

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 55/94

Date of Decision: 21.6.1999

Usha Narsian

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Director, Deptt.of Atomic Energy, Bombay & Ors.
Respondent(s)

Shri Ravi Shetty

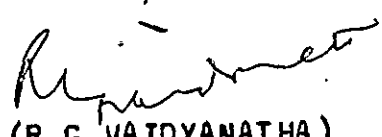
Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. D.S.Baweja, 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? NV


(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 55/94

Monday this the 21st day of June, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Usha Narsian,
R/o. 10/188 Jai Shastri Nagar,
Mulund West,
Bombay.

... Applicant

By Advocate Shri G.K.Masand

v/s.

1. Director,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg,
Bombay.
2. Additional Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M.Marg,
Bombay.
3. Director,
Directorate of Purchase & Stores,
Department of Atomic Energy,
V.S.Bhavan,
Anushakti Nagar,
Bombay.

... Respondents

By Advocate Shri Ravi Shetty

ORDER

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act. Respondents have filed reply opposing the application. We have heard Shri G.K. Masand, learned counsel for the applicant and Shri R.R.Shetty, learned counsel for the respondents.

.. 2/-
Riy

2. The applicant was working as Junior Stanographer in the office of Directorate of Purchase and Stores in the Department of Atomic Energy at the relevant time. Due to some alleged misconduct, a chargesheet was issued against the applicant. The applicant filed a reply to the chargesheet denying the charges. Then a regular enquiry was held and the enquiry officer submitted a report to the effect that the charges are duly proved. Accepting the report, the disciplinary authority passed an order imposing the penalty of compulsory retirement. Applicant's appeal to the appellate authority was unsuccessful. Then she filed an original application No. 318/87 in this Tribunal. This Tribunal by order dated 8.4.1992 set aside the orders of the respondents on the sole ground that the copy of enquiry report had not been furnished to the applicant.

Subsequently, the disciplinary authority furnished a copy of the enquiry report to the applicant. She submitted her representation to the enquiry report. The applicant came to be kept under deemed suspension w.e.f. 3.7.1985. After receiving the representation of the applicant against the enquiry report, the disciplinary authority passed the fresh impugned order dated 11.5.1993. Again agreeing with the enquiry report and imposing the same penalty of compulsory retirement w.e.f. 3.7.1985 and further ordering that the subsequent period from 3.7.1985 shall be treated as period of suspension and shall not count for pension, qualifying service and leave etc.

Being aggrieved with the order, the applicant preferred an appeal to the appellate authority, namely, the Additional Secretary, Department of Atomic Energy. The appellate authority by the impugned order dated 28.10.1993/2.11.1993 agreed with the order of the disciplinary authority and dismissed the appeal. Being aggrieved by these orders, the applicant has approached this Tribunal. The applicant has taken number of grounds in challenging the impugned orders.

3. Respondents have filed reply justifying the action taken against the applicant and they have mentioned the facts and circumstances of the case.

4. At the time of arguments, the learned counsel for the applicant among other grounds contended that the order of the disciplinary authority is bad since it was prejudiced and biased against the applicant. He further contended that the order of the appellate authority is a creptic order as it does not contain the reasons and it is not a speaking order and he has not given even personal hearing to the applicant before passing the impugned order. The learned counsel for the respondents, on the other hand, supported the orders of the disciplinary authority and the appellate authority.

After hearing for some time, since the impugned order cannot be sustained on the second ground alone, namely, the order of the authority is creptic and without hearing the applicant, we are not considering the other grounds taken by the applicant in support of the contentions.



being aggrieved with the order, the applicant preferred an appeal to the appellate authority, namely, the additional secretary, Department of Atomic Energy. The appellate authority by the impugned order dated 27.10.1993/2.11.1993 agreed with the order of the disciplinary authority and dismissed the appeal. Being aggrieved by these orders, the applicant has approached this Tribunal. The applicant has taken number of grounds in challenging the impugned orders.

3. Respondents have filed reply justifying the action taken against the applicant and they have mentioned the facts and circumstances of the case.

4. At the time of arguments, the learned counsel for the applicant along other grounds contended that the order of the disciplinary authority is bad since it was prejudiced and biased against the applicant. He further contended that the order of the appellate authority is a nullity as it does not contain the reasons and it is not a speaking order and they have not given even personal hearing to the applicant before passing the impugned order. The learned counsel for the respondents, on the other hand, supported the order of the disciplinary authority and the appellate authority.

