

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.646 OF 2003
ALLAHABAD THIS THE 1st DAY OF *July* 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

HON'BLE MR. S. C. CHAUBE, MEMBER- A

Bhola Mistry,

aged about 49 years,

S/o Late Ram Sunder Mistry,

R/o LIG 2161 Awas Vikas Colony No.3,

Kanpur-208017.

.....Applicant

(By Advocate Sri T.S. Pandey)

Versus

1. Union of India,
through Secretary, (Production and Supplies),
Ministry of Defence, South Block,
New Delhi.
2. Chairman/Member, Ordnance Factory Board,
10-A S.K. Bose Road,
Kolkata.
3. General Manager,
Field Gun Factory, Kanpur.
4. Shri S.K. Yadav, the then Works Manager,
Field Gun Factory, Kanpur.
5. Lt. Col D.D. Sharma,
the then Security Officer,
Field Gun Factory, Kanpur, Presently posted as J.G.M.
Small Arms Factory, Kanpur

.....Respondents

(By Advocate Shri R. Sharma)

O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A. applicant has challenged the penalty order dated 27.5.2000 whereby applicant was compulsorily retired from service (page 20), Appellate order dated 31.10.2000 whereby appeal was rejected (Page 18) and the

revisionary order dated 01.05.2003 (Page 16) which too was rejected.

2. It is submitted by applicant that he was served with a chargesheet dated 7.9.1998 with the following allegations.

- "1. That, the said Shri Bhola Mistry while functioning as representative of QC(Stores) on 10.06.1998 in compliance with standing instructions on disposal of Steel Scrap HNCM (T&B) & Steel Scrap skull 'D' committed gross misconduct of negligence and dereliction of duty in as much as he failed to ensure that only right quality and right quantity of material is loaded by the purchaser.
2. Shri Bhola Mistry failed to maintain absolute integrity and devotion to duty as he directly or indirectly helped in manipulation of 40 tonne weighing machine because of which Pvt.contrctors' trucks carrying scrap materials were loaded with excess materials than shown in the record. This, if undetected, could have caused loss to the state.
3. As he failed to maintain absolute integrity in that on 10.6.1998 he allowed to load excess material on private contractors' trucks which, if passed out, would have caused unlawful gain to private contrators and loss to the state.
4. Shri Bhola Mistry, CM-II/QC(S)/FGK failed to maintain absolute integrity in that on 10.6.1998 he should have allowed loading of only steel Scrap HNCM(T&B)on Truck No. UMO 9343 but on re-checking carried out on 11.06.1998 it was found that the said truck was carrying 13 pieces of unauthorised material weighing 260 Kg, which, if passed out, would have caused unlawful gain to private contractors and loss to the state.
5. That said Shri Bhola Mistry is a habitual offender in committing negligence/dereliction of duty. He did not follow the instructions for disposal and lifting of slag, drors, scaling and other waste from manufacture of iron or steel in the past also. The above act of Shri Bhola Mistry is in violation of Rule 3(1) (ii) of CCS (conduct) Rules, 1964 amounting to gross misconduct."

3. Enquiry Officer was appointed, to whom written submissions were given by applicant yet Enquiry Officer gave his report on 7.8.1998 holding the applicant guilty of charge no.1 by observing that Shri Bhola Mistry did not go to loading site in violation of instructions and practice. Charge No.2 and 3 have been proved by observing that This charge has been established as confirmed by PW-2,

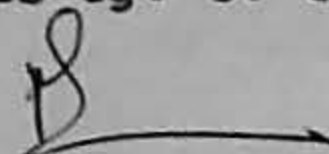


PW-3 & PW-4, key of weighing room was unauthorisedly kept in QC(s) section to manipulate the weighing machine. This charge has also been established as he did not go to site of loading to avoid loading of excess material in trucks. He provided opportunity to contractors to load excess materials by helping in manipulation of weighing machine. Charge no.4 also stands proved as he did not go to site of loading of truck no.UMO-9343 & therefore helped the contractor to load unauthorized 13 pieces, PW-4, PW-3, PW-1 & PW-5 have confirmed that 13 pieces (unauthorized) weighing about 260 kg were found in truck no.UMO-9343. Similarly charge no.5 was also proved by observing as follows:-

"This charge is also established since in past disposal cases he was warned & penalized. He did not learn lesson and therefore on 10.6.1998 again committed dereliction/negligence of duty and not followed instructions guidelines & practices in disposal of steel scrap."

