

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAT BENCH, MUMBAT

OA.NO.744/97

Thursday this the 14th day of June, 2001.

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

Hon'ble Shri Govindan S. Tampi, Member (A)

Jitendra Singh Rawat,
Aerodrome Officer,
O/O the Director General,
Civil Aviation,
C-14/4, New Airport Colony,
Sahar Road, Mumbai.

...Applicant

By Advocate Shri Abhay Kulkarni

vs.

1. Union of India
through the Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi.
2. Director General of Civil
Aviation, DGCA Complex,
Opp. Safdarjung Airport,
New Delhi.
3. The Chairman,
Airports Authority of India
through Regional Executive
Director, Airports Authority
of India, (National Airport
Division), Mumbai Airport,
Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

..2/-

O R D E R

{Per : Shri Govindan S. Tampi, Member (A)}

In this OA. filed under Section 19 of the Administrative Tribunals Act, 1985, Shri Jitendra Singh Rawat, Aerodrome Officer in the organisation of Director General of Civil Aviation challenges the order dated 9.7.1991 passed by the Disciplinary authority, the appellate authority's order dated 4.1.1996 and revision authority's order dated 20.8.1996.

2. Heard Shri Abhay Kulkarni, learned counsel appearing for the applicant and Shri V.D.Vadhavkar, learned counsel for the respondents.

3. Brief facts as brought out in the pleadings are that the applicant who was an employee of the Civil Aviation Department joined as Aerodrome Officer on deputation from the DGCA office to National Airports Authority. He was posted to Guwahati Airport in July, 1987. Following an accident resulting from the entry of the ~~stray~~ cattle into the Airport, who dashed against the Aircraft, which occurred on 11.1.1989, proceedings were initiated against the applicant, by way of chargesheet dated 13.3.1989. At the end of the proceedings, the Inquiry Officer by his report dated 23.8.1990 exonerated him. However, the disciplinary authority, i.e. The Chairman of the National Airport Authority by his order dated 9.1.1991 disagreed with the finding of the same and passed the impugned order and imposed upon the applicant

the penalty of withholding of three increments in the grade of Aerodrome Officer with cumulative effect for a period of three years. The appellate authority while considering his appeal, sought the advice of the UPSC with the recommendation that the penalty could be waived. However, on the advice of the UPSC that the penalty was not excessive and be retained, the appeal was rejected on 4.1.1996. The Review Application filed on 8.6.1993 was also rejected on 20.8.1996. Hence, this application.

4. In his detailed application as well as during the course of the oral submissions made before us, through Shri Abhay Kulkarni, learned counsel, the applicant states that the proceedings initiated against him and the penalty imposed on him, upheld in revision were incorrect, arbitrary and unjustified. Among the legal pleas raised by him are that the disciplinary authority while passing its order disagreed from the findings of the Inquiry Report. However, reasons of disagreement were not communicated to him so that he could make a proper representation. No reasons were communicated and therefore his chances of proper defence was denied. This was clearly a case of ~~violation of the principles of natural justice.~~ Secondly, he states that the UPSC which was consulted in this connection had given its opinion against the suggestions made by the appellate authority that the penalty imposed on him was liable to be set aside. According to the learned counsel, the UPSC did not have the necessary expertise to comment in the matter especially those

relating to the Safety requirements in the Airport, which was the responsibility of the NAA and which they failed to safeguard. Thirdly, he states that what the disciplinary authority, appellate authority and the revision authority seem to be operating under the basis that his main job in the Airport was for look out. He had carried out all the responsibilities expected of him. Further, he sought to rely upon the report given by the DGCA in respect of the accident wherein the responsibility with regard to Airport Security has been squarely placed on the National Airports Authority. Shri Kulkarni also relied upon the decision of the Hon'ble Apex Court in the case of S.B.I. & Ors. vs. Arvind K.Shukla, C.A.No.5474/98, (2001 II CLR 300) holding that disciplinary authority should have recorded its reasons for disagreement with enquiry officer and should have given opportunity to the delinquent to make representation before recording ultimate findings and failure to do so has vitiated the order. The apex Court had followed their earlier decision in Punjab National Bank V/s Kunj Behari Misra (JT. 1988 (5) SC 548). In view of the above the application should succeed and the impugned orders be set aside pleads Shri Kulkarni.

