

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 671/93

DATE OF DECISION: 26<sup>th</sup> Nov, 98

Shri Mulji Devji Parmar Applicant.

Shri K.P.Anilkumar. Advocate for  
Applicant.

Versus

Union of India and others-----Respondents.

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

CORAM

Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? No
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal? No
- (3) Library. Yes

*S.L. Jain*  
(S.L. Jain)  
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:671.93

the 26<sup>th</sup> day of NOVEMBER 1999

CORAM : Hon'ble Shri D.S.Baweja, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

Mulji Devji Parmar  
Residing at  
Room No. 74, Chawl No.23.  
B.D.D. Chawls,  
N.M.Joshi Marg.,  
Bombay.

...Applicant.

By Advocate Shri K.P.Anilkumar.

V/s

1. Union of India through  
The Assistant Chief  
Superintendent (G III)  
Central Telegraph Office  
Bombay.

2. The Chief Superintendent (G III)  
Central Telegraph Office  
Bombay.

...Respondents.

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

O R D E R

(Per Shri S.L.Jain Member(J) )

This is an application under section 19 of the Administrative Tribunals Act 1985 seeking the relief of declaration that enquiry initiated and concluded against the applicant is vitiated for non-observance of principles of natural justice, the action of the respondents in not staying the order of compulsory retirement Exhibit 'F' during the pendency of the appeal is illegal and not sustainable in law, to set aside the

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enquiry along with enquiry report, to declare the impugned order dated 13.6.1990 Exhibit 'F', 25.10.1990 Exhibit 'H' illegal, improper and unsustainable and to quash the same, to direct the respondents to reinstate the applicant in employment with full backwages, Continuity of service alongwith consequential benefits, in alternative to direct the respondents to pay to the applicant the difference between the entire amount of wages deducted towards dies-non for the entire period of service and basic wages which alone constitute admissible deductions towards dies non, in alternative to pay to the applicant full wages for the period intervening the period of passing the impugned orders Exhibit 'F' and 'H' hereto, besides extend to him the full pensionary benefits in terms of O.M.No.G.I.Department of Personnel and Training No.18011/1/86 Estt. dated 28.3.1988 alongwith costs of the application.

2. The applicant was appointed as Substitute Sweeper in the year 1967-68, appointed as regular Sweeper on 15.9.1970, conferred quasi permanent capacity on 23.11.1979, appointed as Telegraphman on 16.2.1982 vide order dated 12.3.1982. A memo dated 23.11.1989 was issued to the applicant to hold enquiry, charge was admitted, after enquiry the disciplinary authority agreed with the report of the Enquiry Officer and penalised with an order of compulsory retirement on 13.6.1990, an appeal against the same, rejected on 25.10.1990.

3. The applicant has challenged the said orders on the ground that the charge sheet is vague and defective, as it does not mention in clear terms the misconduct committed by the applicant. Rule 62 and 162 of the Post and Telegraph Manual

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vol III mentioned in the charge sheet has nothing to do with the allegation. The charge sheet was in respect of the period for which the applicant was warned and asked to improve. The order passed 'compulsorily retiring the applicant' in fact and in law constitutes dismissal as pensionary benefits have been denied. As such the penalty is not consistent with the gravity of the offence alleged against the applicant, which is contrary to CCS (Pension) Rules 1972 in force since 28.3.1988. The respondent No.2 who passed the order dated 25.10.1990 -Exhibit 'H' is in the category of Junior Administrative Grade which is higher to an officer of Telegraph Traffic Service Group 'A' while the appellate authority is an officer of Telegraph Traffic Service Group 'A' as per P & T Manual Volume VII Part VII Group 'D'. Thus the appellate order is passed by an Authority without inherent jurisdiction hence non-est, during the course of the appeal the order against which appeal is preferred is deemed to have been stayed. Respondent No.1 and 2 have failed to apply their mind while passing the impugned orders, enquiry was conducted with undue haste and without informing the applicant about his rights, no assistance was provided, defence of ailment was wrongly rejected. Six statutory punishments earlier imposed on the applicant flowed from the absence ordered as dies non without any pay and allowances and without issuance of show cause notice, considered three earlier punishments relating to the period to 12.9.1981 as he was duly promoted thereafter, thus enquiry officer, the disciplinary authority and the appellate authority acted without applying their mind. Hence this OA for the above said relief.

