

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.1543/2003
MA 1301/2003**

New Delhi this the 19th day of August, 2004.

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)**

Sh. Sunil Parashar
S/o Sh. J.P.Sharma
Working as Jr. Engineer PPIO
Tughlakabad, Delhi.

-Applicant

(By Advocate Shri M.K.Bhardwaj)

-Versus-

Union of India & Ors. through

1. Secretary, Ministry of Railway
Rail Bhawan, New Delhi.
2. The General Manager
Western Railway, Mumbai.
3. The Divisional Railway Manager
DRM Office, Western Railway, Jaipur.
4. The Sr. Supdt. Engineer
TRS, TKD, Delhi.

-Respondents

(By Advocate Shri Rajender Khatter)

O R D E R (ORAL)

Mr. Shanker Raju, Member (J):

Applicant impugns respondents order dated 12-6-2001 imposing upon him a penalty of reduction in pay from Rs.5900 to Rs.5000 in the pay scale for a period of ten years with future effect. He has also assailed appellate

orders dated 20-7-2001 and 12-9-2001 upholding the punishment.

2. MA 1301/2003 has been filed for condonation of delay on the ground that the delay was attributable to the counsel earlier appeared who has delayed filing of this OA.

3. As regards delay, respondents' counsel Sh. Khatter refers to a decision of the Punjab and Haryana High Court in **Ramesh Kumar v. Union of India** (2004 (1) ATJ 212) to contend that delay beyond the prescribed period of limitation under Section 21 (a) of the Administrative Tribunals Act, 1985 without any sufficient justification is not to be condoned.

4. On the question of delay, we find that there is about nine months' delay in filing the OA which is on the ground that the earlier advocate has delayed filing of this OA and was responsible for the delay. In **A.M. Lod v. State of Tripura**, 2004 (L&S) SCC 10), the Apex Court has ruled that though condonation of limitation is a discretion vested in the Court, yet it is to be liberally construed.

5. In **State of Bihar v. Kameshwar Prasad Singh**, 2001 (1) SLJ 76, the Apex Court has held that delay is to be condoned on sufficient cause to dispense justice. The explanation of delay should not smack of malafide or dilatory tactics. The Court is duty bound to show utmost consideration.

6. Having regard to the above, as the case of the applicant is good on merits, we condone the delay under Section 21 (3) of the Administrative Tribunals Act, 1985.

7. Applicant who is working as Jr. Engineer II has been proceeded against in a major penalty chargesheet under the Railway Servants (Discipline & Appeal) Rules, 1968 for the following articles of charges :-

"Sh. Sunil Parashar, while working as JE (TRS)/TKD, has himself written a letter and also through his wife addressed to GM/W.Rly, Minister for Railways with a copy to many other Authorities falsely complaining against the then Sr. DEE(TRS)/TKD, Sh. Sanjeev Bhardwaj and other senior officials like DRM/KTTand General Manager/CCG. Thus, he has acted in a manner which is unbecoming of a Railway Servant violating para 3.1 (iii) of Railway Service Conduct Rules, 1966.

8. Applicant has asked for engagement of defence assistant and on last opportunity on 18-12-2000, the Enquiry Officer (EO) directed him either to produce the defence assistant or the proceedings would be proceeded ex-parte. Applicant on 18-12-2000 requested that his defence assistant was away to outstation yet the proceedings have been held ex-parte and he was held guilty of the charges.

9. It is not within the ambit of the enquiry to throw light on the described truthful and concocted complaints but in brief it is clear that the letter which the employee had written to the higher officials got written by his wife on

being frustrated which is not covered under Rule 3 (iii) of the Railway Servants Conduct Rules, 1966 but rather his personal allegations directed against a particular person which throws light on the immoral and unparliamentary language and also illogical thoughts. The employee irrespective of the results of loss and gains against the Rules made his complaints which do not come within the ambit of the Rules and are violation of the same.

10. The disciplinary authority on the representation of the applicant, imposed the punishment which was confirmed in appeal and revision, giving rise to present OA.

