

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1008/1998

Date of decision : -4.12.2002

Smt.Rekha Keshav Kakade

Applicant.

Shri S.P.Kulkarni

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.S.Karkera Proxy Counsel
for Shri P.M.Pradhan.

Advocate for
Respondent(s)

CORAM :

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J),
Hon'ble Smt. Shanta Shastry, Member (A).

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? - No

(3) Library. - No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice-Chairman (J)

2. The above penalty orders have been issued by the Respondents against the applicant after holding a departmental proceedings on the memorandum of charges issued against her on 07.02.1997. This Memorandum of Charges has been issued under Rule 16 of CCS (CCA) Rules, 1965. The Statement of Articles of Charges given in Annexure - I of the Memorandum reads as follows:-

"That the said Miss R.K.Kakade, T.O.A. while working in this office has indulged in destroying official papers. That the said Miss R.K.Kakade, T.O.A. while working in the office has neglected office work and caused for office work in embarrassing position. That the said Miss R.K.Kakade, T.O.A. while working in this office has disobeyed the orders of immediate Superior authority."

Annexure - II of the Memorandum of Charges contains a Statement of Imputation of mis-conduct, mis-behaviour on the aforesaid Articles of Charges, which read as follows :-

"1. Articles I & III :- That the said Miss.R.K.Kakade, T.O.A. has behaved in a manner of unbecoming of Govt. Servant.

2. Article - II :- That the said Miss R.K.Kakade, T.O.A. has failed to maintain devotion to duty assigned to her.

And thus violated Rule - 3 (1) - (ii) & (iii) of CCS (Conduct) Rules, 1964."

Annexure - III gives the list of documents by which the Articles of Charges were proposed to be sustained, which contains a list of 9 (nine) such documents.

3. Learned Counsel for the applicant has submitted that a perusal of the Articles of Charges together with the Statement of Imputation reproduced above show that the charges are vague and not specific. He has submitted that the Respondents have failed to clearly indicate in what manner the applicant had disobeyed

the orders of her immediate superior authorities and have merely given a list of documents in Annexure - III. He has also pointed out that no witnesses were listed or called at the departmental enquiry proceedings held against the applicant. He has also submitted that after the enquiry was held on 20.03.1997, no further date was intimated to the applicant and thereafter, they continued to hold the proceedings ex parte without due intimation to the applicant. Learned Counsel has also taken an objection to the manner in which the departmental proceedings have been held against the applicant, that the Enquiry Officer's Report was not furnished to the applicant so that no reasonable opportunity of hearing has been given to her to controvert the same by way of a representation. He has also submitted that the Appellate Authority's order is a non-speaking, cryptic order. For these reasons, Shri S.P.Kulkarni, Learned Counsel has submitted that the impugned penalty orders may be quashed and set aside, with consequential benefits to the applicant.

4. We have seen the reply filed by the Respondents and heard Shri S.S.Karkera Proxy Counsel for Shri P.M.Pradhan. From paragraph 12 of the reply filed by the Respondents to averments given by the applicant in paragraphs 4.10 and 4.11 of the OA, it is seen that there is no specific denial to the applicant's contention that a copy of the Enquiry Officer's report was not furnished to the applicant, which has again been repeated in paragraph 5.1 (g). The Respondents have merely stated, inter alia, that Disciplinary Authority on the basis of the Report submitted by the Enquiry Officer and on the basis of the whole

records, has imposed the punishment on the applicant in accordance with the Rules, which according to them is just and proper. Learned Counsel for applicant has also contended that the penalty order dated 21.04.1997 issued by the Respondents to withhold one increment due to the applicant for a period of one year with cumulative effect amounts to a major penalty under the provisions of Rule 16 of CCS (CCA) Rules, 1965, which cannot be done without holding an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 and in any case, without giving a copy of the Enquiry Officer's report to the applicant to enable her to make a representation on it. Learned Counsel for Respondents has submitted that as the applicant did not continue to participate in the Disciplinary Proceedings, the Respondents had to hold it ex parte and there is nothing wrong in that. According to him, the Respondents have seen the entire records and passed the penalty orders and has prayed that the OA may, therefore, be dismissed.

