after the receipt of the explanation of the petitioners in reply to the show cause notice. The Commission was expected to reconsider or review the tentative opinion given by it earlier in the light of the explanation offered by the petitioners. The President, in his turn, was required to apply his mind to the contents of the show cause notice, the explanation offerred by the petitioners and the opinion of the Commission and thereafter come to an independent judgement as to whether it was expedient to enhance the penalty imposed upon the petitioners. This

procedure having not been followed, the impugned order passed by the President cannot be sustained.

9. It has been vehemently urged by the learned counsel for the respondents that the Commission having been consulted in the year 1983 upon the memorandum of appeals of the petitioners and it having given its opinion and the same being before the President, it was not necessary in law to obtain the opinion of the Commission for the second time. It is contended that the notings in the file that the matter should have been referred to the Commission again will be of no avail to the petitioners as they were apparently made under a mistaken legal advice. We have already referred to the Rule 27 and the Regulations. The emphasis of the Regulations is that the Commission has to be consulted before a final order is passed on the appeal. The proper course should have been to form a tentative opinion on the memorandum of appeal and forward the same to the Commission for consultation. Thereafter, the Commission should have given its opinion. Then, final order should have been passed by the President after taking into view the Commission's view point. That is the normal procedure.

10. In the instant case, the punishment was sought to be enhanced. A statutory safeguard given to delinquent Government servant that the Commission should have a chance of considering the entire material which was before the disciplinary authority, the order of punishment passed by that authority, the show cause notice given by the President as to why the punishment should not be enhanced and the explanation offerred thereon should be before the Commission before it is called upon to tender its opinion. The consultation as envisaged in Rule 27 is an effective consultation. Therefore, the respondents cannot take any advantage of the earlier opinion tendered by the Commission on 31.5.1983.

..7/-

11. We do not consider it necessary to examine the other submissions made on behalf of the petitioners.

12. We have not been addressed any arguments on behalf the petitioners assailing the order of punishment passed by the punishing authority.

13. These petitions succeed in part. The order dated 12.2.1985 passed by the President enhancing the penalties imposed upon the petitioners are quashed. The order passed by the punishing authority in the cases of the two petitioners are kept in tact. It goes without saying that the petitioners would be entitled to consequential benefits which may be permissible under the law.

14. We have yet to decide as to what should be the proper order passed, keeping in view the facts and circumstances of the instant case. It is to be remembered that the incident which gave rise to the disciplinary proceedings against the petitioners is of the year 1971. Charge Memos were given to them in September 1974. They preferred appeals before the President in December 1977. No action was taken by the President till 9.2.1984 when show cause notices were given to the petitioners as to why the penalties imposed upon them may not be enhanced and thereafter orders were passed finally in February, 1985. Now, we are at the end of the year 1992. We feel that this is a typical case where the ends of justice would be met if we direct that no further proceedings should be initiated against the applicant by the President and the appeals preferred by them should be deemed to be dismissed.

15. There shall be no orders as to costs.

(MS. USHA SAVARA) 1.12.92
MEMBER (A)

(S.K.DHAON)
VICE CHAIRMAN

mrj.