11. Learned counsel for the applicant has two fold contentions. The first is that whereas in his complaints dated 2-10-98 written by applicant and 20-11-98 written by his wife, allegations of threat have been leveled against Sh. Garg, Sr. DEE who despite being aware of the allegations acted as an appellate authority and rejected the appeal which is not legal as one who has some personal interest in the matter should keep himself off from the proceedings.

12. The second plea raised by the applicant is that no misconduct is made out against applicant, crossing proper channel without any other allegations to substantiate, an over-tact would not amount to mis-conduct as held by the Ahmedabad Bench of the Tribunal in **I.I.Ajab v. UOI & Ors.**, 2003 (2) ATJ 385.

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13. On the other hand, respondents' counsel vehemently opposed the contention. His plea that the OA is time barred has already been overruled.

14. On merits it is contended that the applicant is in the habit of making baseless and false allegations against the superiors and crossing over the usual channel of communication to raise grievance in service matters. Applicant at his own volition had not participated in the enquiry despite accord of reasonable opportunity.

15. Sh. Khatter states that the charges are proved and reasoned orders have been passed. Neither enquiry nor penalty imposed suffer from any legal infirmity.

16. We have carefully considered the rival contentions and perused the material on record.

17. Voicing the legitimate grievance by a Govt. servant individually is guaranteed under Article 19 of the Constitution of India. However, restrictions imposed are reasonable to the extent that in attempting to do so, the character, morality and the conduct should not be as to constitute a misconduct.

18. Admittedly, in Railway Servants Conduct Rules, 1966, no provision is incorporated which prohibits communication without following the usual channel as a misconduct. However, in Rule 3 (iii), what has been proved as a misconduct is any act of the railway servant which would violate either the law or the instructions and any act

which is indecent. The aforesaid provision is at par with Rule 3 of the CCS (Conduct) Rules, 1964, according to which, a Govt. servant should not act in a manner which is unbecoming of a Govt. servant.

19. As per Govt. of India DoPT OM No.1103/7/99/Estt.-A dated 1-1-99, on the representations from Govt. servants on service matters, the following guidelines have been framed :-

"(26) Representation from Government servants on service matters.---Reference is invited to the Ministry of Home Affairs O.M.No.118/52-Ests., dated the 30th April, 1952 on the subject mentioned above (copy enclosed for ready reference).

2. It has been envisaged in these instructions that whenever, in any matter connected with his service rights or conditions, a Government servant wishes to press a claim or to seek redress of a grievance, the proper course for him is to address his immediate official superior, or the Head of his Office or such other authority at the lowest level as he is competent to deal with the matter. Of late, it is observed that there has been a tendency on the part of officers at different levels to bypass the prescribed channels of representation and write directly to the high functionaries totally ignoring the prescribed channels. The problem is more acute in large Departments where often very junior employees at clerical level address multiple representations to the Minister, Prime Minister and other functionaries. Apart from individual representations, the service unions have also developed a tendency to write to the Ministers and Prime Minister on individual grievances. Some of these representations are often forwarded through Members of Parliament, in violation of Rule 20 of the CCS (Conduct) Rules, 1964.

3. Existing instructions clearly provide that representations on service matters should be forwarded through proper channel. The stage at which an advance copy of the representation may be sent to higher authorities has also been indicated. In M.H.A., O.M. No.25/34/68-Estt. (A), dated 20-12-1968 (copy enclosed), time-limits for disposal of various types of representations have been prescribed. If it is anticipated that an appeal or petition cannot be disposed of within a month of its submission, an acknowledgement or interim reply should be sent to the individual within a month.

4. Thus adequate instructions are available in the matter of submission of representations by the government servants and treatment of the representations by the authorities concerned. As such, submission of representations directly to the higher authorities by-passing the prescribed channel of communication, has to be viewed seriously and appropriate disciplinary action should be taken against those who violate these instructions as it can rightly be treated as an unbecoming conduct attracting the provisions of Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964.

5. It is requested that these instructions may be brought to the notice of all Government servants and appropriate disciplinary action may be taken against those who violate these instructions."

