

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 1066/1997
DATED THE 9th DAY OF April 2002

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

Shri S.B.Chavan,
Junior Gestetner Operator,
Faculty of Guided Missiles,
Institution of Armament
Technology, Girinagar,
Pune - 411 025. Applicant

By Advocate Ms. Rekha Tawade

v/s.

1. The Director & Dean,
Institute of Armament Technology,
Defence Research and Development
Organisation,
Ministry of Defence, Girinagar,
Pune 411 025.
2. The Union of India,
Ministry of Defence, South Block,
New Delhi

By Advocate Shri R.K.Shetty

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant is challenging the order dated 6/4/95 imposing penalty of Compulsory retirement on the applicant.

2. The applicant was working as Junior Gestetner Operator. He was served with a charge sheet on 11/8/92. The statement of imputation of misconduct or misbehaviour annexed with the charge sheet is reproduced below:-

That the said Shri S.B.Chavan while working as Junior Gestetner Operator in IAT, Pune has violated Rule 20 of CCS(Conduct) Rules 1964, thereby committed misconduct of unbecoming of a Government Servant as per Rule 3(1)(iii) of the said Rule. Shri S.B.Chavan, has

been warned in writing to desist from sending his representation direct to the higher authorities such as President of India, Prime Minister of India, Defence Minister and Union Home Minister etc. without routing through proper channel and concerning to this non-promotion to the post of Senior Gestether Operator vide IAT Pune letter No.121/EC/SBC dated 18 Feb 92 and dated 05 March 92. Attention of Shri S.B.Chavan, was also invited towards Ministry of Home Affairs, New Delhi OM No.118/52/Ests dated 30 April 1952 as reproduced in IAT Pune Routine Order No.132 dated 28 Feb 92, according to which no Government servant can forward his representation directly to the higher authorities vide IAT, Pune letter No.121/EC/SBC dated 18 Feb 92. Inspite of issue of aforesaid written warning letters, Shri S.B.Chavan, is still forwarding his representations direct to the higher authorities including Political leaders regarding his non-promotion to the post of Senior Gestentner Operator. The various representations sent directly by Shri S.B.Chavan, are listed vide Appendix 'A' to this Memorandum.

2. A second memorandum was issued to the applicant on 11/10/94. A regular enquiry was conducted into the matter and thereafter since the charges stood proved, the Disciplinary Authority imposed penalty of compulsory retirement vide the impugned order dated 6/4/95. The applicant has therefore prayed to quash and set aside the aforesaid impugned order and to pay all wages and other benefits in consequence thereof.

3. The applicant was charge sheeted for misconduct and repeatedly submitting his representations to the President of India, Prime Minister, Defence Minister without forwarding the same through proper channel inspite of verbal and written instructions issued to him from time to time and inspite of administering the final warning to him on 15/9/94 to desist from addressing his representation of service matters directly to the President of India and other higher authorities. He was also charge sheeted for using derogatory language in his representation dated 20/8/94 addressed directly to the President of India.

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4. The main grounds taken by the applicant for quashing and setting aside of the impugned order are that writing of the letters to the Prime Minister, Defence Minister and various other Senior Officials is not misconduct when particularly the said officers had not taken offence nor have they asked for action to be taken against the applicant. The respondents had wrongly concluded that he was not a fit person to be retained in Government service and the punishment is grossly disproportionate and unjust. According to the applicant there is no breach of Rule 3(1)(iii) or Rule 20 of the CCS (Conduct) Rules 1964. The applicant submits that he had made the representations to the Senior Government Officials through proper channel. Further writing representations to Senior Government officials is constitutionally protected under Article 19(1)(a) of the Constitution of India and cannot constitute a misconduct. The petitioner was under considerable strain and was over-anxious to have his grievance resolved.

5. The learned counsel for the applicant also submitted that the charge sheet was not served on the applicant nor were the documents listed in the Annexure to the charge sheet served upon the applicant.

6. The respondents have filed their reply and submit that the applicant who was working as Junior Gestetner Operator in the Institute of Armament Technology (IAT) Pune had committed gross misconduct unbecoming of a Government servant. A charge sheet was therefore issued to the applicant on 11/8/1992. However, according to the respondents, the appointing authority after

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following the prescribed procedure was of the opinion that the applicant should be given a personal hearing by the higher authority viz. the Chief Controller Research and Development Organisation, R&D Headquarters. Accordingly the applicant was given a personal hearing on 14/2/1994 and was advised to desist from sending representations directly to higher authorities and not to violate Ministry of Home Affairs OM dated 30/4/1952 and Rule 20 of CCS(Conduct) Rules 1964. He was advised by the higher authority who is also the Appellate Authority in applicant's case and the applicant had verbally agreed not to repeat such activities. Keeping in view the surety given by the applicant, the competent authority i.e. Director & Dean did not follow up the disciplinary action initiated vide memo dated 11/8/92. However, the applicant persisted with his habit of sending representations directly to the higher authorities. In one such representation dated 20/8/94 he specifically made derogatory and defamatory statements openly challenging the President. This resulted into the issuing of a fresh charge sheet on 11/10/1994.

