

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 856/92

Date of Decision 17-6-96

B.S.Panigrahi Petitioner

Shri D.V.Gangal Advocate for the Petitioner.

Versus

Union of India & 3 Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member (J).

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

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

abp.

MR.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO.6, PRESCOT ROAD, 4th FLOOR,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 856/92.

DATED THIS 14th DAY OF JUNE, 1996.

GRAM : Hon'ble Shri B.S. Hegde, Member (J).

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

B.S. Panigrahi
(Advocate by Shri D.V. Gangal)

... Applicant

v/s.

1. The Union of India through
Secretary, Ministry of Defence,
South Block,
New Delhi - 110 011.

2. The Chief of Naval Staff,
Naval Head Quarters,
South Block,
New Delhi - 110 011.

3. The Flag Officer Commanding in Chief,
Western Naval Command,
Bombay - 400 023.

4. The Admiral Superintendent,
Naval Dockyard,
Bombay - 400 023.

... Respondents.

(Advocate by Shri V.S. Masurkar)

I O R D E R I

I Per Shri M.R. Kolhatkar, Member (A) I

In this OA, the outline of the case is clear but the specific facts are nebulous. The case is that of enhancement of penalty by revisionary authority from the original penalty of withholding of increments for 3 years with cumulative effect to one of removal and it is this removal that the applicant has challenged.

2. The applicant states that he was appointed on Casual basis on or about 1980, that he was appointed on regular basis on or about 1984 and that he was charge-sheeted on or about 1986 and that the removal order was dated 27/11/87. The applicant states that he has passed IVth

according to applicant standard. There was/a redundant condition of eligibility for appointment namely that the candidate must possess VIIIth standard pass qualification. However, it is his contention that he was appointed regularly through Employment Exchange and passed trade test but that he was proceeded against under CCS(CCA) Rules 1965 and his signature was obtained on dotted lines on an assurance that he would be given minor punishment. But ultimately the minor punishment was converted into a major penalty of removal. No annexures have been filed with the OA including appointment order, evidence relating to regularization, evidence relating to educational qualification of VIIIth standard pass being redundant, copy of the chargesheet, copy of enquiry officer's report, copy of the original order of penalty, copy of proceedings leading to enhancement of penalty to removal, copy of removal order, etc. The only enclosure is the representation dated 14/2/92 which is a review application under rule 29 of CCS(CCA) Rules 1965 addressed to the Chief of the Naval Staff and urging following grounds for review of the case.

"4. I am now pleading for review of my case under the same rule in view of the following development which have since taken place:-

- a. It has been held the Central Administrative Tribunal, Bombay Bench in a number of cases that removal from service is in violation of principles of natural justice if the delinquents are served with Show Cause Notice alongwith copy of proceeding of Inquiry and are deprived of making a representation against the penalty proposed or in respect of the Inquiry Report.
- b. The deptt. of Personnel & Training has also issued instruction to comply with the necessity mentioned in Para 4(a) above vide its OM No.11012/13/86 - Estt(A) dated 26th June 1989.
- c. The Supreme Court has also upheld this view in its decision Union of India Vs. Mohd. Ramzan Khan, AIR 1991 SC 471.
- d. The judgements given by CAT, Bombay in OA No.100/89-AR Malay v/s. Union of India & Ors. OA No.57/89-BN Dakua v/s. Union of India etc, have quashed the removal orders and directed that the employees who filed applications before it be taken back on duty with continuity of service and consequent benefits.
- e. I am a similarly placed employee.

3. The relief sought by the applicant is to quash the order of removal and direct the respondents to reinstate the applicant with full back wages and continuity of service; alternatively to direct the respondents to ~~have~~ the decided review application of the applicant by the competent authority.

4. Respondents have opposed the OA. Unfortunately, respondents have also not thought it fit to enclose a copy of the relevant documents to enable the Tribunal to know the specific facts. However, the basic contention of the ~~Respondent~~ is that the applicant was sponsored by Employment Exchange, Bombay and initially he was appointed on Casual basis. Subsequently, on verification of School Leaving Certificate, it was revealed that the said certificate was fictitious, and the selection committee was misguided by the applicant due to the bogus certificate produced by ^{and} him/ that the minimum educational qualification of VIIIth standard pass was not a redundant one but on the other hand it is a statutory condition laid down by SRO 338/79.

