

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 252/93

Date of Decision: 1.7.1999.

Shri Suresh Sakhararam Sarankar **Applicant.**

Shri S.Natarajan. Advocate for
Applicant.

Versus

Union of India and others Respondent(s)

Shri S.S.Karkera for

Shri P.M.Pradhan, Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice S.Venkataraman, Vice Chairman.

Hon'ble Shri. S.K. Ghosal, Member (A).

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

(S. Venkataraman)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 252/93

Thursday the 1st day of July 1999.

CORAM: Hon'ble Shri Justice S.Venkataraman, Vice Chairman
Hon'ble Shri S.K. Ghosal, Member(A)

Suresh Sakharam Sarankar
residing at
P/4, Room No.8
P & T Colony Sahar
Andheri, Bombay.

... Applicant.

By Advocate Shri S.Natarajan.

V/s.

1. Union of India through
The Secretary
Ministry of Communication
Department of Post
Dak Bhavan, Sansad Marg.,
New Delhi.
2. Chief Post Master General
Maharashtra Circle
G.P.O. Bombay.
3. Director,
Postal Services (City)
C/o The Chief P.M.G.
C.P.O. Bombay.
4. Senior Manager,
Department of Post
Mail Motor Service
134-A, Ahire Road,
Worli, Bombay.

... Respondents.

By Advocate Shri S.S. Karkera for Shri P.M.Pradhan.

O R D E R (ORAL)

(Per Shri Justice S.Venkataraman, Vice Chairman)

The applicant is aggrieved by the order
of the Disciplinary Authority dated 24.3.1990
(Annexure A2) by which he was removed from service.
By the order of the Appellate Authority dated 21.10.1992

the penalty was reduced to compulsory retirement.

2. The charges framed against the applicant are that he while functioning as cleaner on 3.5.1989 left his duty unauthorisedly at 10.30 hrs. and further remained absent unauthorisedly on 4.5.1989 and during the period from 5.6.1989 to 8.6.1989 refused to perform any effective duty in contravention of Rule 62 and 162 of P & T Manual Volume III read with Rule 3(i) (ii) and (iii) of CCS (Conduct) Rules 1964. The second charge is that while functioning as Cleaner the applicant sat on fast unto death from 12.6.1989 to 27.6.1989 for unjust demands in contravention of rule 7(iii) read with rule 3(i)(iii) of CCS(Conduct) Rules 1964.

3. The applicant did not choose to appear and file any defence and inspite of the intimation given by the Enquiry Officer. During the enquiry some witnesses were examined and documents were marked and the Enquiry Officer submitted the report holding that the charges are proved. The applicant had challenged the order of the Disciplinary Authority and the order of the Appellate Authority ~~rejecting his appeal~~ ^{rejecting his appeal} ~~which had been~~ based on his appeal in OA 528/93 and in that case the Appellate Authority was directed to dispose of his appeal after giving personal hearing, taking into consideration the plea raised in the application and to pass a reasonable speaking order. The applicant was given personal hearing and the Appellate Authority passed the order dated 18.10.1989 holding

that there was no reason to interfere with the findings of the Disciplinary Authority but however modified the penalty from removal from service to that of Compulsory retirement. The applicant has now challenged the orders of Disciplinary Authority and the Appellate Authority.

4. The main grounds urged by the counsel for the applicant are that inspite of the representation given by the applicant that as he cannot understand English, he should be furnished with translation of charge sheet in Hindi or Marathi and that still the Disciplinary Authority had not furnished translation and that this has violated the principles of natural justice as the applicant ^{could} had not defend himself appropriately that though the first charge refers to the applicant's absence on 4.5.1989 and leaving the duty on 3.5.1989, the applicant had already been proceeded against in another minor penalty ^{proceeding for} of his absence on 3.5.1989 and 4.5.1989 and as such this charge should not have been framed and that with regard to ^{the charge that} he had not performed duty on 5.6-1989 and 8.6.1989 though he was physically present. Apart from that allegation contradicts the Disciplinary Authority's action in imposing the penalty for his unauthorised absence from 5.6.1989 to 8.6.1989 and that as such the applicant should not have ^{been} held ^{of} guilty for charge one. So far as second charge is concerned the main contention of the learned counsel for the applicant

is that no ~~documents~~ ^{evidence} had been adduced in the enquiry to show that he had actually entered on fast to press his demand from 12.6.1989 to 27.6.1989, though in his letter S-11 he had threatened to do so.