20. If one has regard to the above, though there are no statutory rules pertaining to by-passing the proper channels in making representations in railways, yet what has been observed is that making representations by govt. servants by-passing the prescribed channel of communication is to be viewed seriously.

21. On perusal of the records, we find that the first representation dated 2-10-98 as reflected in the

chargesheet has been made by applicant to the General Manager, Western Railway through proper channel alleging harassment and mental torture which had repercussions on his financial conditions for non-payment, delay in payment, withholding of payment by one Sh. Bhardwaj and Sr. DEE Sh. Garg. This letter has been forwarded as an advance copy to the Minister of Railway, Prime Minister and Chairman, Human Rights Commission.

22. Second letter dated 20-11-98 is a letter addressed to the Minister of Railway by the wife of the applicant alleging harassment of her husband (applicant) at hands of Sh. Sanjeev Bhardwaj. This has been filed when nothing has been heard from the General Manager. An enquiry went into the complaint of wife of the applicant Smt. Sarwesh on being asked by the Vigilance as to what was the source of the documents, the answer of applicant's wife was that he could tell this after the same is confirmed by her husband. She further refused to say any thing. The aforesaid statement prompted the authorities to level allegations against applicant for lodging a malicious complaint against the senior officers.

23. The misconduct is a generic term. What conduct amounts to misconduct depends upon facts and circumstances of each case and as per the given situation. Any act which brands the government servant as a corrupt official, any misbehavior, dereliction of duties, gross

negligence, conduct opposed to morality and unbecoming of a government servant certainly falls within the ambit of misconduct. There are few misconduct which do not amount to misconduct. However, cases of trivial nature are not covered by specific provisions of the Rules would not come within the ambit of misconduct as per OM No.11013/18/76-Estt.(A) dated 7.2.77. The Apex Court in **Union of India v. J. Ahmed**, (1979 (2) SCC observed as under:

"An industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in **Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik**, AIR 1966 SC 1051, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In **S. Govinda menon v. Union of India**, AIR 1967 SC 1274, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may not amount to misconduct as was held by this Court in **P.H. Kalyani v. Air France, Calcutta**, AIR 1963 SC 1756, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences

directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakercand Sah v. manager, Ahmedabad Co-op. Department Stores Ltd, (1978) 19 Guj LR 108, 120). But in any case failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

24. If once has regard to the above, lack of efficiency or negligence in performance of duties, an error of judgment are not per se misconduct if resultant damage is very high. In order to be a misconduct culpability is to be a sine qua non. As a model employer government and its functionaries are obligated to redress any grievance raised by its employees. In service matters the grievance ranges from problems in the matter of appointment till retiral benefits. Working government servants have plethora of problems faced by them in day-to-day service live. Withholding of salary and subjecting an employee to frequent transfers and also initiation of baseless

proceedings/disciplinary proceedings are few examples. One works for the salary. Without payment of salary which is the only mode of earning for a government servant living life is impossible. When such a grievance is raised before the higher authority as the immediate controlling authority, subjecting the government servant to harassment and mental torture he has no option but to voice his legitimate grievance before the higher authority who is supposed not only to upkeep the congenial atmosphere under his working as well as keep interest of the subordinates and their legitimate rights to widen the efficiency and as a result good administration contributes towards progress of the nation. But once the higher officials close their ears and eyes to the legitimate grievance of the lower rung and do not respond to their grievances helpless employees have no option but to bypass the usual proper channel of communication in order to bring to highlight the harassment and atrocities on him. The government on its own, with a view to curb the aforesaid callous attitude, have constituted bodies like grievance cell and Human Rights Commission.

25. In our considered view, communication, by passing the proper channel, would not, *per se*, amount to misconduct unless the overt act establishes that the grievances raised are flimsy, unfounded and despite opportunity to the complainant remained unsubstantiated.

