CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 267/91

DATE OF DECISION 17-11-94

Mr. H.R. Sheth — Petitioner

Mr. B.P. Jasani
Mr. A.M. Vaishnav — Advocate for the Petitioner (s)

Versus

Union of India and Others — Respondent

Mr. Akil Kureshi — Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan — Member (A)

The Hon'ble Dr. R.K. Saxena — Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgment ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

Shri H.R. Sheth
E-3, Swamy Vivekanand Flats
Jodhpur Char Rasta
Satellite Road, Ahmedabad. Applicant

Advocate Mr. B.P. Jasani
Mr. A.M. Vaishnav.

Versus

1. The Chairman, ISRO
Secretary, D.O.S.
Antriksh Bhavan,
New B.E.L. Road,
Banglore 560 094

or

The Union of India
Copy to be served through the
Secretary, Department of Space
Research Organisatin, Ministry of
Space, Government f India, New Delhi

2. The Director, Department of Space
Space Applications Centra (ISRO)
Jodhpur Tekra, Ahmedabad.

3. Mr. M.M. Shah
Controller, Department of Space,
Space ApplicationS Centre (ISRO)
Jodhpur Tekra, Ahmedabad. Respondents.

Advocate Mr. Akil Kureshi

JUDGMENT

In

O.A. 267/91

Date: 17-11-94

Per Hon'ble Dr. R.K. Saxena Member (J)

The applicant H.R. Seth has challenged the order of punishment, Annexure A-1 which was upheld in appeal by

by order Annexure A-5.

2. The facts of the case are that the applicant was working as Stores Assistant 'B' in Space Applications Centre under the administrative control of respondent No.2. The work of the applicant as Stores Assistant was to receive the material purchased by the Department and keep in the stores. On demand, the material used to be given to the indentors or sent to the Divisional Stores. It is said that the orders for the purchase of 300 mts. of P.V.C. cables of 4 core x 6 sqm mm and 175 meters of 2 core x 10 sq mm. were placed. The material had arrived at M/s Jaipur Golden Transport Company, Ahmedabad. The applicant went there on 30-5-1985 for collecting the material but he did not bring the material in the stores. He had actually mis-appropriated the said material valued Rs.6434.25. He had also made in correct entries of the material having been brought in the stores. He was therefore charge-sheeted on 28-5-1986 for the following charge:-

> "That the said Shri H.R. Sheth while functioning as Stores Assitant 'B' in the CED Stores of Department of Space at SAC, Ahmedabad, has committ--ed grave mis-conduct in asmuch as he has failed to bring to the SAC Campus 300 mts of PVC cables of 4 core x 6 sq. mm and 175 meters of 2 core x 10 sq mm. collectively by him from M/s Jaipur Golden Transport Company, Ahmedabad on 30-5-85 and has thus misappropriated the government property with a view to defraud the Government.
>
> Shri Sheth has by the above act failed to

to maintain absolute integrity and thereby violated Rule 3 (1) (i) of CCS (Conduct) Rules, 1964."

3. He was required to submit his written statement of his defence within ten days. Shri Sheth denied the charge. The inquiry was started in which Shri D.V.Pagedar was appointed inquiry officer. He concluded, at the close of inquiry, that the charge was established against the applicant. Shri M.M. Shah Controller, agreed with the report of the inquiry-officer and awarded punishment of reducing the pay of the applicant by four stages from Rs. 2300/- to 2100/- in the time scale of pay of Rs. 1400-40-1600-50-2300-EB-60-2600 for a period of two years with effect from 9-8-1990. It was also mentioned in the order of punishment that Shri Sheth would not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. Besides, the reduction of pay, pecuniary loss of Rs. 6434.25 suffered by Government as a result of his proven mis-conduct was ordered to be recovered from him in monthly instalments as per rules from his pay from August 1990 onwards. The order of punishment was challenged by the applicant by filing appeal before the Director who agreed with the

punishment and therefore rejected the appeal on 1-5-1991. Feeling aggrieved by the order of punishment and the order passed by the Appellate Authority, this application has been filed on the grounds that there was no evidence against the applicant, the principles of natural justice have not been followed inasmuch as that neither the copies of the documents were given nor were some of the witnesses of the defence summouned despite request having been made. It is also contended that the presenting officer was a law-knwoing person whereas he was denied the services of legal practioner. It is also averred that the Inquiry Officer dis-allowed the affidavit of Shri Narendra Rami, driver of the taxi, to be brought on record because in that affidavit he had supported the applicant for having brought the goods in his taxi in the yard. The delay in holding the inquiry, discrimination in awarding the punish--ment to different delinquent employees and the plea of double jeopardy were also taken;and in the light of these facts and circumstances, quashment of the order of punishment and order passed in appeal, is prayed.

