

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

70

NEW BOMBAY BENCH

O.A. No. 136/91
~~xxxxxx~~

198

DATE OF DECISION 15-7-92

Smt. Panchfula & 2 ors. Petitioner

Mr. A S Bhagat

Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Ramesh Darda

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble ~~Mr.~~ Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

W.D

S. M.
V.C..

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING AT NAGPUR
NAGPUR

O.A. No. 136/91

1. Smt. Panchfula
Wd/o. R.E. Fusatey
aged 35 years; Occ. Housewife;
Legal Representative of
R.E. Fusatey; deceased
Postal Assistant; Gondia City;
R/o. Manewada; Nagpur 440024
2. Ku. Jayshree d/o. R.E. Fusatey
aged 13 years student through
guardian mother Smt. Panchfula
wd/o. R.E. Fusatey
3. Smt. Radhabai Wd/o. Eknath
Fusatey; Aged 70 years;
Mother of R E Fusatey;
R/o. Vishwakarma Nagar
Nagpur 440027

..Applicants

V/s.

1. Shri L J Sherkey
Senior Supdt. of Post Offices
MFL Division, Nagpur 12
2. Shri V K Varadarajan
Dest Officer (Vig.III)
Postal Directorate
New Delhi 110001.
3. Shri A W Joshi
Sr. Supdt. of Post Offices
East Division; Pune
4. Director
Postal Services
Nagpur 440010
5. Union of India
through the Secretary
to the Government of India
Ministry of Communications
Department of Posts
New Delhi 110001.

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Ms. Usha Savara, Member (A)

APPEARANCE:

Mr. A S Bhagat
Counsel
for the applicant

Mr. Ramesh Darda
Counsel
for the respondents

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ORAL JUDGMENT:

DATED: 15-7-1992

(PER: S K Dhaon, Vice Chairman)

By the order dated 23.3.1990, the Senior Superintendent of Post Offices, Pune City East Division, passed ~~an~~ order of removing R.E. Fusatey from service. The said order is being impugned in the present application.

2. Shri R.E. Fusatey preferred an appeal but during the pendency of the same he died. Thereafter, this application was presented by Smt. Panchfula claiming to be a legal representative of Fusatey.

3. It is an admitted position that no decision in the appeal could be given probably on account of the death of the applicant therein.

4. In a nut shell, the charge against the applicant was that on 21.12.1967 R.E. Fusatey while functioning as P/A Gondia City assaulted Shri D.R. Ukey, S.P.M., by hitting him with 5 kilogram iron weight on his head. This incident took place in the office itself between 1020 and 1030 hours, during the office hours. Shri Fusatey was given an opportunity to explain his conduct, evidence was led in support of the charge. The victim was removed to the hospital in a precarious state where no less than 56 stitches were given to him on his head. The Inquiry Officer found that the charge stood proved and recommended dismissal of Fusatey. The punishing authority agreed with the findings of the Inquiry Officer. It, however, converted the order of dismissal into ^{an} order of removal.

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5. The first contention advanced on behalf of the applicant is that the chargesheet was not given by the officer competent to do so. It is clear to us that the charge sheet was given by the Senior Superintendent of Post Offices. It is also clear to us that Fusatey was appointed by an officer of that rank. The argument is that the officer who appointed Fusatey was a higher grade than the officer who gave the charge sheet. It is a very fine argument indeed. We are satisfied that both the officers held the same rank and therefore there was no infirmity in the framing of charge sheet by the Senior Superintendent of Post Offices.

6. The next argument advanced is that the authorisation given by the President to the SSP (OS) Pune City to act as a Disciplinary Authority was void as the order was communicated by one Shri Varadarajan, who described himself as Desk Officer (Vig. III). In paragraph 4 of the order dated 7.12.1989, which is filed as Annexure 10 to this application, it is clearly recited in pursuance of the provisions of the Rule 12 of the relevant rules the President passed the order empowering the officer concerned to do the needful. There is a presumption in law that official acts are/ performed in a regular manner. Nothing, therefore, turns upon the mere fact that the order has been communicated by ~~some~~ ^{the} Desk Officer. There is nothing before us to indicate that the President did not pass the order. Therefore, there is no substance in this argument.

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7. The third contention advanced is that the departmental proceedings against Fusatey could not be initiated as he was facing a Criminal trial before a competent court of law. We have examined the question and we are satisfied that the argument is based on an erroneous assumption of fact. It appears that merely a F.I.R. ^{was} lodged against Fusatey and on the basis of that report he was arrested and released on bail. There is nothing on record that after due investigation ^{an} charge sheet was given to Fusatey to face a criminal trial. The conclusion is, therefore, inevitable that no criminal proceedings were pending as against him when the disciplinary proceedings ^{were} commenced.

8. The next argument advanced is that the disciplinary proceedings stood vitiated on account of mala fide. There is no allegation of mala fide against any particular officer. Learned counsel states that the entire department bore malice against Fusatey. In the absence of any specific allegation against any particular officer the allegation of mala fide, if any, has to be ignored.

9. The last submission is that on the ⁰ relevant date viz., on 21-12-1967 Fusatey was insane. We have gone through the record and we do not find any evidence to substantiate this assumption. contention. Therefore, nothing will turn upon this argument also. No other point has been pressed on behalf of the applicant.

10. The application fails and is dismissed with no order as to costs.

b. Savara
(Ms. Usha Savara) '5.7.'72
M(A)

(S K Dhaon)
(S K Dhaon)
V.C.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P.No. 144/92
in
OA.NO. 136/91

Smt. Panchfula & 2 Ors.

... **Applicants**

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Ms. Usha Savara

Tribunal's Order On Review Petition
By Circulation.

Dated: 29-10-1992

(PER: S.K.Dhaon, Vice Chairman)

This is an application seeking the review of the order passed by us on 15.7.1992 while disposing of OA. 136/91 finally.

2. A number of contentions were advanced before us. One of them was that the disciplinary proceedings against the applicant stood vitiated on account of malafide. We met the argument thus :"There is no allegation of mala fide against any particular officer. Learned counsel states that the entire department bore malice against Fusatey. In the absence of any specific allegation against any particular officer the allegation of mala fide, if any, has to be ignored."

3. In the Review application the plea of malafide has been highlighted. Reliance is placed upon a judgement of the Supreme Court in the case of Sardar Pratap Singh vs. State of Punjab, wherein it has been held that if no reply is given in the counter affidavit to an allegation of malafide, the same should be deemed to be correct. There can be no quarrel with this proposition.

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4. We may state that the said case was not cited at the time of the arguments, although it had no relevance.

5. We have considered the contents of the Review application carefully. We feel that the same do not make out a case that the order passed by us and which is sought to be reviewed suffers from any error apparent on the face of the record.

6. We are disposing of this application by adopting a process of circulation as admissible under the rules.

7. We find no merit in this application. Accordingly, we reject the same.

U. Savara
(MS.USHA SAVARA)

MEMBER (A)

S.K. Dhaon
(S.K.DHAON)
VICE CHAIRMAN

mrj.