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4. The respondents have denied the allegations levelled against them and resisted the claim of the applicant on the ground that OA is barred by time, there are no grounds to condone the delay in filing the OA. The applicant was awarded six statutory punishments for unauthorised absence on different occasions and was awarded adverse entries during the successive years with a clear mention to improve as explained in Annexure II. The applicant did not care to improve despite it, even after issue of memo dated 6.10.1989. The applicant remained unauthorisedly absent on 14.10.1989, 20.10.1989 to 7.11.1989, 9.11.1989 to 20.11.1989 which was treated as dies non, there is no provision to the effect to indicate that the charged person is entitled to be informed that he is entitled to be assisted in his defence in the inquiry. The applicant failed to submit the defence statement within the stipulated period of 10 days, attended the enquiry on 19.2.1990 and admitted the charges, the applicant produced the Medical certificate dated 14.2.1990 on 19.2.1990. The applicant did not comply Rule 162 of P & T Manual Vol III, corresponded in English, copy of the enquiry report was supplied to the applicant and at no occasion in leave applications, fact of illness is mentioned, letter dated 12.11.1993 was never addressed to the respondents, Copies asked for vide letter dated 6.11.1992 were supplied to the applicant. The Disciplinary Authority passed the order on the basis of the report of Enquiry Officer after application of mind. The appeal was duly considered and rejected, allegations of malafides, illegality, bias are unwarranted. The Disciplinary authority was

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Assistant Chief Superintendent (G III) CTO Bombay and the appeal is decided by the Chief Superintendent CTO Bombay who is an officer of Telegraph Traffic Service Group 'A' in terms of part VII Group 'D' of P & T Manual Vo.III. Hence prayed for dismissal of OA alongwith costs.

5. On perusal of the delay condonation application and certificate Annexure 'A' we find that the applicant was under treatment since 28.11.1990 to 26.4.1993 and was certified to be fit on 1.5.1993. He has filed this OA on 9.7.1993. This delay is being explained stating that he was fit only on 1.7.1993. The delay commencing from 1.5.1993 til 8.7.1993 is not explained and we do not find any reason to condone the delay occurred from 1.5.1993 to 8.7.1993. Hence application deserves to be partly dismissed for the period 1.5.1993 to 8.7.1993 but earlier delay is condoned, resulting that the OA is barred by limitation. Had the Tribunal taken the view that the delay for the whole period deserves to be condoned, we proceed to decide the case of the applicant on merits.

6. On perusal of the order imposing the penalty, we find that the order is passed by Assistant Chief Superintendent Grade III (AC S.G.III) C.T.O. Bombay and appeal against the same is decided by Chief Superintendent C.T.O. Bombay to whom the appeal was referred. The appellate authority is an officer of Telegraph Traffic Service Group 'A' in terms of part VII Group 'D' of P & T Manual Volume III. In view of rule No. 24(1)(ii), the

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appeal lies to the immediate Superior of that authority, who passed the order imposing the penalty. The Chief Superintendent C.T.O. Bombay is immediate superior to the Assistant Chief Superintendent Grade II (AC S.G. III) CTD Bombay. Hence we do not find that the appeal is not decided by Competent Authority.

7. On perusal of Rule 14(4) we do not find that it is necessary for the disciplinary authority to inform the charged official that he is entitled to have the assistance for defending himself.

8. As the applicant has corresponded in English and he never complained that he is not able to read or understand the English language, now he is not at liberty to take the said plea. Dies non is not a penalty prescribed by CCS Rules 1972.

9. On perusal of the charge sheet we do not find it to be vague one. The applicant has admitted the charge without raising the objection in this respect at the proper time also.

10. The charge regarding previous absence of the applicant - the same having been treated as dies non and punishment can be taken into consideration to show that inspite of number of dies non and punishments, the applicant has not improved. Punishments six in number and warning which is prescribed as punishment cannot be a matter of charge and is also not a matter of charge. The authority felt that there is no use in keeping such a person in service who after having been treated as dies non, punished and warned has not improved. There can be no question of double jeopardy involved in respect of dies non. The gravity of charge is the previous conduct of remaining unauthorisedly absent on number of occasions.

