

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.545/1993
DATED THE 20th DAY OF AUG, 2001

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

M.H.Mahendra,
Senior Examiner of Trade Marks,
Trade Marks Registry,
Old C.G.O. Building,
101, Maharshi Karve Road,
Bombay - 400 020.

... Applicant

By Advocate Shri P.A.Prabhakaran

V/s.

1. Union of India,
Through the Secretary to Government
Ministry of Industry,
Department of Industrial Development,
Udyog Bhavan, New Delhi-110 001.

2. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi - 110 011.

3. Shri M.C.Sarkar,
Deputy Controller of Patents
& Designs (Retd),
(Inquiry Officer),
AE - 725, Sector-I,
Salt Lake City,
Calcutta - 700 064.

4. Controller-General of Patents,
Designs and Trade Marks,
Trade Mark Registry,
Old C.G.O. Building,
101, Maharshi Karve Road,
Bombay - 400 020.

... Respondents

By Advocate Shri V.G.Rege

...2.

:2:
(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant, who, at the relevant point of time was functioning as Senior Examiner of Trade Marks, was placed under suspension on 24/12/86 and departmental proceedings were contemplated against him. He was served with a memorandum dated 8/1/87 enclosing therewith a chargesheet under Rule-14 of CCS(CCA) Rules 1965 containing in all seven articles of charges against the applicant. The same are reproduced below:-

Article of Charge-I

That Shri M.H. Mahendra while functioning as Senior Examiner of Trade Marks, during the period October-December, 1984 refused to carry out the official instructions/orders of the immediate controlling officer (Assistant Registrar of Trade Marks) in the disposal of applications allotted by him. By the aforesaid acts, Shri Mahendra exhibited lack of devotion to duty and thus he contravened the provision of Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.

Article of Charge-II

That the said Shri M.H. Mahendra while functioning as Senior Examiner of Trade Marks during the period January, 1985 did not attend, without any valid reason an official meeting of Senior Examiners/Examiners convened by the then Deputy Registrar of Trade Marks on 21/1/1985 [although he was present in the office and was aware of the meeting. By the aforesaid act, Shri Mahendra exhibited lack of devotion to duty and exhibited a conduct unbecoming of a Government servant of his status. Thus he contravened the provision of Rule 3 (1)(ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article of Charge-III

That the said Shri Mahendra while functioning as Senior Examiner of Trade Marks during the period January, 1985 even after he was informed of the decision taken at the meeting held on 21/1/85 and was directed in writing to immediately attend to the index work and complete 40 cases per day, as per the directions of the Controller General of Patents, Designs and Trade Marks, he did not attend to the said work. By his aforesaid acts, Shri Mahendra exhibited lack
...3.

:3:

of devotion to duty and acted in a manner unbecoming of a Government servant of his status. Thus he contravened the provision of Rule (3)(ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article of Charge-IV

That the said Shri Mahendra while functioning as Senior Examiner of Trade Marks during the period February, 1985 refused to hand over charge of the Unit 8 to Shri K.K.Sharma, Senior Examiner of Trade Marks as per reallocation of work. This act on the part of Shri Mahendra constitutes deliberate insubordination, indiscipline and thus he has exhibited total lack of devotion to duty and thereby contravening the provisions of Rule 3 of the CCS(Conduct) Rules, 1964.

Article of Charge-V

That the said Shri Mahendra had not been submitting any of his cases to any of the supervisory officers for approval nor has he been reporting to any one about the work he is doing. Shri Mahendra is not submitting any weekly report of examination of applications in accordance with the official instructions. By his aforesaid acts, Shri Mahendra exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant of his status and thereby he contravened the provision of Rule 3(a1)(ii)&(iii).

Article of Charge-VI

That Shri Mahendra while functioning as Senior Examiner of Trade Marks during the period January, 1985 misbehaved with Shri Rakesh Kumar, Assistant Examiner of Trade Marks and also incited him not to carry out the orders of his superior officers and not to do the work. By the aforesaid acts, Shri Mahendra exhibited a conduct highly unbecoming of a Government servant of his status and thereby he contravened the provisions of Rule 3(1)(iii) of the CCS(Conduct) Rules.

