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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 515/89

~~Transfer Application No:~~

DATE OF DECISION 12.2.1993.

Shri A.D.Kakade.

Petitioner

Shri C.Ranganathan.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri A.I.Bhatkar.

Advocate for the Respondent(s)

CORAM:

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

The Hon'ble ~~S.K.Dhaon~~ Ms. Usha Savara, Member(A).

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 it needs to be circulated to other Benches of the Tribunal ?

N^o

S.K.
(S.K. DHAON)
VICE - CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
B O M B A Y.

Original Application No.515/89.

Shri A.D.Kakade.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Mr.S.K.Dhaon, Vice-Chairman,
Hon'ble Ms.Usha Savara, Member(A).

Appearances:-

Applicant by Shri C.Ranganathan.
Respondents by Shri A.I.Bhatkar.

Oral Judgment:-

[Per Shri S.K.Dhaon, Vice-Chairman] Dated: 12.2.1993.

(In) disciplinary Proceedings, under Rule 14 of the C.C.S.(CCA) Rules, 1965 (hereafter referred to as 'Rules'), initiated against the applicant on 8.11.1985, the Dy. General Manager (MM), Bombay Telephones (acting as the punishing authority) passed an order of Compulsory Retirement on 29th July, 1988. The General Manager, Telecommunication, Maharashtra Circle acting as the appellate authority dismissed the appeal/revision application preferred by the applicant. The two orders ~~are~~ have been impugned in the present application.

2. During the year 1980 the applicant was functioning as a Store Keeper, Retail Stores Depot (RSD) Bombay Telephones, Ghatkopar. The article of charges as furnished to him contained the following allegations which are material:-

"He along with Shri B.L.Pishal, Store Keeper and Shri C.V.Gupte, Godown Sarkar, misappropriated 600 Kgs. of Plumbing materials of RSD, Ghatkopar valued at Rs.48,000/- by falsely showing, issue of the said materials under 4 false and fabricated Stores Requisitions dt. 11.1.80, 17.5.80, 19.6.80 and 30.10.80 vide vouchers dt.5.2.80, 1.7.80, 31.7.80 and 10.11.80. He himself signed the S.Rs. dt.17.6.1980 and

30.10.1980 and the gate passes dt. 30.6.1980 and 5.11.1980. He wilfully acted upon forged S.Rs. as well as on gate passes containing incorrect and false identity of persons taking the delivery and also vehicle numbers."

3. The undisputed facts are these. The S.Rs. (Stores Requisitions) could be issued by one Assistant Engineer known as C.P.-12. The S.Rs. which were presented to the applicant for taking out the goods from the Stores did not bear the signatures of A.E. C.P.12. However, the rubber stamp underneath the forged signatures appeared to be the one usually used by the said A.E. The applicant was aware and conversant with the signatures of the A.E. C.P.-12, he without hesitation acted upon the forged signatures of the A.E. C.P.12. He signed on behalf of the A.E. (RSD). He also appended his signature to the reverse of the S.Rs. He has not disclosed as to who brought the S.Rs. to him. The S.Rs were handed over to known Peons for being delivered to the Stores Department. The said S.Rs were neither issued by the A.E. concerned nor were they forwarded by him to the applicant (Store Keeper) to be acted upon. The applicant had signed on the gate passes. On these gate passes St. No.13237 was mentioned. This number had been allotted to one Shri D.R.Tambe. The applicant admitted that Shri Tambe had not brought the gate passes to him. Shri Tambe too denied the fact that he had taken the gate passes to the applicant. Even vehicle number mentioned on the gate passes were not of the vehicles belonging to the department.

4. The Enquiry Officer in paragraph 10 of his report under the heading "Assessment of Evidence" observed that the admitted facts in the case were following:

"i) Exs. S2 to S5 had not been issued and signed

by the AE, CP-12 and the signature of AE, CP-12 appearing on these documents have been forged.

- ii) The applicant had signed Exs.S3 and S5 on behalf of the AE as well as in the capacity of a Store Keeper.
- iii) Exs.S-7 and S-9 had been signed by the applicant."

5. The Enquiry Officer emphasised that the applicant either deliberately or negligently failed to exercise due diligence in examining the S.Rs. and the gate passes presented to him. He acted in a manner unbecoming of a person holding a responsible post. He, therefore, while applying the principle of pre-ponderance of probabilities came to the conclusion that the charge against the applicant stood proved. The punishing authority agreed with the opinion of the Enquiry Officer. The Appellate/Revision authority concurred with the view taken by the punishing authority.

6. We have examined the records ourselves. We have seen the S.Rs. and the gate passes and we are satisfied that, but for either intentional or negligent conduct of the applicant, the goods could not be taken out of the Stores. We are not sitting in a Court of Appeal and, therefore, we are not expected to re-appraise the evidence. We are satisfied that the departmental proceedings were conducted in a fair manner. Indeed no argument has been advanced before us to the effect that the applicant was not afforded a reasonable opportunity of defending himself.

