IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 641/93

Date of Decision: 7-10-1997

Balraj Mohanlal Khaparde — Applicant.

Mr. Anil Kumar — Advocate for Applicant.

Versus

UOI & ORS. — Respondent(s)

Mr.S.S.Karkera for Mr.P.M.Pradhan — Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. P.P. Srivastava, Member(A)

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

V.C.

trk

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

O.A..No. 641/93

DATED : 7th OCTOBER, 1997

CORAM : Hon. Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon. Shri P.P. Srivastava, Member (A)

Balraj Mohanlal Khaparde
Room No. 1
Rahimat Villa Chawl
Harijanwada
Panvel
District Raigad
(By Adv. Mr. Anil Kumar K.P.) ..Applicant

V/s.

1. Union of India through
the Chief General Manager(T)
Maharashtra Circle
Mumbai 400001

2. The Chief Superintendent
Central Telegraph Office
Mumbai 400001

3. The Assistant Chief
Superintendent,
Central Telegraph Office
Mumbai 400001
(By Adv. Mr. S.S. Karkera for
Mr. P M Pradhan, Central Govt.
Standing Counsel) ..Respondents.

ORDER

(Per: R.G. Vaidyanatha, V.C.)

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed their reply. We have heard the arguments on 1.10.1997 in part. It was adjourned to to-day in order to hear the respondents side. To day we have heard the learned counsel for the respondents. The applicant is in person and submits that the counsel has not come and the counsel has already submitted his arguments on the previous date. We have perused the entire material on record The applicant is challenging the order of compulsory

retirement dated 19.10.1992 passed by the disciplinary authority and the order dated 24.12.1992 passed by the appellate authority.

2. The applicant was working as a Telegraphist in the office of Chief Superintendent at Mumbai. The applicant had to remain absent due to personal and domestic difficulties and hence was absent from service on few occasions. He had given leave applications. Due to his unavoidable absence the applicant has to suffer the punishment imposed by the administration. Then on 11.8.92 the Respondent No.3 issued a charge sheet proposing to hold an inquiry. The allegation of charge sheet is one of unauthorised absence. The charges were vague. The charge sheet was illegal; notwithstanding the vagueness and illegality in the charge sheet the applicant agreed with the charges and pleaded for mercy with Respondent No.3. It is also stated that his admission of charge was made on the basis of assurance given by the authority that a lenient view would be taken. Again by letter dated 25.9.92 the applicant admitted all the charges mentioned in the charge sheet and sought indulgence of Respondent No.3. By order dated 19.10.92 the Respondent No.2 compulsorily retired the applicant from service. It is alleged that the Respondent No.2 did not conduct any inquiry as per rules hence it is stated that the inquiry is vitiated. Then the

applicant preferred an appeal before the Respondent No.1 but the appellate authority rejected the appeal by order dated 24.12.1992 without passing a speaking order and without considering various facts and legal grounds mentioned in the appeal memo. The order of compulsory retirement of an official who has put in 12 years of service virtually amounts an order of dismissal from service. The order is bad as no inquiry is held as required by law. The punishment has been imposed by an authority who is not competent authority as per rules. Since the applicant has already suffered punishment for previous unauthorised absence he cannot be punished again and this amounts to double jeopardy. No second show cause notice was given after the inquiry was held and the application is filed praying that the order of the disciplinary authority and appellate authority be quashed and that the applicant be reinstated with full back wages and other consequential benefits.

3. The respondents have filed a reply denying many of the allegations in the application. In particular it is stated that there is no necessity for conducting an inquiry when the applicant has pleaded guilty to the charge sheet. Since the applicant had remained unauthorisedly absent on many occassions the orders passed by the authority from time to time are perfectly valid and justified. The allegations about the vagueness in the charge or illegality in the charge sheet are denied. The allegation that the applicant admitted the charge based on an assurance that a lenient view would be taken is denied. The authorities have considered all the facts and circumstances and passed the impugned orders. The punishment has been imposed by the app-

ropriate authority and that there is no merit in the application and the applicant is not entitled to any benefits. At the time of hearing the learned counsel for the applicant has relied on many contentions for challenging the impugned order of punishment and the order of appellate authority. It is argued that the disciplinary authority has not conducted an inquiry and therefore there is a violation of provisions of CCS(CCA) Rules. Then it is submitted that there was no admission of guilt by the applicant and hence the disciplinary authority in not conducting a full fledged inquiry in bad in law. Then it is submitted that the punishment is given by an authority which is not a prescribed authority in law and it is also submitted that the appellate authority has not passed a speaking order and there is non-application of mind by the appellate authority. It is also argued about double jeopardy. On the other hand the learned counsel for the respondents supported the impugned order and refuted all the above contentions.