Article of Charge-VII

That the said Shri Mahendra while working as Senior Examiner of Trade Marks has been insulting senior officers and colleagues and vitiating the working atmosphere in the office. By his aforesaid acts, Shri Mahendra exhibited lack of devotion to duty and acted in an unbecoming manner and thus he contravened the provision of Rule 3(1)(ii) & (iii).

...4.



2. The applicant sent a statement of defence in respect of articles of charges framed against him. An Inquiry Officer was appointed and the inquiry proceeded. After completion of the inquiry, the inquiry officer submitted his report on 9/8/88 holding that the charges numbers II, IV and VII have been proved and the article of charge VI proved partly. The President being the disciplinary authority, advice of the UPSC was sought and based on the advice of the UPSC, although the inquiry was proceeded against the charge sheet, in respect of major charges for major penalty, ultimately the disciplinary authority awarded a minor penalty to the applicant, of with-holding of one increment in the scale of Rs.2200-4000 attached to the post of Senior Examiner of Trade Marks for a period of two years without cumulative effect vide order dated 10/2/89. Since there is no provision of appeal against the order of the President, the applicant filed OA No.239/89 in this Tribunal challenging the order of penalty. He challenged the entire proceedings on variety of grounds. One of the grounds was that copy of the report was not made available to him either by the Inquiry Officer or by the disciplinary authority and the orders were passed without giving an opportunity of hearing to the applicant against the report of the inquiry officer who held the applicant guilty of some of the charges. In this OA, on behalf of the applicant only one contention was pressed i.e. non giving of the report of the inquiry officer, thus depriving the applicant of an effective representation against the report and the quantum of punishment. The Tribunal quashed and set aside the order of the Disciplinary Authority dated 10/2/89. However, the Tribunal also made it clear that this would not preclude the disciplinary authority

from giving the inquiry officer's report to the applicant and giving him reasonable time to file objections against the same and going ahead with the disciplinary proceedings beyond that stage. The order was passed on 13/2/92.

3. Thereafter, a copy of the Inquiry Officer's report was made available to the applicant on 26/6/92 and he was given an opportunity to make his submissions on the report of the Inquiry Officer. His submissions on the report were received vide letter dated 20/7/92. He was also given a personal hearing on 7/10/92. UPSC who were consulted again in the matter advised vide their letter dated 18/2/93 that after taking into account all aspects relevant to the case, the Commission considered that the penalty of stoppage of one increment for a period of two years without cumulative effect would meet the interest of justice. After careful study of the inquiry report and in the light of the submissions made by the applicant and the observations during his personal hearing together with the advice of the UPSC, the disciplinary authority came to the conclusion that the applicant had indulged in indiscreet and intransigent actions and such behaviour on the part of the Government servant cannot be taken lightly and deserves punishment. Accordingly, a penalty of with-holding of one increment in the scale of Rs.2200-75-2800-EB-100-4000 attached to the post of Senior Examiner of Trade Mark for a period of two years without cumulative effect vide order dated 15/3/93 was impugned. At the end of the order it was also directed that a copy of the order may be added to C.R.Dossier of the applicant. Aggrieved by the impugned order, the applicant has sought the following reliefs:-

:6:

1. A charge sheet bearing no.16(4)/85-viz. dated 8/1/87 issued by the President be quashed.
2. The Inquiry report dated 9/8/1988 submitted by the Inquiry Officer in respect of article of charge II, IV and VII and the first limb of the article VI be quashed.
3. The advice of the U.P.S.C. in respect of article of charge IV and VII as contained in their letter No.F.3/247/92-S.I. dated 18/2/93 of the Under Secretary U.P.S.C. to the Secretary to the Government of India, Ministry of Industry, Department of Industrial Development, New Delhi be quashed and further penalty recommended by the commission also be quashed.
4. An order no.16(4)/85-Vigilance dated 15/3/1993 passed by the President be quashed which imposes two penalties of withholding of one increment for two years without cumulative effect and keeping this order in C.R.dossier of the applicant.

