

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 764/89

Transfer Application No:

DATE OF DECISION: 29.3.1995

Mrs. K. Ambujakshi Krishnan Petitioner

Shri L.M. Nerlekar. Advocate for the Petitioners

Versus

Union of India & Anr. Respondent

Shri S.S. Karkera. Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri P.P. Srivastava, Member (A).

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.S. DESHPANDE)
VICE-CHAIRMAN

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.764/89.

Mrs.K.Ambujakshi Krishnan. ... Applicant.

V/s.

Union of India & Anr. ... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Applicant by Shri L.M.Nerlekar,
Respondents by Shri S.S.Karkera.

Oral Judgment:-

Per Shri M.S.Deshpande, Vice-Chairman Dt. 29.3.1995.

By this application the applicant challenges the finding of guilt and the punishment imposed on her, a disciplinary proceedings by reducing her grade to the stage of Rs.1520/- in the scale.

2. The applicant was appointed in 1968 as a Stenographer with the Respondents and was promoted on 15.3.1982 as Stenographer Selection Grade in the scale of Rs.1400-2300. A charge sheet was served on the applicant on six heads of charges. The first being that she secured an advance of Rs.27,000/- and bought a flat from Maharashtra Housing & Area Development Board, Bombay at Pant Nagar, Ghatkopar and having mortgaged the flat with the President of India for incurring the loan. She sold the property without prior permission of the competent authority in breach of rule 18(2) of the C.C.S. (Conduct) Rules. Secondly, She ~~had~~ cheated Maharashtra Housing & Area Development Board which is a State Government Organisation as she failed to take necessary permission from them before selling the flat.

Thirdly, that she did not utilise the amount of loan for the purpose for which it was sanctioned and utilised Rs.2,850/- out of it for her personal benefit. Fourthly, she did not obtain any permission from the competent authority while entering into the transaction for the purchase of the new house. Fifthly, that she had raised a good amount of money on the basis of government money sanctioned to her in the form of H.B.A. and finally that she had been habitually attending the office late and leaving early without prior permission which amounted to negligence of duty. The applicant gave a reply to the charge sheet, but ultimately the inquiry was held ex parte. The Enquiry Officer found that all the charges were proved and disciplinary authority, while upholding the Enquiry Officer's finding imposed a penalty of reducing the applicant to the stage of Rs.1520/-. The applicant's appeal to the appellate authority failed and she therefore, approached the Tribunal by the present petition.

3. We were taken through the Enquiry Officer's report, as well as the order passed by the Disciplinary Authority. With regard to the first head of charge, the contention on behalf of the applicant was that Rule 18(2) of the CCS(Conduct) Rules would not apply to the present case, as what is required under it is that "No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family". A proviso was added to that sub-rule on 7.3.1986 providing that "the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is with a person having official dealings with him". It is apparent

from the imputations that the infraction by the applicant to place in the year 1988 and since proviso was applicable at that time and since there was no allegation that the applicant's transaction was with a person having official dealings with her, it was not necessary to obtain the previous sanction of the prescribed authority. There is no mention in the charge that the authorities did not have previous knowledge of the transaction of sale by the applicant and in any event, since that was not the head of the charge and the charge was only of not obtaining previous sanction, the sale by the applicant would not come within Rule 18(2) and the charge proceeded on the assumption that the previous sanction of the prescribed authority was necessary could not have been held to be proved.

4. With regard to Charge No.2 it is apparent that the allegation was that the applicant had cheated Maharashtra Housing and Area Development Board as she failed to take necessary permission from them before selling out the flat. No particulars of the cheating were given. The learned counsel for the Respondents stated that the cheating lay in not obtaining the permission of the Housing Board before the sale and that that was the term of the contract. It is difficult to see how a transaction between the applicant and the Housing and Area Development Board to which the Respondents were not parties could be brought in for reaching ^{the conclusion} that non-compliance of the conditions would amount to mis-conduct. In A.L.Kalra V/s.Project and Equipment Corporation of India Ltd. (1984 SCC (L&S) 497 it was pointed out that: "Seeking advance and granting the same under

relevant rules, is at best a loan transaction. The transaction may itself provide for repayment and the consequence of failure to repay or to abide by the rules. That has been done in this case. Any attempt to go in search of a possible other consequence of breach of contract itself appears to be arbitrary and even motivated."

It is therefore, not possible for us to hold that the charge of cheating could have been legitimately made and it could be held to have been proved without furnishing the proper particulars in the imputations and without supporting those particulars by adducing proper evidence. In the present case we find that there was no evidence on which the disciplinary authority could have acted for holding that there was cheating and this charge also, therefore, was not brought hold to the applicant.

5. The third charge was that the applicant had not properly utilised the amount of loan for the purpose for which it was sanctioned and had used Rs.2,850/- for her personal benefit. The Enquiry Officer has reproduced what were the applicant's defences in his report. She had stated that when the total amount payable by her to the Housing Board was Rs.56,000/- she had on that basis requested for a loan of Rs.30,000/- and had offered to pay back at the rate of Rs.300/- per month and the Board wanted the amount on or before 2.4.1981. On account of the delay in receiving the loan she had to make payments of further amounts to the Board and therefore, the allegation that she had used Rs.2,850/- for her personal benefit was not correct. Her contention was that she had raised the amount of loan from private sources and had repaid them and this was permissible. A concession was granted on 14.2.1972 by O.M. No.1/17015/8/72-H.III

(page 56) of Swamy's Compilation of H.B.A. Rules, 17th Edition, which reads as follows:

"that the Government servants should be permitted to utilise the amount of advance for purposes of repayment of other loans taken from non-Government sources to build the house, even if the construction of the house has already commenced and this is subject to the condition that the Head of the Department is satisfied that the other loans were taken by the Government servant entirely for the purpose of construction of the house."