5. With regard to his first submission regarding non supply of translation of charge sheet, the learned counsel for the applicant relied upon the decision of the Ahmedabad Bench of this Tribunal in Teja Nonghan V/s. Union of India and others (1991) 17 ATC 113. It is no doubt true that the Tribunal ^{did} ~~had~~ not find the respondent's explanation for not furnishing the translation ^{was} satisfactory and ^{it} was observed that there was a ~~default~~ in natural justice. But they have also pointed out that neither side had produced relevant rules on that subject. In the instant case the Appellate Authority has pointed out that the applicant himself had given a representation in English. This is not a case where the respondents have admitted that the applicant does not understand English. Apart from that the respondents have ^{pointed out} ~~enhanced~~ in reply to applicant's first representation that as per P & T Manual Volume III the charge-sheet to any person is issued only in English and if necessary, the person charge sheeted may arrange for its translation in any other language, for his convenience. The applicant was also informed that if he wants translation of any particular letter in Hindi then they will consider for arranging

such translation and that his request for translation of all letters in Marathi cannot be agreed to. (Annexure A 5 dated 23.10.1989). The applicant however did not choose to take part in the enquiry and we do not think that the applicant can take the plea that because the charge-sheet and other documents were not translated into his vernakular language, proceedings are vitiated. The enquiry has commenced more than one month after the department sent reply to the applicant.

6. As far as the first charge is concerned we do see some force in the submission made by the applicant. It is not disputed that the department had initiated minor penalty proceedings against the applicant for unauthorised absence and that the penalty of stoppage of one increment has been imposed. The statement of imputation in that regard has been issued on 30.1.1990 while the present charge sheet had been issued on 24.3.1990. In that statement of imputation the applicant has been shown to have been on ^{un}authorised absence on 3.5.1989, 4.5.1989 and from 5.6.1989 to 8.6.1989. The respondents have stated that the earlier proceedings are only with regard to his mis-conduct of remaining absent habitually and that now his mis-conduct of being unauthorisedly absent on particular dates is the subject matter of the charge-sheet. We do not think that the applicant could have been again separately charge sheeted for the absence on some

dates. That apart, having held in the earlier proceedings that the applicant was unauthorisedly absent from 5.6.1989 to 8.6.1989, in the present charge sheet the respondents have alleged that from 5.6.1989 to 8.6.1989 the applicant was actually present and that he did not perform duty. As such the first charge should not have been framed against the applicant.

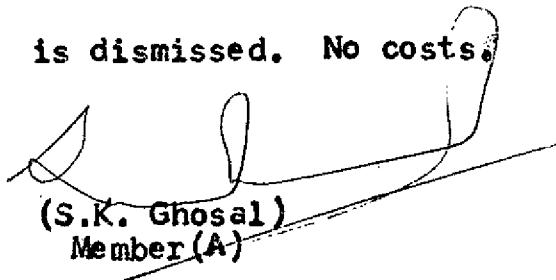
7. The main charge is with regard to his mis-conduct in going on fast unto death in the office premises from 12.6.1989 to 27.6.1989 for some demands. The learned counsel for the applicant contended that no witness had specifically stated that he saw the applicant sitting on fast and that only on the basis of three documents the Enquiry Officer had held that this charge is proved. He urged that even these documents had not been marked in evidence by examining either the person who issued the letters or the person who delivered them to the applicant. We have perused the enquiry proceedings which shows that no witness has been examined to prove that the applicant was seen sitting on fast during the above period. But the applicant himself had written (Exhibit S-11) wherein he had threatened to go on fast from 12.6.1989 to 27.6.1989. This fact is not disputed. S 14 and S 15 are written by the officer who intimated the applicant that he has been sitting on fast in the premises, that it was illegal and calling upon him to withdraw the fast undertaken

by him, failing which action will be taken against him. These two documents which were produced by the presenting officer during the enquiry had been taken on record and the Enquiry Officer marked them as exhibits. Though the officer who wrote those letters to the applicant has not been examined, it cannot be said that the Enquiry Officer could not have taken into consideration those documents. Strict rules of evidence are not applicable in the disciplinary proceedings. They were produced during the enquiry and they were marked as exhibits. The fact that the applicant had received those letters had not been disputed by the applicant. In fact in O.A. 582/91 in para 4.5 the applicant has clearly stated that Director had asked him to stop hunger strike. In para 4.11 of that application the applicant has specifically admitted that since he did not get the salary he sat on hunger strike unto death. He has also stated that due to the intervention of police the applicant was made to break the hunger strike after 14 days on 26.6.1989. Though the learned counsel for the applicant contended that even if the applicant has admitted that he had undertaken the fast in the previous application, the Tribunal has to hold that the charges is not proved as no evidence had been adduced in that regard in the enquiry. We feel that it would be ridiculous for us to hold inspite of applicant's categorical admission before the Tribunal that he had undertaken hunger strike

that the charge is not proved. As already pointed out this is not a case where it can be said that there was absolutely no evidence before the Enquiry Officer in support of the charge in view of the letter written by the applicant and the two letters written by the officer which are marked as exhibits. In the circumstances we are unable to hold that the charges are not proved.

8. Though the learned counsel for the applicant has pointed out that the applicant had some grievance because he had been made to work continuously without much break, we do not think that could be a justification to the applicant to undertake fast to press his demands, in the office premises, which would affect the discipline in the office and also affect the image of the institution. The Appellate Authority after taking into consideration the circumstances under which he had undertaken the fast has modified the penalty to compulsory retirement. We cannot interfere with the quantum of the penalty.

9. For the above reasons this application is dismissed. No costs.


(S.K. Ghosal)
Member (A)


(S. Venkataaraman)
Vice Chairman