

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

OA No.94/1996

Mumbai this the 18 th day of July, 2001

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Smt.Shanta Shastry, Member (A)

Shri Uddhay Ambadasrao Ashture,
S/O Shri Ambasrao Shankarrao Ashture
Ex-T.O.A.(T), C.T.O.Nashik-1
R/at Kanherwadi, Care/Postal Club,
at P.O.Nashik-422001,District-Nashik

..Applicant

(By Advocate Shri S.P.Kulkarni)

VERSUS

Union of India through:

- 1.Divisional Engineer(Admn.),
O/O General Manager,
Telecommunications, Department
of Telecom,Canada Corner,Nashik
(Taking over from Supdt, Telegraph
Traffic Division,Nashik-1)
- 2.General Manager,
Telecommunications,Canada Corner,
Nashik,Nashik-422002
- 3.Shri B.B.Walekar(the then Disc.
Authority issuing charge Memo's
(Exh.'D'&'E')dated 22.11.1993 and
12.5.1994) and now Sub-Divisional
Engineer(Incharge) C.T.O.Nashik-1,
(the then Superintendent I/c C.T.O.
Nashik.)
- 4.Telcom District Engineer,
Dhule-424001

..Respondents

(By Advocate Shri P.M.Pradhan, learned
counsel through proxy counsel Shri
Karkera)

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O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

This application has been filed by the applicant in which he has impugned the order dated 21.8.1995 issued by the appellate authority rejecting his appeal against the order dated 7.3.1995. These orders have been passed by the respondents after major penalty chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was issued against the applicant. Departmental proceedings were held against the applicant in which the respondents have found him guilty of misconduct, as alleged in the chargesheet, and removed him from service. They have also ordered recovery of an amount of Rs.32,033/- by order dated 22.11.1994. He has prayed for quashing of the charge Memos.dated 22.11.1993 and 12.5.1994. However, during the hearing, Shri S.P.Kulkarni, learned counsel for the applicant has submitted that only the punishment orders passed by the respondents in pursuance of the impugned charge memo.dated 12.5.1994 have been referred to in the OA and they are relevant.

2. We have considered the pleadings on record and the submissions made by the learned counsel for the parties. By order dated 18.7.2001 the OA was dismissed and the reasons are as follows:-

3. The applicant has stated that he was in service with the respondents from 2.4.1984 to 31.10.1992 and has submitted his resignation on 11.8.1992 with three months notice meaning thereby, that he would cease to be in Govt.service on and from

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11.11.1992. On the next day i.e. 12.8.1992, he had submitted another letter for withdrawal of his resignation letter, which was rejected by the respondents by their letter dated 14.8.1992. One of the main contentions raised by the learned counsel for the applicant is that the respondents have not taken any decision on the letter of resignation tendered by the applicant on 11.8.1992, and in any case, the applicant was not communicated any decision regarding his resignation. In the OA, the applicant has submitted that he was working as Lecturer in English in C.I.D.C.O College, Nasik. In the impugned chargesheet containing two articles of charges, it has been alleged that the applicant while working as TOA(T) in CTO Nasik, accepted private employment as Lecturer in English ⁱⁿ ~~in~~ the College at Nasik w.e.f. 27.9.1991 without any previous permission/sanction of the Govt. and he continued to be in service in that college from that date. In the second article of charge, it has been alleged that during the period from 27.9.1991 to 31.10.1992 he had performed his duties as TOA(T) in CTO Nasik as well as continued his private service as Lecturer in English in the aforesaid College, Nasik and simultaneously he had drawn monthly salary in both the offices. Reference has also been made to his tendering his letter of resignation with three months notice on 11.8.1992 but withdrawing the same and that he managed to continue as a Govt, servant till date. They have also made an allegation that after the applicant accepted the private employment w.e.f. 27.9.91 he had neglected his duties in Govt. service by availing

frequent leave, reporting sick and producing false medical certificates to enable him to continue his private service in the College. For these various acts of the applicant he was charged for grave mis-conduct under the provisions of Rule 3(1)(i)(ii) and (iii) of the CCS(Conduct) Rules, 1964. After the enquiry had been ordered against the applicant in the aforesaid charges, learned counsel for the applicant has submitted that initially the applicant had participated in the same. Thereafter, when he had absented himself, admittedly the enquiry was held ex-parte. Copy of the enquiry report was delivered to the applicant on 27.8.1994 on which he did not make any further representation. The disciplinary authority i.e the Divisional Engineer (Admn.) Nasik by his letter dated 22.11.1994 came to the conclusion that the applicant was guilty of grave mis-conduct and deserved deterrent punishment. Accordingly, the punishment of removal from service was passed against the applicant with order for recovery of the gross salary paid to him for the period from 27.9.1991 to 31.10.1992.

4. Learned counsel for the applicant has submitted that while the respondents have only rejected the applicant's letter for withdrawal of resignation which has not been accepted they have not taken any decision on his letter/request for resignation. He has accordingly submitted that the applicant has, therefore, to be treated as having resigned from service. He has also submitted that the respondents have suppressed the relevant information to the enquiry officer that they have only rejected

the withdrawal of his resignation. This contention of the learned counsel cannot be accepted because admittedly, the applicant has himself participated in the departmental enquiry held against him subsequently. The respondents have stated that the resignation of the applicant was not at all accepted. On the contrary, it is also noticed from the submissions made by the applicant himself that he had submitted medical certificates and leave applications from December, 1992 till 9.7.1993. These facts have also been referred to in the impugned order dated 22.11.1994. In the circumstances, the contention of the applicant's counsel that the applicant had already resigned and was not in service when the charge sheet was issued on 12.5.1994 cannot be accepted. He has relied on the judgement of the Hon'ble Supreme Court in **Rajasthan State Electricity Board and Ors. Vs, Brij Mohan Parihar** (2000 SCC(L&S)904). We, however, find that the facts in that case are somewhat different from the present case. From the relevant facts, including the documents and conduct of the applicant in the present case, it cannot, therefore, be stated that he has treated himself to have resigned from Government service, as he now alleges, w.e.f. 11.11.1992. In the circumstances of the case, the judgement of the Supreme Court in **Brij Mohan Parihar's case (Supra)** will not assist the applicant.