4. The respondents submitted written reply and contend--ed that there was over-whelming evidence in the case and every opportunity was given to the applicant. It was also

contended that the defence witnesses who were required to be produced, were casual labourers whose identity was difficult to be ~~asserted~~ ascertained and therefore the inquiry officer did not acceded ~~ed~~ to the request of the applicant. The respondents also came with the case that the order-s of punishment and ~~that~~ ours passed in appeal, were passed after examining the evidence and all the circumstances in the case and there was no illegality in it.

5. We have heard the learned counsel for the applicant and the respondents and have perused the record.

6. As is already pointed out, the order of punishment has been challenged on several grounds and one of them is that it is a case of no evidence. It is well settled law and very recently reiterated by their lordships of Supreme Court in Union of India and Others Vs. Upendra Singh (1994) 3 SCC 357 and in State Bank of India and Others Vs. Samrendra Kishore Endow and another (1994) 27 ATC 149 that the role of High Court or Tribunal in the case of Departmental Inquiry, is limited. The High Court or the

Tribunal does not act as Appellate Court or authority but reviews the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court. The appraisal of evidence is ~~x~~ also barred unless it is pointed out that there was no evidence in support of the charge at all. Since the learned counsel for the applicant in this case has come with the plea that there x is no evidence at all or it is a case of no evidence and yet the order of punishment has been recorded, it & has become necessary to go through evidence of the case. It is with this view that we are trying to find out if the contention of the learned counsel for the applicant is correct. It is an admitted fact to the applicant that the material in question was collected by him on 30-5-1985 from M/s Jaipur Golden Transport Company. This fact has been written by the applicant in his written defence brief, dated 22-9-1988 and ~~again~~ given & to the inquiry officer. Para 2 of this written defence brief deals with this admission. Now the

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question arises if the material reached stores or not. In this connection the evidence ~~done~~ addduced during the inquiry was taken into consideration. The contention of the applicant that the material was brought by him in the taxi driven by Shri Narendra Rami and the entry of the said material was made in the stock Register by his Assistant. Shri Narendra Rami denied to have driven the material from M/s Jaipur Golden Transport Company to the stores. The applicant had obtained the affidavit from this driver prior to his being examined before the Inquiry Officer. The affidavit was not taken on record. The driver was however, cross examined by the applicant. The main thrust had been that no entry of the taxi allegedly engaged by the applicant for carrying goods inside the store, was made at the gate. It is a practice that no material can be taken inside the store or outside the store without entry being made at the gate. Besides, witnesses deposed that this material i.e. the drum containing 300 meters of PVC Cable of 4 core x 6sq mm and 175 meters of 2 core x 10 sq mm cannot be accommodated in the car either on the seats or in the dicky. This evidecne has been believed by the Inquiry officer. We cannot re-appraise the evidence recorded during inquiry. However, no procedural defect could be pointed out in recording the evidence. The only point which has been asserted is that the

affidavit which the applicant had obtained from the driver Shri Narendra Rami, was not ~~a~~ taken on record, but the cross-examination was made on that point. In this way, if the affidavit has not been brought on record, it does not prejudice the applicant at all. The same situation had arisen in the case Managing Director ECIL Hyderabad Vs. B. Karunakaran, 1994 27 ATC 767 and their Lordships of Supreme Court held that non-tendering of witnesses for cross-examination whose affidavit was obtained, could not be said to have caused any prejudice. Here in this case the affidavit was no doubt not brought on record but cross-examination was made on all points. We, therefore hold that it caused no prejudice to the applicant.

7. The learned counsel for the applicant drew our attention towards the fact that the labourers who were engaged for loading or unloading the material, were required to be summowned by the respondents but the said application was rejected by the Inquiry Officer. It has been pointed out on behalf of the respondents that the applicant had no doubt given the names but their details and particualrs were not given and therefore, it was not possible to identify them.

..10..

