

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1518/97

Date 17.8.1999

Between:

Swapan Adhikary

.. Applicant

A N D

1. The Director General of
Mines Safety,
Post and District Dhanbad
826 001.

2. Union of India,
Secretary,
Ministry of Labour,
Shramshakti Bhavan,
Rafi Marg,
New Delhi - 110 001.

.. Respondents

Counsel for the Applicant : Mr. R.Briz Mohan Singh

Counsel for the Respondents: Mr. V. Rajeshwar Rao

Coram:

Hon. Shri R. Rangarajan, Member (A)

Hon. Shri B.S. Jai Parameshwar, Member (J)

R

O R D E R

(Per Hon. Shri B.S. Jai Parameshwar, Member(J)

Heard Mr. R. Briz Mohan Singh,
learned counsel for the Applicant and Mr. V.
Rajeshwar Rao, learned standing counsel for the
Respondents.

2. While the Applicant was working as
Deputy Director of Mines Safety, Oorgam Region,
Kolar Gold Fields, Karnataka, ^{the} Respondent No.1
issued a memorandum of charges vide proceedings
No. C-11011/2/93-ISH-I dt. 28-10-1994, Annexure A-2
Page 20 to the OA. On 11-11-1994 the Applicant
submitted his explanation to the charge memo.
A copy of the explanation submitted by the Applicant
is at Annexure A-3, page 25 to the OA.

3. Even after lapse of about a year
and half the respondent No.1 appears to have not
taken any action on the charge memo. In the
meanwhile the Applicant became eligible for
promotion to the next higher cadre. On 9-5-1996
the Applicant submitted a representation to
consider his case for promotion as Director of
Mines Safety. A copy of the representation dt.
9-5-96 is at page 29 to the OA.

4. The Respondent No.1 by his
proceedings No. C-11011/2/93-ISH.I/II dt.
24-5-1996 issued a fresh charge memo. In the
charge memo it is stated that the earlier
charge memo dt. 28-10-1994 has been withdrawn.
The misconduct alleged against the applicant
reads as under :



"ARTICLE-I

That Shri Swapan Adhikary while functioning as Deputy Director of Mines Safety (Mining) in the office of the Director Mines Safety, Bhubaneswar from 31-10-81 to 13-7-88 and then from -4-7-1988 to 19-11-1990 and previously in the office of DGMS Dhanbad, had purchased a flat at Ultadanga from C.I.T. Calcutta for Rs.1,53,000/- and since August,1988 the same flat was also rented out. Shri Adhikary, however, did not intimate these transactions to the competent authority as required under the Rule 18(2) of the Central Civil Services(Conduct)Rules,1964.

ARTICLE - II

Shri Adhikary's wife was engaged in the trade/business of tuition and embrodary works. Shri Adhikary, however, did not report to the Government about this resulting in contravention of Rule 15(3) of the Central Civil Services (Conduct)Rules, 1964.

Thus by his above mentioned acts Shri Adhikary failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant thereby contravening Rule 3(1)(i) and (iii) of the Central Civil Services (Conduct)Rules, 1964."

5. The Applicant submitted an explanation to the chargememo, as per his ~~own~~ explanation dt 4-6-1996. A copy of the explanation is at Annexure A-8, page 35 to the OA. We feel it proper to reproduce para-4 of his explanation.

✓

"4. I submit that I have always maintained absolute integrity as a responsible officer in the Department. The contravention of Rule 3(1)(i) & (iii) of the Central Civil Services (Conduct) Rules, 1964 are only on account of my not being aware of the said rule position for which I regret very much. Otherwise I have always acquitted myself honourable both in Department and the Society as a respectable citizen. I also further request that I may be heard in person to substantiate my case set out in this written statement."

6. The Deputy Secretary to the government of India by his order dtd. 15-1-1997 considering the explanation of the Applicant felt no need to conduct a detailed enquiry ^{as} ~~on~~ the Applicant admitted ^{the} ~~his~~ charges and imposed the penalty of Censure on the Applicant. A copy of the order of the Disciplinary Authority dt. 15-1-1997 is at page 37 Annexure A-IX to the OA.