5. Another contention raised by Shri S.P.Kulkarni, learned counsel for the applicant was that no witnesses were called in the departmental enquiry proceedings. He has also referred to

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Annexure IV of the charge memo in which it is stated "nil" in the list of witnesses. In fact no witnesses were called by the respondents. He has submitted that in the Inquiry Officer's report dated 24.8.1994, he has stated in the findings that the two charges against the applicant stood proved on the basis of "documentary and oral evidence" adduced in the case before him which is incorrect because admittedly no oral evidence has been adduced in the case. It was submitted by both the learned counsel that in fact no witnesses / oral evidence were there in the enquiry proceedings. While no doubt it is correct that the enquiry officer had used the word "oral" incorrectly, having regard to the judgement of the Supreme Court in S.K.Sharma Vs.State Bank of Patiala (JT.1996(3)SC 722), it cannot be held that this would have caused prejudice to the applicant so as to justify setting aside the punishment order on this ground.

6. Similarly, objection has also been made by Shri Kulkarni, learned counsel to the minutes of the hearing held by the inquiry officer on 5.8.94 wherein he has used words 'reviewed and discussed in length.' This has been explained by the learned counsel for the respondents to mean that the Inquiry Officer himself has apprised considered the evidence after going through the relevant records before him. On that date, apparently, the applicant did not turn up at the enquiry and hence the same was held ex parte. That being the position, the applicant cannot also take an objection to the enquiry being held ex parte when admittedly after taking part

in the same initially he chose not to continue to appear. Taking into account the facts and circumstances of the case, the assumptions of the applicant's counsel based on the Minutes of the enquiry dated 5.8.1994 cannot also assist the applicant.

7. The respondents have relied on the letter issued by the Principal of KTH College, Nasik which they consider sufficient proof to establish that the applicant was in their service as Lecturer in English during the relevant period. In this regard, learned counsel for the applicant has relied on the judgement of the Tribunal(PB) in Hari Giri Vs.UOI & Ors (1992(19)(ATC)659). In that case the Tribunal had held that the omission to examine the material witness i.e. Vice-Principal to enable the applicant to cross examine him vitiates the enquiry. Therein, the applicant had been charged that he had produced a certificate that he had passed VIII standard from Multan DAV Secondary School, West Patel Nagar, New Delhi which was alleged to be false and forged. It was further noted that the Vice-Principal of the School had given in writing that the certificates which is in English is a case of fraud as in those days the school used to issue certificate only in Hindi. It was in those circumstances that the Tribunal had held that the omission to examine the material witness vitiates the enquiry. That is not the position in the present case. In the impugned chargesheet levelled against the applicant, the respondents have given copies of the list of documents relied

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upon by them, including the letter received from the Principal of KTM College, Nasik. Further, the applicant did not also request for the witness to be called and so these submissions of the applicant's counsel are also rejected.

8. Learned counsel for the applicant has submitted that as the applicant had been transferred from Nasik to Dhule, only the officer in the latter place could have taken action against him departmentally. However, he confirms that the applicant himself had continued to remain in Nasik during the relevant period and his medical and other leave applications were sent to this office for necessary action, even if he had submitted them to the office at Dhule. He had also participated in the departmental enquiry initiated against him at Nasik. In the facts and circumstances of the case his contention that the impugned punishment orders have not been passed by the competent authority, who is the officer in Dhule and not Nashik, cannot also be accepted. Hence the impugned punishment order dated 12.11.1994 passed by the Divisional Engineer (Admn.) cannot be faulted on this ground. We have also considered the other grounds taken by applicant and but do not find merit in the same.

9. In the result, for the reasons given above, the order dated 18.7.2001 has been passed stating that the OA is without any merit and the same is accordingly rejected. No order as to costs.

Shanta

(Smt. Shanta Shastry)
Member(A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

Central Administrative Tribunal
Mumbai Bench

RP 57/2001
in
OA 94/1996

Mumbai this the 9 th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Smt. Shanta Shastry, Member (A).

U.A. Ashture Petitioner.

Versus

Union of India & Ors. Respondents.

O R D E R (By Circulation)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

RP 57/2001 has been filed by the applicant against the Tribunal's order dated 18.7.2001, praying for recall of the order and the O.A. be heard on the issues put forth in the Review Petition.

2. We have carefully considered the grounds taken in the aforesaid Review Petition. It is relevant to note that the Tribunal's order dated 18.7.2001 is an oral order passed after hearing the learned counsel for the parties and in their presence. The applicant has tried to reargue the case in the Review Petition. It is settled law (See the judgements of the Hon'ble Supreme Court in Tungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh (AIR 1964 SC 1372), A.T. Sharma Vs. A.P. Sharma & Ors. (AIR 1979 SC 1047) and Meera Bhanja Vs. Nirmala Kumari Choudhary (AIR 1995 SC 455) that the Review Application/Petition cannot be used as if it is an appeal to reagitate the same issues or other issues merely because the applicant feels that the order passed by the

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Tribunal is wrong. As none of the grounds to allow the Review Petition under the provisions of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 is available to the applicant in the present case, RP 57/2001 is dismissed.

Shanta Shastry
(Shanta Shastry)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'