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11. A medical certificate dated 14.2.1990 was submitted by the applicant which mentions that he was suffering and under treatment from vertigo C H/o insomnia and anxiety from last 3 years. On perusal of his applications for the alleged period - we find that this certificate covers last two periods of <sup>1</sup>25.4.88 to 4.6.88 and 4.5.89 to 19.5.89 <sup>1</sup> but it is an after thought, ground made out as the ground for absence was not so stated earlier in respect of the same period. In addition to it, even in such circumstance, an employee is bound to inform the office about his sickness with medical certificate which the applicant failed to do so.

12. If the applicant was having any grievance regarding his treating as dies-non or the improper payment in this respect, he ought to have challenged the same timely. Now he is estopped to challenge the same.

13. Perusal of the order of the Disciplinary Authority and Appellate Authority it cannot be said that they have not applied their mind while deciding the disciplinary proceedings or were biased. The Enquiry Officer did not proceed with undue haste or was biased.

14. The memo dated 6.10.1989 was not a warning memo but an occasion memo which is mentioned as such in the charge sheet itself.

15. The learned counsel for the applicant relied on (1991) 16 ATC 627 B.J.Edward V/s Collector Central Excise Madurai and others decided by CAT Madras Bench for the proposition of 'Double Jeopardy' On perusal of the same, we find that on the same facts when the charged officer was warned, fresh departmental enquiry

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was initiated and it was held that the principle of 'Double Jeopardy' does apply. We agree to the said proposition of law but in the present case earlier punishments, are taken into consideration as previous conduct. Regarding the period of dies-non, enquiry in respect of said period was necessary one. Hence enquiry does not offend principle of 'Double Jeopardy'. It is to be clarified that in respect of the periods for which there are already penalties, principle of Double Jeopardy is attracted, but the said punishments are taken into consideration as previous conduct, hence the said principle is not applicable.

16. There is no provision in the CCS Rules 1972 that the order passed by the Disciplinary Authority is operative only after the prescribed period of appeal. Hence this ground also fails.

17. The learned counsel for the applicant relied on (1989) 9 ATC 26 Dr. Puzhankara Kamalam V/s Indian counsel of Agriculture Research Represented by Director General and others decided by CAT Madras Bench and argued that if absence is due to compelling circumstances it cannot be considered as misconduct. We agree to the said proposition of law but at the same time unauthorised absence of several times cannot be tolerated particularly when there are no compelling circumstances for such absence. The finding of the Tribunal in the said case in para 6 of the order is worth mentioning which is as under:

It may be that many of such cases, assessed in the light of the factors that led to the absence, warrant the initiation of disciplinary proceedings for violation of

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Rule 3(1), as involving lack of faithfulness to duty and wilful abstention. It does not follow that wherever there is an absence without prior sanction of leave, one can find lack of devotion to duty or conduct unbecoming of a Government servant warranting initiation of proceedings for imposition of a major penalty of removal from service.

18. The learned counsel for the applicant relied on 220 Swami's Casual Labour Digest 1994(2). A Prasad Rao V/s General Manager South Central Railway Secendrabad and others decided by CAT Hyderabad and argued that mere absence from duty not authorised by grant of leave cannot be treated as mis-conduct. On perusal of the above authority we find that the above proposition of law was laid down in absence of allegation in the charge sheet or in a statement of imputation or absence in reply statement filed by the respondents that during the period in question the applicant's absence was wilful.

19. 1998(2) SC Service Law judgement 127 Union of India and others V/s Shri B.Dev is worth mentioning which makes it clear that on the basis of unauthorised absence disciplinary proceeding can be initiated, the charged officer can be held guilty and penalised.

20. Regarding the punishment which virtually amounts to dismissal, we are of the opinion that normally it is within the jurisdiction of the departmental authorities and the Tribunal cannot interfere it unless it shocks the conscious of the Tribunal. Looking to the conduct of the applicant, who has served

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the respondent in his own way, we do not find that the case of the applicant is covered in the category 'Shocks the conscious of the Tribunal' Hence we are not inclined to interfere even in punishment awarded.

21. In the result we do not find any merit in OA, it deserves to be dismissed and is dismissed accordingly with no order as to costs.

*S.L. Jain*  
(S.L.JAIN)  
MEMBER (J)

*D.S. Baweja*  
(D.S. BAWEJA)  
MEMBER (A)

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