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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 780/89
T.A. No.

198

DATE OF DECISION 12-4-94

Smt. K. S. Joshi Petitioner

Shri V. B. Raikar Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Shri P. M. Pradhan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M. R. Kolhatkar, Member (A)

The Hon'ble ~~M~~ Smt. Lakshmi Swaminathan, Member (J)

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

M.R. Kolhatkar

(M. R. Kolhatkar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. No. 780/89

Smt. K. S. Joshi
C. S. No. 298,
Kasaba Peth,
PUNE

.... Applicant

Vs.

1. Union of India,
through General Manager,
Ministry of Communication,
New Delhi.

2. General Manager,
Telephones,
Pune

.... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

Shri V. B. Raikar, counsel
for the applicant.

Shri P. M. Pradhan, counsel
for the Respondents.

JUDGMENT

Date : 12-4-94

Per : Hon'ble Shri M. R. Kolhatkar, Member (A) 0

1. The Applicant who started her service
from 26.8.1968 as a telephone operator was at the
relevant time working as Office Assistant in the
Office of General Manager Telephones, Pune. She
was chargesheeted under Rule 14 of CCS (CCA) Rules
1965 on 13.5.1986 on two charges.

(1) Frequent and abrupt absence for 114 days
during the period 11.3.1985 to 8.10.1985.

(2) Unauthorized absence from duty between
a
6.11.1985 to 4.4.1986 for a total of 47 days.

After the enquiry, the punishment of Compulsory
retirement was imposed on her by the Assistant General
Manager (Telephone) Pune by his order dated 7.1.1987
vide Annexure IV. Her appeal against the order was
rejected by the Appellate authority Deputy General

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Manager (Telephone) Pune on 23.2.1987 and her revision application to the General Manager was also rejected on 17.6.1987. These latter two orders are not on record. The applicant has challenged these orders as being illegal. According to her, She suffered from backache which is a professional hazard of a telephone operator and she has been victimized. The Application was filed on 6.10.1989.

2. The Respondents have resisted the application firstly on the ground of limitation. The applicant appears to have filed a separate application for condonation of delay (not found on record). The reason given is that the Applicant had initially filed a civil suit under wrong legal advice which caused delay. We are not inclined to reject the OA. at this stage on grounds ~~of~~ limitation and have proceeded to hear the matter on merit.

3. The Respondents have contended that the Applicant was in the habit of remaining absent from duty frequently and abruptly for one reason ~~or~~ another. In the period from 11.3.1985 to 8.10.1985 she absented herself from duty for a total of 114 days on 15 occasions of which 10 were on medical grounds and 5 on other grounds. Out of these spells, a total of 35 days was her irregular absence which was treated as "Dies non". Moreover, the plea that she suffered from backache because of previous work as telephone operator is also not borne out from record because only one out of several medical certificates

mentions these grounds. It is further stated that although she was required to send a leave application along with medical certificate within 24 hours of commencement of leave, in the period from 6.11.1985 to 1.4.1986, on 10 occasions, she had proceeded on leave without informing the department and on every occasion leave application was received much later.

4. We deal with the contentions ~~of~~ the Applicant in order. Firstly, it is argued that the Applicant has been discriminated against because there have been a number of ~~identical~~ cases who have been retained in active employment and the Applicant has been, picked up for harsh punishment. The Applicant has not given any specific examples of hostile discrimination and ~~we~~ are not inclined to consider this plea.

5. Secondly, it ^{is} argued that the Applicant was entitled to personal ~~hearing~~ at the appellate stage which was not ~~done~~, that over all performance of the Applicant from inception of her appointment ought to have been taken into consideration and there has been a violation of principles of natural justice. Respondents' stand is that the Applicant ~~is~~ not entitled to personal hearing under any provision of law. We note in this connection that in the well known case of "Ram Chandra Vs. Union of India (1986(2) SLR 608) the Supreme Court held that Appellate authority sitting as a quasi-judicial authority should dispose of the appeal with

application of mind and that an opportunity of personal hearing in a case of dismissal or removal from service should be given to the delinquent employee. We note that apart from the fact that the instant case is not that of removal of dismissal, Applicant has not produced copy of her appeal memo and appellate order. We are, therefore, unable to hold that there is a violation of principles of natural justice on account of denial of personal hearing which the Applicant requested.

6. Thirdly, the Applicant argues that the leave sought by her could have been adjusted in the normal course towards various kinds of leave instead of the extreme & cruel punishment imposed by the Respondents. On this point, Respondents have relied on Hariram Vs. Delhi Administration.

..... which was ^a Full Bench case of Principal Bench, New Delhi reported in A.T. Full Bench Judgments Vol. III (1991-93) at Page 133. (OA. 1344/90 decided on 4.8.1993). That was a case in which a constable of Delhi Administration was removed from service on charge of wilful & unauthorised absence from duty. It was held that the latter part of the order condoning unauthorised absence by granting leave without pay does not absolve the delinquent from the main charges.

