

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1741/2003

New Delhi this, the 25th day of May, 2004

Hon'ble Shri S.K.Naik, Member (A)

Shri Tarsem Lal
17/4 B, P&T Qr. Kali Bari Marg,
New Delhi-110001

..Applicant

(Shri Sant Lal, Advocate)

VERSUS

The Union of India, through

1. Secretary, M/O Communications,
Department of Posts, Dak Bhawan,
New Delhi-110001

2. Chief Postmaster General
Delhi Circle, Meghdoot Bhawan,
New Delhi-110001

3. Sr. Supdt.
New Delhi Sorting Division
Meghdoot Bhawan, New Delhi

...Respondents

(Shri Shri B.K.Berera, Advocate)

O R D E R

The applicant was issued OM dated 1.6.2000 on the following charge:

"It is alleged that Shri Tarsem Lal-I, Stg. Asstt. while working as Staff-III during the period from Jan-88 to May-89, irregularly sent Shri Krishan Kumar Part-time Waterman to APS Kamptee deliberately. It is further alleged that Shri Tarsem Lal-I Stg. Asstt. allowed the official Shri Krishan Kumar to render his service in APS for more than one year for the reason best known to him. Shri Tarsem Lal-I Stg. Asstt. is alleged to have failed to maintain full devotion to his duty and violated the provision of Rules 3(1)(ii) of CCS(Conduct) Rules, 1964. Further Shri Tarsem Lal-I is also alleged to have acted in a manner unbecoming of Govt. servant thereby contravened the provision of Rule 3(1)(III) of CCS (Conduct) Rules, 1964."

2. While denying the aforesaid charge vide his letter dated 14.6.2000, the applicant had asked for a photocopy of letter dated 20.1.88 vide which the said Krishan Kumar

here



was sent to Kamptee and requested for conducting an enquiry into the matter. This was followed by another letter dated 28.7.2000, inter alia raising the ground of 12 years delay in issuing the OM. However, the disciplinary authority vide its letter dated 6.8.2001 imposed upon the applicant penalty of withholding of increment for one year without cumulative effect. Applicant's appeal dated 20.9.2001 and revision dated 19.9.2002 have met with rejection by the appellate and revisional authorities vide orders dated 26.3.2002 and 19.9.2002 respectively giving rise to the present OA.

3. The vital grounds taken by the applicant in assailing the impugned orders are that; it is a case of no evidence, that there was inordinate unexplained delay of 12 years in issuing the charge-sheet as the incident took place in the year 1988, further that neither any enquiry was conducted nor a photocopy of the letter dated 20.1.88 was furnished to him. It has also been contended that the competent authority should have ordered the holding of common proceedings in respect of the applicant and the co-accused Shri A.S.Rathe. It has been assailed further on the ground that the charge is vague inasmuch as it does not state as to how a Clerk is authorised to send a part-time worker. Besides, the punishment order has been passed by an incompetent authority without application of mind. Lastly, it has been contended that the order suffers from the illegality of the respondents not holding a regular inquiry despite a specific request by the applicant, which is a requirement under the rules.

Pract

4. In reply, the counsel for the respondents has contended that the applicant prepared a Memo on 20.1.88 in favour of Shri Krishan Kumar, a part time employee to join APS (on deputation) despite the fact that the latter was not eligible for the same. This was informed by the Record Officer on 2.2.88 to SSRM. As the applicant did not pay any attention to this letter, Krishan Kumar continued to render service in APS for more than a year. Ultimately Krishan Kumar was called back vide letter dated 31.1.1989. Thereafter enquiries made into the matter revealed that Krishan Kumar managed to take a letter from Divl. Office showing him as "ED" when he was sent back to his parent Unit and directed to report to BPO, Delhi Cantt. for medical examination after a week in connection with deputation to APS on the ground of being underweight. The enquiry also revealed that the letter dated 20.1.88 was not forwarded to APO RO to avoid contradiction and office copy available in personal file of the official was found washed. Nothing which could be read was available on the sheet except the cyclostyled portion of the letter.

5. This manipulation came to light when Krishan Kumar filed a case in the Staff Adalat in 1999 in which he had claimed temporary status/regularization in the Deptt. on the basis of rendering service in APS for 16 months as an "ED". This false claim raised suspicion as after his reversion on 25.5.89 by APS authorities, Krishan Kumar was re-engaged as part time Waterman with 5 hour duty on 15.6.89 which he accepted without any objection/claim in the Division.

