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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 610/91

Transfer Application No:

DATE OF DECISION: 10/2/95

Shri V.S.Kenge

Petitioner

Shri B.Dattamurthy

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri S.S.Karkera for Sh.P.M.Pradhan

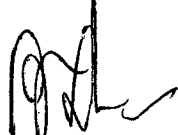
Advocate for the Respondent(s)


CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ? no


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

(10)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 610/91

Shri V.S.Kenge

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri B.Dattamurthy
Advocate
for the Applicant

Shri S.S.Karkera
for Shri P.M.Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 10/2/95

(PER: P.P.Srivastava, Member (A))

The applicant was working as Senior Supdt. of Railway Mail Service-B Division Pune during the period 13.6.1983 to 16.8.1984. The applicant was issued a charge-sheet on 20.1.1987. The charges were as under :-

"Article - 1: That the said Shri V.S.Kenge while functioning as Senior Supdt. of RMS B-Division Pune during the period from 13.6.83 to 16.8.84 fixed the date of examination as 15.7.84 for promotion of lower grade staff to Group 'D' cadre for 18 vacancies vide Memo No. B-71/Rectt/IV/Dept/I/84 dated 11.5.84. He subsequently altered the number of vacancies to 23 from 18 as initially announced, after the last date of receipt of application (20.6.84) in contravention of DGP&T New Delhi's orders issued under No. 62/52/73-SPB I dated 6.2.76 and 21.7.78. Thus Shri V.S.Kenge, SSRM violated the provisions of orders issued under DGP&T New Delhi No. 62/52/73-SPB I dated 6.2.76 and 21.7.78.

By his above act Shri Kenge failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravening the provisions of Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

(12)

Article-II :- That during the aforesaid period and while functioning in the aforesaid office, the said Shri V.S.Kenge declared only sixteen candidates successful and selected, although in the said examination twenty candidates got qualifying marks. The result in respect of one candidate was withheld, even though the number of vacancies announced were twenty three. All the twenty qualified candidates should have figured in the select list of candidates. Thus Shri V.S. Kenge, then Sr.Supt. of RMS 'B' Division Pune contravened the provisions of Section I(5) of Appendix 12 of P&T Manual Volume IV.

By his above acts Shri Kenge failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravening the provisions of Rules 3(i) (ii) (iii) of the CCS(Conduct) Rules, 1964.

Article-III :- That during the aforesaid period and while functioning as aforesaid Shri Kenge awarded irrational marks to the candidates of Roll No. B-25, Shri B.S.Jagadale even though the candidate was not able to write correctly. Consequently, the non-deserving candidate was declared successful in the said examination. Thus, Shri V.S.Kenge has shown undue favour to an undeserving candidate.

By his above act Shri V.S.Kenge acted in a manner unbecoming of a Govt. servant and, also otherwise than in his best judgement and thereby contravened the provisions of Rule 3(1)(iii) and 3(2)(ii) of the CCS (Conduct) Rules, 1964."

2. The applicant thereafter submitted a defence denying the charges. An enquiry was conducted and the applicant was held guilty of the charges. A copy of enquiry report was given to the applicant on 18.8.1989 while the enquiry was concluded in July 1988 and the enquiry report was dated 16.8.1988. Meanwhile, the applicant had retired on superannuation on 30.9.1988. The case of the applicant therefore was submitted to the President for deciding the punishment. The applicant was awarded a 10% cut in the pension for a period of three years vide order dated 12.12.1990 placed at Annexure-'A'.

The order is signed by Asstt. Director General (Vig.) by order and in the name of the President. The applicant submitted a representation as an appeal dated 22.2.1991 which is placed at Annexure-'E' to the OA. but the same was rejected on the ground that the President cannot revise his own order and no revision can be entertained against the orders of the President. Aggrieved by these orders, the applicant has approached the Tribunal through the OA. and has prayed for quashing and setting aside the order of 10% cut in the pension issued on 12.12.1990 and grant him all the consequential benefits. The applicant has brought out that no financial loss has been caused by the applicant to the Government and he has not committed any serious or grave mis-conduct. He has said that the action taken by him in increasing the number of vacancies from 18 to 23 has not resulted in any loss to the Administration as number of qualified candidates declared were only 17 and thus his action had not adversely affected the Govt. on any count.

3. The applicant has further stated that the enquiry was not conducted according to norms. Although the enquiry was finalised on 16.8.1988, the enquiry report was given to the applicant after one year on 18.8.1989. The applicant has also brought out that the President has power to review any order including his own order under CCS(CCA) Rules 1965 and this power is in the nature of Revisionary Power and not in the nature of reviewing one's own order.

4. The respondents in their reply have submitted that the enquiry has been conducted as per rules and no flaw has been pointed out by the applicant in the conduct of proceedings. On the question of delay and supplying the copy of report,

the respondents have mentioned that since the applicant retired soon after the enquiry was over, the case was required to be submitted to the President and it did take time to process the case as the case was required to be sent to the Head Office and then to the Ministry.

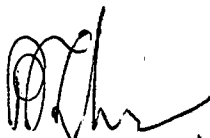
5. We have heard the applicant's counsel Shri B. Dattamurthy and the counsel for the respondents Shri S.S.Karkera. The counsel for the applicant has emphatically argued that since there has been no loss to the ex-chequer and the action of the applicant was in the nature of his negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation, may be negligence in discharge of duty rather than misconduct. In this connection, he has brought to our notice the Supreme Court judgement, AIR 1979 SC 1022, Union of India & Ors. vs. J.Ahmed wherein it has been held that :-

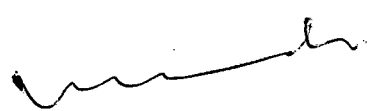
"Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high."

6. The counsel for the applicant has also argued that the cut in the pension is required to be resorted in the grave misconduct and the applicant cannot be considered as committed grave misconduct.

7. The counsel for the respondents has argued that the conduct of the applicant has been examined through the process of proceedings under the concerned rules for disciplinary action and he was awarded full opportunity under the rules. Counsel for the respondents has also argued that the applicant has not brought out any flaw which would have vitiated the action taken against the applicant under the disciplinary rules.

8. After considering arguments of both the sides as well as perusing the record, we have come to the conclusion that in this case the enquiry has been conducted within the frame work of rules and the counsel for the applicant has not established any flaw in the process of enquiry which would have resulted into miscarriage of justice or would have vitiated the principles of natural justice. As far as the question of merit and the gravity of charges is concerned, we are of the opinion that it is for the disciplinary authority to decide on this issue. What we require to look into is whether the conduct of enquiry has been as per the rules or not. We do not find any material in this case to show us that the enquiry has not been conducted according to rules or there has been violation of the principles of natural justice. We, therefore, find no merit in the OA. and the same is dismissed with no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.