

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 617 of 2002

Jabalpur, this the 29th day of July, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Suneshwar Prasad, aged about
59 years, S/o. Shri Raghunath Prasad,
R/o. Quarter No. 114, Telegraph
Quarter, Garha Road,
Jabalpur (MP).

... applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India,
through the Secretary,
Ministry of Telecommunications,
Government of India,
New Delhi.

2. Member (Production),
Telecom Commission,
Sanchar Bhawan, 20 Ashok
Road, New Delhi-110001.

3. Chief General Manager,
Telecom Factory,
Jabalpur (MP).

4. Assistant Manager,
Telecom Factory,
Jabalpur (MP).

... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"(i) to quash the impugned order dated 21.9.2001 (A-9) issued by the respondent No. 2 as being void, illegal and arbitrary,

(ii) to hold that the action of the revisional authority in passing the impugned order was a malafide exercise and colourable exercise of power,

(iii) to direct the respondents to reinstate the applicant in service with all consequential benefits from the date the similarly placed employees i.e. Shri A.J. Sunny, Shri D.J. Mukherjee, Shri Mukesh Kumar Patel and Shri Mohammad Tahir were reinstated."

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2. The brief facts of the case are that the applicant was initially appointed as Head Tindal in Telecom. Factory, Jabalpur on 25.5.1964. While working as such, charge sheets were issued against the applicant and other 5 individuals. After conduction of the departmental enquiry, the applicant was inflicted with the penalty of dismissal from service by the respondent No. 4. On preferring an appeal, the appellate authority i.e. respondent No. 3 rejected the same on 6.4.1992. Thereafter the applicant preferred a revision petition before the Minister of Communication and also to the President of India. The revision was also dismissed on 27.5.1997. The Ministry of Communication was also the reviewing authority and had come to a finding that the applicant on having been dismissed from service, has been discriminated against the similarly charged employees, though they had been earlier dismissed from service, was later favoured by giving lesser penalty of reduction of the scale for 3 years non-cumulatively. Aggrieved by the aforesaid dismissal from service and discriminative treatment metted out to the applicant, he filed an Original Application No. 727/1997, which was finally decided vide order dated 30.4.2001, with the finding that since the applicant has been discriminated against the award of penalty as compared to other similarly placed employees, the matter was remitted to the revising authority for deciding afresh on the question of quantum of penalty without taking into consideration the revisional order dated 27.5.1997. The respondents preferred a Writ Petition No. 3447/2001 before the Hon'ble High Court challenging the order of the Tribunal passed in OA No. 727/1997, dated 30.4.2001. The Hon'ble High Court dismissed the WP vide order dated 9.8.2001. Thus, the findings of the Tribunal that the



applicant was discriminated against the matter of award of penalty was upheld by the Hon'ble High Court. But the revising authority, without applying its mind and without appreciating the similarity of the case of the applicant with that of the other similarly placed employees, declined to interfere with the quantum of penalty by the impugned order dated 21.9.2001. Aggrieved by this the Applicant has approached this Tribunal by filing this OA and claiming the aforesaid reliefs.

3. Heard the learned counsel for both the parties and perused the records carefully.

4. It is argued on behalf of the applicant that five other employees alongwith the applicant were charge sheeted and they were imposed the punishment of dismissal from service by the authorities concerned. Later on the punishment awarded to the five other employees were reduced while the punishment against the applicant was maintained as such. Hence, the applicant has been discriminated against the award of penalty as compared to other 5 similarly placed employees. Our attention is drawn towards the order passed in OA No. 727/1997, decided on 30th April, 2001. The relevant portion of the said judgment is as under :

"6.6 It is not denied by the respondents that based on the review petition, initially, the President of India decided to accord similar treatment to the applicant as that to Shri Sunny but based on the advice of the UPSC, his petition was rejected.

The advice of the UPSC as contained in their para 4.1 is a general statement. UPSC, based the facts of the two cases have not brought out in what manner the gravity of offence differ in two cases and how the gravity of offence of the applicant is substantially more to justify the penalty of dismissal from service without taking into account past two minor penalties.

7. In view of facts and circumstances of the case and our observations as made in para 6.6, we remand the case to the revising authority with a direction to reconsider the case of the applicant afresh without



taking into considerations the order dated 27.5.97 passed by the reviewing authority based on UPSC advice but keeping in view the contention of the learned counsel of applicant at para 6.4 and our observations in Para 6.6 of this order. Let the revising authority after due consideration, pass a fresh speaking order within 03 months from the date of receipt of the copy of this order. The applicant is directed to send a copy of this order to the Revising Authority as also to respondent No. 2 within three weeks from today through Regd. A.D. Post. With above directions this OA is disposed of without any order as to costs."

Against this order, the respondents filed a writ petition in the Hon'ble High Court which was dismissed by the Hon'ble High Court. Even then, the respondents were adamant to pass the illegal order against the applicant ignoring the aforesaid judicial orders passed by the Tribunal and the Hon'ble High Court and maintained the order of punishment of dismissal from service on the applicant. The case of the applicant and other 5 persons were similar but in the case of the applicant, the respondents have apparently made discrimination while passing the punishment order. The learned counsel for the applicant has also drawn our Full Bench attention towards the judgment of the Mumbai Bench of the Tribunal in the case of J.M. Burman Vs. Union of India & Ors., 2004(2) ATJ 340, in which it is held that "We are pained to observe that despite a clear finding of this Tribunal that the other persons who are alleged to have misconducted had been given lesser punishment, the applicant has been given a severe punishment. Seemingly, the appellate authority lost sight of the said observation of this Tribunal. We would have only hoped that due regards should have been paid to the findings of this Tribunal which we have reproduced. When such findings had been recorded, it implied that it had shocked the conscience of the Court and that lesser punishment should have been imposed."



