

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI**

ORIGINAL APPLICATION NO. 905.1997

Date of Decision: 31.10.2001

Shri Rajaram Krishna Kharbade Applicant

Shri S.P. Kulkarni, Advocate for Applicant

Versus

Union of India & another Respondents

Shri P.M. Pradhan Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library

(SMT. SHANTA SHAstry)
MEMBER (A)

Gai'an

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 905/97

THIS THE 31ST DAY OF OCTOBER, 2001

CORAM: SHRI S.L. JAIN.
SMT. SHANTA SHAstry

: MEMBER (J)
: MEMBER (A)

Shri Rajaram Krishna Kharbade,
Son of Krishna Kharbade,
An Adult, Ex-U.D.C. from
office of Chief Posstmster General,
Maharashtra Circle,
G.P.O. Building, Near C.S.T.,
Mumbai-400 001.

... Applicant

By Advocate Shri S.P. Kulkarni.

Versus

1. Union of India, through
Director of Postal Services,
Mumbai City Region, G.P.O.,
Building, Near CST,
Mumbai-400 001.
2. The Chief Postmaster General,
G.P.O. Building, Near CST,
Mumbai-400 001. .. Respondents

By Advocate Shri P.M. Pradhan.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicant in this case, who was working as UDC in the office of the Chief Post Master General, Maharashtra Circle at the relevant time, was proceeded against departmentally under Rule 14 of the CCS (CCA) Rules, 1965. A charge sheet was issued on 24.7.1990. On denial of the charges, a regular enquiry was conducted and the charge was held to be proved. The Disciplinary Authority, based on enquiry report and the material available, passed an order on 18th August, 1993

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dismissing the applicant from service with immediate effect. The appeal preferred against the order of the Disciplinary Authority was upheld by the Appellate Authority. Being aggrieved, the applicant has approached this Tribunal to quash and set aside the orders dated 24.7.1990 the order of the Disciplinary Authority dated 18th August, 1993 and the order of the Appellate Authority and to reinstate the applicant in service with full pay and allowances, seniority and promotion as if no such punishment order has been passed. The applicant has also asked for cost of Rs.5000/- to be paid to him.

2. The applicant while in service had collected a huge amount of cash from various employees of the Department of Posts on the plea of getting them sites in the proposed land to be obtained from the State Government. The charge against the applicant was that the Shri Shri P.K. Kharbade while functioning as UDC, RDPS Office, Bombay during the period from January, 1987 to January 1988 collected huge amounts of subscriptions from the officials mentioned in Annexure II in the capacity of Chief Promoter of Postal Kamgar Co-operative Society, Bombay without obtaining prior permission from the appropriate authority of the Postal Department and thus, behaved in a manner un-becoming of a government servant and thereby violated provisions of Rule 3 (1) (iii) and rule 12 of CCS (Conduct) Rules, 1964.

3. The contention of the applicant is, ^{that} the CCS (Conduct) Rules alleged to have been violated by the applicant are not relevant to the charge framed against the applicant. Therefore, disciplinary proceedings deserves to be quashed and set aside. The oral enquiry against the applicant and the conclusion drawn by the enquiry office is on a wrong footing. According to the applicant, the enquiry is biased and one sided. On completion of the enquiry, copy of the brief of the Presenting Officer was not given to the applicant as required under Government of India instruction 37 below Rule 14 of the CCS (CCA) Rules, 1965, thus violating the prescribed procedure. The Disciplinary Authority, without applying his mind, issued the final punishment order by relying upon irrelevant evidences and that too after a period of more than one year and eight months instead of within the prescribed period of three months. The applicant submits that he had lodged a complaint against the enquiry officer with the Disciplinary Authority on 07.01.1991 in writing, requesting to stay the enquiry. However, the enquiry officer was allowed to continue with the enquiry denying justice to the applicant. Therefore, the enquiry is vitiated. The applicant submits that mere technical omission on the part of the applicant in not taking permission from the prescribed authority does not amount to violation of the

CCS (Conduct) Rules and does not warrant the extreme penalty like dismissal, which is harsh and disproportionate and bad in law.