5. We have carefully considered the pleadings and the submissions made by the Learned Counsel for the parties. From a perusal of charges levelled against the applicant by Memo dated 7.2.1997 (Annexure - A-1) read with Statement of Imputation of mis-conduct and mis-behaviour (Annexure - A-2), it cannot be held that the charges are clear, particularly with regards to the charges against the applicant that she has disobeyed the orders of ^{the 10/} immediate superior authority. Even in the list of documents annexed to the Memorandum of Charges, there is no specific mention of the incident or the details thereon of the orders issued by the immediate superior authority with reference to the
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alleged disobedience by the applicant of those orders. Similarly, with regard to her nature of working which has caused embarrassment in the office work and position, details are not given. No doubt, with regard to the first Article of Charge where it is alleged that she had indulged in destroying some official papers, there is a reference at S1. No.7 in the list of documents that she had torn certain official documents into small pieces. Therefore, reading the Annexures to the Memorandum of Charges, including the statement of imputation of mis-conduct and mis-behaviour, we find force in the submissions made by Shri S.P.Kulkarni, Learned Counsel for applicant that they are vague and on this ground the penalty orders are liable to be quashed and set aside.

6. It is noted that the Memorandum of Charges were purported to have been issued under Rule 16 of the CCS (CCA) Rules, 1965. From the Disciplinary Authority's order dated 21.04.1997, it is also clear that an Enquiry Officer had been nominated, an inquiry has been held and he has submitted a report which has been referred to in that order. There is also no denial by the Respondents that a copy of the Enquiry Officer's report submitted in the Disciplinary Proceedings held against the applicant has not been given to the applicant, which is one of the main grounds taken by the Learned Counsel for the applicant. The penalty order of withholding one increment for one year with cumulative effect is a major penalty and there is, therefore, no reason why the respondents should not have followed the procedure laid down under Rule 14 of the CCS (CCA) Rules, 1965, instead of Rule 16 of the Rules. In any case, the above action of the Respondents show

that they have clearly violated the principles of natural justice as the applicant was entitled to have a copy of the Enquiry Officer's report and to make a submission thereon. (See the recent Judgment of the Hon'ble Supreme Court in the case of O.K.Bharadwaj Vs. Union of India & Ors. - (2002) SCC (L&S) 188). Therefore, in the facts and circumstances of the case, it is evident that the Respondents have violated both the provisions of Rules and the principles of natural justice and the OA, is therefore, liable to succeed.

7. With regard to the contention of the Learned Counsel for the applicant that the Appellate Authority's order is cryptic and non-speaking, we feel that this order is also liable to be quashed and set aside.

8. Miscellaneous Petition No.720/1998 has been filed by the applicant for condoning the delay of about three months in filing this application against the impugned penalty orders. Learned Counsel for Respondents has opposed the condonation of delay. However, taking into account the aforesaid facts and circumstances of the case and the manner in which the Respondents have grossly violated the provisions of Rules and principles of natural justice, we consider that this is an appropriate case where M.P. 720/1998 should be allowed for condonation of delay. As mentioned above, there is no reason why the respondents ought not to have conducted the departmental enquiry proceedings initiated against the applicant vide memo dt. 7.2.1997 strictly in accordance with the Rules and instructions on the subject. For these reasons, M.P. 720/1998 is allowed condoning the delay.

9. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:-

- (i) The Charge Memo dated 7.2.1997 followed by the impugned penalty order issued by the disciplinary authority and appellate authority, dated 21.4.1997 and 17.7.1997 respectively are quashed and set aside;
- (ii) Accordingly, the Respondents shall restore to the applicant the consequential benefits in accordance with law, rules and instructions;
- (iii) However, in the facts and circumstances of the case, liberty is granted to the respondents to proceed in the matter in accordance with law for which necessary decision to initiate action shall be taken within three months from the date of receipt of a copy of this order, failing which, it shall abate. No order as to costs.

Shanta

(SMT. SHANTA SHAstry)
MEMBER (A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

B.