4. On the basis of detailed enquiry report, the disciplinary authority imposed the penalty of compulsory retirement vide order dated 27.5.2000 (Page 20) after giving him opportunity to represent. Being aggrieved applicant filed an appeal but that was also rejected on 31.10.2000 (page18) by passing a non speaking order. He then filed revision but revision was also rejected in a stereotype manner. Applicant has challenged these orders on following grounds.

1. The impugned orders are bad in law as they are violative of Article 14 and 16 of the Constitution of India in as much as applicant has been discriminated against. He has submitted that in the same incident number of other persons were also chargesheeted but even though they were given initially the punishment of compulsory retirement but on appeal their punishment was reduced to reduction of two or three increments eg. J. Chandra



Chargeman Grade-I was awarded compulsory retirement but on appeal it was reduced to reduction of two increments.

5. In case of Harjinder Singh Incharge of security gate who was responsible for light weight of truck was initially given compulsory retirement but on appeal reduced to reduction of three increments.

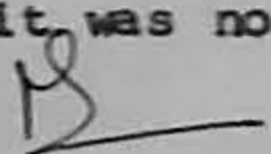
6. K.K. Bhattarya Chargeman Grade I was also initially compulsory retired but on appeal it was reduced to reduction of two increments. He has thus, submitted that when punishment of all other persons was reduced, there is no justification as to why punishment of applicant should also not be reduced. He, thus, submitted that the impugned orders are liable to be quashed and set aside on this ground alone.

7. He next contended that each page of chargesheet was not signed by the disciplinary authority, therefore, this is not a valid chargesheet in the eyes of law.

8. He next contended that the punishment awarded is too excessive and not commensurate with the gravity of charges therefore, it is a fit case for interference by the court.

9. He further contended that the orders have been passed in a stereotype manner without application of mind as none of the points raised by him have been considered by the authorities therefore, these orders are liable to be quashed on this ground alone.

10. He also submitted that Lt. Col. D.D. Sharma was the over all Incharge of security and the allegations made against him are absolutely unsustainable as it was not



part of his duty.

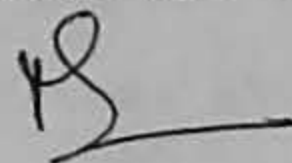
11. He also submitted that a common enquiry should have been held as chargesheet dated 7.9.1998 was common for all the 7 delinquent employees or at best 2 Enquiry Officer could have been appointed as Shri A.P. Awasthi was a gazetted officer.

12. He has thus, prayed that the impugned orders may be quashed and set aside and respondents be directed to reinstate the applicant in service with all consequential benefits of pay, seniority and promotion etc.

13. Respondents on the other hand have opposed this O.A. by submitting that applicant was working in the post of Chargeman Grade-II (Tech) in the Quality Control (Stores) Section in the Field Gun Factory, Kanpur. As such he was assigned duty of supervision, inspection and loading of materials which were sold as per terms of contract, as well as other duties assigned to him by his superiors.

14. That on 10.6.1998 at about 9.40A.M. Trucks of M/s Modern Constructions and Traders, Kanpur and one Truck of M/s Paramount Centrispun Castings Ltd, Nagpur entered the Factory to lift the Steel Scrap Turning and Boring and Skull 'D'. The loading of these Trucks continued beyond Factory working hours and hence Trucks were detained in the Factory.