4. It is the contention of the applicant that the applicant was harrassed throughout. The charge sheet issued to him is vague. The procedure adopted by the Inquiry Officer as well as the disciplinary authority in the departmental proceedings is in violation of the guidelines which are mandatory. The entire proceedings are due to bias and with an ulterior movtive to harass the applicant so that his future prospect of promotion is marred. There is a denial of natural justice in that the applicant was denied the service of the defence assistant of his choice deliberately. The respondents further changed the Presenting Officer by cancelling the appointment of Shri H.P.Shukla who was a Law Graduate. He was replaced by one Dr.S.K.Pal. Though applicant had objected to the authenticity of certain documents on the ground that unless the person who has issued the document is produced for cross examination, the same cannot be used against the applicant, ignoring the objections

...7.

raised by the applicant, the relevant documents were taken on record without producing the witnesses. Further the Inquiry Officer was not impartial in that he sought the advice of the disciplinary authority in allowing or disallowing certain documents. Though some of the documents were allowed earlier by the Inquiry Officer which were withheld by the Disciplinary Authority without any speaking order. But ultimately on the basis of the same, certain articles of charges are held to be proved. The order of disciplinary authority is a non speaking order without meeting any of the points raised by the applicant. The Inquiry Officer erred in dividing the composite article of charge into two water-tight compartment of imputations which is against the rules. The advice of the UPSC which is supposed to have been followed by the disciplinary authority is full of contradictions. The UPSC did not agree with the findings of the Inquiry Officer in respect of articles-IV of the charge but held that the said charge is proved on a different ground. It was not open for the UPSC to give such a finding except the advice. The advice of the UPSC in respect of article IV by the disciplinary authority has completely vitiated the Inquiry. Double punishment has been imposed on the applicant i.e. in addition to the withholding of the increment, a copy of the order has been directed to be placed in the C.R.Dossier of the applicant. The applicant has thus challenged the penalty order on various grounds.

5. The respondents submit that the inquiry was conducted in a fair manner. There was no deliberate delay on the part of the respondents. The respondents, strictly followed the

Hon'ble Tribunal's order quashing the penalty order of disciplinary authority dated 10/2/89. The disciplinary proceedings were started therefore from the stage of serving of the inquiry report on the applicant and after due process of consultation with the UPSC and after considering the report of the Inquiry Officer carefully, the disciplinary authority had come to the conclusion that the charged officer was guilty of the charges namely charge nos.IV and VII and had therefore rightly imposed a minor penalty of withholding of an increment for a period of two years. The charge is not at all vague. All the articles of charges were supported with statement of imputations. As regards the cancellation of the appointment order of Shri Shukla the applicant himself had objected to the appointment of Shri Shukla as Presenting Officer on the ground that Shri Shukla was one of the respondents in the application filed by the applicant. Since the presenting officer was not a legal practitioner, the request of the applicant to engage Shri Mahalle, Advocate who was a legal practitioner was rejected by the Disciplinary Authority. Thereafter, the applicant was allowed to avail the service of another defence assistant and the inquiry had proceeded accordingly. The applicant and his defence assistant were given inspection of the documents on 10/9/87 specified in the list given in Annexure-3 to the Charge sheet dated 8/1/87, immediately after the preliminary hearing. After the applicant had inspected the documents alongwith his Defence Assistant, Shri J.R.Goyal, in the presence of the disciplinary authority, the Defence Assistant gave a certificate that he and

the charged officer had inspected the original documents listed at Annexure - 3 dated 8/1/87. Thereafter, the applicant had also submitted a list of 28 further official documents and had also raised dispute regarding the authenticity of certain documents. The Inquiry Officer has stated that no objection was raised by the applicant during the inspection or even while giving the receipt. Therefore, it has to be considered that those documents had been accepted by him for all purposes. Any objection raised afterwards cannot be allowed. Merely disputing the authenticity of certain documents do not mean anything specifically and clearly what was actually disputed.