7. We shall now deal with the technical submissions made on behalf of the applicant. The first is that in contravention of Rule 18 of the Rules common proceedings took place with three other delinquent government servants.

The record discloses that initially joint proceedings were commenced. However, an objection was taken by the applicant to the holding of common proceedings. It was accepted and, thereafter, separate proceedings were conducted. Therefore, Rule 18 had not been contravened.

8. The second submission is that the charge memo was given to the applicant by Dy. General Manager(MM), an Officer superior in rank to the Officer appointing the applicant, and, therefore, the proceedings were a nullity. We have not been shown any rule which prohibits the giving of a charge-memo by an authority superior to the appointing authority. Moreover, no prejudice has been caused to the applicant by the adoption of such a procedure. We, therefore, repel the contention.

9. The next submission is that the Dy. General Manager (MM), Bombay, not being the appointing authority of the applicant, had no jurisdiction to pass the order of punishment. This aspect has been dealt with by the appellate/revision authority in the following manner:

"The applicant was initially appointed as T.S. Clerk, under the administrative control of C.T.S. Bombay. The D.G.P & T issued the approval for 20% promotional avenue vide No.31-19/74-PE-I Dt. 15.6.1974.

In pursuance of the said instructions, the G.M., Bombay Telephones issued approval to the conversion of one out of two permanent posts of Time Scale Clerk created vide D.O. No.ESA-29/41/34 dt. 16.10.1953, (CCTS) Calcutta No.T-749/14, dt. 25.6.1954) into that of L.S.G. Clerk in the revised scale of Rs.425-640 w.e.f. 1.6.1974 for C.S.D. Bombay Telephones, vide No.Est-2/170 dated 3.2.1975

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...5.

On the basis of approval of G.M. T.S. Calcutta for appointment of Shri Kakade as L.S.G. Clerk in scale of Rs.425/640 w.e.f. 2.10.1974 against the L.S.G. post created under G.M.Telecom. Bombay conveyed vide No. referred to above in para , the C.T.S. Bombay issued the struck off order of Shri Kakade w.e.f. 15.7.1976, vide No.ES-3687/158 dt. 15.7.76 with orders to report to A.E. Stores RSD, Ghatkopar, Bombay-86. He further requested G.M. Bombay Telephones to issue formal appointment order. The applicant resumed duty under A.D. Stores, R.S.D. Ghatkopar, Bombay on 16.7.1976.

11. Apart from the aforesaid documents referred to by the appellate/revisional authority, we find that the order dt. 31.7.1976 issued by the Asstt. General Manager (Administration), Bombay Telephones too has [redacted] relevance to the controversy with which we are dealing at the moment. The subject ~~is~~ of the order is posting of L.S.G. Clerk in Circle Stores Depot-Ghatkopar, Bombay Telephones. It says that pursuant to the orders contained in Controller of Telegraph Stores, Bombay's Memo dt. 15.7.1974 the applicant on his appointment as L.S.G. Clerk w.e.f. 2.10.1974 and having reported to the ~~said~~ District on 16.7.1976 (F.N.) is posted under Asstt. Engineer Stores, R.S.D., Bombay Telephones, Ghatkopar, Bombay w.e.f. 16.7.1976 against the post of L.S.G. Clerk created under ~~the~~ office Sanction order dt. 2.2.1975 for Circle Stores Depot, Bombay Telephones. It is also provided that the applicant's staff No. would be 12249.

12. Assuming that the documents referred to by the Appellate/Revision Authority do not clinch the controversy raised by the applicant, the afore mentioned order dated 31.7.1976 passed by the Asstt. G.M., Bombay Telephones should be construed as an order appointing the applicant in the Bombay Telephones Division. It is thus clear that the case set out by the applicant that he continued to be on deputation with the Bombay Telephones Division and his employer viz. the C.T.S., Bombay continued to have disciplinary control over him does not hold any water.

13. Yet there is another document on record viz. an application given by the applicant some time in the year 1981, a ~~true~~ copy of which has been filed as Annexure - 9 to the reply filed on behalf of the respondents, praying therein that he may be permitted to exercise the option of reverting back to his original department viz. C.T.S., Bombay. This document also shows that the applicant, at least in 1981, considered himself to be within the jurisdiction of the Telephone Department of Bombay.

14. No other point has been pressed in support of this application.

15. This application fails and is dismissed but without any order as to costs.

Usha Savara
(USHA SAVARA) 12.2.92
MEMBER(A)

S.K. Dhaon
(S. K. DHAON)
VICE- CHAIRMAN.

B.