After hearing for some time, since the impugned order cannot be sustained on the second ground alone, namely, the order of the authority is null and without hearing the applicant, we are not considering the other grounds taken by the applicant in support of the contentions.

5. The applicant has preferred an appeal memorandum dated 8.6.1993 which is at page 62 of the paper-book which runs into 7 pages of as many as 27 paragraphs.

If we peruse the impugned order of the appellate authority, we find that paras 1 to 19 describe whatever has been done till that date. Then in Para 19, the appellate authority mentioned that the applicant has preferred an appeal memo dated 8.6.1993. Then he mentioned to the final operative portion of the order at page 29 which reads as follows :-

" And whereas the undersigned as Appellate Authority has carefully gone through the appeal dated 8.6.93 and the relevant records of the case, the undersigned does not find the reasons to review the order of the Disciplinary Authority imposing the penalty of compulsory retirement from service on Kum.Narsian."

We therefore see that by a single sentence order the appellate authority confirms the order of the disciplinary authority. It does not discuss the facts of the case and the grounds taken by the applicant. The learned counsel for the respondents contended that the appellate authority need not write a lengthy order when he is agreeing with the order of the disciplinary authority. It may be so and the appellate authority need not write a very lengthy order discussing all the facts of the case and all the grounds taken by the applicant but the order must indicate the application of mind particularly on the grounds taken by the applicant. He need not write a lengthy order but should say that he has considered all the grounds and find them not acceptable. There is sufficient indication in the order to show that there is no application of mind on the facts of the case which is very much wanting in the present case. Hence, on the face of it we find that this order is a non-speaking order.

2. The applicant has referred an appeal memorandum dated 8.6.1937 which is at page 62 of the paper-book which runs into 7 pages of as many as 27 paragraphs.

If we pursue the impugned order of the appellate authority, we find that paras 1 to 19 describe whatever has been done till that date. Then in para 19, the appellate authority mentioned that the applicant has referred an appeal memorandum dated 8.6.1937. Then he mentioned to the trial operative portion of the order at page 29 which reads as follows :-

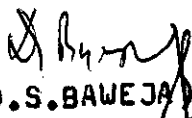
"And whereas the undersigned as Appellate Authority has carefully gone through the appeal dated 8.6.37 and the relevant records of the case, the undersigned has not found the reasons to revise the order of the disciplinary authority imposing the penalty of committal retirement from service on Kum. ..."


we therefore set that by a single sentence order the appellate authority confirms the order of the disciplinary authority. It does not discuss the facts of the case and the grounds taken by the applicant. The learned counsel for the respondents contended that the appellate authority need not write a lengthy order when he is agreeing with the order of the disciplinary authority. It may be so and the appellate authority need not write a very lengthy order discussing all the facts of the case and all the grounds taken by the applicant but the order must indicate the application of mind particularly on the grounds taken by the applicant. He need not write a lengthy order but should say that he has considered all the grounds and find them not acceptable. There is sufficient indication in the order to show that there is no application of mind on the facts of the case which is very much wanting in the present case. Hence, on the face of it we find that this order is a non-speaking order.

6. Then we also notice that the appellant in para 27 of the appeal memo had made a specific request of personal hearing. The appellate authority does not refer to this request, much less reject it. This also shows that the appellate authority has not applied his mind to lengthy memo of appeal given by the applicant pressing number of grounds. We are not for a moment ^{saying} that there is merit in all the grounds or there is no merit at all. It is for the competent authority to apply its mind and take a decision by considering all the grounds taken by the applicant either to reject the same or agree with the same. Therefore, in the circumstances of the case, the order of the appellate authority is not sustainable in law and hence liable to be set aside.

7. The only ^{course} question left to us is to remand the case to the appellate authority who should give a personal hearing to the applicant and then pass a speaking order. Since it is an old case of 1985, we feel that the appellate authority should dispose of the matter within a period of three months from the date of receipt of this order. All questions on merits are left open.

8. In the result, the OA. is disposed of with the above directions. A copy of the order be given to the appellate authority to dispose of the appeal of the applicant by a speaking order. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN