

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 452/96

Date of Decision : 2nd November 2001

B.K.Madhvi _____ Applicant

Shri S.P.Kulkarni _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri V.S.Masurkar _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other ~~no~~ Benches of the Tribunal ?
- (iii) Library *yes*

SLJ
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.452/96

Dated this the 2nd day of November 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tamai, Member (A)

Bhau Khandu Madhvi,
R/at : Rabada, Ghansoli,
Opposite Haanuman Chawl,
Thane Belapur Road,
Thane.

...Applicant

By Advocate Shri S.P.Kulkarni

vs.

1. Union of India through
Assistant Manager (I.S.),
Telecom Factory,
O/o the Chief General Manager,
Telecom Factory,
Dept. of Telecommunications,
T.F. Deonar Post Office,
Mumbai.

2. Senior Engineer (PN),
O/o the Chief General Manager,
Telecom Factory,
Dept. of Telecommunications,
Ministry of Communication,
T.F. Deonar Post Office,
Bombay.

3. Chief General Manager,
Telecom Factory,
Dept. of Telecommunications,
Ministry of Communication,
T.F. Deonar Post Office,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

PM

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the declaration that punishment and appellate order dated 19.6.1992 (Exh.-'C' & 'C(i)'), 12.3.1993 (Exh.-'A') respectively be quashed and set aside with a direction to the respondents to drop the charge-sheet as the same is not proved but other charge is failure to maintain devotion to duty is held as proved along with consequential benefits and personal hearing.

2. On 9.8.1990 'Revolutionary' Day was being celebrated in the memory of those who sacrificed their lives during struggle for independence. The applicant who was working as Carpenter along with his other working colleagues desired to pay homage on the said day to those martyrs who sacrificed their lives for independence. Accordingly, a board was exhibited in Marathi in the name of Shri B.K.Madhvi, which is translated as under :-

"Revolutionary Day 9th August, 1990" "To throw out British Rule-48 years ago there was a great revolution on this day during which many Indians Revolutionaries laid down their lives. In the memory of those revolutionaries to-day at 12.30 hrs. a meeting of all working brothers is called for. Large number may attend the meeting and make a great success".

Place : Behind Electric Shop.

Yours faithfully,

B.K.Madhvi
All Workers Bros."

Q84 //

..3/-

The meeting was held in the factory premises, though no permission in writing was sought. The applicant was asked to submit his explanation by 20.8.1990 by the Assistant Manager, Telecom Factory, Bombay-88 vide letter dated 16.8.1990. The applicant submitted the said explanation within time fixed by the said letter on 20.8.1990.

3. The applicant was issued a charge-sheet dated 5.9.1990 by the Assistant General Manager, Telecom Factory, Bombay-88. The applicant sought time, as time provided was ten days to submit the defence, which was granted and the applicant submitted the defence within the extended time by the respondents. After the enquiry, the enquiry officer submitted his report on 22.8.1991. The copy of enquiry officer's report along with show notice was sent to the applicant on 26.9.1991. The applicant submitted his explanation but the disciplinary authority held the applicant guilty of the charges and penalised the applicant - reduced by two stages from Rs.950/to Rs.920/in the scale of Rs.800-1150 for a period of two years w.e.f. 11.5.1992. The applicant preferred an appeal against the said penalty order, also sought personal hearing which was not provided to the applicant and the appeal was rejected by the appellate authority on 12.3.1993.

4. The grievance of the applicant is that meeting was held in the Factory premises where the applicant has been working during lunch hours with the permission from Shri Saxena, the Assistant Manager, Telecom Factory, Bombay-88 at about 11.00 hrs.

JK/-

Even Shri Saxena met at the place where Union Boards are exhibited. The Article of Charges levelled against the applicant were vague one. There was no mention in which manner the applicant participated in politics. The disciplinary authority relied on the explanation given by the applicant which can not be used as an evidence against him. The enquiry officer failed to examine Shri Saxena who was a material witness to arrive to a conclusion whether the permission was granted by him or not. The report of the enquiry officer is a reflection of non-application of mind. The disciplinary authority also failed to apply mind to the grounds/contentions raised by the applicant. The appellate authority passed the criptic order without affording the opportunity for personal hearing. Hence, this OA. for the above said reliefs.

5. The claim of the applicant is being resisted by the respondents with the allegation that the meeting was held between 12.30 p.m. to 1.15 p.m., it was the duty of the applicant to establish his own defence. Hence, prayed for dismissal of the OA. along with the costs.

6. One of the ground raised by the applicant is that there was no preliminary enquiry held by the respondents before issue of the chargesheet and as such the issue of chargesheet is vitiated. The chargesheet is vague.

7. The learned counsel for the applicant argued that the disciplinary authority has held him guilty of the charge which was not levelled against him, i.e. the charge of unbecoming of Government Servant was not levelled against him but he has been held guilty for the same. As such, to hold the applicant guilty of such a charge for which he has no opportunity to defend himself is breach of principles of natural justice. Shri Saxena, who has given the permission for such meeting has not been examined by the Inquiry Officer.

The learned counsel for the applicant argued that the misconduct has been enumerated in Central Civil Services (Conduct) Rules, 1964 which are applicable under Standing Orders Order 39 (a) and said conduct do not state that unbecoming of a Government Servant is a misconduct as enumerated therein. Unbecoming of Government Servant is enumerated in Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

8. It is also being argued that the chargesheet was issued by an authority who is not competent authority to issue the same.

9. It is true that the applicant in his appeal (at page 7 in the last) mentioned that he may be given opportunity along with his defence council to defend him (Personal hearing). We have carefully perused the order of the appellate authority and we are of the considered opinion that even the appellate authority did

not consider and decide his prayer regarding up-holding of opportunity of personal hearing/personal hearing alongwith his defence assistant. The learned counsel for the applicant relied on AIR 1986 SC 1173, Ram Chander vs. Union of India & Ors. and argued that where personal hearing is sought, the appellate authority is expected to provide the personal hearing. The Apex Court has held as under :-

"It is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case [(1985) 3 SCC 398] that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

10. We agree with the submission of the learned counsel for the applicant in view of the above referred decision of the Apex Court and quash the punishment and appellate order dated 19.6.1992 and 12.3.1993 and remit the case to the appellate authority for providing personal hearing to the applicant and thereafter to decide the matter on all the points raised by the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

mrj

(S.L.JAIN)
MEMBER (J)

S.L.JAIN