

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 761 of 2002

Jabalpur, this the 16th day of July, 2004

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

S.C. Verma, Superintending
Engineer (Electrical), Bharat
Sanchar Nigam Limited, Ground Floor,
BSNL Bhawan, Hoshangabad Road,
Bhopal.

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India,
through its Secretary,
Ministry of Communication,
Sanchar Bhawan, Sansad Marg,
New Delhi.

2. Union Public Service Commission,
through its Chairman, Dhaulpur
House, Shahjahan Road,
New Delhi.

... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R (Oral)

By Madan Mohan, Judicial Member -

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

"(ii) set aside the punishment order dated 13.5.1997
Annexure A-1 and order dt. 27.8.2002 Annexure A-2 and
also the entire disciplinary proceedings,

(iii) consequently command the respondents to provide
all consequential benefits to the applicant as if the
aforesaid impugned orders were never served nor the
applicant was subjected to any impugned disciplinary
proceedings,

(iv) direct the respondents to open the sealed cover
and effect to the recommendations pursuant to the
DPC's which took place during the pendency of the
disciplinary proceedings."

2. The brief facts of the case that the applicant is
presently working on the post of Superintending Engineer
(Electrical) and is posted at Bhopal. While working as such
he was shocked to receive a charge sheet under Rule 14 of the



CCS(CCA) Rules, 1965. He submitted his reply denying the charges in toto. The documents which were relied upon in the charge sheet and which were mentioned in the Annexure of the charge sheet were not supplied to the applicant before institution of the departmental enquiry and the same were in a latter stage provided to the applicant. The applicant's valuable right to file an adequate and effective reply to the charge sheet was taken away by the respondents. One Shri Vinod Khurana, Commissioner for Departmental enquiries in the Central Vigilance Commission was appointed as enquiry officer. The respondents for no justifiable reasons delayed the enquiry and in the meantime various juniors of the applicant were promoted over and above the applicant. The applicant feeling aggrieved with this action of the respondents filed OA No. 735/1996 before the Mumbai Bench of the Tribunal. The Tribunal vide its order dated 7.4.1987 deplored the action of the respondents in not considering the applicant for promotion to the post of Superintending Engineer merely on the pretext of pending case against him and not for any other ground. Accordingly, the Tribunal directed the respondents to consider the applicant for promotion to the post of Superintending Engineer on adhoc basis in terms of DOPT memorandum dated 14.9.1992. In the departmental enquiry full, reasonable and effective opportunity of defence was not provided to the applicant. The enquiry officer prepared his report dated 1.8.1995 which was supplied to the applicant along with the notice of respondent No. 1. The enquiry officer found the charge No. 2 as not proved and found the charges Nos. 1 and 3 as proved and charge No. 4 as partly proved. The applicant submitted his representation dated 8.2.1996 against the enquiry officer's report. The disciplinary authority deliberately did not produce the material evidence even though directed to do so by the enquiry officer. Despite the fact that there was no material

evidence to prove that applicant had acted malafide and on the other hand there is significant evidence to prove that Shri Subramaniyam acted malafide and misused his authority during the absence of the applicant from Division-II and caused huge loss to the Government in order to benefit his favourite Contractor M/s. Gita Electricals, no action has been taken by the disciplinary authority against Shri Subramaniyam and the applicant has been made an innocent victim. No evidence whatsoever had been adduced to hold that the applicant was a direct demanding officer. The respondent No. 1 passed the punishment order dated 13.5.1997 Annexure A-1, whereby the punishment of reduction of pay by two stages from Rs. 4500/- to Rs. 4250/- in the time scale of pay Rs. 3000-4500/- for a period of two years with cumulative effect was inflicted on the applicant which is a major punishment under Rule 11 of CCS (CCA) Rules. On perusal of the order dated 13.5.1997, it shows that the disciplinary authority has not assigned any reasons as to why the applicant's defence against the enquiry officer's report is not found to be trust worthy. Without application of mind a major punishment has been inflicted on the applicant which has resulted into deprivation of applicant from promotion and in the meantime his juniors were also promoted. Since the applicant is a Group-A Officer, and the order was passed in the name of the Hon'ble President of India, the applicant had no right to appear yet the applicant preferred a review petition to Hon'ble President under Rule 29 of CCS (CCA) Rules. The respondent No. 1 passed the impugned order dated 27.8.2002, whereby the applicant's review petition was rejected. Aggrieved by this the applicant has approached this Tribunal filing the present OA and claiming the aforesaid reliefs.