6. The charge memorandum dated 11/10/94 containing the articles of charge framed against the applicant together with its enclosures to be served on him was sent to the applicant at his official address through his superior officer. The same was returned as having been refused to be accepted by the applicant. The charge memo was once again sent to the applicant at his official as well as residential address by Registered post. The applicant still refused to accept the same. The registered envelopes were returned by the Postal authorities with a remark "Refused". Therefore the enquiry officer who was appointed

proceeded with the enquiry. A due notice was given to him to defend his case. Since the applicant did not attend the enquiry despite issuing a notice to do so, ex parte enquiry was held against the applicant and the finding was given that both the articles of charges framed against the applicant stood proved. Again the enquiry report was forwarded to the applicant at his official address through his superior officer to enable him to make written submission within the stipulated time limit. Again the applicant refused to accept the report stating that he needed Hindi version of the report. Therefore, again the enquiry report both in English and Hindi version was sent to the applicant at his known residential address by registered post A/D. The applicant refused to accept the report sent to him. It was returned with the remarks "Refused". Further an attempt was made to serve the enquiry report on the applicant in the office itself in the presence of witnesses. He refused to accept the enquiry report. Therefore, after having given all reasonable opportunities, the respondents took the enquiry report as having been deemed to have been served on the applicant and then proceeded to impose penalty of compulsory retirement. Thus, the respondents have followed the proper procedure and had given enough opportunity to the applicant to defend himself at every stage but the applicant failed to avail of any of the opportunities given to him. It is binding on the Government servant to follow the rules laid down and the regulations. The applicant cannot correspond directly with outside agencies, even in case of emergency, if any direct dealing is there, it is the duty of the Government servant to inform immediately the superior

authority. As the applicant failed to improve inspite of oral and written warnings to him not to correspond directly with higher authorities, the respondents had to take the extreme step of conducting an enquiry and imposing the penalty of compulsory retirement on the applicant.

7. The learned counsel for the applicant pleaded that the applicant did not get the documents listed with the charge sheet and since the enquiry was ex-parte, the entire order of compulsory retirement if the disciplinary authority is vitiated.

8. The applicant has also cited a judgement of the Supreme Court in the case of A.N.Kalra V/s. Project and Equipment Corporation India Ltd 1984 LAB I.C. 961. In this judgement it was held in para-22 therein that when the rules granting advance such as House Building Advance, themselves provided the consequence of breach of condition, there was no ground for initiating disciplinary enquiry as the breach of the rules ^{es} do not constitute misconduct. There has to be a specific conduct falling in any of the misconduct specifically enumerated in the Conduct Rules. According to the applicant, the applicant's writing letters directly to the President of India or Prime Minister cannot be construed as misconduct.

9. We have perused the relevant record which was directed to be produced by the respondents. After going through the record we find that the applicant had addressed a series of letters to the President of India, Prime Minister and Others including the Chairman of the National Commission for Safai Karmacharis. We also find that he had written them directly without routing the same through the proper channel. He used derogatory and

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defamatory language. Even after giving him a warning and even after he had orally agreed not to repeat the same, he persisted in sending such letters. The applicant has contended that there has been no breach of conduct rule 20 or 3(1)(iii). We have seen the rules. Rule 20 pertains to canvassing of non-official or other outside influence. The applicant has written frequently to President of India, Prime Minister, etc directly inspite of being warned. His persistance in writing such letters inspite of warning amounts to insubordination, disobedience. Rule 3(1)(iii) speaks of an act unbecoming of a Government servant is to abide by prescribed rules and instructions of Government. Instruction 25 under Rule 3(1)(iii) has listed out specific acts of conduct of a servant that may amount to misconduct and those which amount to misconduct. If a servant is abusive, it may be a misconduct. Wilful insubordination or disobedience is treated as misconduct. Thus, the applicant's action of writing letters directly to President of India, Prime Minister, etc challenging the President, abusing superior officers, using derogatory language are acts of misconduct amounting to breach of conduct Rules 20 and 3(1)(iii).

10. In our considered view, the charge is very clearly worded. The applicant was given every reasonable opportunity to defend himself. The applicant cannot now complain after having failed to avail of the opportunity to defend himself. He has refused to accept the charge sheet, the enquiry report inspite of being given the Hindi version and was given ample

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time to mend his ways. The applicant cannot make a grievance of not having been furnished the documents annexed with the charge sheet as he himself is to be blamed for refusing to accept the charge sheet. his ways. Therefore the respondents cannot be faulted. The applicant has not preferred any appeal against the impugned penalty order. He however has written a letter to the President of India for setting aside the impugned order dated 6/4/95. It is not a statutory appeal. Since almost seven years have lapsed it would be a futile exercise now.

11. The respondents have also taken objection regarding limitation. The applicant was retired compulsorily by order dated 6/4/95 whereas he has filed the OA on 6/8/97 i.e beyond the period of limitation of one year from the date the cause of action arose. There is no application for condonation of delay. Thus, on this ground itself it deserves to be dismissed. As already discussed on merits also and for the reasons recorded above, the OA fails. Accordingly the OA is dismissed without any order as to costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER(A)

S.L.Jain

(S.L.JAIN)
MEMBER(J)

abp

dt 9/4/19
order/Judgement despatched
to Applicant/Respondent(s)
on 17/4/19