

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 578/92 /199

Date of Decision: 16-01-1998

Mrs. S.B. Ghodke

Petitioner/s

Mr. D.V. Gangal

Advocate for the
Petitioner/s

V/s.

U.O.I. & ors.

Respondent/s

Mr. R.C. Kotiankar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri M.R. Kolhatkar, Member(A).

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

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

Reconsideration
V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 578/92

DATED : 16TH JANUARY, 1998

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri M R Kolhatkar, Member(A)

Mrs. S.B. Ghodke
Upper Division Clerk
C/o. P B Parayane
Rukmini Miketan
3rd floor;
Ranade Road Extn.,
Dadar
Mumbai 400028
(By Adv. Mr. D V Gangal)

..Applicant

V/s.

1. Union of India
through Secretary
Department of Telecommunications
Sanchar Bhavan
New Delhi 110001

2. The General Manager(North)
M.T.N.L., Wadala Telephone
Exchange Building
Dadar, Mumbai 400014
(By Adv. R C Kotiankar)

..Respondents

OPEN COURT ORDER

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[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed by the Applicant challenging the punishment imposed in the departmental enquiry. Respondents have filed reply. Applicant has filed rejoinder. We have heard the learned counsel appearing for both the sides.

2. The Applicant is working as Upper Division Clerk (UDC) and her case is as follows:

.. The Applicant joined the Bombay Telephones in 1976 as Lower Division Clerk. She was promoted as UDC in 1980.



She was transferred to work under the Accounts Officer (Cash - North) as per order dated 21.5.81. While she was working to work under the Accounts Officer, disciplinary enquiry was held against her and the Administrative Officer passed an order dated 2.11.81 imposing penalty of stoppage of increment for one year. She filed an appeal before the Area Manager, who reduced the punishment of stopping increment to only for three months. Then she filed a revision petition before the Advisor (HRD) Telecom Commission and it was dismissed by order dated 31.5.90. She sent a petition to the President which came to be rejected by order dated 30th September 1991. Being aggrieved by all these orders the Applicant has filed the present application. It is alleged that the Applicant was not under the Administrative control of the Accounts Officer and therefore the Accounts Officer was not competent to impose any penalty against the Applicant. The Accounts Officer was not the disciplinary authority as far as the Applicant is concerned. The order of the Accounts Officer is illegal and without jurisdiction. Then on merits by way of amendment made recently in 1997 it is stated that the Applicant was new to the job and was not conversant in preparing the salary bills etc., and if there was some delay or negligence in performance of her duties it cannot amount to misconduct calling for punishment. The Applicant has, therefore, filed this application praying for quashing of the orders of the Accounts Officer, the appellate authority, the revisional authority and the President.



3. Respondents have filed reply asserting that the Applicant was under administrative control of Accounts Officer and that the Accounts Officer was the disciplinary authority and he was quite competent to pass the impugned order of punishment. They have given number of reasons to show how as to how and why the Accounts Officer had administrative control over the Applicant. It is stated that the application is hopelessly barred by limitation. Even on merits the order of Accounts Officer is supported and that the appellate authority and other authorities had considered the contentions of the Applicant and her case has been rejected through out and hence there is no merit in the application.

4. The learned counsel Mr. Gangal appearing for the Applicant raised two points in support of the application. His main contention is that the Accounts Officer was not the disciplinary authority and he had no administrative control over the Applicant and therefore his order initiating disciplinary inquiry and imposing punishment is without jurisdiction and illegal. On merits, his contentions is that the allegation against the Applicant may show some negligence in performance of her ^{trivial} duties but since it was ~~frivolous~~ it cannot amount to misconduct so as to call for any punishment. On the other hand Mr. Kotiankar, learned counsel for the respondents refused both the contentions and further submitted that the application is barred by limitation. We will examine these contentions one by one.