7. Against the said punishment order the Applicant submitted a review application^{dt. 7-5-97} to Respondent No. 2. A copy of the review application is at page 38, Annexure A-X to the OA. The reviewing authority by his proceedings of even No. dt. 11-9-1997 rejected the revision petition. He formed an opinion as under :

".....since no new facts or material is brought to the notice which could not be produced or was not available at the time of passing of the order dtd. 15-1-97 and which could have had the effect of changing the nature of the case, the competent authority after due consideration has decided that there will not be any change in the order dt. 15-1-97 regarding imposition of a minor penalty of Censure. "

8. The Applicant has challenged the impugned orders on the following grounds:

The action of the respondents in keeping silent for nearly a year and half on the charge memo dt. 28-10-1994 was only to deny him the promotional opportunity. The decision of the disciplinary authority not to conduct an enquiry is not correct. The punishment of Censure imposed on him is disproportionate to the misconduct alleged against him.

The disciplinary authority has not properly applied its mind to the explanation given by him. It is his case that he has not admitted the charges of misconduct. The Articles of Charge as such do not amount to misconduct. The Disciplinary authority had not felt to give an oral enquiry to the Applicant. The disciplinary proceedings are vitiated due to violation of principles of natural



justice. Under any circumstance the impugned punishment order cannot be sustained in the eyes of law.

9. The respondents have filed a reply stating that the disciplinary authority felt that certain charges of misconduct indicated in the charge memo dt. 28-10-1994 was not correct and that therefore the disciplinary authority felt it proper to issue a fresh charge memo dt. 24-5-96 that the disciplinary authority properly considered in the explanation of the Applicant, that the explanation given by the applicant he clearly admitted the misconduct levelled against him; that the disciplinary authority considering the said admission of misconduct by the Applicant was sufficient it formed an opinion that no detailed enquiry was essential and passed a least minor punishment of Censure; that the contention of the Applicant punishment of Censure is disproportionate to the misconduct alleged is not correct; that there was some delay in reporting the acquisition of a flat by him; that the reviewing authority felt that the applicant had not brought out any new material or evidence which could not be produced or not available at the time of passing the order dt. 15-1-97 by the disciplinary authority and that the imposition of penalty by the disciplinary authority was upheld by the reviewing authority and there are no merits in the OA. Thus they pray for the dismissal of the OA.

10. The point for consideration is whether the enquiry initiated against him was concluded following the procedures and the principles of natural justice. The para-4 of the explanation offered by the Applicant has been extracted above.



The Disciplinary Authority even though formed an opinion that the explanation of the Applicant amounted to an admission of misconduct it was his duty to give a personal hearing to enable the Applicant to substantiate his case. Furthermore the charge memo is issued for imposing a major penalty. In such case the enquiry is absolutely necessary unless the disciplinary authority forms an opinion that the explanation offered by the Applicant amounted to clear admission of the charges.

11. When the Applicant himself prayed for a personal hearing the least that could have been done by the disciplinary authority is to give him an opportunity to explain his case. The disciplinary authority could have passed any order as he deemed fit in the circumstances of the case. This Tribunal cannot go into the question of propriety of imposing a particular punishment but the manner in which the disciplinary authority imposed the punishment has to be seen. In our opinion when the Applicant prayed for a personal hearing he should have been given an opportunity. In view of the matter we feel that the disciplinary authority had passed the order dt. 15-1-97 in utter violation of principles of natural justice. Further he should have explained in the order as to how he came to the conclusion that the explanation given by the Applicant amounted to admission of guilt. These aspects are not to be found in the impugned order dt. 15-1-1997.

12. The reviewing authority has failed to consider these aspects of the matter. Hence we direct

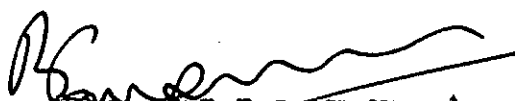


the reviewing authority to reconsider the revision petition dt. 7-5-1997 after giving a personal hearing to the Applicant.