4. According to the applicant, Rule 12 of the CCS (Conduct) Rules is not violated and therefore Rule 3 (1) (iii) of CCS (Conduct) Rules cannot be said to be violated also. Rule 12 of the CCS (Conduct) Rules 1964 states that no Government servant shall, except with the previous sanction of the Government or prescribed authority ask for or accept contribution to, or otherwise associate himself with the raising of any funds or other collections in cash or kind in pursuance of any objection whatsoever. Rule 15 (1) (a) says that no Government servant shall, except with the previous sanction of the Government engage directly or indirectly in any trade or undertake any employment. Provided that a Government servant may without such sanction undertake honorary work of social or charitable nature or occasional work of literary, artistic or scientific character. In this particular case, the applicant was not engaged in any trade or business. He was only promoting a housing society for the postal employees. Rule 15.2 (e) states that a Government servant may without the previous sanction of the Government, take part in the registration, promotion or management of a Co-operative society registered under Co-operative Societies Act. The learned counsel for the applicant submits that this rule deals with raising of funds for

purposes like Flag day/ National Defence Fund etc., and therefore, the applicant could not be said to have violated this rule and it is not relevant or applicable in the case of the applicant. Collection of funds in the capacity of Chief Promoter is only governed by the old rule 12 or new rule 15 of the CCS (Conduct) Rules 1964. The learned counsel for the applicant maintains that the applicant, being a representative of the service union, took up the welfare activity like formation of Co-operativie Housing Society for the Postal Kamgars, which cannot be said to be an offence and it can be undertaken even without prior permission from the competent authority as per rule.

5. Coming to the enquiry, the learned counsel for the applicant submits that the applicant had complained in writing against bias of the enquiry officer and had requested to stay the proceedings. However, this request was not allowed. The enquiry officer conducted the enquiry without going through the relevance of the charge framed and the rules applied against the applicant carefully and without applying his mind, held the charges proved. The applicant was not supplied with a copy of the brief from the Presenting Officer as required under Government of India instruction 37 under Rule 14 of CCS (CCS) Rules, 1965 before calling upon the applicant to file his written statement. The principles of natural justice have been violated. The learned counsel for the applicant also has objected to the

Disciplinary Authority relying upon the letter dated 27.10.1988 from the applicant without giving an opportunity to him to explain the disposal of the amount of Rs.14,25,000/- during the course of oral enquiry. The applicant is also aggrieved with the punishment of dismissal from service. The Appellate Authority's order also according to the applicant, has been passed without discussing the issues raised by the applicant in his appeal. It is a non-speaking order rejecting the appeal on 09.5.1996 after a period of two years and five months. The applicant has also relied on the judgment in the case of D.V. Kapoor Vs. Union of India & Ors (1990 (4) SCC 314) stating that even assuming without admitting there is a technical omission on the part of the applicant for not taking prior permission from the prescribed authority, ^{it} which does not amount to violation of CCS (Conduct) Rules.

6. The respondents have filed the reply and have stated that the applicant has been dismissed after conducting a proper enquiry and the orders of the Disciplinary Authority and Appellate Authority are quite in order. The respondents submit that the Appellate Authority passed the order on 09.5.1996, whereas the applicant has approached on 12th August, 1997 i.e. after the period of limitation of one year as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Therefore, the application deserves to be dismissed on this ground itself.

7. Coming to the merits, the respondents deny the contention of the applicant that he has not violated Rule 12 of the CCS (Conduct) Rules 1964. According to the respondents a reference to the pre 1964 conduct rule is irrelevant to the issue involved in the case of the applicant. Rule 12 of the CCS (Conduct) Rules is available since publication of the CCS (Conduct) Rules, 1964 and it is attracted in the case of the applicant. The respondents have relied on the text of the rule to arrive at the conclusion of the charge and not on the caption of the rule as stated by the applicant. The respondents deny the contention of the applicant that he can undertake Co-operative activities of the employees without the prior permission or that he has committed any offence. They further state that rule 15 applies for Registration, Promotion or management of Co-operative Societies.