5. The main point to be considered in this O.A. is whether the Accounts Officer under whom the Applicant was working had administrative control over her so as to become her disciplinary authority. Learned counsel for the Applicant has taken us through the rules and contended that the Accounts Officer had only financial powers and duties and he had no administrative control over the Applicant. In particular reliance was placed on P&T manual V1.III page 273(4th edition - Government Publication), where for UDC, LDC and Stenographers the disciplinary authority is Deputy General Manager and for minor Penalty Accounts personnel it is shown as Gazetted Officer (in respect of staff under his administrative control). It is not disputed that Accounts Officer is a Gazetted Officer. Therefore, the only dispute between the parties is whether the Accounts Officer had administrative control over the Applicant or not.

6. In the written statement the respondents have given some idea as to what is meant by administrative control. It may be noted that work 'administrative control' is not defined in the P&T manual. Therefore, we have to go by the general definition or general understanding, ^{which} that means one officer must have control over the other administratively. This has been explained in the written statement stating that the higher officer must have power to write Confidential Reports, to recommend in crossing the Efficiency Bar, sanction of leave, day to-day supervision and day to-day checking etc. These are



general guidelines which given an authority for the Accounts Officer to have administrative control over the Applicant. In the OA itself the Applicant has admitted that she was working under the Accounts Officer (vide para 4 of the application). In para 5 it is admitted that the Applicant was employed as UDC attached to the Accounts Officer and again in the same para in the later contention it is stated that the Accounts Officer cannot be disciplinary authority notwithstanding the fact that she was working under him. Then in para 5.1 it is again admitted that the Applicant was allotted work under the Accounts Officer. She further stated that an employee [✓] may working under the supervision and control of an officer but that officer does not automatically become disciplinary authority. The fact that the Applicant was working under the Accounts Officer and Accounts Officer was supervising her work are not disputed. But this gives an idea whether the Accounts Officer had administrative control or not.

7. The order of transfer of the Applicant is at page 17 of the paper book which reads as follows:

"In accordance with order No.N/00/12/76
dt. 19.5.81 of Dy.AGM(N), Bombay
Telephones Smt. S.B.Ghodke, UDC
ST.No.12772 is relieved from this office
today the 21st May, 1981 A/N with
instructions to report to A.O.(C-N)."

The above order clearly shows that the Applicant is directed to 'report to the A.O.(C-N)'. It is also clearly shown that the Applicant was posted to work directly under the Accounts Officer.



8. It is not disputed that the Accounts Officer was writing the Annual Confidential Reports of the Applicant. In fact we have on record a representation made by the Applicant challenging the adverse remarks made by the Accounts Officer, which is at page 42 of the paper book. Here she has clearly alleged that the Accounts Officer has made adverse remarks in the Annual Confidential Reports the she has admitted in the rejoinder, page 69, that the Accounts Officer had powers to recommend sanctioning of Efficiency Bar to her.

9. From the above facts we find that the Applicant was posted to work under the Accounts Officer, he had control over her in day-to-day work, he had power to write Annual Confidential Reports, he had power to recommend sanction of Efficiency Bar, he had the power to sanction leave. If all these things do not mean administrative control we do not know what else can be.

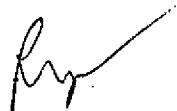
10. Learned counsel for the Applicant has drawn our attention to Telecommunication Finance Handbook which points out number of functions, works, financial duties of the Accounts Officer. It is true that Accounts Officer has so many number of financial duties. As rightly pointed out by the learned counsel for the respondents the Finance Handbook cannot be anything other than financial duties of the officer entrusted with the financial management. The fact that the Applicant was posted to work under the Accounts Officer and she was



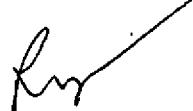
actually working under him is not in dispute. We have seen how many powers were exercised by the Accounts Officer over the Applicant including writing of Annual Confidential Reports. These circumstances are sufficient to point out that the Accounts Officer had administrative control over the Applicant. Admittedly he is a gazetted officer. Hence the Accounts Officer has the power to initiate disciplinary enquiry for minor penalty as mentioned in the rules.

