

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.797/2001.

Date of decision : 6.2.2003

S.H.Sonkusare

Applicant.

Shri V.M.Bendre

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Smt.H.P.Shah.

Advocate for  
Respondents.

CORAM :

Hon'ble Shri G.C.Srivastava, Member (A).

(1) To be referred to the Reporter or not?

No

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

No

(3) Library.

Yes

  
(G.C.SRIVASTAVA)  
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.797/2001.

this the 6<sup>th</sup> day of February 2003.

Hon'ble Shri G.C.Srivastava, Member (A).

Shri S.H.Sonkusare,  
191, Suvarna Sanket Co-op. Hsg. Soc. Ltd.,  
Opp. Water Supply Office,  
Ulhasnagar - 4,  
Ulhasnagar - 421 004.  
(By Advocate Shri V.M.Bendre)

...Applicant.

v.

1. Union of India through  
The Chief Post Master General,  
Maharashtra Circle,  
Office of the Chief Post Master General,  
Chhatrapati Shivaji Terminus,  
Mumbai.
2. Dy. Director,  
Savings Branch,  
Office of the Director Saving Bank,  
G.P.O., Chhatrapati Shivaji Terminus,  
Mumbai.  
(By Advocate Smt.H.P.Shah)

: O R D E R :

G.C.Srivastava, Member (A).

The applicant who was working as Senior Supervisor under the Respondents is aggrieved on account of their order of dies non w.e.f. 5.10.1999 to 8.10.1999, 11.10.1999 to 16.10.1999 and 18.10.1999 imposed by Memo dt. 26.10.1999 (Annexure - A-I) and the penalty of withholding of one increment in the scale of Rs.5,000-8,000 for a period of two years without cumulative effect and has prayed that the same be quashed and set aside.

2. According to the applicant, while he was working as Incharge SBCO he was assisted by another LSG Supervisor Mr.D.M.Thakre who did not perform the duties assigned to him as per the departmental rules. When he made a complaint against the said

Ceol

...2.

Mr.Thakre, the Accounts Officer issued an order dt. 13.9.1999 to the applicant to perform those duties which were required to be performed by Mr.Thakre. He represented against the said order as per his complaint dt. 4.10.1999 and pending a decision on the said complaint he did not perform those duties as ordered. Thereupon, the Respondents issued order dt. 26.10.1999 (Annexure - I) treating the above period from 5.10.1999 to 8.10.1999, 11.10.1999 to 16.10.1999 and 18.10.1999 as dies non and also awarded the penalty of withholding of one increment in the scale of Rs.5,000-8,000 for a period of two years without cumulative effect. His appeal has also been turned down and aggrieved by this the applicant has approached this Tribunal.

3. The Respondents have contested the OA and have filed detailed reply, stating inter alia, that the applicant has not filed any revision petition against the order of the Appellate Authority and has approached this Tribunal without exhausting departmental remedies available to him under the Rules.

4. I have heard Mr.V.M.Bendre and Mrs. H.P.Shah, Learned Counsel for applicant and respondents respectively and have carefully perused the pleadings and the documents placed on record.

5. The main arguments advanced by Mr.Bendre for the applicant are i) the order dt. 26.10.1999 treating the period from 5.10.1999 to 8.10.1999, 11.10.1999 to 16.10.1999 and 18.10.1999 has been issued suddenly to the applicant and he had no opportunity to explain his conduct or to state his defence before the impugned order was issued. Hence, the order violates Articles 14 and 16 of the Constitution of India, ii) he has also been imposed with a penalty of withholding one increment

for a period of <sup>Two</sup>~~one~~ years without cumulative effect for the same act and hence this amounts to double punishment. iii) the action of the Respondents is discriminatory as they have followed two norms in the matter one in respect of the applicant and the other in respect of Mr. Thakre, iv) the applicant belongs to reserved community and therefore, the action of the Respondents is discriminatory, motivated, illegal and mala fide as the authorities have conspired to favour another employee Mr. Thakre belonging to general category at the cost of harassing the applicant who belongs to reserved community, v) there is a total non-application of mind while passing the impugned orders. Mr. Bendre has also relied on the Judgments of the Hon'ble Supreme Court in the case of A.R. Antule Vs. Ramdas Naik and Ors., Keshavji Raoji and Co. Vs. Commissioner of Income Tax and Babaji Kondaji Garad and Ors. Vs. Nasik Merchants Cooperative Bank Ltd.

6. On the other hand, Mrs. H.P. Shah Learned Counsel for the Respondents has contended that the impugned orders have been passed by the Competent Authority after due application of mind and keeping in view the facts and circumstances of the case. According to her, the appeal filed by the applicant also stands decided vide order dt. 25.10.2001 (Annexure - R-9). She has also submitted that instead of preferring a Revision Petition against the order of the Appellate Authority, the applicant has chosen to approach the Tribunal and has therefore, not availed of the departmental remedy available to him.

7. During the course of arguments of Mr. Bendre it has come out quite clearly that prior to the issue of the order


of dies non no opportunity has been afforded to the applicants to explain his position or to state his defence in violation of the existing provisions under Fundamental Rules and that he has been punished by withholding his one increment for a period of two years without cumulative effect for the same act. Mrs. Shah for the Respondents, has however, stated that the plea of issue of show cause, before issue of the order of dies non has not been raised by the applicant in his OA and hence this cannot be allowed to be pleaded at this stage. Mr. Bendre, has however, submitted that it is a point of law and if any such point of law has the effect of rendering the order itself void, the same can be raised at the time of oral submissions and the Tribunal has full jurisdiction to consider the same.

8. However, as Mr. Bendre for the applicant has later stated at the Bar that the applicant shall submit a self-contained Revision Petition to the Competent Authority of the Respondent Department who may be directed to consider and decide the same within a specified period with liberty to him to seek appropriate legal remedy, in case the final order goes against him, I do not propose to go into the merits of the rival contentions and leave the matter to be decided by the Revisional Authority after the Revision Petition is submitted by the applicant. In the circumstances, I direct that if the applicant submits Revision Petition within a period of one month from today, the Competent Revisional Authority shall consider the same as per Rules and take an appropriate decision by passing a speaking order under

...5.

intimation to the applicant within a period of four months of submission of the said representation. If the applicant is still aggrieved against the final order, he shall have liberty to approach this Tribunal afresh with all the contentions raised in this OA remaining open.

9. With the above directions, the OA stands disposed of. No orders as to costs.

  
(G.C. SRIVASTAVA)  
MEMBER (A)

B.