8. The learned counsel for the respondents submits that there was no bias against the applicant shown by the enquiry officer. The applicant's representation against the enquiry officer had been duly considered by the Disciplinary Authority in accordance with the rules and the same was rejected. The enquiry officer conducted the enquiry by examining all the witnesses and relevant documents and had drawn the reasonable conclusion that the charge was proved. The applicant had also admitted that he had collected the funds from

the members of the proposed Co-operative Housing Society. Further, it is not correct to say that the applicant was not supplied with the copy of the Presenting Officer's brief. It was supplied to him and he was asked to give his brief before 11.11.1991, but he avoided to furnish his brief. The enquiry officer's report was also made available. The applicant was given reasonable opportunity at every stage. The applicant failed to give his representation, if any after providing him the enquiry report. Therefore, the Disciplinary Authority followed the procedure prescribed under the rules and issued the impugned penalty order. The respondents do not also agree to the contention that the order passed by the Appellate Authority is a non-speaking order or without application of mind nor was the appeal rejected, arbitrarily or illegally.

9. We have heard the learned counsel for both the parties and have given careful consideration to the arguments advanced. The issue is limited to this, as to whether it was necessary for the applicant to take prior permission of the Government before collecting the subscription from employees who were supposed to be members of the proposed P & T Kamgar Housing society? According to the respondents, as per the enquiry report, the charge that the applicant did not take prior permission has been proved. In fact, the applicant has not denied that he did not take prior permission. He has clearly stated that he was not aware that such

permission was required. The respondents, however, held that the applicant could not be ignorant of the conduct rules and it was necessary for him to take the prior permission. The learned counsel for the applicant has argued that Rule 12 of the CCS (Conduct) Rules 1964 is not applicable and there is, therefore, no violation of conduct rules. Rule 12 of the conduct rules corrected upto 01st May, 1993 talks of subscription. According to this rule, no Government servant shall, except of the previous sanction of the Government or with the prescribed authority ask for or accept contribution to or otherwise associate himself with the raising of any funds or other collection in cash or in kind in pursuance of any object whatsoever. Similarly, Rule 15 talks of private trade or employment. No Government servant shall except with the previous sanction of the Government engage directly or indirectly in any trade or business negotiate for or undertake any other employment etc. However, Rule 15 (2) lays down that a Government servant may without previous sanction of the Government take part in the registration/promotion or management of a Co-operative Society for the benefit of Government servants registered under the Co-operative Societies Act 1860 or any other law for the time being in force. The applicant, therefore, feels that he need not have taken permission before collecting funds. In our considered view, had the society promoted by the applicant been duly registered, then perhaps, he could have got the benefit of this clause (e) of Rule 15 (2). But it is

evident from the record that the society was not registered as a Co-operative Housing Society at all. The applicant was only a Chief Promoter. No land also was allotted as was brought out in the preliminary investigation into the complaints made against the collection of subscription for the proposed Cooperative Housing Society. The rule talks of taking part in registering or promotion of a Society. It does not talk about collection of subscriptions. Rule 12 of the conduct rules is specific and the respondents have rightly charged the applicant under that rule. As the society was not even registered, it was certainly necessary that the applicant should have taken the permission of the competent authority before proceeding to collect the funds. The applicant has, therefore, violated Rule 12, which prohibits collection of funds or subscription except with the previous sanction of the Government or the prescribed authority. We have, therefore, to uphold that the respondents were justified in issuing the charge memo to the applicant for violating Rule 12 of the CCS (Conduct) Rules and Rule 3 (1)(iii) of the CCS (Conduct) Rules 1964. The mere omission to quote the right rule does not vitiate the orders of the Disciplinary Authority or the Appellate Authority. In any case we find that Rule 12 of the conduct rules does apply in the case of the applicant. But applicant's case is not covered under rule 15 (2) (e) of the Conduct Rules. We have also noted that the applicant was provided with all the documents including

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the brief of the Presenting Officer. He was given opportunity to defend himself. No principles of natural justice were violated. The orders of the Disciplinary Authority are speaking, reasoned orders so also the order of the Appellate Authority is a detailed reasoned order. It cannot be said to be arbitrary or non-speaking. In our considered view, the applicant has not shown any good reason to interfere with the impugned orders. We do not consider the punishment so shocking as to persuade us to direct the respondents to reconsider the quantum of punishment. In the facts and circumstances of the case, the OA fails and is dismissed. No costs.

Shanta ✓
(SMT. SHANTA SHAstry)
MEMBER (A)

Jain ✓
(S.L. JAIN)
MEMBER (J)

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