13. In that view of the matter we feel it proper to issue the following directions:


- (i) The impugned order dt. 11-9-97 of the reviewing authority is hereby set aside;
- (ii) the reviewing authority (Respondent No.2) shall give an opportunity to the Applicant to explain his stand as requested by him in his explanation dt. 4-6-96;
- (iii) After hearing the Applicant the reviewing authority shall consider the review application dt. 7-5-97 and pass a speaking order;
- (iv) Time for compliance: 4 months from the date of receipt of a copy of this order;

14. Parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
Member (J)

MD

17/12


(R. RANGARAJAN)
Member (A)


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COPY TO:-

1. HON'BLE
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1st AND II nd COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD:

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

ORDER DATE: 17/8/99

MA/RA/CP.NO
IN
DA.NO. 1518/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

O.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अपिचरदण
Central Administrative Tribunal
प्रेषण / DESPATCH

24 AUG 1999

हैदराबाद ब्याचपीठ
HYDERABAD BENCH

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.
1st Floor, HAC Bhavan, Opp:Public Garden, Hyderabad.500004.A.P.

ORIGINAL APPLICATION NO. 1518. OF 199 7.

Applicant(s).

V/S

Respondent(s)

Swapan Adhikary.
By Advocate Shri:

The D.G., of Mines Safety Post and
District Dhanbad-826001., Bihar.&
(By Central Govt. Standing Counsel)

R.Briz Mohan Singh,
To.

Mr.V.Rajeswara Rao.Addl.CGSC.

1. The Director General of Mines Safety Post and District Dhanbad-866001.
2. The Secretary, Union of India, Ministry of Labour,
Shramshakthi Bhavan, Rafi Marg, New-Delhi.110001.

Whereas an application filed by the above named applicant under Section 19 of the Administrative Tribunal Act, 1985 as in the copy annexed hereunto has been registered and upon preliminary hearing the Tribunal has admitted the application.

Notice is hereby given to you that if you wish to contest the application, you may file your reply along with the document in support thereof and after serving copy of the same on the applicant or his Legal practitioner within 30 days of receipt of the notice before this Tribunal, either in person or through a Legal practitioner/ Presenting Officer appointed by you in this behalf. In default, the said application may be heard and decided in your absence on or after that date without any further Notice.

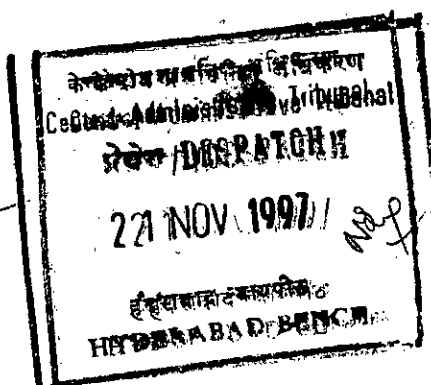
Issued under my hand and the seal of the Tribunal

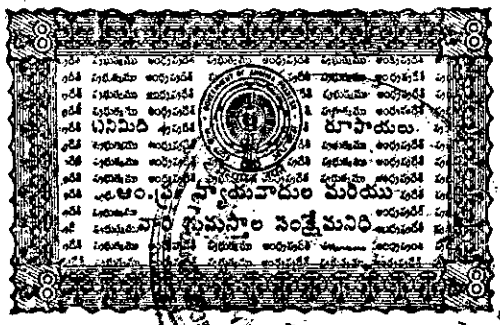
This the . . . Twelfth day of . November 1997.

//BY ORDER OF THE TRIBUNAL//

Date: 17-11-97.

FOR REGISTRAR.





In the Court Of the CENTRAL

ADMINISTRATIVE TRIBUNAL, HYDERABAD.

O.A. No

of 199 7

Between . A. J
Swapan Adhikary

Plaintiff
Petitioner

Appellant
Accused

AND

The Director General of ...
Mines Safety,
Post & District Dhanbad -
Bihar
and another.

