

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 590/95
~~Transfer Application No.~~

Date of Decision : 14.7.95

Shri V.L. Bhosle

Petitioner

Shri D.V. Gangal

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri V.S. Masurkar


Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

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

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


(B.S. Hegde)
Member (J)

ssp.

(4)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 590/95

V.L. Bhosle ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri P.P. Srivastava, Member (A)

APPEARANCE : 1) Shri D.V. Gangal, counsel for the Applicant.

2) Shri V.S. Masurkar, counsel for the Respondents.

JUDGEMENT

Dated: 14.7.95

(Per: Hon'ble Shri B.S. Hegde, Member (J)).

1. The Applicant in this O.A. has challenged the following orders of the Respondents i.e. Annexures A-1, A-2 and A-3 and also seeks for a direction to the Respondents to appoint Ad-hoc Disciplinary Authority under Rule 12 (2-A) of the CCS (CCA) Rules. Annexure A-1 is issued by the Respondents on 6-6-1995 i.e. the Disciplinary Authority who while disagreeing with the findings of the Inquiry Officer directed the Applicant to make his representation/reply to notice within a period of 15 days in writing on receipt of the same. Annexure A-2 relates to the findings of the Inquiry Officer dated 10-1-1995. Annexure A-3 dated 22-5-1995 is a reply to the Applicant on the basis of the representation made by the Applicant to the Respondents for appointment of Ad-hoc Disciplinary Authority which was rejected by the Competent Authority i.e. the Minister

(3)

From pre-page:

of State for Communication.

2. It may be recalled that pursuant to the order of the Tribunal vide dated 16-1-1995, the Tribunal observed that "it is clear from the departmental instructions that it is for the Government to take steps under those instructions and it is not for us during the pendency of departmental proceedings to give any directions to the authority concerned. We only direct that in the event of the applicant making a representation against the disciplinary authority, that request shall be considered by the competent authority within two weeks thereafter." As stated earlier, the representation made by the Applicant, on 6-3-1995 for appointment of Ad-hoc Disciplinary Authority has been disposed of by the Respondents vide dated 22nd May 1995 not agreeing with his suggestion.

3. The Respondents have filed an M.P. No. 228/95 seeking for extension of time in order to comply with the Tribunal's directions for a period of six months and also to complete the inquiry proceedings. Accordingly, the M.P. was allowed and the Respondents were directed to complete the inquiry proceedings by 31-12-1995.

4. Heard the learned counsel for the parties ; Shri Gangal for the Applicant and Shri Masurkar for the Respondents. The learned counsel for the Applicant submitted that the Respondents have sought extension of time in order to complete the inquiry on the ground that the matter will be remitted back to the Central Vigilance Commission for further enquiry under Rule 15 of the CCS (CCA) Rules. Since the Applicant

From pre-page:

has not received any notice from the Inquiry Officer so far, it is not open to the Respondents to issue any punishment order before the completion of the inquiry report. Further, when the matter is pending before the Inquiry Officer, it is not open to the Respondents i.e. the Disciplinary Authority to impose any penalty which they have done by issuing their order dated 3-7-1995. The said contention is being disputed by the learned counsel for the Respondents Shri Masurkar stating that the narrations have been detailed in the order passed by the Disciplinary Authority vide dated 3-7-1995 which is reproduced below :