26. In the instant case what has been alleged against applicant is that he had written a letter on 2.10.98 to the General Manager with a copy to other authorities complaining against Senior DEE which has been found to be a misconduct. Applicant has never crossed the proper channel. He made a communication through proper channel to the General Manager and mere sending copies of the same to the higher authorities in advance would not, per se, constitute a misconduct. In his complaint applicant has highlighted mental harassment at the hands of officers whereby not only frequent transfers but withholding of his passes, salary made him totally broken. He has also written that in the event justice is not imparted to him he may be allowed to voice his grievance in the Press and may also be allowed to go to the Court. As applicant was harassed for more than three years with the results due to non-payment of salary was burdened with debts. In such circumstances this complaint does not show any iota of disrespect to any one or use of unparliamentary language. When the immediate officer Sr. DEE who had been harassing applicant has not taken any action it was only General Manager being the superior authority who could have looked into these allegations. As such, on making this application by applicant does not amount to misconduct.

27. As regards the extension of this charge to the extent that the complaint alleged by applicant's wife on 20.11.98 and her refusal to answer any question, a factum of conspiracy was inferred, we find that the complaint made to Minister of Railways is in continuation of the earlier request made by applicant, which has not been paid any heed. Accordingly, as her own husband being fed up with the financial constraints as the family was burdened with debts the complaint was made. This was also in the backdrop that the General Manager despite a complaint has not taken any action for about 1 ½ months. The investigation was carried out by the Vigilance has drawn a flak on asking, one complaint was made by applicant's wife who admitted it and as to the documents and their source it is stated that she would ask her husband and has not made any further statement.

28. In order to establish the misconduct, it was incumbent upon the authorities to have produced the same evidence to show that the complaint was written through wife of applicant was actuated by applicant. Nothing has come-forth to substantiate this. Moreover, a complaint by the wife of applicant to the Railway Minister not being a railway servant there is no question of her observing proper channel as she cannot be brought into the ambit of Railway Servant Conduct Rules, 1966. However, on perusal of the complaint we find that except demanding an

enquiry into the harassment of applicant and baseless chargesheet issued to him as well as withholding of payments no insinuation, unparliamentary language or baseless allegations have been alleged. Accordingly, we do not find any misconduct attributable to applicant on this count.

29. We are of the considered view that the disciplinary authority who ordered the enquiry should have before hand ascertained whether the allegations leveled are in fact trivial misconduct or no misconduct at all. The issue of this chargesheet shows close mind and an arbitrary exercise of the jurisdiction being a quasi judicial authority, a logic and rational procedure has to be preceded and the fairness should be inbuilt in the action. Since the charges do not confirm misconduct the very basis of the chargesheet and the consequent orders have no locus standi and are nullity in law.

30. On another count on which the enquiry is vitiated is that before imposing a punishment upon a government servant, in the present case the Railway Rules, a reasonable opportunity should have been accorded in consonance with the principles of natural justice. A chargesheet issued followed by representation by the Railway servant either himself to defend the charge or through the defence assistant, applicant requested for engagement of a defence assistant. He named him in the

application but for want of authorization from the department applicant on being appraised by the EO to proceed enquiry *ex parte* on 18.12.2000 informed the EO that his defence assistant is out of station, yet, without acceding to the legitimate request the enquiry was proceeded *ex parte*, which has deprived applicant a reasonable opportunity to defend and has been prejudiced.

31. The appellate authority, i.e., Senior DDE A.K. Garg against whom the complaint was made by applicant despite being aware of the same, yet associated himself with the enquiry and acted as an appellate authority, which cannot be countenanced in view of principles of natural justice. One cannot be a judge of his own cause. The appellate order is also vitiated.

32. Once the EO has recorded a finding, whether the complaints are false or not, it does not come within the ambit of the enquiry when commenting upon the tenor or language and whether the language is unparliamentary or not is within the scope and ambit and would not amount to expression of opinion on extraneous matter unrelated to the charge, which has weighed heavily in the mind of the punishing and appellate authorities.

33. In the result, for the foregoing reasons, we allow the OA and set aside the impugned orders. Respondents are directed to restore applicant back on his pay scale with all

consequential benefits, within a period of two months from the date of receipt of a copy of this order. We also award a sum of Rs.5,000/- (Rupees five thousand only) as cost of litigation, which shall be paid by the respondents within the aforesaid period.

S. Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra 19.8.04
(V.K. Majotra)
Vice-Chairman(A)