4. The first two contentions may be taken up together. The question is whether the applicant has pleaded guilty to the charges or he contested the charge sheet. After the charge sheet was issued to the applicant, he gave a letter dated 2.9.92 in which he admitted all the charges against him and prayed that he may be excused and give one more chance to improve his irregularity. Then the disciplinary authority wrote

to the applicant a letter to admit or deny the charges specifically. Then the applicant by reply dated 25.9.92 agreed with the charges. The relevant portion of which is as follows:

> "Reference to my earlierreply dated 2.9.92 I have agreed with the charges framed in the charge sheet. I once again admit all the articles of charge".

It is therefore seen that in both the letters the applicant has admitted all the charges and now it is too late in the day to say that the has not admitted the charges and a full fledged inquiry was necessary. Even in the original application the applicant has stated that he has admitted the charges on the basis of an assurance given by the authorities. Therefore, the applicant has no doubt in his mind about his pleading guilty to the charges but the only explanation in the O.A is that he has pleaded guilty on the basis of assurance given by the authorities.

5. As far as the allegation about the assurance given by the authorities is concerned this is a bare allegation in the application which is denied by the respondents. There is no other material to substantiate the submission. However, the material on record clearly shows that the applicant has admitted all the charges and pleaded mercy and wanted a lenient view to be taken.

6. Once we reach the conclusion that the applicant has admitted the charges, the question whether there was a necessity for a formal full fledged inquiry as contended by the learned counsel for the applicant. Rule 14 of CCS(CCA) Rules provides for procedure for imposing major penalties. Rule 14(4) provides that the charge sheet should be served to the Government servant

with all necessary documents and he shall be called upon to submit a written statement of defence. Then sub-rule(5) provides that after receiving the written statement the disciplinary authority shall inquire into the said articles of charge as are not admitted. Therefore, the duty cast on the inquiry authority or disciplinary authority is to conduct inquiry regarding charges which are not admitted. In otherwords there is no question of holding an inquiry when the charge is admitted. It is one of the fundamental principles in the law of Evidence that a fact admitted need not be proved. When we have reached the conclusion that the applicant has admitted the charges framed against him there is no necessity for holding a formal inquiry as contemplated in the application. The learned counsel for the applicant invited our attention to AIR 1961 SC 1070, JAGDISH PRASAD SAXENA Vs. THE STATE OF MADHYA PRADESH. That is a case where no inquiry was held after the issuance of chargesheet. In other words the inquiry authority proceeded on some admission made by the delinquent officer during the priliminary inquiry. It was in those circumstances held in spite of admission in the priliminary inquiry, once charge sheet is issued then a formal inquiry should be held. In our view the said decision is distinguishable on facts and has no application to the facts of the present case. On facts we are satisfied that there was an unequivocal admission on the part of the applicant. Therefore the allegation in the charge sheet about the unauthorised absence, there would be no necessity for holding a formal inquiry.

7. The next submission on behalf of the applicant is that the punishment was imposed by the Chief Superintendent who is not a prescribed inquiry authority under the rules. The learned counsel for the applicant placed reliance on a notification dated 12.5.1987 which prescribes that Senior Superintendent Telegraphic Officer is the disciplinary authority and Chief Superintendent as the Appellate Authority. It was argued that this punishment has been imposed by the Chief Superintendent is illegal since he is not competent authority under the said notification. Reliance was placed on 1990(14)ATC 619 where a Bench of Ernakulam Tribunal in P M ABDUL KHADER Vs. UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF COMMUNICATIONS, DEPARTMENT OF TELECOM AND OTHERS, has held that when a statutory authority is given powers to punish a person no other authority eigher higher in rank or lower in rank cannot exercise that power. But the said authority itself provides the qualification that unless concurrently given similar powers. Therefore, the emphasis in the decision is that no other authority can pass an order of punishment except the prescribed authority unless that authority is given concurrent powers. The learned counsel for the respondents invited our attention to the CCS(CCA) Rules. Rule 12(2)(a) provides that punishment can be imposed by the competent authority or the authority in the schedule. Therefore we find that here the rule itself provides concurrent authority not only on the specific authority but also on the appointing authority. In the present case the learned counsel for the respondents made available to us the order of appointment issued to the applicant dated 13.3.1980 which was issued by the Chief Superintendent, Central Telegraph Officer, Mumbai. In the present notification the applicant is shown at Sr.No.30. Hence there is no

