

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 470/96 /199

Date of Decision: 13.9.96

Prabhakar Atmaram Mhatre

Petitioner/s

Mr. P.A. Prabhakaran

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr. V.S. Masurkar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J)

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

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R.K.

(M.R. KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 470/96

Pronounced, this the 13th day of Sept 1996

CORAM: HON'BLE SHRI B.S. HEGDE, MEMBER (J.)
HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A)

Prabhakar Atmaram Mhatre
Naval Armament Inspectorate,
Naval Dockyard, Gun Gate,
Mumbai - 400 023.

By advocate Shri P.A. Prabhakaran .. Applicant

-versus-

1. Union of India
through
Vice Admiral,
Flag Officer Commanding in Chief
Head Quarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai - 400 001.
2. Chief Inspector of Naval
Armaments,
Naval Dockyard,
Gun Gate,
Mumbai - 400 023.

By Advocate Shri V.S. Masurkar,
C.G.S.C. .. Respondents

O R D E R

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

In this O.A. the ex-parte interim relief was granted on 14-5-96 as per following orders :

"Heard Shri P.A. Prabhakaran for the applicant. He has challenged the order dt. 25-4-1996 enhancing the original penalty of 'Censure' to that of 'Reduction of pay by three stages for a period of two years without cumulative effect'. It is the contention of the applicant that the penalty was imposed after a summary enquiry inspite of the request of the applicant for conduct of oral enquiry vide para 3 of Annexure A-2. He relies on (1996) 32 ATC 461 in R.Ratnam vs.U.C.I. and Ors. a case decided by the Madras Bench of C.A.T. on 6-2-1995."

2. The respondents have filed their reply on 9-7-96 and the applicant has filed rejoinder on 2-8-96. We have heard both the parties. The short point for consideration is whether ~~in~~ proceedings as for a minor penalty under Rule 16 of CCS(CCA)Rules,1965 the disciplinary authority is required to hold an oral enquiry if sought for. Rules 16 (1) (b) & (c) are relevant for this purpose. The same ~~are~~ reproduced below :

"16. Procedure for imposing minor penalties

- (1) Subject to the provisions of sub-rule(3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after -
 - (a)
 - (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
 - (c) taking representation, if any, submitted by the Government servant under clause(a) and the record of inquiry, if any, held under clause (b) into consideration;

There is a separate Rule 16(1-A) also providing for holding of an oral enquiry but that is not material. The Govt. of India's instructions, Department of Personnel & Training O:M. No.11012/18/85-Est.(A) dt. 28th October,1985 ~~are also~~ relevant because ~~they~~ envisage that if the departmental authority is of the opinion that enquiry is not necessary it should pass a reasoned order :

"(1) Holding of an inquiry when requested by the delinquent: Instructions -

The Staff Side of the Committee of the National Council (JCM) set up to consider

revision of CCS(CCA)Rules,1965, had suggested that Rule 16(1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16(1-A) of the CCS(CCA)Rules,1965 provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid.leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an enquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."

3. In this case the facts are that the applicant was issued a memorandum dt. 13-5-95 at Annexure A-1 along with a statement of imputations and ~~he~~ filed a representation on 9-6-95 at page 16 Annexure A-2. In para 3 of the representation the applicant has specifically requested for an oral ⁱⁿ enquiry and ~~the~~ rest of the memorandum he has given detailed reasons. However, this request for oral enquiry was not at all considered and no reasons were communicated for not holding oral enquiry other than an order imposing the punishment of Censure vide Ex. "AA" page-13. In his appeal dt.16-11-95 Annexure A-3 he has raised this among other points viz. that he had requested for an oral enquiry and the Disciplinary Authority was required to give in writing the decision on his request for holding oral inquiry in the matter. But this contention was also rejected in the appellate order dt. 25-4-1996 in which it is stated that the appellant's request cannot be acceded to by the Disciplinary Authority, that it is not mandatory, but discretionary on the part of the Disciplinary Authority to hold departmental ~~enquiry~~ under the provisions of Rule 16 of the CCS(CCA)Rules, 1965 and hence the contention is not tenable. It would thus be seen that nowhere the contention of the applicant for ~~holding~~ ^{an} oral enquiry and conveying the decision of the disciplinary authority on this request has been dealt with in accordance with the rules and instructions thereon.

4. In the written statement filed by the respondents to the O.A. again the same stand is repeated in which it is stated that it is not mandatory but discretionary on the part of the Disciplinary Authority

to hold departmental inquiry under Rule 16 of CCS(CCA) Rules, 1965.

5. We are not at present concerned with the validity or otherwise ^{of} enhancement of the penalty from Censure to that of reduction of pay by three stages for a period of two years without cumulative effect. We are concerned with violation of guidelines incorporated in Rule 16(1)(b) & (c) of the CCS(CCA) Rules 1965 read with Govt. of India's instruction there of. It may be that the Govt. of India's instructions are in the nature of guidelines but they incorporate a wholesome safeguard relating to principles of natural justice and the same has become the law in view of the judgment of the Madras Bench of the Tribunal in R.Ratnam vs. U.O.I. & Ors., (1996)32 ATC 461, in which it was held that though it was not mandatory to hold an enquiry where a minor penalty was proposed, a request for holding the enquiry must be considered objectively and an enquiry held if it was required to establish the charge - Rejection of request for holding an enquiry must be by a speaking order - The disciplinary authority failed to do so and the appellate authority also failed to consider the grounds put forth and to pass a speaking order - Hence the orders of the disciplinary and appellate authorities were set aside. The ratio in Ratnam's case squarely applies to the facts of the instant case. We, therefore, consider that the O.A. can be disposed of at the admission stage by issuing appropriate directions to the respondents. We, therefore, admit the O.A. and dispose of the same by passing the following order :

O R D E R

Penalty order dt. 5-10-95 and the appellate order dt. 25-4-96 are hereby quashed and

set aside. The respondents, however, are at liberty to consider the matter from the stage of representation of the applicant dt. 9-6-95 which contains a request for holding an oral enquiry. The respondents may either consider the request or may reject the request. If they reject the request they may do by means of a speaking order. The O.A. is disposed of in this terms without any order as to costs.

MR Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)

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