

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 18.9.95.

OA No.399/95

Padha Kishan Dagar s/o Shri Kesarilal, aged about 52 years, working as Postal Assistant, PIP, PO, Kota.

... APPLICANT.

VERSUS

Union of India and others

... RESPONDENTS.

CORAM:

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

HON'BLE MR. PATTAN PFAKASH, MEMBER (J)

For the Applicant ... Mr. K.L. Thawani

For the Respondents ... ---

O R D E R

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

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri Padha Kishan Dagar has prayed that orders Annexure A-1 being the charge-sheet dated 18.2.88 issued to the applicant under Rule 14 of the CCS (CCA) Rules, and a communication Annexure A-2 dated 24.4.95 being the letter from the Post Master General to the applicant rejecting his representation against initiation of disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, may be quashed and the respondents may be restrained from conducting any oral enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965.

2. The facts of this case, as stated by the applicant, are that the applicant had taken a LTC advance of Rs.2450/- on 31.10.86 for proceeding to Kanya Kumari but due to unavoidable circumstances he could not proceed to Kanya Kumari. Thereafter, the said advance was recovered from the pay of the applicant during the period August, 1987 to November, 1988 and another sum of Rs.334/- was also recovered being the interest payable. Medical Advance aggregating Rs.900/- were taken by the applicant in June and August, 1987 for treatment of his daughter and wife on the authority of Authorised Medical Attendant but due to loss of cash memos by the wife of the applicant, claims for medical reimbursement could not be submitted. Both these advances have since been recovered from the applicant. The applicant's case is that grant of advances/loans is a civil liability yet proceedings under Rule 14 of the CCS (CCA) Rules, 1965 have been initiated against the applicant. The applicant had filed an OA, No.729/88, against

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the charge-sheet issued to him. The proceedings were stayed by the Tribunal. Thereafter, the said OA was disposed of by the Tribunal vide order dated 4.7.94 (Ann.A-4) holding that there is no case for stay of disciplinary proceedings. The applicant was given liberty to move departmental authorities with regard to these proceedings. The stay granted earlier was vacated. Thereafter, the applicant moved a Review Application, which was rejected on 18.11.94 (Ann.A-5). The applicant thereafter approached the Senior Supdt. of Post Offices, Kota, the disciplinary authority, who however did not pass a speaking order but directed the applicant to cooperate in the matter of oral enquiry. The applicant's appeal to the Director Postal Services was also rejected. The disciplinary authority has now appointed a new enquiry officer vide order dated 2.8.95 but no date of enquiry has been fixed. The allegations made against the applicant do not justify initiation of major penalty proceedings against him. The LTC advance has already been refunded alongwith penal interest and, therefore, there is no misconduct on the part of the applicant warranting action against him under the CCS (COA) Rules. As regards the medical advance, unfortunately cash memos were lost by the wife of the applicant and, therefore, a bill could not be preferred to cover the medical advances. There has, however, been no falsification nor any misappropriation on the part of the applicant and it was the simple case of recovery of unutilised advances. 42 other officials, who had taken LTC advance but had not utilised it, have not been served with any charge-sheet, but the applicant has been singled out for this treatment. As per Annexure A-11, the instructions issued by the Director Postal Services by letter dated 3.7.88, there is no justification in initiating disciplinary proceedings in such cases. These instructions have been flouted by the disciplinary authority.

3. During the arguments, the learned counsel for the applicant cited before us an order of Jabalpur Bench of the Tribunal in Abdul Gaffar v. Union of India and others, ATR 1983 (2) CAT 318, wherein the Tribunal while deciding the OA on 2.3.83 posed a question whether breach of loan agreement by a government servant for purchase of a vehicle amounts to misconduct. The Tribunal in this case held that imposition of a penalty of reduction in rank coupled with withholding of two increments with cumulative effect attracts principle of double jeopardy. The order was quashed with a direction to the authority to impose a penalty of censure on the applicant. He also referred to the order of the Tribunal in Anand Prakash Sharma v. Union of India and others, decided on 30.8.93 and digested in Swamy's Digest Vol.VII-1994/1, page 268, wherein the New Delhi Bench of the Tribunal held that the Tribunal can quash disciplinary proceedings even before their

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completion for violation of principles of natural justice. He urged that since no case of misconduct whatsoever has been made out against the applicant, there was no justification for continuing the disciplinary proceedings initiated against the applicant.

4. We have heard the learned counsel for the applicant and have gone through the material on record as also the judgements cited before us.

5. By order Annexure A-4 dated 4.7.94 the Tribunal has already held that no interference is called for with regard to issue of charge-sheet to the applicant. The stay granted earlier was vacated and the applicant was directed to approach the departmental authorities in the matter of disciplinary proceedings. The question whether this charge-sheet should be quashed has already been decided by the Tribunal by order dated 4.7.94. and, therefore, this matter is no longer open to us to adjudication at this stage. The learned counsel for the applicant drew our attention to Annexure A-5, which is the order dated 18.11.94, passed by the Tribunal on a Review Application made by the applicant, wherein it is said that if the applicant is aggrieved by any decision of the respondents, he may file a fresh application before the Tribunal. The decision, with which the applicant should be aggrieved and against which he can come to the Tribunal, can only be that which is taken by the departmental authorities in response to the directions issued to the applicant, as contained in para-2 of the Tribunal's order dated 4.7.94. In the directions given in para-2 it was stated that the applicant may file reply to the departmental proceedings and contest the same according to the rules. It was further stated that the respondents shall give the applicant an appropriate opportunity of hearing. The implication of what has been stated by the Tribunal in para-2 of the order dated 4.7.94 is that the applicant shall contest the departmental proceedings in accordance with the procedure prescribed for contesting such proceedings and thereafter if he is aggrieved by any decision taken by the disciplinary authority or the higher departmental authorities, he may approach the Tribunal as permitted by the order dated 18.11.94 in the Review Application. However, after the applicant has filed reply to the charge-sheet, he has again come to the Tribunal. The reply of the disciplinary authority was that enquiry officer has been appointed but his report has not been received. This cannot furnish a cause of action to the applicant for approaching the Tribunal afresh. In our view, the matter has already been concluded by the Tribunal's order dated 4.7.94 and, therefore, the applicant is not justified in approaching the Tribunal with a prayer for quashing the charge-sheet issued to him.

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6. The order of the Jabalpur Bench of the Tribunal in Abdul Gaffar's case, cited before us, does not show that the Tribunal had held that there was no misconduct whatsoever by the applicant when there was breach of a loan agreement with the Government by him. It was for this reason that the Tribunal had directed that the penalty of censure may be imposed on the applicant. As regards the order in Anand Prakash Sharma's case, the principle laid down therein is unexceptionable but the applicant has not been able to show to us which principles of natural justice have been violated in issuing the charge-sheet to the applicant and ordering appointment of the enquiry officer and informing the applicant that the matter will be decided only after receipt of the enquiry officer's report.

7. In these circumstances, we find no merit in this second application and it is, therefore, dismissed at the admission stage.


(PATTAN PPAKASH)

MEMBER (J)


(O.P. SHAFMA)

MEMBER (A)

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