

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

OPEN COURT/PRE DELIVERY JUDGEMENT IN OA 137/2001.

Hon'ble Vice Chairman / Member (J) /
Member (A) may kindly see the above judgement for
approval / signature.

Agreed
V.C. / Member (J) / Member (A)

Hon'ble Vice Chairman

Hon'ble Member (J) I agree

Hon'ble Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. : 137/2001

Date of Decision : 21st March 2001

R.Prasad _____ Applicant.

Shri R.Ramesh _____ 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 Smt.Shanta Shastry, 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

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

mrj*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.137/2001

Dated this the 21st day of March 2001.

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

Hon'ble Smt. Shanta Shastry, Member (A)

Rajendra Prasad,
Phone Inspector,
Kandivali Telephone Exchange
Bldg., S.V.Road, Kandivali (W),
Mumbai.

...Applicant

By Advocate Shri R.Ramesh
with Shri M.S.Ramamurthy

V/S.

1. Chief General manager,
M.T.N.L., Telephone House,
Veer Savarkar Road,
Mumbai.

2. Dy.General Manager,
Kandivali Telephone Exchange,
S.V.Road, Kandivali (West),
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

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 relief that the chargesheet dated 30.7.1994, order of suspension dated 21.10.2000 be quashed and set aside and a direction to the Department to send the applicant for training as JTO.

JL-87111 ..2/-

2. The applicant while working as Phone Inspector at Borivali was served with a chargesheet dated 19.4.1994. An enquiry was conducted. The Enquiry Officer submitted the report, exonerated the applicant of all the charges vide report dated 18.9.2000. The next charge-sheet dated 30.7.1994 was served. Enquiry Officer has been appointed. The enquiry could not be conducted or proceeded with as no Presenting Officer was available and the enquiry could not take place even after 7 years of delay. A reminder was sent by the applicant to the General Manager, Kandivali requesting him to appoint enquiry officer so that enquiry could be concluded but no steps have been taken so far.

3. The promotion of the applicant to the rank of JTO has become due for which examination was held in April,2000. The medical was held on 18.12.2000. The applicant has been declared successful but he was not sent for training on the ground that a disciplinary case is pending against him. After the examination and before the medical test on 21.10.2000 the applicant was placed under suspension pending contemplated disciplinary action.

4. The applicant has challenged the said exercise of the respondents on the ground that in respect of second charge-sheet dated 30.7.1994, the vigilance has submitted the report that all the allegations had been found not proved. The said enquiry is

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not concluded and the applicant is harassed on account of the pendency of the enquiry. Suspension order has been issued by the Deputy General Manager, Kandivali who could not have issued the chargesheet as he has been placed under the direct control of the Dy.General Manager rather than the SDE/DE and as such suspension order should have been issued by somebody who is of a higher rank than the DGM who is his immediate controller. The period cannot extend beyond 3 months which comes to an end on 21.1.2001. He could not be prevented from going to the training of JTO since he has already cleared the written examination as well as the medical. At the most, actual promotion could be placed under sealed cover. The suspension is malafide, illegal, arbitrary and abrupt without any reason. Hence, this OA. for the above said relief.

5. The respondents have resisted the claim of the applicant and alleged that Union of India is not arrayed as party respondent, hence OA. is liable to be dismissed on this count. The suspension of the applicant was reviewed by the competent authority vide order dated 22.2.2001. The suspension order and the disciplinary proceedings are in no way connected to each other. The disciplinary authority has issued the notice to the applicant. Respondents have also explained the pendency of enquiry since 1994. The said suspension is for misconduct which took place when he was posted as Phone Inspector in the Meera Road Telephone Exchange. The chargesheet is under finalisation

J. S. R.

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and will be issued shortly. The applicant was suspended strictly in accordance with Rule 10 of the CCS(CCA) Rules,1965. The contention of the applicant that the vigilance has not found him guilty is not correct. There was seriousness of misconduct hence the applicant is suspended. Rule 10 of CAT (Procedure) Rules,1987 is being violated. Hence prayed for dismissal of the OA. along with the cost.

6. On perusal of the reliefs claimed by the applicant, it is suffice to state that the chargesheet dated 30.7.1994 and suspension dated 21.10.2000 are distinct causes of action. The applicant is entitled to plead only one cause of action. It is true that he is entitled to plead a cause of action and the relief based on the said cause of action , i.e. consequential reliefs but he is not entitled to seek relief in respect of more than one cause of action. In the circumstances, on a query by the Bench to the applicant's counsel to elect one, the applicant's counsel though did not agree that these are two different cause of action, at the same time stated that in case the Tribunal comes to a conclusion that these are two distinct causes of action, his cause for suspension be considered. We agree with the learned counsel for the applicant that only on account of suspension the applicant is not sent for training as JTO. Hence, it is a consequential relief which can be considered.

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7. In view of the above discussion, the chargesheet dated 30.7.1994 and the earlier chargesheet dated 19.4.1994 (for which no relief was sought) deserves no consideration in this OA.

8. It is true that in examination held in April, 2000 and the medical test held on 18.12.2000 the applicant was found successful but as he was suspended on 21.2.2000, sending him for training amounts to revoking the suspension and taking the applicant on duty as training itself is a part of duty.

9. The learned counsel for the respondents submitted that the applicant has submitted an appeal (Annexure-'A-12') to the General manager in respect of his suspension on 13.11.2000 and filed the OA. on 29.2.2001 even before expiry of six months from the date of filing of appeal. Hence, OA> is pre-mature one and is liable to be dismissed as such. We find substance in the submission of the learned counsel for the respondents in view of Section 20 (2)(b) of the Administrative Tribunals Act, 1985.

10. The learned counsel for the respondents also placed review of the suspension in the case of the applicant which is done on 22.2.2001. We have perused the file submitted by the respondents' counsel in respect of the suspension and review of the applicant's case and are of the opinion that so far investigation is in progress but may be completed shortly.

J.V.D.

11. The learned counsel for the applicant relied on Madhukar Namdeo Patil vs. Chairman, Sudhagad Education Society, which deals with suspension of an employee after the period of judicial custody coming to an end, which is not relevant for the decision in the present case.

12. In view of the above discussion, we are of the considered opinion that OA. is pre-mature one. Suspension has been reviewed timely and properly. Hence, OA. is liable to be dismissed and is dismissed accordingly with no order as to costs.

Shanta f-
(SMT. SHANTA SHASTRY)
MEMBER (A)

Jain /
(S.L.JAIN)
MEMBER (J)

mrj.