T. D. Singh

6. Thereafter a detailed enquiry was conducted which revealed that all previous records were found removed from the concerned file to avoid detection of the aforesaid fraudulent action. It was also found that the applicant had made contradictory statement in his letters dated 12.8.99 and 28.7.2000 inasmuch as a memo dated 20.1.98 showing Krishan Kumar as ED Mail Man was sent to BRO Delhi Cantt for medical check-up while another memo bearing the same date shows Krishan Kumar at PT Waterman which was sent to Record Officer, who immediately vide letter dated 2.2.88 informed the authorities about his ineligibility. Though the applicant did not press for holding detailed enquiry vide his letter dated 28.7.2000, yet a detailed enquiry was conducted. The disciplinary authority after examining the case in the light of the statement made by the applicant on 12.8.99 and his representation dated 28.7.2000 and available records, passed an appropriate order imposing the penalty. Since all previous records relating to the case were found removed from the relevant file, photocopies available in personal file and record office at Kamptee were obtained and the same were inspected by the applicant.

7. I have heard the counsel for the parties as also have perused the records of the case. Counsel for the applicant has strenuously argued and that too at great length that the applicant cannot be held responsible for the despatch of Shri Krishan Kumar, a part time Waterman for deputation to the APS as he was mere LDC. He had no authority and could at best bring the ineligibility of Tarsem Lal for being sent on deputation to his superiors. The counsel has tried to convince me that the innocence of the applicant can be seen from the fact that he had,

Verdict

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on the draft (D-10 - page 12 of the counter) prepared for being sent to the APS, has correctly scored out the word "ED" and has reflected the status as PT Waterman. The other main point on which a lot of emphasis has been laid by the counsel for applicant pertains to the inordinate delay with regard to the issue of the charge-sheet. A delay of about 12 years, the counsel contends, has prejudiced the interest of the applicant. He has also pointed out a number of technical infirmities such as the request of the applicant to hold a regular inquiry not having been considered and further that being a case fit for common proceedings, the respondents have held separate inquiries against the applicant and the co-accused. He contends that some of the documents asked for not having been supplied will vitiate the disciplinary proceedings. I, however, find that this is a case of minor penalty proceedings in which a detailed regular inquiry was not called for. The charge-sheet itself was issued under Rule 16 of CCS (CCA) Rules. The applicant has inspected the concerned records and has submitted his defence. He has not denied the fact that he was the dealing hand during the entire period relevant to the incident which has resulted in his charge-sheet. In fact, in his cross examination he has admitted that he did not even proceed on leave during the said period. It is not, however, the business of the Tribunal to go into the details of the evidence or whether have they been correctly appreciated by the disciplinary authority or not. Since the disciplinary proceedings are to judge the culpability on the basis of preponderance of probability, so long as there has been evidence on record and that the principle of natural justice, insofar as giving the delinquent official adequate opportunity to place his case



case before the disciplinary authority, is complied with, the Tribunal in the normal course would not interfere in such matters. As has been pointed out by the counsel for respondents, the Tribunal has to go by the dictum laid down by the Hon'ble Supreme Court in the case of State of Tamil Nadu & another v. S. Subramanian, 1996 (1) SLR 816 in which it has been held that "the Tribunal is not a Court of Appeal - It has only the power of judicial review - It is the exclusive domain of disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not - Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion reached by the authority based on evidences - Tribunal is devoid of power to re-appreciate the evidence and to come to its own conclusion."

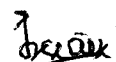
8. Having regard to the ruling cited above, I do not consider it necessary to deal at length the technicalities on which the counsel for applicant has laboured at length to convince me that the disciplinary proceedings suffer from a number of legal infirmities.

9. The only other point which needs consideration is as to whether the disciplinary proceedings suffer from the vices of inordinate delay. There is no doubt that in the case in hand the applicant has been charge-sheeted after a long delay of 12 years from the occurrence of the incident. However, I find from the explanation offered by the respondents that but for a case filed by the Shri Krishan Kumar before the Staff Adalat in December, 1998 claiming temporary status/regularisation in the Department, the matter would not have been detected by them

them at all. They have stated that it was only when Shri Krishan Kumar made a claim for temporary status/regularisation on the basis of his sixteen months' service as ED in the APS Kamptee that a suspicion arose in the minds of the respondents resulting in an inquiry. The peculiar background and the way the records have been washed/damaged while the applicant was the dealing hand in the matter, it has been held, amply proved that he is some how or the other involved in the matter. Therefore, I find that there is adequate explanation for the delay and the same cannot be taken as an advantage by the applicant in the peculiar facts of the case.

10. The other minor point on which the counsel for applicant has found fault with the impugned proceedings is that a common inquiry has not been held. I have been informed by the counsel for respondents that the Head Clerk concerned in this case has also been separately proceeded against and punished. His appeal too has been rejected. In this view of the matter, it could not be said that any prejudice has been caused to the applicant and this argument, therefore, has to fail.

11. In the result, I find no merit in this OA and the same is accordingly dismissed with no order as to costs.


(S. K. Naik)
Member (A)

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