

**Central Administrative Tribunal
Madras Bench**

OA/310/00756/2018

Dated 25th April Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

Y.Ajit Doss
Engineering Assistant, All India Radio,
Chennai 600004. .. Applicant
By Advocate **M/s.Ratio Legis**

Vs.

1. Union of India rep by
The Chief Executive Officer,
All India Radio,
Chennai 600 004.
2. The Director General,
All India Radio,
Chennai 600 004.
3. The Deputy Director,
General (Engineering),
All India Radio,
Chennai 600 004. .. Respondents

By Advocate **Mr.M.Kishore Kumar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to call for the records related to order No.C-13013/2/2013/EE(V)-I/4367 dated 01.12.2017 passed by the second respondent and to quash the same and further to direct the respondents to do the necessary to cancel the penalty and to pass such other order/orders as this Tribunal may deem fit and proper and thus to render justice.”

2. The applicant's case is that, he is working as Engineering Assistant in the All India Radio (AIR), Puducherry. According to him, the Chief Executive Officer (CEO), Prasar Bharati had initiated a formal disciplinary proceedings against him under Rule 14 of CCS (CCA) Rules on 20.8.2015. According to him, the Disciplinary Authority, i.e. Director General (DG), AIR was not there as his post was lying vacant. Accordingly, the CEO has initiated the proceedings and issued charge memo. An enquiry was conducted and a report was submitted to the DG. The DG who was posted later took up the matter and imposed a major penalty on the applicant i.e. reduction by one stage in the time scale of pay for one year. He had issued Annexure A6 impugned order in this OA. According to the applicant, he had approached the CEO with a representation on 16.1.2018 stating various grounds in favour of him and contended that since the CEO has initiated disciplinary proceedings, the final order should also be passed by him. He had also filed a Revision Petition to the CEO on 07.2.2018. According to the applicant, the action of the DG, AIR in imposing the penalty in a disciplinary proceeding which was initiated

by a “higher disciplinary authority” is not legal and is liable to be set aside.

3. The respondents entered appearance and filed a detailed reply statement. According to them, the applicant belongs to Group 'B' Category and as per the rules of Prasar Bharati, the DG, AIR is the Disciplinary Authority. Since the post of DG was vacant, the CEO, Prasar Bharati who is a “higher disciplinary authority” had initiated the disciplinary proceedings against the applicant as per CCS (CCA) Rules. In the meanwhile, the post of DG was filled up and the enquiry report was submitted to him. It was accordingly the punishment was imposed. According to the respondents, the action of the respondents are perfectly legal as the DG is the authority competent to impose punishment i.e. Disciplinary Authority.

4. The main contention put forward by the applicant is that when a disciplinary action is initiated by a “higher disciplinary authority”, the decision should also be taken by him on the enquiry report. The applicant mainly rely upon a Office Memorandum issued by Ministry of Home Affairs No.6/26/60-Ests.(A) dated 08.6.1962. As per the said OM “proceedings are instituted by a “higher disciplinary authority”, final orders should also be passed by such “higher disciplinary authority” and the case should not be remitted to lower disciplinary authority on the ground that on merit of the case it is sufficient to impose a minor penalty and such minor penalty could be imposed by a lower disciplinary authority. In such cases the appeal against the punishment order of the “higher disciplinary authority” shall lie to the authority prescribed under the CCS (CCA) Rules as the appellate authority in respect of such order”.

5. On going through the rival submission made before us, it can be seen that the post of DG, AIR who was the Disciplinary Authority was vacant at the time of initiation of disciplinary proceedings against the applicant. Accordingly, the “higher disciplinary authority” has initiated a formal disciplinary proceedings against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 which is produced as Annexure A1. If we go through Annexure A1 charge memorandum, it can be seen that it was issued by CEO, Prasar Bharati on 20.8.2015. If we go through Annexure A6, it can be seen that the said final order was passed by the Disciplinary Authority i.e. DG, AIR. From this it is clear that the Disciplinary Authority had imposed penalty on receipt of enquiry report and the applicant was imposed with a punishment of reduction to a lower stage in the Time Scale of pay by one stage for one year with further direction that the government servant will not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increment of his pay is imposed on the applicant in terms of Rule 11 of CCS (CCA) Rules 1965. So, it is clear that the Disciplinary Authority has acted on the basis of enquiry report submitted by the Enquiry Officer appointed by the CEO who is a “higher disciplinary authority” in this case. As per the OM referred by the applicant dated 08.6.1962 issued by the Ministry of Home Affairs, it can be seen that **“when proceedings are initiated by “higher disciplinary authority”, the final order should also be passed by such “higher disciplinary authority” and the case should not be remitted to a lower disciplinary authority, on the ground that on merits of the case it is sufficient to impose a minor penalty**

and such minor penalty could be imposed by a lower disciplinary authority. In such cases the appeal against the punishment order of the “higher disciplinary authority” shall lie to the authority prescribed under the CCS (CCA) Rules, as the appellate authority in respect of such order.” even if only a minor penalty is to be imposed. It is also made clear that in such cases appeal against the punishment order of the “higher disciplinary authority” shall lie to the authority prescribed under the CCS (CCA) Rules as Annexure A4 in respect of such order. Here the Disciplinary Authority as clearly violated the OM issued by the Ministry of Home Affairs under CCS (CCA) Rules. This has greatly prejudiced the applicant in his case. The CEO is the Appellate Authority from an order passed by the DG. In this case the formal disciplinary action was initiated by the Appellate Authority and it cannot be justified that he himself becomes a Appellate Authority. It is a clear violation of natural justice and the guidelines issued by the Ministry of Home Affairs against the procedure adopted in the disciplinary proceedings. The counsel for the respondents had cited two decisions i.e. *Inspector General of Police v. Thavasiappan (1996 AIR 1318, 1996 SCC (2) 145)* and *P.V.Srinivasa Sastry & Others v. Comptroller & Auditor General reported in (AIR 1993 SC 321)*.

6. We have gone through the two decisions and those decisions are not directly on the point of the issue in this OA. Accordingly, we find merit in the contentions of the applicant in this case. **The action of the DG imposing penalty on the applicant is illegal and arbitrary and is liable to be quashed. In the result, we hereby set aside the punishment imposed by the DG which is produced as Annexure A6 and**

direct the respondents to place the enquiry report to the “higher disciplinary authority” who had initiated the disciplinary proceedings and the “higher disciplinary authority” CEO will pass appropriate orders on the same in accordance with rules within a period of three months from the date of receipt of a copy of this order. OA is disposed off accordingly. No costs.

(T.Jacob)
Member(A)

25.04.2019

(P.Madhavan)
Member(J)

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