15. That in the same evening i.e. 10.6.1998, an information was received by the Security Officer of the Factory from the General Manager, Field Gun Factory, Kanpur (Respondent No.3) that the latter was getting repeated requests for allowing these Trucks to be passed out after closing hours and therefore, the respondents no. 3 was



getting doubt that there might be some irregularities etc. in the material loaded in these Trucks. Accordingly, the respondent no.3 had advised the Security Officer to get a thorough checking carried out next morning on these Trucks which were not being allowed for passing out after working hours.

16. That on the next morning i.e. on 11.6.1998 the Security Officer had carried out search of these Trucks and found that the Truck brought by M/s Paramount Centrispun Castings Ltd. Nagpur which was carrying scrap (Turning and Boaring) was loaded with unauthorized material weighing 260 Kgs (Approximately) consisting of end pieces of barrel and casting (total 13 pieces).

17. That while action was in process in respect of aforesaid irregularity, another much more serious irregularity came to notice with regard to tampering of the Weigh Bridge. It so happened that on 11.6.1998, a Truck No.UP 78-N-0299 from M/s Indian Oil Corporation, Barauni which was carrying petroleum coke, came at about 11.00 A.M. for getting inside the Factory to deliver the material.

18. That when the routine weightment of this Truck No.UP-78-N-0299 was carried out on the 40 Tonnes Weight Bridge inside the Factory, the Gross weight was found to be 14.26 Tonnes whereas the representative of the firm claimed that correct gross weight of the Truck was 17.6 Tonnes and accordingly, representative of the Firm had protested against the above weightment and requested that (i) either the Truck may be re-weighed on any Weigh Bridge outside the Factory or (ii) the Weighing Machine of the Factory may be properly checked up.

19. That immediately M/s Avery India Ltd. who are

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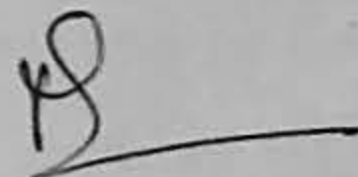
having a contract for maintenance and calibration of this Weigh Bridge, was informed and M/s Avery India Ltd. had sent their representative Shri U.M. Mathur to find out the factual position.

20. That when the representative of M/s Avery India Ltd. had opened the cover of the Weigh Bridge Machine, it was found that a mild steel piece of approx. 1 Kg mass had been positioned in the balance chamber which was witnessed by the Factory representative also.

21. That due to positioning of 1 Kg mass in the balance chamber, there was fouling against the wall of the chamber and the indicator movement was dampened which resulted in the weight of the items of Weigh Bridge being shown wrongly on the indicator.

22. That after the above rectification, the four Trucks in question were re-weighed both for gross weight and for the tare weight. This was done by weighing the loaded Trucks with and without the above mass in position, which revealed that each Truck was carrying material approx 3.4 Tonnes to 3.5 Tonnes in excess of the weight shown on the register and the gate passes in question.

23. That the Security Officer had carried out a discrete and thorough investigation into the whole matter, looking into all aspects including the role of officers and staff members dealing with various activities (involvement of those who signed on the gate passes and those who were involved in the process of loading of the material, its weighment and its passing out etc.) directly or indirectly and thereafter the Security Officer had submitted his



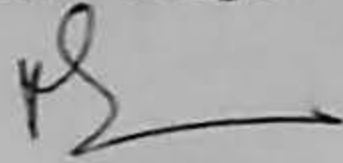
report vide report dated 13.6.1998.

24. That as per report submitted by the Security Officer a prima facie case had been established against the applicant alongwith seven other employees of the Factory. Accordingly chargesheet was issued to all.

25. In the enquiry full opportunity was given to him and all the charges were found proved against him. He was therefore rightly imposed the punishment of compulsory retirement.

26. As far as other officers are concerned they have explained that all were charged for different charges with regard to lapse/ommission of their assigned duties and common chargesheet was not issued as alleged by applicant, therefore, he can't compare his case with others.