It appears quite reasonable that if any witness is required to be summoned, the detailed particulars should have been given. That was all the more necessary when they were alleged to have belonged to the other State of Madhya Pradesh. The observation of the Inquiry Officer that these witnesses even if they had been summoned would not have been in a position to recollect the incident of loading and unloading of this material was not justified. The question however, arises whether this observation of the Inquiry officer has caused any prejudice to the applicant. On careful consideration of the facts and circusmtance, we do not find that any prejudice has been caused thereby. Even if it is assumed for the sake of argurment that these witnesses had deposed about the loading of material in the car and unloading the same in the Store, it would have made no difference because there was no entry of the car at the gate and the witnesses who have been examined, had deposed that that material could not be carried in the said car. Even if it is assumed that the material was taken inside the store, the responsibility remained with the applicant who was Stores Assistant 'B' because the material if not found was to be explained by him. On subsequent inspection, the material was not found in the stores. It was neither

stolen nor pilfered. It cannot evaporate into air. Looking to these circumstance non-production of defence witnesses is not going to make any change in the conclusion which is arrived at.

8. On the consideration of the facts and circumstances, we hold the view that the contention of the learned counsel for the applicant that it is a case of no evidence, is not correct. We have already mentioned that we cannot make appraisal of the evidences. Whatever evidence was adduced, was appreciated by the Disciplinary Authority and thereafter by the Appellate Authority. As these authorities came to the conclusion that the charge was established against the applicant and therefore that finding cannot be changed or disturbed by us.

9. It was argued that the copies of the documents were not given to the applicant but it could not be disclosed as to what those documents ~~actually were~~ actually were which were needed by the applicant. From the perusal of the report of the Inquiry Officer and the order of punishment, it is revealed that whatever documents were relied upon, their copies were made available to the applicant. In view of this fact, this contention also does not hold good.

10. It is argued that the Presenting Officer in this case was having Degree of LL.M. and he, therefore, wanted help of a practising Lawyer which was not allowed. The respondents came with the plea that Legal practioners are not allowed to appear in Domestic Inquiries and, therefore, the demand of Legal Practioner was rightly rejected. We also hold the view that the help of a Legal Practioner cannot be allowed in such matters. If the Presenting Officer was having Degree of LL.M.; the defence Assitant Shri A.M. Vaishnav B.A., LL.B. was allowed to defend the applicant. Thus the applicant was in a position to have the services of a Law-Graduate. Thus the denial of services of Legal Practioner does not caused any prejudice to the applicant. Their Lordships of Supreme Court considered this question in the case Sunil Kumar Banerjee V. State of West Bengal and others 1980 SCC (L&S) 369 and it was held that engaging a lawyer was based on the provisions made thereunder any rules and here under these rules discretion was given to the Inquiry Officer. Here in this case before us it has been pointed out that there was no such provision for seeking help of a legal practioner. Therefore, the application was rejected. Our conclusion is fortified by the law laid down by the Supreme Court.

11. The contention of the applicant in the case is that there had been undue delay in concluding the inquiry and this delay had cuased prejudice to him. It may be mentioned that the incident of mis-conduct had taken place on 30-5-1985 while the charge-sheet was prepared on 20-5-1986. The inquiry proceeding continued during the period 1986 to August 9, 1990 when the order of punishment was passed by Shri M.M. Shah, Controller. Looking to the file of inquiry, it is revealed that several witnesses had been examined and several documents were taken into consideration. It is true that the time consumed was of about four years but we do not think that the applicant is in any manner prejudiced thereby. As a matter of fact, the applicant did not point out any general or particular prejudice caused to him. For this reason, we do not find any substance in this point also.

12. As regard the penalty awarded to the applicant it has been firstly urged that the order of punishment has not been passed by the competent authority. It has not been specified on behalf of the applicant as to who is the competent authority in his view. The contention of the respondents on the other hand is

that the applicant was appointed by the Controller and he was punished and the order of punishment was also passed by the Controller who was the competent authority for the purpose. The Appellate order has been passed by the Director who is superior to the Controller and in whom the Appeallate power has been vested. In the light of this fact, the contention of the applicant does not hold good and is rejected. Secondly, it is also argued that the respondents failed to adopt an uniform policy in awarding punishment. During arguments, the learned counsel for the applicant produced a paper giving a comparative statement of the cases of the present applicant as well as of one Shri K.George Abraham. It is also pointed out that the property involved in the case of the applicant was of Rs.6434.25 whereas in the case of Shri K. George Abraham, the amount was Rs.7908/-. The applicant was reduced by four stages for two years and ~~few~~ future increments were postponed. The recovery of loss of Rs. 6434.25 was also orderd. In the case of Shri K. George Abraham, he was reduced by two stages for a period of one year without cumulative effect. The learned counsel for the respondents argued that the applicant had tried to mis-guide the Tribunal because the nature of