11. Learned counsel for the Applicant also invited my attention to the schedule of administrative powers of different officers and pointed out that there is no reference to Accounts Officer. In our view there need not be a catalog of every officer under these rules. We have already pointed out administrative control has to be inferred from the proven and admitted facts. The Applicant was under the administrative control of the Accounts Officer who was admittedly a gazetted officer, hence an officer competent to initiate disciplinary inquiry for imposition of minor penalties as provided under the Rules. Hence we do not find any merit in the arguments advanced on behalf of the Applicant that the Accounts Officer had no disciplinary powers and his order is without jurisdiction.

12. Once we reach the conclusion that the Applicant was under the administrative control of Accounts Officer who



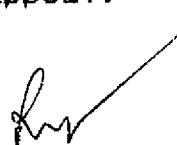
is a gazetted officer and has power to initiate disciplinary inquiry for minor penalties no other point need be considered. As far as the merits are concerned the argument that the Applicant was new to the job and even if there was some delay or negligence on the part of the Applicant that itself would not amount to dereliction of duty so as to call for punishment under the disciplinary rules, reliance was placed on AIR 1979 SC 1022 [UNION OF INDIA & ORS. Vs. J. AHMED. That was a case where there was communal riots in a particular district in which the delinquent officer was a District Magistrate. The Supreme Court observed that the allegations made against the officer was an error of judgment and does not amount to misconduct. As far as the question of negligence is concerned the Supreme Court observed that the High Court was of the opinion that misconduct in the context of disciplinary proceedings means misbehavior involving some form of guilty mind or mens rea. The Supreme Court in para 12 of the reported judgment ruled that gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings. As far as the allegations against the Deputy Commissioner, in para 13, the Supreme Court observed that the allegations may indicate that the officer is not fit to hold the post and it may be possible to revert him or he may be compulsorily retired. In subsequent paragraphs the Supreme Court has observed that if he is an young officer the matter would be different, but the officer in



that case had retired during the pendency of the inquiry. In our view the observations made in that case may not be applicable to the facts and circumstances of the present case.

13. Learned counsel for the respondents invited our attention to an unreported judgment of this Tribunal dated 15.12.1992 in the case of VILAS ATMARAM KERKAR Vs. ACCOUNTS OFFICER (TRAFFIC) M.T.N.L., BOMBAY. Even in that case an identical question was raised viz., whether the Accounts Officer (Traffic), M.T.N.L., was the competent authority to issue the suspension order. This Tribunal held that the Accounts Officer has administrative control over the Applicant in that case and has powers to initiate disciplinary inquiry and to pass orders of suspension etc. We are in respectful agreement with the said judgment.

14. Coming to the facts of the present case, in the order of the disciplinary authority, it is mentioned that the Applicant had lack of devotion of duty and was not doing her duty properly and the pay bills were not prepared as per the program fixed. Some more details were given as to how the Applicant's work was not satisfactory. We are not sitting in appeal over the finding of the disciplinary authority. Time and again the Supreme Court has come down heavily on the Courts and Tribunals should not interfere with the orders of the disciplinary authority as if they are sitting in appeal.



The Tribunal or Court is only concerned with the correctness of the judicial process of reasoning, about the competence of the disciplinary authority or about the following of principles of natural justice etc. On merits we cannot sit in appeal and come to a conclusion that the disciplinary authorities finding on misconduct were wrong or erroneous. That is not the province of this tribunal and therefore we should not go into the merits of the case though the disciplinary authority imposed the penalty of one year for the misconduct against the Applicant, the Appellate Authority has reduced it to three months. In the circumstances of the case that no case is made out for interfering with the impugned order passed ^{by} the disciplinary inquiry, either regarding finding of the guilt or regarding punishment.

15. As far as the argument of the learned counsel for the respondents regarding limitation is concerned the learned counsel for the Applicant is right in submitting that notwithstanding that this point has been considered on the earlier occasion and the objection regarding limitation was overruled by this Tribunal as per order dated 3.8.94. Even otherwise when we are holding that the application is not maintainable on merits the question of limitation does not survive.

16. In the result the present application is dismissed. In the circumstances of the case there would be no order as to costs.

M.R.Kolhatkar
(M.R. Kolhatkar)
Member (A)

R.G.Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman