Central Administrative Tribunal
Principal Bench

RA No.135/2017
MA No.1985/2017
in
OA No.773/2013

New Delhi, this the 23rd day of May, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)

1. Union of India through Secretary,
Department of Telecommunications,
Ministry of Communication & IT,
Government of India, Sanchar Bhawan,
20 Ashoka Road, New Delhi-110001.

2. Member (Services),
Department of Telecommunications,
Ministry of Communication & IT,
Government of India, Sanchar Bhawan,
20 Ashoka Road, New Delhi-110001. ... Applicants

(By Advocate : Mr. Subhash Gosai)

Versus

Shri Ashok Golas
(Superannuated from Indian Telecommunication
Service Group 'A'),
101-A, Mount Kailash,
New Delhi. ... Respondent

O R D E R

Justice Permod Kohli, Chairman :

MA No.1985/2017

This application has been filed seeking condonation of delay of 38 days in filing the review application.

2. Review is sought in respect to order dated 01.02.2017 passed by this Tribunal in OA No.773/2013. In para 2 of the application seeking condonation of delay it is stated that the order of the Tribunal dated 01.02.2017 was received by the department (review applicants) on 21.02.2017, and after seeking advice it was decided on 15.03.2017 to file review application before this Tribunal. Accordingly on 27.03.2017, after approval, review application was got prepared and submitted for filing on 27.04.2017. This condonation application has been filed on 16.05.2017. Explanation tendered in para 2 reads as under:

> "2. That it is respectfully submitted that impugned order dated 01.02.2017 was received by the department on dated 21.02.2017, thereafter advice was sought and on 15.03.2017 (Annexure-RA/3), it has been decided to prefer a review application before this Hon'ble Tribunal and accordingly on 27.03.2017 (Annexure-RA/4) after approval a review application got prepared and submitted for filing on dated 27.04.2017 (Annexure-RA/5)."

3. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 prescribes the manner in which review is required to be filed. Limitation is prescribed under sub-rule (1) of rule 17, which reads as under:

> "(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

Under rule 17(1) the limitation prescribed for filing of review application is thirty days from the date of receipt of copy of the order sought to be reviewed. From the certified copy of the order dated 01.02.2017 placed on record by the review applicants it seems that averments made in para 2 of

the application seeking condonation of delay are false. Application for obtaining urgent certified copy was filed by the counsel for respondents (review applicants) on 08.05.2017. The copy was ready on 11.05.2017 and delivered on the same day. Assuming reference in para 2 is to an uncertified copy obtained from internet. It was available with the department on 21.02.2017. The department decided to file review and communicated to the counsel Mr. Subhash Gosai vide letter dated 27.03.2017. Mr. Gosai was sent four copies of the review application duly vetted and verified on 27.04.2017 for filing before the Tribunal. There is absolutely no explanation for the delay in filing the review application between 27.04.2017 and 16.05.2017. Even if the thirty days' period commenced from the date of receipt of copy, i.e., 21.02.2017, the same expired on 23.03.2017, and even if the explanation tendered in para 2 is also accepted, there is no explanation for not filing the review application on 28.04.2017 which was a working day, and up to 16.05.2017.

4. From the record of the certified copy placed on record, as noticed by us hereinabove, we find that the application for obtaining certified copy was filed on 08.05.2017, i.e., beyond the period of limitation for filing review application. When the decision was taken to file review application on 27.03.2017, as is evident from Annexure RA/4, why the application for obtaining certified copy was not made immediately thereafter is not explained. There is definitely negligence on the part of the review applicants in not obtaining the certified copy. Normally, the Tribunal or the Courts are liberal in cases of condonation of delay where

the substantive rights of parties are affected. However, where the negligence of a party is apparent, such party making false averments is not entitled to any indulgence in matters of discretion. In the instant case, even if we accept the explanation in para 2, the decision was taken on 27.03.2017 but the review applicants were so negligent that they applied for obtaining certified copy of the order only on 08.05.2017, i.e., after almost one month and ten days. There is absolutely no explanation for delay in filing the review application when the same was prepared on 27.04.2017. On account of the negligence of the review applicants, we are not inclined to condone the delay in the present case.

5. We have given our thoughtful consideration to the merits of the review application as well. In detailed judgment dated 01.02.2017 this Tribunal held that order dated 25.06.2010 administering recordable warning upon the applicant would have civil consequences and amount to stigma on account of specific allegations including on his integrity, and such order having been issued without observing principles of natural justice is bad in law, and quashed the same. Relevant observations are contained in para 12 of the judgment which reads as under:

> "12. In the instant case, both the impugned orders clearly specify the allegations against the applicant and thus the intention of the respondents is absolutely certain to punish the applicant. However, on account of remarks of the Hon'ble Minister, instead of disciplinary proceedings on the basis of specific allegations, this devise has been adopted and recordable warning issued. Admittedly, under such circumstances, it not only casts stigma but also would result in civil consequences in the service career of the

> applicant if it is placed on his service dossier. Thus observance of principles of natural justice becomes imperative. The contention of the learned counsel for the respondents that a questionnaire was issued to the applicant and thus principles of natural justice have been observed cannot be accepted. Firstly that questionnaire was in regard to the allegations which were being investigated for purposes of holding either criminal investigation or, may be, disciplinary proceedings. In view of the competent authority having refused initiation of disciplinary proceedings at the fag end of the retirement of the applicant, the respondents issued the recordable warning. It is at this stage that the applicant was required to be provided an opportunity in respect to the proposed action, which is intended to impact the civil rights of the applicant in his service career and also amounts to stigma on account of specific allegations, including integrity. Admittedly, no such opportunity was provided to the applicant. Thus the impugned orders are liable to be quashed."

6. The review applicants have taken only two grounds for seeking review – (*i*) that the warning is only an administrative warning and not a recordable warning; and (*ii*) that the warning becomes recordable warning if it is placed on CR dossiers which constitutes adverse entry, and principles of natural justice are required to be observed only when it is placed on the service dossier. For this purpose, reliance is placed upon office memorandum dated 06.12.2016. Both the grounds deserve to be rejected. It is settled law that review jurisdiction is available only on the grounds prescribed under Order XLVII Rule 1 of the Code of Civil Procedure, which contains only three grounds – (*i*) mistake or error apparent on the face of record; (*ii*) discovery of new and important matter or evidence, which, even after exercise of due diligence, was

not within the knowledge of the review petitioner or could not be produced by him at the time when the order sought to be reviewed was passed; and (*iii*) for any other sufficient reason. In the present case, we do not find that there is any error apparent on the face of the record nor any such error has been pointed out in the review application or during the course of arguments. Reliance upon office memorandum dated 06.12.2016 issued by DOP&T has been placed for the first time. There is not even a whisper in the review application regarding the fact that this memorandum was not within the notice of the department at the time of passing of the judgment under review or could not be produced despite due diligence. Thus the second ground prescribed under law is also not available to the review applicants. No other valid ground has been pointed out except making reference to a judgment of the Hon'ble High Court of Delhi reported as ***Gopal Bhagat v Municipal Corporation of Delhi*** [1995 (34) DRJ 622]. In this judgment the question that was considered by the Hon'ble High Court was whether a recordable warning is in the nature of punishment. The Hon'ble Division Bench held that it is not a punishment like 'censure' by drawing distinction between the penalty of 'censure' and 'recordable warning'. Nonetheless, in para 16 of the said judgment the Hon'ble High Court observed as under:

> "16. If the warning is in writing or a recordable warning, it is in its legal implication akin to an adverse entry in the confidential records of the employee. Though the employee was not intended to be penalised yet being a recordable warning it goes in the personal record of the employee and becomes relevant for the purpose of assessing the overall performance of the employee. A recordable warning shall, therefore, have to be dealt with on lines similar to ACRs. Though no opportunity of hearing or a notice to show cause against need precede the issuance of a warning yet the employee must have an opportunity of making a representation against and such a representation if made shall have to be considered and disposed of by the authority issuing the warning or, its superior authority. This alone will be consistent with the principles of natural justice and fair play."

The above observations clearly establish that a simple warning and recordable warning are two different conditions in respect to an employee. Once a recordable warning is issued, it has its implications inviting observance of principles of natural justice, may be *post facto*.

7. This Tribunal while passing the judgment under review relied upon another earlier judgment passed by a learned Single Judge of the Hon'ble High Court of Delhi in case of ***Nadhan Singh*** *v* ***Union of India*** [1969 SLR 24]. The Hon'ble High Court in its judgment in ***Gopal Bhagat***'s case (supra) relied upon by the review applicants, considered the implications of the said judgment. The Hon'ble Division Bench approved the same though on facts of the

case the judgment was distinguished. Relevant observations are in para 19, which read as under:

> "19.1 The memorandum issued by the Authority stated that the employee was guilty of misconduct and that the copy of the memorandum should be placed on his character roll. The learned Judge held that notwithstanding the word 'warning' used in the memorandum it really imposed a penalty of censure on the employee which could not have been done except by following the rules for imposing a minor penalty.
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> 19.2 This case is distinguishable because of the following features:- (*i*) disciplinary proceedings had been initiated against the employee by a notice issued to him but the memorandum did not say that the action was dropped; (*ii*) in express terms the memorandum stated that the employee was found guilty of misconduct; (*iii*) the memorandum stated a copy thereof to be placed in the petitioner's character roll; (*iv*) the authority issuing the memorandum had described himself as disciplinary authority which indicated that the memorandum was being issued by him in his capacity as disciplinary authority.
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> 19.3 The decision in ***Shri Nadhan Singh***'s case is clearly distinguishable and does not apply to the case at hand."

The ratio of ***Nadhan Singh***'s case (supra) has not been set aside by the aforesaid later judgment of the Hon'ble High Court of Delhi, rather it is approved.

8. We have applied the ratio of ***Nadhan Singh***'s case as the facts of the present case were similar thereto. In the present case, an investigation was got conducted and specific allegations were made against the applicant, which have been reproduced at page 3 of the

judgment under review. The order dated 25.06.2010 was earlier challenged in OA No.4427/2011. Said OA was disposed of with direction to the respondents to consider the representation of the applicant against the said order and pass a fresh order. The respondents (review applicants) rejected the representation giving the following reasons:

> "(i) The administrative warning was issued to Shri Golas after due process and giving sufficient opportunity for rebuttal borne out of the facts that during investigation, questionnaire was sent to Shri Golas on 24.07.2008 and again on 16.12.2008 and reminders on 18.12.2008 and 03.07.2009, a copy of the CVO's report was also served to Shri Golas on 11.08.2009; while complying the direction of the Hon'ble Court in OA No.1553/08 filed by Shri Golas, CMD, BSNL gave opportunity to Shri Golas to represent on 24.07.2009 and 02.09.2009; a number of opportunities to inspect the files and related documents of CVO, BSNL relating to the case were given to Shri Golas and copy of the documents, as demanded, were also provided to him."

While giving the details of the basis for issuing the order dated 25.06.2010 for recordable warning, it has been noticed by this Tribunal that a proposal was moved for initiating disciplinary proceedings against the applicant (respondent in the present review application), and it was only on account of the comments of the concerned Minister that at the fag end of his service disciplinary proceedings may not be initiated but only administrative action be

taken. Relevant comments are reproduced in the judgment under review and are quoted hereunder:

> "How is it that just when officer is about to retire, such matters are being raised. Looks more like a case of harassment on eve of retirement. MOC may decide. Administrative Action is recommended."

The recordable warning issued vide order dated 25.06.2010 is thus in the nature of "administrative action" and is not a mere warning. In any case, the order impugned in the OA contained specific allegations of misconduct including question on the integrity of the respondent and thus was not a warning simplicitor. Such allegations of misconduct impact the reputation and career of a public servant. Taking into consideration all these facts this Tribunal had passed the judgment under review.

9. We do not find any valid ground to interfere. Thus, the review application is dismissed both on ground of limitation and on merits.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/