mis-conduct in the two cases was quite different. The applicant did not take the goods to the Store whereas Shri K.George Abraham had taken the amount as TA/DA and he had admitted the mis-conduct. He had also repented for the same but no such act was done or behaviour shown on behalf of the applicant. The punishment is always awarded considering the facts and circumstances of the case and also the demeanour of the accused or the delinquent employee. The facts as are disclosed by the learned counsel for the respondents clearly makes a distinction based on reasonable consideration. Thus the plea that uniform policy in awarding punishment has not been observed, carries no weight. The learned counsel for the applicant thirdly argued that it was a case of double-jeopardy because not only that the salary of the applicant has been reduced for two years but also the recovery of the price of the material involved, has been ordered to be ~~recovered~~ made. So far as imposition of penalty by way of reducing the ~~sk~~ salary and recovery of the lost property is concerned, it can hardly be said that it is a case of double-jeopardy. In this connection, the view taken by the Full Bench of the Tribunal in the case Biswanath Debnath v/s. Union of India & others, Full Bench Judgments (CAT) Vol.II 382 can be a guiding factor. In this case, the

Full Bench discussed the connotation of double jeopardy and held that recovery of the amount along with the penalty of reducing salary, did not amount double-jeopardy. Thus, the argument at Bar, by the learned counsel for the applicant, does not hold good.

13. Another case, Vijaykumar vs. Haryana State Agricultural Marketing Board, Panchkula and another, 1989 (5) SLR 116 can also be taken help of. Their Lordships of Punjab and Haryana High Court, while considering the penalty in Disciplinary proceedings along with the recovery of the loss caused to the Government, held that there were not two punishments and that was not the instance of the double-jeopardy. Thus, we are fortified in our approach that the recovery made from the applicant besides reducing his salary, does not amount a case of double-jeopardy.

14. While advancing arguments the learned counsel for the applicant has relied on the case Kulwantsingh Gill V/s. State of Punjan, 1990 (4) JT 70. This case deals with the question that the penalty, if related to withholding of increment with cumulative effect, it would be a case of major penalty. This legal aspect has not been challenged by the respondents. It is

admittedly a case of major penalty. The order of punishment was passed on 09.9.1990. Although it has not been argued that the ratio taken by their lordships of Supreme Court in Union of India and Others v.s Mohmmed Ramzan Khan, 1991 (1) SCC 588 was applicable in this case but assuming that it was the intention of the applicant to rely on Kulwantsingh Gill's case (Supra), it may be made clear that Ramzan Khan's case was decided on 20.11.1990 and therefore whatever implications of Ramzan Khan's case was, it was operative only thereafter, This situation was clarified by their Lordships in the case Managing Director ECIL, Hyderabad Vs. Karunanaran (Supra). Thus even if the copy of the report of the inquiry officer has not been given, it does not affect the penalty order in any manner.

15. Interestingly reliance has been placed by the Counsel for the applicant and the respondents on the case Union of India Vs. Parma Nanda, AIR 1989 SC 1185. Their Lordships of Supreme Court in this case held that if the penalty on delinquent employee was imposed by the competent authority, the Tribunal could not interfere with it on the ground that it was not commensurate with delinquency of employee. Only in exceptional case where the person without

inquiry is dismissed, removed or reduced in rank solely without holding enquiry on the basis of conviction by criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the evidence and sentence inflicted on the person. In this way, it is clear that this case-law does not help the applicant in any manner.

16. On consideration of all facts and circumstances and the legal position as discussed above, we are of the view that there is no merit in the application and it is, therefore rejected. No order as to costs.

(DR. R.K.SAXENA)
MEMBER (J)

(V. RADHAKRISHNAN)
MEMBER (A)

AS

Rec't
AR Rec't
11-9-95

9.10.95

Central Administrative Tribunal
Ahmedabad Bench.
Inward No. 951
Date 11/9/95

SECTION-IX

D.No. 12/8/95/SC
Supreme Court of India
Dated: 1)-8-95

From:
Section Officer,
Supreme Court of India.

To:
The Registrar
Central Administrative Tribunal
Ahmedabad Bench, Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL(C) NO. 17083 of 1995
(Petition under Article 136 of the Constitution of India
from the Judgment and Order dated 17-4-95
of the High Court of Govt in OA 267/91

H.R. Sheth
.. Petitioner(s)

-Vs-

Col 4 Ors.
.. Respondent(s)

Sir,

I am directed to inform you that the petition above mentioned filed in the Supreme Court was/~~were~~ dismissed by the Court on 7-8-95.

For Perusal Please:-

Yours faithfully,

Section Officer

O/C. 17.11.95
1. Hon'ble V.R.
2. Hon'ble V. Radhakrishnan, member (A)
3. Hon'ble [illegible], member (J)