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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 648 OF 1987.
~~F.A. No.~~

DATE OF DECISION 10.8.1988

SHRI NATVARLAL MOHANLAL PARMAR. Petitioner

MR. N.J. MEHTA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Shri Natvarlal Mohanlal Parmar,
Block No. A/2/12,
DOS Housing Colony,
Vastrapur, Ahmedabad.

..... Petitioner.

(Advocate: Mr. N.J. Mehta)

Versus.

1. Union of India,
(Notice to be served through
the Secretary,
Department of Space,
New Delhi.)
2. The Director,
Space Application Centre,
Satellite Road,
Jodhpur Tekara, Ahmedabad.
3. Shri C.R. Shah
and/or his successor in office,
Head P & GA,
Space Application Centre,
Satellite Road, Jodhpur Tekara,
Ahmedabad.
4. Shri K.S. Krishnan
and/or his successor in office,
Administrative Officer-II,
Space Application Centre,
Ahmedabad.

..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 648 OF 1987

Date: 10.8.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri N.M. Parmar of Ahmedabad, being aggrieved by the order dated December 19, 1986 (Annexure A-6) imposing penalty of "removal from service", has filed this application under section 19 of the Administrative Tribunals Act, 1985 on 14.12.87. He has challenged the validity of the orders, including disciplinary and appellate authority of the Space Application Centre, Government of India, Ahmedabad, on the grounds, inter-alia that he was not afforded a real and reasonable opportunity of defending

himself and the impugned orders are passed in violation of the principles of natural justice. The petitioner, therefore, prayed that the impugned orders, including Annexure A-6, A-8 and A-12 passed by the disciplinary authority and appellate authority, be quashed and set aside and the respondents authorities be directed to reinstate him in service as Helper-B with all consequential benefits i.e., salary, difference of salaries, increments, etc., as if the impugned orders have not been passed at all against him.

2. Controverting the assertions made by the petitioner the respondents in their reply submitted that the petitioner was given full and fair opportunity to defend himself and engage any Government servant of his choice to work as his Defence Assistant and in fact, the petitioner had availed of the services of Government servant as his defence assistant. According to them, the disciplinary authority while passing the impugned order had taken into consideration the gravity of the misconduct alleged and proved and the authorities have taken decision after elaborate discussion by speaking orders.

3. During the pendency of the proceedings the petitioner was allowed to occupy the quarter until July 1988 with a direction that he will be liable to pay monthly rent and in case the result go against him the competent authority will be allowed to fix the penal rate, vide interim order dated 17.3.1988. When the matter came up for hearing, we have heard Mr.N.J.Mehta and Mr.J.D. Ajmera, the learned counsel for the petitioner and the respondents respectively. We have also perused the re-joinder and the materials placed on record.

4. Mr. N.J.Mehta, the learned counsel for the petitioner, contended inter-alia that the departmental inquiry was vitiated inasmuch as he was denied the assistance of a lawyer and the admission of the alleged misconduct was obtained by the enquiry officer Shri Unnikrishnan under the assurance that a lesser punishment will be imposed upon him. According to him, the charges of misconduct levelled against the petitioner are not duly proved and even the order of penalty of removal from service is too harsh and excessive as the petitioner was in the employment since the year 1974. In support of his submission Mr.Mehta relied on the cases viz; (i) The Board of Trustees of the Port of Bombay V/s. Dilipkumar Raghavendra Nadkarni, A.I.R. 1983 S.C.109, & (ii) Pushpa Iyenger V/s.Indian Airlines Corporation & Ors. 1988(1)L.L.J. p.385). Mr. J.D. Ajmera however supported the departmental action taken against the petitioner and strenuously urged that the findings of the facts recorded by the Inquiry Officer and confirmed by the disciplinary authority are based on evidence and arrived at after a detailed discussion and therefore can not be challenged on the ground that there was no application of mind. In his submission there are no valid grounds to interfere with the order of penalty imposed upon the petitioner.

5. Before dealing with the points raised by the learned counsel for the parties, it may be stated at the outset that the Article of charges levelled against the petitioner related to two different instances of misconduct involving the acts of theft of the properties of S.A.C. With regard to the first instance of theft, which is alleged to have taken place on 11.10.84, the petitioner was directed to submit his explanation under memorandum dated 15.11.84 and he was

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called upon to show-cause as to why disciplinary action as per rule should not be taken against him. However he failed to submit the same. Accordingly, he was served with the charge sheet dated 5.2.85 (Annexure A-1). The article of charges framed against the petitioner, reads as under :-

On 11-10-1984 at 12-35 hours, Shri N.M.Parmar was carrying some materials with him in a khakhi envelope. Near the L.C.quarters adjacent to the SAC, main gate, he was interrogated and asked to show the envelope to Sub-Inspector, Shri U.V.Singh but Shri Parmar replied that it contained some sweets. However after physical verification of the envelope by the security staff, it was found that the envelope contained one aluminium packet weighing approximately 2.5 kgs. and costing about Rs.85/-. As such, it was seized from him and Shri Parmar has signed the seizure memo.