5. It appears that ~~cross~~ verification of certificates was carried out due to en masse fraudulent entry cases in 1980. It appears that the applicant had also secured employment by producing false certificate and therefore he was charge-sheeted by Memo No. DYP/SD/56681/C.58 dt. 27/11/84. The applicant did not file a reply/any reasons. However, at the preliminary hearing, he decided to defend his case through his defense assistant. He declined to cross-examine the prosecution witness/ and made a statement that he pleaded guilty. The respondents have denied that the applicant was forced to sign any statement on dotted lines. The charge and the proceedings were also explained to the applicant in Hindi. He was awarded the punishment of withholding of increments for 3 years by Disciplinary Authority. We gather from the review application of the applicant that this penalty was imposed in 1985. Respondents contend that

subsequently the case was reviewed by the competent authority under the CCS CCA rules and the punishment of removal from service was imposed on him. As noted above, was the order dated 27/11/87. It is contended that the reviewing authority had given the applicant reasonable opportunity to make a representation and then alone the penalty was imposed.

6. The applicant has taken several grounds to challenge the order of removal and the substance of these grounds is extracted in the review application filed by the applicant from which we have quoted.

7. At the argument stage, the Learned Counsel for applicant confined his submissions to two aspects. Firstly, he prayed that the Tribunal ~~need~~ not go into the merits of the case and ~~may~~ dispose of the matter by simple direction to the department to consider the review application which application was dated 14/2/92. Secondly, the applicant contended that the judgement of this Tribunal in OA 941/89 delivered on 13/2/92 in Katamala Ankaya v/s. Union of India clearly covers his case and this Tribunal should follow the decision and quash the punishment order of removal. That was also a case in which allegation ^{against} of the applicant was that he secured employment by producing false certificate. Reasons of the Tribunal for quashing the penalty of removal are contained in the following para:-

"On behalf of the applicant it was contended that the officer Shri S.M.Gadihoke, Vice Admiral, Chief of Personnel was not competent to issue notice or to pass any punishment order against the applicant as he was not the competent authority and further/review proceedings could have started within a period of six months and not after one and a half year. The applicant has specifically pleaded that Shri S.M.Gadihoke was not authorised under Rule 29 to issue any such order in as much as he was not the authority mentioned in Rule 29 of the CCS (CCA) Rules 1965. The respondents have controverted this allegation by stating that under Presidential order the Rule 29 CCS (CCA) Powers were conferred upon the Chief of Personnel.

In this connection a reference has been made to the order dated 2nd December, 1983 i.e. for the purpose of Rule 29(1)(VI) of the CCS (CCA) Rules, 1965 the President specified certain authorities for disposing of all revision petitions made under Rule 29 of the CCS (CCA) Rules by Group 'C' & 'L' civilian employees working in the lower formation of service Headquarters against the orders of major penalties. But no powers under the said order was conferred on any authority who can exercise suo-moto powers of revision nor has any such order been produced before us. Obviously the applicant's plea stands proved and this application has got to be allowed on the ground that the action which has been taken against the applicant or the order which has been passed by the authority which was not competent to do so and accordingly this application is allowed and the punishment order dated 5.4.1988 is quashed."

8. We have considered the matter. We are not inclined to dispose of the application by issue of direction. We therefore propose to consider whether the judgment in ~~Katamala Ankaya~~ helps the applicant. We have already extracted the relief paragraph of the relevant judgement.

9. The ground urged by the applicant that the review proceedings were not considered within the period of six months were noted by the Tribunal but were not accepted. For this case, the limitation of six months applies to the Appellate Authority when it exercises the powers to re-consider. What weighed with the Tribunal ~~as~~ gathered was that from the Tribunal's order powers were conferred on the Chief of Personnel for revision but no powers in the said order who can exercise suo motu power of revision were conferred on any other authority nor has any such order been produced before us.

10. In order to proceed with this aspect of the arguments, we ~~xxx~~ extract the rule 29 ~~revision~~ and Review in following paras:-

29. (Revision)

(1) Notwithstanding anything contained in these rules -

- (i) the President or
- (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or
- (iii) the Member (Personnel) Postal Services Board in the case of a Government servant in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or
- (iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat of the Posts and Telegraphs Board), under the control of such Head of a Department; or
- (v) the appellate authority, within six months of the date of the order proposed to be (revised); or
- (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;
 - (a) confirm, modify or set aside the order; or
 - (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty had been imposed; or."

