

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA no. 70/93 : Date of order 15.9.94
N.N. Kochhar : Applicant
V/s
Union of India & Others : Respondents
Mr. J.K. Kaushik : Counsel for the applicant
Mr. Praveen Balwada : Counsel for the respondents.

CORAM

Hon'ble Mr. Gopal Krishna, Member (Judicial)

Hon'ble Mr. O.P. Sharma, Member (Administrative)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE)

Shri N.N. Kochhar in this application u/s 19 of the Administrative Tribunals Act, 1985, has prayed that the charge-sheet dated 9.3.88 (Annexure A-1) issued under Rule 16 of the CCS(CCA) Rules, order of penalty dated 3.3.89 imposing the penalty of withholding of increments for 2½ years (Annexure A-1) and the orders dated 10.5.91 and 9.4.92 (Annexures A-3 and A-4) rejecting the revision and review applications respectively of the applicant may be quashed with all consequential benefits.

2. The applicant's case is that a charge sheet under Rule 16 of the CCS(CCA) Rules was served on the applicant by memorandum dated 9.3.88 and two charges were mentioned therein. One related to recruitment of a candidate, who was over age by 14 days as per rules and the other related to directly approaching the Prime Minister of India, bringing out his personal problems which could have been redressed by submitting a proper representation to the concerned authorities through proper channel. The applicant submitted a representation against the aforesaid charge sheet and after consideration thereof, the disciplinary authority imposed on the applicant, under Rule 16 of the aforesaid rules, a penalty of withholding of increments for a period of 2½ years without cumulative effect. The applicant preferred a revision application against the said order but it was dismissed by the President by order dated 10.5.91 (Annexure A-3). Thereafter the

applicant preferred a review application and it was also rejected by order dated 9.4.92 on the ground that no new points had been brought out in the review application.

3. The applicant is aggrieved by the penalty order on various grounds. According to him, the action of recruiting a person ~~who~~^{was} over age by mere 14 days was inadvertent and no corrupt motive was involved in this action. He added that his mere representing a matter before the Prime Minister could not justify imposition of penalty on him. In this connection, he cited before us a judgement of the Tribunal in C.S. Manral V/s Union of India, of which a summary is incorporated in Swamy's Case Law Digest Vol. I, first edition. As per this judgement, action of this nature cannot form the basis of any disciplinary proceedings. He also drew our attention to the office memorandum dated 22.5.88 issued by the Department of Personnel and Training, Government of India, according to which a Government servant violating the provisions of Rule 20 of the CCS(Conduct) Rules for the first time should be advised by the appropriate disciplinary authority to desist from approaching the Members of Parliament etc. The applicant's case is that since this was his first act of approaching an authority like the Prime Minister of India, at most, the respondents should have advised him to desist from such course of action in future. There was, therefore, no justification of ^{him} initiation of any penalty proceedings against ~~and~~ levy of a penalty thereafter.

4. The respondents in their reply have taken a preliminary objection that the application is time barred because the revision application filed by the applicant was disposed of on 10.5.91 whereas the applicant filed this OA on 27.1.93. The further case of the learned counsel for the respondents is that although the applicant had filed a review application, which was disposed of on 9.4.92, this could not extend the limitation period for filing the OA because the review application had been filed without mentioning therein any new material or evidence which could have

the effect of materially altering the outcome of the case. We, however, find no substance in this objection on the ground of limitation because the communication sent to the applicant on 9.4.92 pointing out that his review application was not tenable also provided him the basis for filing the OA and the period of limitation could be reckoned from the date of receipt of this communication. Viewed in this light, the OA has been filed in time.

5. As regards the merits of the case, the Tribunal exercises the power of judicial review and it is not expected to reappreciate the evidence in disciplinary cases and come to its own conclusion as regards the gravity of misconduct and substitute its own opinion for that of the departmental authorities. The applicant had failed to exercise due care and attention when he recruited a candidate who was over aged and this was indeed a misconduct. Further Rule 20 of the CCS(Conduct) Rules provides that no Government Servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. It is not clear from the summary of the judgement made available to us in Manral's ^{case} whether the Tribunal had considered the provisions of Rule 20 of the CCS (Conduct) Rules while deciding the matter. There is no reference to this rule in the summary itself. When there is a specific provision of the Rules prohibiting a particular action, violation thereof would certainly constitute a misconduct. In the circumstances, we cannot take a view that the applicant's directly approaching the Prime Minister of India did not at all constitute a misconduct and therefore, the applicant was not liable to any disciplinary action. However note has to be taken of the office memorandum no. 1-11013/7/85/Estt. dated 22.5.85 issued by the

and
Department of Personnel Training, Government that when there is
a first violation of Rule 20, the Government servant should be
advised to desist from such course of action.

6. If we take a total view of the facts of this case, it would prefer that the penalty imposed on the applicant is rather too harsh. However as already stated above, since the Tribunal only exercises the powers of judicial review, we are not inclined to determine the gravity of the misconduct of the applicant ourselves or to interfere with the quantum of penalty already imposed. In the circumstances, we remit the matter to the Disciplinary Authority with a direction to consider the position of the case as stated and to pass such fresh order, in supersession of the earlier order of penalty, as may be just and proper in the circumstances of the case and in the light of the observations made above. The fresh order to be passed in supersession of the earlier penalty order may be passed by the disciplinary authority within a period of four months from the date of receipt of a copy of this order.

7. The OA is disposed of accordingly, with no order as to costs.


(O.P. SHARMA)
MEMBER(A)


(GOPAL KRISHNA)
MEMBER(J)