difficulty to hold that the Chief Superintendent is the appointing authority of the applicant. Hence by virtue of 12(2)(a) the appointing authority has powers to impose any major penalties as provided under Rule 11. We may also refer to Article 311 of the Constitution of India where sub-clause (1) provides that no person shall be expelled or removed from service by any authority subordinate to the appointing authority. In clear terms 311(1) provides that the order of removal from service can be passed only by the appointing authority and no person subordinate to the appointing authority. Since the Chief Superintendent is shown to be the appointing authority he was within his rights to pass the impugned order of punishment.

8. Once we come to the conclusion that the Chief Superintendent being appointing authority has powers to pass the impugned order of punishment then Rule 24 is attracted. Rule 24(1)(ii) provides that where an order is passed by an authority the appeal lies to the immediate superior of that authority. In the present case the applicant himself sent the appeal memo to the Chief General Manager, who is the superior officer to the Chief Superintendent. The Chief General Manager has disposed off the appeal.

9. In our view both the orders passed by the disciplinary authority and appellate authority are well within their powers and there is no illegality or irregularity in both of them exercising the powers. Hence we are not impressed by the argument of the learned Counsel for the applicant that the orders passed by the disciplinary authority and/or the appellate authority are irregular or illegal.

10. Another submission made on behalf of the applicant is that there is no application of mind by the appellate authority and he has not passed a speaking order. The order of the appellate authority is at page 20 of the paper book. In the appellate order in the preamble the appellate authority has referred to the charges leveled against the applicant about unauthorised absence and about his going through the entire record and then observing that the applicant has admitted the charges and then in the conclusion passed the order dismissing the appeal. In our view the impugned order shows application of mind by the appellate authority in the facts and circumstances and upon the admission made by the application the authority has found that there is no merit in the appeal and rejected the same. It means the appellate authority has confirmed the order of the disciplinary authority. It is well settled that if the appellate authority passes an order concurring with the view taken by the disciplinary authority he need not have to write a detailed speaking order. In our view the order of the appellate authority does not suffer from any legal infirmities.

11. Then the submission about the double jeopardy does not appeal to us. The previous absence of the applicant is taken into consideration to show that in spite of number of punishments and warnings the applicant has not improved and now he has remained absent for 97 days and therefore the authority felt that there is no use in keeping such a person in service. Hence there is no question of double jeopardy or the principle of double jeopardy is involved as he is punished for the latest absence of 97 days, but the gravity of the charge is based on his previous conduct of remaining unauthorisedly absent on many occasions.

12. Another argument that a fresh show cause notice should have been issued before the competent authority passed the order of punishment doesnot ~~make~~ merit consideration since the order is passed by the disciplinary authority himself and there is no inquiry report from any other authority. It is only when the inquiry authority is different from the disciplinary authority the question of disciplinary authority issuing a show cause notice before punishment arises as per the law. In this case the disciplinary authority has himself considered the facts of the case and passed final order of punishment after finding the applicant guilty.

13. Another argument on behalf of the applicant is that the charges under Rule 162 does not apply to the facts of the case. It may be so. But charge under Rule ~~162~~ 62 clearly attracted to the facts of the case. It provides for unauthorised absence and going on leave without permission etc. No prejudice is caused to the applicen since he knew what fate he would meet viz., remaining absent for 190 days and he pleaded guilty to the charge. Hence we are satisfied that no prejudice is caused to the applicant by incorporating Rule 162 in the charge.

14. The last submission on behalf of the applicant is appeal for mercy of the Court that the applicant has a big family and he is a poor man etc. In our view the punishment has been passed by the competent authority by exercising discretion. The Tribunal cannot in its wisdom substitute its discretion regarding punishment in the case of discretion exercised by the competent authority. Normally the jurisdiction of the Tribunal is limited. It cannot reappreciate the merits of the case or inferfere with the punishment unless and until a strong case is made out that the punishment is disproportionate to the offence and

further it shocks the conscience of the Court. In the facts and circumstances of the case we find that no case is made out for interference with the punishment. In our view the application has no merit.

15. In the result the application is dismissed. No costs.

(P.P.Srivastava)
Member(A)

(R.G.Vaidyanatha)
Vice Chairman

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