27. They have further explained that in similar cases he was found negligent and in the past on two occasions i.e. on the first occasion he was issued recorded warning letter No.1562/129/92/BM/VIG dated 17.7.1992 mentioning that he was found negligent in supervising/examining the slag of are furnace which was loaded on truck of M/s Tewari Disposal on that date. The applicant had without any protest accepted the said charge. On the 2nd occasion he was found negligent for committing dereliction of duty by not following the instructions for disposal of slag for which he was awarded the penalty of reduction to the post of Examiner (HS-I) with further orders for his restoration to the post of Changan-II after a period of 3 years vide GM/FGK Order No. 1562/53/94/BM/VIG dated 7.5.1994. However, this penalty was moderated to stoppage of increments for two years with ^{cumulative} cum effect at the Appellate stage.



28. They further submitted that as per instructions No.13/Disposal/MCO dated 23.1.1987 and GMs R. Note No. 001/Disposal/PV issued by Ex-General Manager Shri R.N. Mehtani and Shri N. Pandian respectively, a set drill for lifting and loading and weighing of disposal of materials has been formulated. The applicant was very well aware with the aforesaid drill but he had not performed his duties properly. The verification of quality of disposal material was the responsibility of the QC (Stores) rep. The applicant had never at any stage represented against these instructions ~~can~~ /has himself confirmed in the inquiry proceedings that The applicant ~~about~~ he was aware with the directives of the General Manager that during lifting of steel scrap (Turning and boring) the representative of QC (Stores) will be present to certify that the contractor ^{has} lifting the same scrap which has been ordered for disposal and not any other material. The applicant has also admitted in answer to Question No.10 of P/44 that he did not ensure for loading of correct quantity and quality of loading scrap.

29. They have also explained that all prosecution witnesses were produced and chance given to the applicant to ^B ~~Cross examine~~ them. He never requested to produce any other witness as defence witness. They have thus, submitted that since applicant has been punished on proved charges, it calls for no interference. The O.A. may, therefore, be dismissed.

30. We have heard both the counsel and perused the pleadings as well. At the outset we would like to state that the scope of interference in disciplinary cases is very limited as we are not sitting here in appellate jurisdiction. In AIR 1989 SC 1185 U.O.I. Vs. Parma Nanda Hon'ble Supreme Court held as follows:-



"27. 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 is conferred on the competent authority either by an Act of legislature or rules made under the proviso of Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural 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 malafide is certainly not a matter ~~of~~ 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."

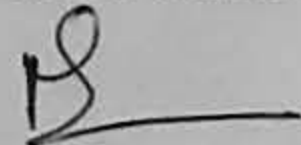
The same view was taken by Hon'ble Supreme Court in the case of Government of Tamil Nadu and Another Vs A. Rajapandian reported in AIR 1995 SC 561. It was held therein as under:-

"The Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority."

In J.T. 1996 (3) SC 772 in the case of State Bank of Patiala Vs. S.K. Sharma Hon'ble Supreme Court further propounded the theory of prejudice and held as under:-

"Justice means justice between both the parties. The interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

Similarly on the point of proportionality of punishment Hon'ble Supreme Court has repeatedly held that once



misconduct is proved then what punishment should be imposed should be left to the disciplinary authority to decide and Tribunal can't dictate what punishment should be given. Even in those cases where penalty is found to be too excessive as compared to the gravity of misconduct and it shocks the conscience of the court, it has been held by Hon'ble Supreme Court that matter should be remitted back to the authorities to reconsider the penalty imposed. J.T. 1995(8) SC 65 in the case of B.C. Chaturvedi Vs. U.O.I. and Ors. In AIR 2002 (3) S.C. 151 Hon'ble Supreme Court held that once charges are proved other considerations are not relevant, court cannot interfere in quantum of Punishment. Similarly in 2003 SCC (L&S) 363 in the case of Mohilal Hon'ble Supreme Court held that "Not only the amount involved but the mental setup, type of duty and similar relevant circumstances have to be taken into consideration to decide the proportionality of punishment. If employee holds a position of trust where honesty and integrity are inbuilt requirement of functioning, matter should be dealt with iron hands and not leniently. In that case termination of bus conductors for carrying ticketless passengers in SRTC bus was upheld-loss of only Rs.16 was held to be inconsequential.