The finding of the Enquiry Officer was that there was no evidence of taking prior permission to utilise the amount of Rs.2,850/- which remained with her out of the loan which was sanctioned, but there is no reference at all to the applicant's plea that she had raised the amount from private sources and that the amount could not be said to have been utilised for a purpose other than for which it had been granted. There was total non-application of mind by the disciplinary authority to the material contention raised by the applicant and in the circumstances, the finding on this point also cannot be supported.

6. With regard to the fourth head of charge, the applicant had stated in her defence that this charge was entirely un-intelligible to her and we would ~~reproduce~~ the charge because it has not been intelligible to us also. It reads :

"that Mrs.K.Ambujakshi Krishnan has not obtained any furniship from the competent authority where entry in the transactions for the purchase of new house."

The learned counsel for the Respondents stated that we should read the word 'permission' in place of the word 'furniship', but even if we were to do so the other part again remains un-intelligible, but the learned counsel wanted us to read that it meant while entering into the transaction for purchase of a new house. What is overlooked is that if a person

is to be charged ^{it} should be intelligible to him and the allegation should not be left to guess work. In any event, even if we were to read the charge in the manner in which the learned counsel for the respondents wants us to read, our observations with regard to the requirements of Rule 18(2) would also apply here and the charge No.4 cannot also be held to have been established.

7. The next head of charge was that the applicant had profited by selling the property at a higher price when it had been purchased by using government loan. If the same itself cannot be attacked, that the applicant received a consideration for the sale higher than the price for which it was purchased, cannot also be the subject matter of the charge because there was no rule that the property should not be sold for a price higher than it was purchased and this position was entirely missed by the departmental authorities. The charge No.5 is also therefore required to be quashed.

8. The last charge, Charge No.6, as already been pointed out was about habitual late attendance and early leaving of the office without prior permission of the authority concerned. To this ^{it} applicant had stated that she was punctual in attending the office and it was only on a few occasions that she ^{was} ~~had~~ required to attend the office late or leave early when she was faced with domestic problems. Annexure-3 to the charge is a schedule which shows the dates on which the applicant came late to the office and left early. The schedule begins from November, 1979 and includes dates up to January, 1988.

The learned counsel for the applicant pointed out that the applicant had been warned on 28.2.1986 as she was absent from her duties and office premises on 19.2.1986. It was also mentioned that the applicant was in the habit of attending the officelate every day and leaving the same early, while putting the time as per normal office timing; which was highly objectionable and misleading and that serious view of the irregularity and conduct which is affecting the discipline and functioning of the Centre. It is therefore, clear that the entire period up to 20.2.1986 was the subject matter of this warning and that would leave only the period from March, 1986 to January, 1988 which could have been considered as a part of the charge. The learned counsel for the applicant urged that the applicant was seriously prejudiced by being charged at one time with several other un-connected charges with a charge of this type for her shortcomings from November, 1979 and even if such a charge were to have been made, it would be expected that the applicant's lapse should have been noticed on the day on which it was committed and action taken ^{not} and the action could have been reserved over a long duration making it impossible for the applicant to explain her conduct at this distance of time. In support he pointed out that for March and April, 1986 the late coming was for 10 days each, in May, 1986 for 12 days, in June, 1987 11 days, July, 1987 15 days, August, 1987 12 days and October, 1987 10 days. The delay in taking action on what would normally be a petty matter would seriously prejudice the applicant. The contention was that if action was not taken immediately, then it must be deemed that the lapse was ignored and action was waived.

9. Our attention was drawn to the observations of Chandigarh Bench of this Tribunal in Tek Chand Dhanjal V/s. UOI & Anr. (1994 ATC 673). There it was observed that the act of managing to get a document signed from a senior officer allegedly in support of his case for maintaining his promotion to the grade of Stenographer w.e.f. 5.12.1977, that in a way ~~the other two~~ connected with ~~charges~~ came to be clubbed with a charge in respect of an offence which was alleged to have occurred in 1971 and such a clubbing of offence committed over a long duration from 1971 to 1990 could not be sustained. It is difficult for us to spell out from this decision that joinder of charges of this type was held to be illegal. The Tribunal proceeded in that case on the basis of its peculiar facts. In the present case we think that holding a trial on charges at a distance of time when it would make it impossible for delinquent to answer the charge spread over such a long period would itself be a ground for quashing the charge. Considering that a mere warning had been administered ~~for~~ the lapse committed over a period of 7 years earlier. ~~only~~ with a ~~warning at the hands of the department.~~

10. In view of the above reasons we quash the finding of guilty recorded against the applicant and the penalty imposed on her. We direct the respondents to restore all the pecuniary benefits to which the applicant would be entitled ~~as~~ ~~if~~ such a penalty were not imposed on the applicant within three months from the date of communication of this order. With regard to the suspension order dt. 29.1.1988 we direct the respondents to pass orders according to rules as to how the period of suspension would be treated

within the same period. There will be no order
as to costs.


(P.P.SRIVASTAVA)
MEMBER(A)


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.