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CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A. No. 266 of 1988

New Delhi dated the 2<sup>nd</sup> ~~October~~ November, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri H.R. Sharma  
House No. 92,  
Sector-17, panchkula,  
Haryana (pin code: 134109) ... APPLICANT

(By Advocate: Shri B.S. Gupta)

VERSUS

1. Union of India through the  
Secretary, Govt. of India,  
Ministry of Defence,  
Army Hqrs., South Block,  
New Delhi.
2. Engineer-in-Chief,  
Army Hqrs., Kashmir House,  
New Delhi.
3. Chief Engineer,  
Northern Command,  
C/o 56 APD ... RESPONDENTS

(None appeared)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri H.R. Sharma former Asstt. Garrison Engineer B/R II C/o 56 APD has impugned the orders dated 25.2.87 (Ann. A.8(a) compulsorily retiring him from service with immediate effect, as well as the inquiry report dated 22.12.86 (Annexure A-8(b) <sup>has</sup> on the basis of which that order was issued and prayed for reinstatement with consequential benefits.

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2. The case of the applicant who at the relevant point of time was posted as A.G.E. B/R II under Garrison Engineer 6362 C/o 56 APO is that he was under orders of transfer to Pune and was directed to hand over charge to his subordinate Shri O.P. Sharma who was not on good terms with him. The applicant handed over charge on 12.3.84, but remained on the strength of that organisation till 19.3.84 when he was finally struck off strength (Ann. A.1). On 16.3.84, while going round the airfield he found 25 drums of Bitumen lying in the shoulders of the airfield near the emergency landing ground from where bushes had been recently cleared. He immediately contacted Shri O.P. Sharma regarding the presence of the drums, but getting no satisfactory explanation he informed Major J.R. Jethmalani, GE who directed him to have the drums shifted to AGE B/R II storeyard. For this purpose, on 16.3.84 he issued a gatepass for shifting of the drums and hired a private truck No. JKN 5635. As Shri O.P. Sharma refused to take these drums on charge in AGE B/R II store yard, the applicant states that he gave direction to have the drums stored in the

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Satwara House Officers Mess which was a well guarded place inside a walled enclosure within the Military area close to the landing ground premises. When the truck reached Satwara House and unloaded the said 25 drums, those drums were shown by the applicant to Major Jethmalani and also to Shri D.M. Kohli B.S.O. and Shri H.L. Sharma so that the same were taken on record. The applicant states that he was struck of strength on 19.3.84 and on 31.3.84 he wrote to G.E. regarding this surplus material (Ann. A.3) <sup>to</sup> which he did not receive any reply, which was followed by another letter dated 14.5.84 (Annexure A.4) to which again no reply was received. He sent another reminder on 25.6.84 (Annexure A-5) and was shocked to receive the chargesheet dated 27.1.86 (Annexure A-6) that while posted as AGE B/R II in the office of GE 6362 C/o 56 APO during March 1984 he had failed to maintain absolute integrity and devotion to duty in as much as he unauthorisedly issued a gatepass dated 16.3.84 signed AGE B/R II when he was not holding this charge and facilitated the removal of 25 drums of Bitumen (reportedly valued at approx. Rs.15,000/-) for ulterior motives by using this gate pass and by hiring a private truck No. JKN 5635. The applicant contends that he is wholly innocent and was bonofidely motivated by the interest of the state while shifting the drums from the

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field Area to Satwan House. As those premises were closely guarded there could not have been any intention on his part to misappropriate <sup>the Bitumen</sup> ~~it~~. He therefore prays that the impugned enquiry report and compulsory retirement order be quashed and set aside, and he be reinstated with consequential benefits.

3. The respondents in their reply have challenged the O.A. Besides stating that the Tribunal is not legally competent to reappreciate the evidence and substitute its own findings for that of the disciplinary authority, which are based on the E.O's report holding him guilty of the charge, and has to confine itself to seeing that the findings are arrived at in accordance with the established principle of law. The respondents state that the applicant's conduct in going round the Airfiled Technical area after the handing over charge is not free from doubt. His subsequent letters to Major Jethmalani were only to remove the <sup>finger</sup> of suspicion from him <sup>and</sup> ~~twice~~ <sup>an</sup> afterthought. They state that the applicant neither informed the GE nor his successor on 16.3.84 as claimed by him but attempted to remove the bitumen drums with mala fide intention and mischievous motive, by issuing a forged gatepass and hiring a private truck by paying Rs.100/- out of his own pocket. They therefore state that no interference is called for and the O.A. is fit to be dismissed.