31. In view of the above judgments the position of law is clear that we can't reappreciate the evidence and once misconduct is proved, it is duty of disciplinary authority to impose appropriate penalty. We can't substitute our views to suggest what punishment should be given. Even otherwise perusal of the enquiry report shows there is sufficient material on record to prove the misconduct of applicant. PW-I Shri Karnail Singh has deposed that big iron pieces were found during search in vehicle No.BA UMO-9343 which were kept in middle and below turning and boring scrap loaded on the truck. The PW No.2

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Shri V.N. Agarwal, the then Jt General Manager has also mentioned that the applicant was representative of QC (Stores) and he was deputed to QC (Stores) for loading of steel scrap HNCM turning and boring on 10.6.1998 as such he should have checked quality of material loaded in the trucks. Similarly PW No.3 had confirmed that the applicant was detailed from QC (Stores) for loading of correct quality and quantity of steel scrap HNCM (Turning and boring) and the existence of 13 pieces of unauthorized material during security check, confirms that the applicant had been irresponsible in doing his duty. This PW No.3 has also confirmed that on re-weighment, each truck was found carrying 3.4. to 3.5 MT extra unauthorized material as compared to the quantity mentioned in the gate pass.

32. That the PW No.4 Shri D.D. Sharma, the then security officer/PGK had confirmed that the trucks were carrying more load than they were supposed to besides 13 pieces of unauthorized material. He has also stated that the applicant had directly or indirectly helped in manipulation of 40 tonne weighing machine with the view to take out excess material by the contractors. It has come on record that there was no duplicate key of weigh bridge as it was destroyed. However, the keys of weigh bridge were available with QC (Stores) at the time of occurrence of the incident. The prosecution witness No.4 has also mentioned that the applicant in the past had accepted the charges in similar disposal case for which he was also penalized. Since there is sufficient material on record against the applicant and he has not stated that any irregularity was committed in the holding of the enquiry, we do not think this case calls for any interference.

33. As far as the contention of discrimination is



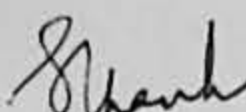
concerned, perusal of chargesheet issued to applicant shows it was in his personal capacity. Applicant has not annexed the chargesheets given to other persons so we do not know what were the allegations against them. However, respondents have stated categorically that common chargesheet was not given and each was charged for the omission as per the duty assigned. In these circumstances applicant can't claim that he should be given the same punishment which has been given to others. After^{by} all the role of each individual will be different and punishment has to be commensurate with the gravity of misconduct. In those cases appellate authority must have recorded the finding that punishment is excessive that is why reduced it but in the instant case Appellate authority has recorded a definite finding that the punishment awarded is just and adequate meaning thereby he has applied his mind to this aspect and maintained the punishment consciously naturally keeping in view the gravity of his misconduct. We can't lose sight of the fact that there were as many as five charges against the applicant which have been proved against the applicant in a detailed enquiry and one of the charges^{for} against applicant is that he is habitual offender in committing negligence/derelection of duty and it has come on record that he was punished also earlier but inspite of it, he didn't improve. In these circumstances, if authorities decided to impose penalty of compulsory retirement on him it can neither be termed as too excessive nor can't be said to have shaken the conscious of court. This doesn't accordingly call for any interference.

34. The next contention of applicant that the orders are non-speaking also has to be rejected. In fact the actual order dated 27.5.2000 has not been annexed by applicant and at page 20 he has merely annexed part II



order which is issued for maintaining the record. Respondents have produced the actual order which is taken on record, perusal of the order shows, authorities have applied their mind to the facts and have imposed the penalty after agreeing with the findings submitted by Enquiry Officer. Appellate authority has considered the question of Quantum of punishment and has held the punishment to be just and adequate which shows the point raised by applicant has been considered by authorities.

35. In view of the above discussion we find no merit in the O.A. The same is accordingly dismissed with no order as to costs.


Member-A


Member-J

/Neelam/