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7. In our view that case or other cases cited there in (viz Supreme Court Judgment in State of Madhya Pradesh Vs. Harihar Gopal 1969 SLR 274) do not have application to the instant case in the way intended by the counsel for Respondents. Those were cases in which termination order was juxtaposed with a second order granting leave for the period of absence. The issue for determination whether the latter order had the effect of nullifying the termination order brought about by the first order and the reply was in the negative. In this case, however, leave was regularized and disciplinary action followed.

8. We have ~~did~~ considered the case of "Gujarat Electricity Board Vs. Atmaram Sungomal Poshani" (1989 SSC(L & S)393) which is a well-known case in which termination on ground of failure to comply with transfer order despite ~~oversay~~ warnings and consequent absence from duty without leave or oversay was held valid. That was a case in which Electricity Board Service Regulation No. 113 ~~fell~~ for interpretation and has no applicability to the instant case.

9. All the same, we do not accept the contention of the Applicant that it was not open to the Department to initiate Departmental action apart from any action taken to regularize leave under leave Rules.

10. Lastly, the Applicant has contended that it appears from the order of the Disciplinary Authority that he was conscious of the fact that the punishment was very severe but it was so imposed to set an example to others for upholding office discipline and curb the tendency of unauthorized and repeated absenteism. The extreme punishment imposed upon her thus to the awareness of the punishing authority was disproportionate. In short, Respondents No.2 wanted to make a deterrent example of her in order that other employees should take a lesson therefrom. At the argument stage, the Applicant relied on the case of "Bhagat Ram Vs. State of Himachal Pradesh (1983(2)SCC 442)." That was a case in which the Hon'ble Supreme Court held that since the Appellant was not afforded a reasonable opportunity to defend himself, accordingly, the enquiry and consequential order of removal from service are vitiated. However, instead of remanding the case, the Hon'ble Supreme Court proceeded to dispose of the case. While the facts are different, the Applicant relies on the following observations of the Hon'ble Supreme Court:

" It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his,

increments with future effect will meet the ends of justice".

We are aware of the observations of the Hon'ble Supreme Court in the subsequent case of "Union of India Vs. Parma Nanda" (AIR 1989 SC 1185) where the Hon'ble Supreme Court defined scope of judicial review with which Central Administrative Tribunal is entrusted. It distinguished Bhagat Ram's case as one where Supreme Court exercised the equitable jurisdiction under Art 136 and ^{"held"} _{"n"} that High Court or Tribunal has no such power or jurisdiction.

11. However, Parmanand has not put an end to the principle of proportionality of penalty. In the English case "Councils of civil service Unions Vs. Minister for the Civil Service" (1984) 3 All ER 935 it has been observed that the principle of proportionality promises to be the fourth head of grounds on which administrative action is subject to judicial review, the first three being "illegality" "irrationality" and "procedural impropriety". We have several judgements of the Hon'ble Supreme Court in which the principle of proportionality of penalty or the duty ~~to~~ act justly while imposing penalty has been recognised.

These are:

- a) Union of India Vs. Tulsiram Patel (AIR 1985 SC 1416)
- b) Shankar Das Vs. Union of India (AIR 1985 SC 772)
- c) Ranjit Singh Thakur Vs. Union of India (AIR 1987 SC 2286)
- d) Sardar Singh Vs. Union of India (AIR 1992 SC 417)

12. To clinch the matter, let us quote the relevant portion of order vide para 8 Annexure IV (Page 26).

" I am, therefore, of the opinion that very severe penalty should be imposed on the accused official Smt. K.S. Joshi, OA. to set an example to others for upholding office discipline and curbing the tendency of unauthorised and repeated absenteeism amongst Government Servants which makes office work to suffer and proves detrimental to public interest."

(Para 9 imposes the penalty of compulsory retirement)

13. Even in Parmanand, the Hon'ble Supreme Court held that the Tribunal can interfere with the penalty if it is malafide. In our view, the penalty of compulsory retirement imposed on the delinquent was not on the basis of proved charges but was actuated by extraneous considerations and ~~Q5~~ such was not only disproportionate but outside the parameters of Parmanand. At the same time, we are not inclined ourselves to substitute another penalty but would like to leave the matter to the Departmental authorities. We, therefore, dispose of the matter by passing the following order.

ORDER

14. The Application is partly allowed. Paras 8 and 9 of the order of the Displing ^{any} Authority dated 7.1.1987 are set aside. Consequently, Respondents are directed to reinstate the Applicant in service and allow her to work in her previous position as

O.A. or in any equivalent position. The finding of guilt recorded by D.A. is not interfered with but the D.A. is directed to send a copy of Inquiry Report to the Applicant with an opportunity to her to make a representation as to quantum of penalty. D.A. may pass a fresh order regarding the quantum of penalty keeping in view our observations regarding the need to act fairly while imposing penalty. The period from the date of compulsory retirement till the date of reinstatement may be decided by the D.A. as per Rules at the time of passing the order regarding penalty. No order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)