6. Out of the total 28 official documents, certain documents were not permissible for inspection under Rules while certain others were not in existence or not available with the department (disciplinary authority) as was intimated. Hence, except such documents all the other documents requisitioned by the charged officer were permitted for inspection vide Inquiry Officer's order dated 8/12/1987. The Inquiry Officer duly recorded the position regarding the availability and inspection of the documents demanded by the applicant. The respondents have thus justified their action.

7. The learned counsel for the applicant had also raised some other issues which do not form part of the relief sought by the applicant. These are regarding crossing of the EB, and increments. The applicant was to cross the EB as on 1/12/85. However, he was not allowed to cross the same as departmental proceedings were contemplated against him around that time. The applicant was finally allowed to cross the EB w.e.f. 1/12/85 and

:10:

later on the same was cancelled on 21/9/92 and he was again finally allowed to cross the EB from 1/12/85. After the inquiry was completed and penalty order was issued, i.e. from 15/9/93, the applicant filed OA 915/93 in this connection and the OA was allowed by the Tribunal permitting the applicant to cross EB. It fell due to him on 1/12/85 in the pre-revised scale and on 1/12/86 in the revised scale of pay. It was directed that his pay shall be fixed taking those dates into consideration and all the arrears shall be paid with interest @ 12% p.a.

8. As regards his promotion, the applicant's case was considered for promotion and it had been placed in sealed cover due to the penalty which had been imposed upon the applicant. The promotion was not effected. A contempt petition filed by the applicant in OA-359/87 in this connection was disposed of on 23/4/95.

Since these matter have been dealt with separately, we do not consider it necessary to adjudicate upon the same in this OA.

9. We have heard the learned counsel for the applicant as well as the respondents and have gone through the pleadings. We find that the inquiry against the applicant has been conducted in a fair manner and according to rules and procedure laid down. We do not find anything vague in the charge sheet, infact having attended the inquiry, the charge sheet cannot be questioned at this stage. We also find that due consideration was given to applicant's request for inspection of documents. He has not raised any objection at the time of inspection. The learned counsel for the respondents has cited the judgement in the case of Director General, Indian Council of Medical Research and Ors V/s. Dr. Anil Kumar Ghosh and Anr. in support that where genuineness of documents produced^{by} during inquiry was not in

h

:11:

dispute and their authors need not be examined. It is to be noted that while the charge sheet initially issued was for a major penalty, after conducting of the inquiry, the respondents themselves have after due consideration of the Inquiry Report and in consultation with the UPSC decided to impose only a minor penalty. The applicant has raised the plea that there are contradictions in the report of the Inquiry Officer and the advice of the UPSC is identical to the one offered earlier. Even the order of the disciplinary authority is not^h different than the earlier order of 10/2/89. We find that the inquiry report remains the same, the departmental proceedings were proceeded with from the stage of supplying of copy of the Inquiry Report to the applicant and the UPSC did not find any new fact or new evidence brought out in the representation of the applicant given on the inquiry report, to change their findings. This has been clearly spelt out by UPSC on re-examining at great length, very carefully and they had observed that all the points raised by the applicant had already been considered threadbare and therefore had stuck to their earlier advice. The order of the disciplinary authority cannot be said to be a non speaking order. Infact, it is evident that due consideration was given after careful consideration, the disciplinary authority decided to impose a minor penalty of withholding of one increment. The punishment is not at all disproportionate. The learned counsel for the respondents has cited the judgement in the case of Om Kumar & Ors. V/s. Union of India. In this judgement in para-26 the proportionality of punishment and the scope of judicial review in this respect have been discussed. It has been held that no

interference has been called for where punishment has been awarded after considering all the materials available. There is nothing to show that the procedure has not been followed strictly. Hence, it does not call for a judicial review.

8. In the facts and circumstances of the case, we are satisfied that there are no procedural flaws or infirmity in the order of the disciplinary authority or the inquiry report or the advice of the UPSC. We are therefore not inclined to interfere with the impugned order.

9. In the result, the OA fails and is dismissed accordingly. We do not order any costs.

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER(A)

S.L. Jain

(S.L. JAIN)
MEMBER(J)

abp