5. In reply the learned counsel for the respondents argued that the applicant together with other co-workers who were leading the crowd hurled abuses and threatened the Manager & the General Manager to drag them and wrongfully confined them and unlawfully restrained to their seats for about $2\frac{1}{2}$ hours. The Chamber of the General Manager was suffocated due to crowd. Some persons even switched off lights and fans many times. The sofa chair of the General Manager's chamber was torn and the call bell of GM's table was broken and betel leaves & Tobacco were spitted on the walls. The case of the applicant was forwarded to the UPSC seeking its opinion. The Commission opined that the contention of differential treatment does not merit consideration because even though the charges against different individuals may be in connection with the same set of incidents, there may be differences in the involvement of the persons concerned and consequently the gravity of the offence may differ. After taking into consideration all other aspects relevant to the case, the Commission considered the penalty of dismissal from service imposed on the applicant was not excessive and this his petition should be rejected. The charges against different officials are different and not identical and cannot be taken into account for consideration on comparison basis. The applicant was leading the crowd and other co-workers were following him. Hence, the charge against the applicant is serious in comparison to other co-workers. Thus the impugned order passed by the authorities concerned is perfectly legal and justified.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that six persons were charge sheeted on the alleged charge and all the six



persons were ordered dismissal from service. But subsequently, five persons punishments were reduced except the applicant's dismissal from service. Against this order the applicant approached this Tribunal by filing OA No. 727/1997 in which the respondents were directed to consider the case of the applicant. Against this order, the respondents filed a Writ Petition in the Hon'ble High Court and the Hon'ble High Court dismissed the Writ Petition, upholding the order passed by the Tribunal. Thereafter the revising authority passed the impugned order dated 21.9.2001. By this order the punishment on the applicant was not changed and it was maintained as such i.e. dismissal from service. We have perused this order and we find that the Member (P.^{rof}o^d) Telecom Commission has given careful consideration to the observations made in para 6.6 of the order dated 30.4.2001 passed by this Tribunal and also the order passed by the Hon'ble High Court in the aforesaid Writ Petition and found that the cases against Shri A.J. Sunny and Shri Suneshwar ~~(applicant)~~ Prasad were not exactly identical. While Shri Sunny only faced the allegations of instigation and participation in the incidents of gherao between 9-10 a.m. and blocking the gate and creating obstruction in combination with others at Gate No. 2 from 3.15 p.m. to 5.55 p.m. on 5.10.1998 and Shri ~~(applicant)~~ Suneshwar Prasad not only faced the above said allegations but he also faced the additional allegations of instigating workers to participate in the second incident of gherao from 11 a.m. to 12.15 p.m. on 5.10.1998 and closing the wicket gate of Gate No. 2 from 5.35 p.m. to 5.55 p.m. on that day. Thus, there are some dissimilarities between the case of Shri Suneshwar Prasad ~~(applicant)~~ and that of Shri A.J. Sunny. The misconduct on the part of the applicant was more grave in nature in comparison to the case of Shri A.J. Sunny. He



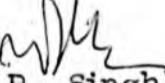
~~H~~e further submitted that after due consideration to the record of discussion which the Union representatives had with the then Member (Production), he was of the view that the gravity of the misconduct on the part of the applicant is greater than the others and hence he deserved a more severe punishment than the others. He further mentioned in the order that to ensure discipline and productivity especially in manufacturing units like Telecom. Factory, it is essential that such misconduct as found to have been committed by the applicant are dealt with deterrently. Hence he ~~does~~ not consider the applicant as a person fit to be taken back in service. Since, the misconduct committed by the applicant is more serious, he ~~does~~ not see any reason to modify the existing penalty and accordingly uphold the same. We also perused the statement of imputations of misconduct in support of the articles of charges framed against the applicant. As regards charge No. II it is mentioned that on 5.10.88 at about 9.00 AM the applicant lead a mob of workers towards the GM's office after unauthorisedly entering the factory despite he being under suspension. The allegation against Shri A.J. Sunny is not of leading the crowd. Apparently there is a difference between the person who is leading the crowd and the person who is assembling in the crowd. Thus, the charge against the applicant seems to be more serious as compared to Shri A.J. Sunny. As regards the ruling cited by the applicant in the case of J.M. Burman (*supra*), the same is not applicable in this case as no such order/has been passed by the Tribunal regarding quantum of punishment in OA No. 727/1997. Thus, the order passed by the Member (Prod) Telecom Commission dated 21st September, 2001 (Annexure A-8), seems to be legal and justified. Accordingly we do not find any ground to interfere with the orders

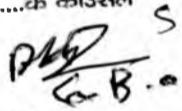


passed by the respondents. It is a settled legal proposition that the Courts/Tribunals cannot reapprise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Accordingly, we are of the considered opinion that the applicant has failed to prove his case and the Original Application is liable to be dismissed as having no merits. Hence, the Original Application is dismissed. There shall be no order as to costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

प्रतांकन से ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अधो दितः—
"SA"
(1) संविव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आकेदत श्री/श्रीमती/कु.....के काउंसल S. Naugar
(3) प्रत्यवी श्री/श्रीमती/कु.....के काउंसल
(4) कायात, के पा., जबलपुर न्यायपीठ
सुचना एवं आवश्यक कार्यवाही हेतु 
S.A. Dharmelikar
Co-B. 04
✓उप रजिस्ट्रार

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