5. Rebutting the pleadings made on behalf of the applicant, Shri V.D.Vadhavkar, learned counsel appearing for the respondents states that the procedure have been correctly gone through and the disciplinary authority, the appellate authority, and Reviewing authority had come to the correct conclusions. According to him detailed duties and responsibilities have been

enumerated for Aerodrome Officers. He stated that in the circumstances of the case, Aerodrome Officer's failure for discharging his duties has resulted in accident and disciplinary authority has correctly decided to differ from the Inquiry Officer's findings and they cannot be faulted. The appellate authority had obtained the opinion of the UPSC which after examination of the matter ^{recommended} ~~decided~~ that the disciplinary authority's order should be endorsed. The same was duly accepted by the appellate authority though originally he had taken a different view. As the proceedings had gone through correctly and punishment has been legally imposed, there was no warrant for any interference in the matter.

6. With regard to the plea of the applicant that before differing from the views given by the ^{the} Inquiry Officer, the Disciplinary Authority should have communicated its reason for such disagreement to the charged officer, Shri Vadhavkar states that the same was necessary only in the case of major penalty and not in the case of minor penalty as in this case. According to the learned counsel stoppage of increment even with cumulative effect was only a minor penalty and therefore communication of detailed reasons for disagreement detailed reasons were not called for. He states that in the circumstances the application should be dismissed as being devoid of any merit.

7. We have given careful and anxious consideration to the points raised by the learned counsel from both sides. While making submissions before us today, Shri Kulkarni raised a few points, which we are not inclined to consider as that will amount to reappreciating the evidence, which the Tribunal is precluded from doing as it is not sitting in appeal in this matter. We are only inclined to find out whether the procedural formalities have been complied with and the decision have been arrived at after giving full opportunity to the applicant to present his case before the adverse decision was taken. The applicant's first plea is that the Disciplinary authority has decided the case against him, disagreeing with the findings of the Inquiry Officer, exonerating him without communicating to him the reasons for disagreement thereby denying him any ^{opportunity} ~~change~~ for effective representation, which was incorrect and illegal. We have to uphold this plea. In case like this ^{where} _L the Disciplinary Authority had taken a view that the Inquiry Officer's report exonerating the applicant was ~~w~~rong and that the charged officer has to be punished, it was definitely incumbent on him to have communicated to the charged officer, i.e. the applicant, the detailed reasons for arriving at such a conclusion while communicating the Inquiry officer's report. By not doing so, Disciplinary authority has been remiss in adherence to the principles of natural justice and the order passed by him is vitiated on account of non-adherence to the principles of natural justice. Decision of the Hon'ble Supreme Court in the case of SBI and others Vs Arvind K Shukla (Supra)

relied upon by the applicant is relevant and binding in this regard. Shri Vadhavkar for the respondents states that this requirement was not binding the case as the penalty imposed was only a minor penalty. We are not inclined to agree as the perusal of the Rule 11 of the CCS (CCA) Rules that stoppage of increment with cumulative effect would fall in the category of major penalty under Rule 11 (v) and therefore the Disciplinary authority should have communicated to the applicant detailed reasoning for differing from the Inquiry Officer's report so as to provide the applicant an opportunity for making his representation. Not having done this, the disciplinary authority has as observed above, acted in violation of rules and therefore the impugned order passed again under his capacity has to be quashed and set aside. When the Disciplinary authority's order is set aside, for non-adherence to the principles of natural justice, orders of the appellate authority and the reviewing authority also follow suit.

8. In the above view of the matter, the application succeeds and is accordingly allowed. The impugned orders are quashed and set aside and the matter is remitted back to the Disciplinary Authority with directions to proceed with the case after communicating to the applicant its detailed reasons if any for differing from Inquiry officer's report, obtaining his representations, if any against it and take a considered decision, to be spelt out in a detailed and speaking order. This exercise

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shall be completed within a period of four months from the date of receipt of a copy of this order. Needless to say the applicant is at liberty to pursue the matter, the above order is adverse in nature and not in consonance with the above directions. No costs.

Operative portion of the order was pronounced in the Court at the conclusion of the oral submissions.

(GOVINDAN S. TAMPI)

MEMBER (A)

mrj/ns

(S.L.JAIN)

MEMBER (J)