11. On a plain reading of the rules extracted above, it is clear that the order of the suo motu revision are contained in the rules and no separate delegation for this purpose is required, what is required is to specify the authority by a specific order/general order who is to exercise the power of revision within such time ~~as~~ is prescribed. Thus, the reading of the rule 29 in Ankaya's case, is contrary to a plain reading of the rules and we do not feel constrained to follow the ratio of Ankaya.

12. Apart from the above, we wish to note the latest developments in the case law. The OA was filed on since then the settled 13/8/92, and law is relating to the need for

supplying of the copy of the Enquiry Officer's report. This matter ofcourse is settled by the Supreme Court decision in ECIL v/s. Karunakaran. Nothing need be said on this aspect of this matter. On the other hand, the Supreme Court in a recent judgement has observed that when there is an admission of guilt, then the charge is to be treated as proved on admission and any other contentions relating to any procedural aspects, are required to be considered in the perspective of the fact of admission. In this connection, reference may be made to Supreme Court judgement in Additional District Magistrate (City) Agra v/s. Prabhakar Chaturvedi and Anr. JT 1996(1)S.C.207 delivered on 8/1/96. The High Court had set aside the order of dismissal in connection with defalcation of Rs.20000/- on the ground that the authorities had not given the delinquent officer adequate opportunity to defend as he was not permitted to examine witnesses nor was he supplied documents asked for by him. the Supreme Court observed that

" ... So far as non-supply of Enquiry Officer's report is concerned, it has to be kept in view that no such contention was raised in the writ petition before the High Court. The High Court has noted this aspect. Nothing could be pointed out to us by learned counsel for respondent to controvert this observation of the High Court. Whether the pleadings in the writ petition should be treated as pleadings in a suit or not is not relevant for deciding this question. Reliance place in the written submission on R.V.Barnsley Metropolitan Borough Council 1976(3)All England Law Reports 452 also is of no avail to respondent No.1. The said decision cannot support the contention canvassed on behalf of the respondent No.1 that even if there is no grievance made in the writ petition the High Court is bound to consider the said grievance. So far as the grievance about the non-examination of witnesses and non-supply of documents is concerned, in our view, the High Court has erred in ignoring the salient features of the case, namely, that respondent No.1 himself by his statement dated 14th December, 1984 admitted to have received an amount of Rs.21,000/- and odd and which

could not be deposited by him along with his associate on account of their carelessness and fault. It is difficult to appreciate how the said statement could be said to have been brought about by coercion as tried to be submitted on behalf of the respondent No.1. But even apart from that the order sheet of the Enquiry Officer clearly shows that respondent No.1 Prabhakar as well as Sajan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was closed. Under these circumstances the subsequent request by respondent No.1 to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact on account of the clear admission contained in writing given by respondent No.1 on 14th December, 1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him. When respondent No.1 was guilty of misappropriation of such a large amount of Rs.21,000/- and odd for couple of months it could not be said that the punishment of dismissal as imposed on him was in any way uncalled for or was grossly disproportionate to the nature of the misconduct proved against respondent No.1. For all these reasons the order of the High Court cannot be sustained and is, therefore, quashed and set aside."

13. In our view the present case is a similar case in which it is not denied that the applicant pleaded guilty to the charge of procuring employment on the basis of false certificate and therefore all other contentions relating to procedural irregularities have to be repelled in this perspective.

14. We may also refer to Full Bench judgement in S.Ranganayakuly v/s. The Sub-Divisional Inspector(Postal) and Others in 1995(I) SLR (CAT) 557 dated 24/10/94. The Full Bench observed that there is a distinction between the "Rules of Recruitment" and "Conditions of Service". Non-fulfilment of any requirement of the "Rules of Recruitment" renders a candidate ineligible or disqualified to enter the arena of

either competition or selection. Such a defect is incurable. It is fatal to the candidature. Unlike the conditions of service, the conditions of recruitment are rigid and inflexible.

15. We note that so far as the guilt of the applicant is concerned, it goes to the root of the matter viz. the applicant had entered into Government service on a false ^{1. on qualifications &} representation/and the Tribunal is required to construe ^{rules} the ^{same} strictly as urged by the respondents as the same are contained in SRO with statutory force.

16. In view of the discussions referred to above and especially keeping in view the decision of the Full Bench and Supreme Court, we hold that the ratio of Ankaya's case is not binding on us. We are of the view that the OA is without merit and the same is dismissed with no orders as to costs.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S. HEGDE)
MEMBER (J)

abp.