6. Reply of the petitioner to the aforesaid charge is a bear denial dated 15.2.85 (Annexure A-II). Mr. Unnikrishnan (A.A.O) was appointed as Inquiry Officer to conduct the enquiry in respect of the aforesaid charge. With regard to another instance of theft alleged to have been committed on 22.5.85, the petitioner was served with the charge sheet dated 10.6.85 (Annexure A-III) under Rule 11 of the D.O.S. Employees (CCA) Rules, 1976. The statement of imputation of misconduct in support of the said charge reads as under :-

At 17-00 hours on 22.5.1985, Shri N.M.Parmar was found moving towards his quarters inside the campus carrying a blue cotton bag in a suspicious manner. Head Constable, Shri Sukan Singh of CISF, SAC stopped him near the RSA workshop and when he checked the said blue cotton bag of Shri Parmar, he found one piece of amplifier mounted on a heat sink. Shri Parmar could not give any satisfactory answer to the questions of Shri Sukan Singh as to the circumstances in which Shri Parmar was carrying in his person the said property belonging to SAC. The cost of the said items is Rs.80/- approximately.

7. It is pertinent to note that the petitioner was assisted by Shri R.H.Desai, Secretary, ISRO-SAC

Karmachari Mahamandal as his defence Assistant in the enquiry conducted by Shri C.Unnikrishnan, Assistant Administrative Officer; whereas in the second enquiry conducted by Shri K.U.Menon, Assistant Administrative Officer, SAC, he was assisted by a Defence Assistant viz; Shri H.R.Vaghela (Purchase Assistant-B). When Mr. R.H.Desai did not remain present in the enquiry as his defence assistant, the petitioner represented that he would engage Mr. M.R.Parmar (Tradesmen-F) as his defence assistant. However, even when Mr.M.R.Parmar did not attend the petitioner was given adjournments as prayed for. However, thereafter when the Presenting Officer examined the witnesses in support of the charge framed against the petitioner, he came forward with the admission of the charge. It is significant to note that the petitioner's plea that the Inquiry Officer in case Shri. Unnikrishnan told him that he would admit the charge levelled against him, he would see that a lesser punishment was imposed upon him, was not at all raised in his reply dated 8.12.86 (Annexure-A-V) in response to the show-cause notice dated 5.11.86 (Annexure A-IV). Such a plea seems to have been raised for the first time in his memo of appeal dated January 9, 1987 (Annexure A-VII). The appellate authority, in its order dated February 18, 1987 (Annexure A-VIII), having considered the said plea has observed that the charge levelled against the petitioner is proved both on the facts laid down by the Presenting Officer and also on his (petitioner's) admission.

8. The disciplinary authority, on receipt of the reports; i.e. (i) dated 21.8.85 from I.O.Shri. Unnikrishnan, (ii) dated 28.8.85 from I.O. Shri M.U.Menon, and having examined minutely all the nature of the evidence adduced against the delinquent,

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concurrent with the conclusions reached by the Inquiry Officer and held the delinquent guilty of the charges and passed the final order in the following terms :-

In view of the above, I have come to the final conclusion that Shri Parmar is not a fit person to be retained in Government service. Continued retention of Shri Parmar would not be in the interest of discipline and decorum of the organisation. Considering all relevant factors, this is a fit case for dismissal from Government service. However, taking a slightly lenient view, I hereby impose the penalty of "removal from service" the said Shri Parmar with immediate effect.

Sd/- K.S. Krishnan
19-4-86
Administrative Officer-II

9. It is now well settled that ordinarily, in cases of dismissal or removal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the disciplinary authority. It will interfere (i) when there is a want of good faith, (ii) when there is a victimisation, (iii) when the disciplinary authority has been guilty of a basic error or violation of principle of natural justice and (iv) when on materials, the findings is completely baseless or perverse. (see Indian Iron & Steel Company V/s. Their Workmen, 1958(1) L.L.J. 260 S.C.).

10. The main grievance of the petitioner is that his request to have assistance of a lawyer, in the enquiry held before Shri Unnikrishnan in respect of the first charge, was refused by him and hence he has been denied a reasonable opportunity to defend himself. Ordinarily, it is not the right of the delinquent to claim an assistance of lawyer. Admittedly the relevant rule does not permit the delinquent employ to engage a legal practitioner. However the disciplinary authority has a discretion to grant

a request of the delinquent employee in a suitable case. In the instant case, Mr.B.P.Nagi, who was the Presenting Officer before the Inquiry Officer Shri Unnikrishnan was only a member of the staff. The petitioner was permitted to be defended by a Defence Assistant of his choice. Thus it was not a case of uneven scales, the weight of legally trained minds on behalf of the employer and simultaneously denying that opportunity to delinquent employee, as observed by the Supreme Court in the case of "Board of Trustees of the Port of Bombay", (supra). In the case of Pushpa Iyengar (supra) the employer had appointed a legally trained persons as Presiding Officer. However in the instant case, the facts are not similar to attract the applicability of the rationale adopted in the said case. The order passed by the disciplinary authority and confirmed in appeal are well discussed and do not suffer from any infirmity. The authorities have adverted to the question of punishment and thus it can not be said that there is any non-application of mind on the part of the authorities in passing the impugned order. Ordinarily, the Tribunal is not required to consider the propriety or adequacy of the punishment or whether the same is excessive or too severe. Even otherwise, having regard to the facts and circumstances of this case, it can not be said that there are any compelling reason for the Tribunal to interfere with the discretion exercised in respect of the disciplinary action taken against the petitioner.

11. In light of our above discussion, we hold that this application is liable to be dismissed as it is