"5. The Disciplinary Authority having gone through the Inquiry Report, observed that the Inquiry has been conducted ex-parte. The Preliminary Inquiry was conducted at Delhi on 26-9-94 and regular proceedings were fixed at Bombay on 12th and 13th Dec. 94. The charged official did not attend the regular inquiry despite advance intimation and special messenger deputed by Inquiry Officer to the Charged Official with a request to attend the inquiry. It was also observed that as per the directives of the Central Administrative Tribunal the inquiry to be completed within 6 months from the date of appointment of the inquiry officer and therefore regular inquiry was held ex-parte. However, the Disciplinary was of the view that conducting ex-parte inquiry resulted in denial of natural justice and fair inquiry. Hence, it is necessary to hold further inquiry into the case summoning the charged official to participate into the inquiry proceedings so that the inquiry would be fair.) The Disciplinary Authority therefore remanded the case back to the Inquiry Officer in exercise of the powers conferred under Rule-15 of CCS (CCA) Rules, 1965 vide letter No. TFB/Dir-11/VO/Con/2/94/Vol.II dated 16-2-95. The officer on special duty from Central Vigilance Commission however returned the case to Vigilance Branch of the Department of Telecom vide his letter no.5 P&T/58, dated 21-4-95 expressing that conduct of further inquiry was not possible and that the Disciplinary Authority is at liberty to take decision in accordance with the provisions of CCS (CCA) Rules, 1965. The Vigilance Branch of Department of Telecom in turn forwarded the same to the Disciplinary Authority on 26-4-95."

(2)

From pre-page:

In the light of the above, the learned counsel for the Respondents submitted that the contention of the Applicant stating that the matter is pending before the Inquiry Officer is found to be incorrect and the punishment imposed on the Applicant is in order. On perusal of the Central Vigilance Commission's letter dated 21-4-1995, it is clear that the Inquiry Authority i.e. the C.V.C. has already written back to the Disciplinary Authority stating that it is not possible for them to proceed with the inquiry proceedings and allowed the Disciplinary Authority to take appropriate decision in the matter. Therefore, the Disciplinary Authority having differed with the findings of the Inquiry Officer issued a notice to the Applicant on 6-6-1995 indicating the proposed penalty and directed him to submit his reply within 15 days along with the reasons for differing with the Inquiry Officer; nevertheless, the Applicant did not make any representation within the specified time nor any submission made during the course of hearing that he had made any representation to the Competent Authority in this behalf. On the other hand, instead of making representation which empowers him under the rule, he has approached this Tribunal by filing the present O.A. and seeking for quashing of the notice of the Disciplinary Authority as well as rejection order of the Respondents rejecting his contention for appointment of an Ad-hoc Disciplinary Authority. In this connection, it is relevant to quote Rule 20 of the Central Administrative Tribunal -

"20. APPLICATION NOT TO BE ADMITTED UNLESS
OTHER REMEDIES EXHAUSTED - (1) A Tribunal shall
not ordinarily admit an application unless it
is satisfied that the applicant had availed of

8

all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by Government or other authority or officer of other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or the person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired."

5. Admittedly, the Applicant has not exhausted statutory remedies available to him under S. 20 by making representation against the imposition of the penalty. During the course of hearing, the learned counsel for the Respondents furnished a copy of the penalty order imposed on the Applicant vide 3-7-1955 imposing penalty of reduction of pay of the Applicant to the lower stage of 1380/- in the time scale of pay of Rs. 1200-1800 for a period of three years with cumulative effect etc.

(9)

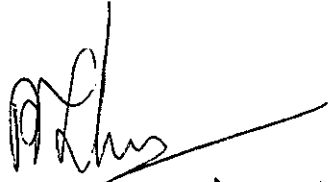
From pre-page:


6. Since the punishment has already been imposed under the Rules, it was open to him to make statutory appeal to the Competent Authority which he has not made in this case. Instead he rushed to the Tribunal praying for quashing the notice and the rejection order of the Respondents for an appointment of an Ad hoc Disciplinary Authority. In support of his contention, the learned counsel for the Respondents has brought to our attention to (1995) 1 SCC 332 Transport Commissioner, Madras v/s A. Radhakrishnamoorthy wherein the Supreme Court has held that "truth and correctness of the charges is not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary enquiry; even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence or where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It will cover up judicial review and decision making process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law. The learned counsel for the Respondents submits that the ratio laid down in the aforesaid decision of the Apex Court squarely applies to the facts and circumstances of this case. There is considerable force in the contention. In view thereof, we are of the opinion, that the O.A. can be disposed of at the admission stage itself as it is devoid of any merit. While dismissing the O.A. at the admission stage, we pass the following order :-