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4. In his rejoinder the applicant has broadly reiterated the contents of his O.A.

5. We have heard Shri B.S. Gupta for the applicant. None appeared for the respondents on successive dates. As this is a very old case, filed as far back as 1988, we are disposing it off after hearing the applicant's counsel Shri B.S. Gupta and perusing the materials on record.

6. The first ground taken in the O.A. is that the respondent failed to produce the most material witness namely Major Jethmalani, GE though he was named as number one in the list of witnesses attached with the charge memo dated 27.1.56. This ground lacks merit because it is for the respondents to choose whom they would like to produce as P.Ws. If they felt that it was not necessary ~~for proving this~~ case, to summon Major Jethmalani, although he was earlier cited as a PW, the applicant can have no legitimate grievance.

7. Next it has been urged that the E.O's findings are based on conjectures and surmises, because according to him the applicant deposited the drums at Satwari House on 16.3.84 with the intention to take it away at some suitable time. According to the applicant this fact is not supported by circumstantial evidence, because if the applicant had wanted to, he could have taken the drums away to a desired place on 16.3.84

itself. The shifting of the drums was as per the knowledge and <sup>orders</sup> of Major Jethmalani, GE and Satwari House was itself well guarded, and once the materials were stored there, it could not have been taken out without authorisation. It is true that the E.O. has reported that the drums were available in Satwari House but that does not disprove the charge against the applicant of unauthorisedly issuing a gate pass dated 16.3.84 named as AGE B/R II when he was not holding the charge and <sup>thereby</sup> facilitated the removal of the drums for ulterior motive by using this gate pass and by hiring a private truck. If as claimed by the applicant he had removed the drums with the knowledge and orders of the GE it would have been a single matter for the applicant to insist on <sup>the G.E.</sup> ~~the~~ production as a DW in case the respondents failed to produce him as a P.W. (when the applicant would have had an opportunity to cross examine him), but there is no averment made by the applicant that in spite of his insistence the respondents failed to produce the GE as a D.W. Furthermore the applicant has himself admitted in paragraph 6.4 of his D.A. that he had handed over charge as AGE B/R II on 12.3.84. All this coupled with the fact that the applicant engaged a private truck for removing the drums and paid Rs.100/- for the same out of his own pocket; and could not satisfactorily establish before the E.O. that he had claimed or received reimbursement

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for this amount led the E.O. to conclude, <sup>that</sup> ~~with~~ the charge against the applicant was established, with which conclusion it is difficult to find fault, and this ground <sup>therefore</sup> fails.

8. The next ground taken is that the Disciplinary Authority has not applied his judicial mind to the facts of the case, because till the applicant was finally SOS on 19.3.84 he remained on the effective strength of the unit and was therefore authorised to issue the gatepass and as the drums were available at Satwari House no ulterior motive can be attributed. For the reasons already discussed in the preceding paragraph this ground also fails.

9. Next it has been urged that the impugned order is based on discrepant and unreliable evidence given by persons lacking in integrity who were in the habit of lodging false complaints against the applicant. It is well settled that the Tribunal would be exceeding its jurisdiction if it were to reappreciate the evidence, or investigate into the character and antecedents of the persons giving evidence. In UOI Vs. Pamananda AIR 1989 SC 1185 the Hon'ble Supreme Court has held as follows:

" We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer

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is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

10. The applicant has not succeeded in establishing that the enquiry conducted by the respondents has not been consistent with the rules. Nor has he established that the principles of natural justice have not been followed in this case in that he was not given adequate opportunity to defend himself. That being the position, this application warrants no interference. It fails and is dismissed. No costs.

*A. Veda Valli*  
2/11/95  
(DR. A. VEDAVALLI)  
Member (J)

*S. R. Adige*  
(S. R. ADIGE)  
Member (A)

/GK/