Defendant
Respondent

Complainant

VAKALAT

ACCEPTED

Handwritten signature: R. Briz Mohan Singh

R. BRIZMOHAN SINGH
Advocate

Advocates for : APPLICANT

Filed on :

Address for Service Phone : 598698

Sri.R. Briz Mohan Singh
Advocate,
3 & 38, Agarwal Chambers,
5-9-1121, King Koti Cross Road
HYDERABAD - 500 001.

In the Court of the CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH

AT HYDERABAD.

Between O.A. No.

1518

of 1997

Swapan Adhikary

**Plaintiff
Petitioner**

**Appellant
Complainant**

AND

The Director General of Mines Safety
Post & District Dhanbad - 826 001,
Bihar and another.

**Defendant
Respondent
Accused**

I/we Swapan Adhikary S/o H.D. Adhikary,

aged about 50 years,

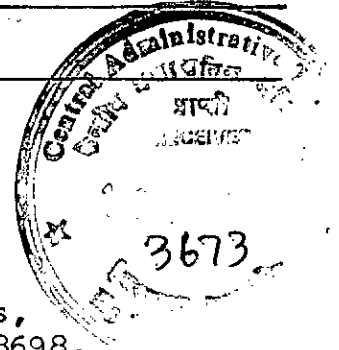
Residing at Hyderabad and working as Deputy Director

of Mines Safety, Ministry of Labour, Hyderabad.

do hereby appoint and retain

**Sri.R. Briz Mohan Singh
Advocate,**

**3 & 38, Agarwal Chambers,
5-9-1121, King Koti Cross Roads,
HYDERABAD - 500 001, Tel.No.598698.**



Advocate/s to appear for me/us in the above Suit/case and to conduct and Prosecute or defend the same and proceedings, that may be taken in respect of any application for execution or any Decree or Order passed therein I/We empower my/our Advocate to appear in all miscellaneous proceedings in the above suit matter till all Decree or Order are fully satisfied or adjusted to compromise and to obtain the return of Documents and draw any moneys that might be payable to me/ in us said suit or of matter and notice I/we do further empower my/our Advocate to accept on my/our behalf, service of all or any appeals or petitions filed in any Court of appeal reference or revision with regard to said suit or matter before the disposal of the same in this Honourable Court

[Handwritten signature]

Certified that the executant how is well acquainted with English and this Vakalatname and the Contents of the Vakalatnama were read out and explained in Telugu/Urdu/Hindi to executant or he/she/they being unacquainted with English who appeared to have perfectly understood the same and signed/put his/their name or mark in my presence.

Identified by :

Advocate

Executed on this

7th

day of November 1997

[Handwritten signature]
Advocate

60

Central Administrative Tribunal,
Hyderabad Bench, Hyderabad.

OA/CA No. 1518 of 1997



MEMO OF APPEARANCE

V. RAJESWARA RAO
ADVOCATE

Standing Counsel for Railways,
Addl. Standing Counsel for Central Govt.

Counsel for..... *Respondent*

Address for Service :

Phone : 272585

104/2 RT, Sanjeevareddy Nagar,
HYDERABAD-500 038.

**Central Administrative Tribunal, Hyderabad Bench,
HYDERABAD.**

OA/CA No. 1518 of 1997

BETWEEN

Swapen Adhikary

Applicant (s)

Vs.

*The Director Genl of Muns
Self P.H. & R.H.
Charging Behav of a/c*

Respondent (s)

MEMO OF APPEARANCE



To,

I V. Rajeswara Rao, Advocate, having been authorised.....

(here furnish the particulars of authority)

by the Central/State Government/Government Servent/..... authority/corporation/
society notified under Sec. 14 of the Administrative Tribunals Act, 1985. Hereby appear for

applicant No...../Respondent No..... and undertake to plead and act
for them in all matters in the aforesaid case.

Place : Hyderabad.

Date : 5/1/98

Address of the Counsel for Service

V. Rajeswara Rao

104/2 RT. Sanjeevareddy Nagar,

HYDERABAD - 500 038.

V. Rajeswara Rao

V. RAJESWARA RAO

Standing Counsel for Railways,

Addl. Standing Counsel for Central Govt.

Signature & Designation of the Counsel.