From pre-page:

10

7. In the facts and circumstances of the case we see no merit in the prayer for quashing the Annexure A-1, A-2 and A-3, because the punishment order has already been issued to the Applicant and thus it became infructuous as the penalty order is not under challenge before us. However, the Applicant is at liberty to take appropriate action under CCS (CCA) Rules as he deems fit. Regarding the prayer for appointment of Ad-hoc disciplinary authority, the Tribunal had already directed vide its order dated 16-1-1995 that it is not for the Tribunal to direct the Respondents and that it is for the Competent Authority to consider the request. On the basis of representation made by the Applicant, the Respondents duly considered his representation but did not accede to his request; therefore, such a plea is not maintainable in view of the decision of this Tribunal in O.A. No. 1128/94 vide dated 16-1-1995. Therefore, the prayer 8 (b) & (c) is without any merit. Accordingly, we see no merit in the O.A. and the same is dismissed with no order as to cost.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

ssp.

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 590/95
(MP-72/95)

Vikram Laxmanrao Bhosle

... Applicant.

v/s.

Union of India through
The Director General
Telecom (T.F.S.) Sanchar
Bhavan, New Delhi

Hon'ble Minister of,
State for Communication
Sanchar Bhavan, Ashoka Road,
New Delhi.

The Chief General Manager,
Telecom Factory, Deonar,
Bombay.

Mr. C.P. Saxena,
The Manager & Disciplinary
Authority, Telecom Factory,
Deonar, Bombay.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri N.K.Verma, Member (A)

Appearance:--

Shri D.V. Gangal, counsel
for the applicant.

Shri V.S.Masurkar, counsel
for the respondents.

ORDER

Dated: 16-11-95

[Per Shri B.S. Hegde, Member (J)]

It may be re-called that the O.A. was
dismissed vide order dated 14.7.95 by passing the
following order:

" The punishment order has already been
issued to the applicant and thus it
became infructuous as the penalty order
was not under challenge before us.
However the applicant is at liberty to
take appropriate action under CCS(CCA)

Ala

...2...

Rules as he deems fit. Regarding the prayer for appointment of ad-hoc disciplinary authority, the Tribunal had already directed vide its order dated 16.1.95 that it is not for the Tribunal to direct the respondents and that it is for the Competent Authority to consider the request on the basis of representation made by the applicant, the respondents duly considered his representation but did not accede to his request.."

2. The applicant has filed M.P. 721/95, wherein he prayed that the Tribunal's judgement dated 14.7.95 may please to suo motu review and issue notice of contempt and forgery against the respondents.

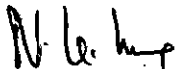
3. During the course of hearing, the learned counsel for the applicant drew our attention to M.P. 228/95 which admittedly have been disposed of 1.6.95. The learned counsel for the respondents has drawn our attention that the M.P. filed by the applicant is neither a review nor a C.P. Therefore, it isn't open to the applicant to seek review of the judgement by way of filing an M.P. As such M.P. is not maintainable and it cannot be treated as review petition. The learned counsel for the respondents draws our attention to provisions of CAT Rules 1982 Rule 5. In this application the applicant has not mentioned who is the contemnor and the format has not properly followed. It cannot be treated as M.P. also. As such M.P. deserves to be dismissed.


15

3. On perusal of the M.P. it is seen that the M.P. is ambiguous and vague. If there is any infirmity in the judgement, it is open to the applicant to move the Tribunal within the time which he did not do.

4. In the facts and circumstances of the case, that the M.P. filed by the applicant is without any substance and it deserves to be dismissed. Accordingly it is dismissed. However, it is open to the applicant to file appeal/representation within a period of one month from the date of receipt of this order. On receipt of the same, the competent authority may dispose of the same by passing a speaking order within one month thereafter.

5. M.P. 721/95 is disposed of in the light of the above.


(N.K. Verma)
Member (A)


(B.S. Hegde)
Member (J)

NS