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



4. The learned counsel for the applicant argued that the applicant was not given due opportunity of hearing and the copies of the relevant documents were not supplied to him. Hence, he could not effectively defend his case and no charge against the applicant is proved by any evidence. Many junior officers were promoted over and above the applicant, ignoring his promotion by the respondents. The impugned orders are not speaking and the applicant was also not supplied with the recommendations/finding of the Union Public Service Commission, as it appears that before imposing the punishment, the UPSC was consulted. Thus a material behind the back of the applicant has been considered and the impugned orders are liable to be set aside. The impugned orders are arbitrary, unjust, unreasonable, unfair and violative of Article 14 of the Constitution of India.

5. In reply the learned counsel for the respondents argued that no opportunity was denied to the applicant during the course of departmental enquiry. He has been provided with all reasonable and fair opportunities keeping in view the principles of natural justice, in terms of CCS (CCA) Rules, to oppose the charges and defend his case. All the required and relevant documents relied by the disciplinary authority have been supplied to him during the course of enquiry and there was no protest or representation from him for non-supply of any of the relevant documents with which his case was prejudiced. It is not a mandatory requirement that all the documents mentioned in the memorandum of charges should be supplied along with the charge sheet. The respondents further argued that the enquiry has been conducted with a view to bring out all the facts before the disciplinary authority by providing full opportunity to the charged officer to present his case and to discredit the prosecution charges. As regards the allegation of promoting his juniors to Superintending Engineer, the respondents submitted that

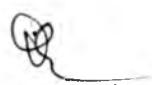
the applicant has no legal right to get promoted unless he fulfills all the conditions of promotion. At the relevant time the applicant was facing departmental action. Therefore, he was not entitled to be promoted unless he was exonerated from all the charges and found fit by the appropriate DPC. Before imposing the punishment on proven misconduct, the disciplinary authority consulted with CVC and UPSC as required under UPSC (Exemption from Consultation) Regulations, 1958. The punishment order is a reasoned and speaking one. The disciplinary authority applied its mind fully on all aspects of the subject and to the records before imposing the penalty. The remarks of the UPSC on findings of the enquiry officer and on advice reference of disciplinary authority, have been supplied to the applicant alongwith the impugned order and it is not a mandatory requirement that it should be supplied to him prior to imposition of the penalty. Hence, the orders passed by the respondents are perfectly legal and justified.

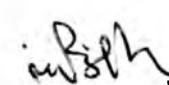
6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that due opportunity of hearing was given to the applicant as he has filed the representation to the enquiry officer's report and has also preferred a review petition. The applicant exhausted all the remedies which were legally available to him. His review petition was also considered and the same was rejected. Copies of the relevant documents were also given to him and the argument advanced by the respondents that copies of all the documents which are not relevant are not necessary to be supplied, seems to be legally correct. The applicant has not shown that he was prejudiced in any way by non-supply of any documents. As regards his promotion is concerned at the relevant time he was facing this departmental enquiry. Hence, his promotion could not have been considered by the respondents till the final disposal of the disciplinary proceedings. We also find that the disciplinary authority before imposing

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the punishment on proven misconduct, has consulted with the CVC and UPSC as required under UPSC (Exemption from Consultation) Regulations, 1958. The remarks of the UPSC on findings of the enquiry officer and on advice reference of disciplinary authority, have been supplied to the applicant alongwith the impugned order and it is not a mandatory requirement that it should be supplied to him prior to imposition of the penalty. This is also not a case of no evidence. The charge No. 2 was not proved but the charges Nos. 1 and 3 were proved and charge No. 4 was partly proved. It is 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 Tribunals/Courts.

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


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

प्रसांकन सं औ/न्या..... जबलपुर, दि.....
प्रतिनिधि अवो दित:-
(1) सचिव, उच्च न्यायालय दार एसोसिएशन, जबलपुर
(2) आवेदक प्री/श्रीमती/वहु को कांडलल
(3) प्रत्यक्षी प्री/श्रीमती/वहु द्ये कांडलल
(4) विधायक, केंद्रीय, जबलपुर लोअर पीठ
संघाजा एवं आवश्यक कार्यकारी देतु

S. Paul

P. Shankaran

उप रजिस्टर

5-8-4

Received
On 6-8-04
By