IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, CALCUTTA

O.A. No.896 of 1996

Date of order 12.6.2000.

B.C. Gorai, son of Late Matilal Garai, Village Ambagan, PO Mihijum, District Dumka, Bihar, worked as Tool Chaker at C.L.W., Bardwan.

.. Applicant.

-versus-

1. Union of India through the General Manager, Chittaranjan Locomotive Works, PO Chittaranjan, District Burdwan.
2. Deputy Chief Mechanical Engineer(ELA), appellate authority, Chittaranjan Locomotive Works, District Burdwan.
3. D.S.Dwivedi, Enquiry Officer, AWM(ELA), Chittarajan Locomotive Works, Chittaranjan, District Burdwan.
4. Works Manager(ELA), Chittaranjan Locomotive Works, Disciplinary Authority, Chittaranjan, District Burdwan.

.. Respondents

Counsel for the applicant .. Mr. Samir Ghosh.

Counsel for the resondents .. Mr. R.N.Dey.
Ms. B.Ray.

CORAM : Hon'ble Mr. Justice S. Narayan, Vice-Chairman.
Hon'ble Mr. L.R.K.Prasad, Member (Administrative)

O R D E R

S.Narayan, Vice-Chairman:-

This is for the second time that the applicant has come up before this Tribunal praying to quash the ultimate result of departmental proceedings initiated and finally adjudicated upon by the departmental authorities. Earlier when the applicant moved this Tribunal through O.A. 500 of 1993 for almost the same cause of action, this Tribunal, by an order dated 1.5.1996, quashed the order of punishmnt affirmed by the appellate authority on 24.2.1993 and it was directed to dispose

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O. A. No. 896/96 1991

DATE OF DECISION 12.6.2000

B.C.Gorai .....Applicant

Mr. Samir Ghosh .....Advocate for the Applicant (s)

Versus

UOI & others .....Respondents

Mr. P.V.Dey
Ms. B.Ray .....Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. Justice S.Narayan, V.C.

The Hon'ble Mr. L.R.K.Prasad, Member(A)

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

MEMBER

of the appeal afresh in accordance with the provision of relevant rules and to pass a speaking order within six weeks from the date of communication of the said order. Pursuant to this order, the appellate authority has passed an order dated 24.5.1996, as at Annexure-K, which has been impugned in the instant O.A. The appellate authority has again upheld the decision of removal from service, awarded by the disciplinary authority to the applicant.

2. In order to appreciate the impugned order, it would be useful to point out the gist of the allegation against the applicant for which he was departmentally proceeded against. It so happened that in the forenoon of 7th August 1991, the applicant was found in possession of two pieces of ball bearing about 20 yards outside the gate of the Works Office. At one point of time, the applicant admitted his guilt before the respondent-authorities, but, ultimately, he set up a defence against the allegation and, as per the defence version, one Shri B. Das had handed over two ball bearings to him on 8.8.1991, that is, on the next following day of the alleged date of occurrence.

3. We have very carefully perused the impugned order dated 24.5.1996 of the appellate authority (Annexure-K) with reference to the report of the inquiring authority, as also the order of the disciplinary authority. The concluding portion of the impugned order states as follows:-

> "In view of the above and applying my mind I came to the conclusion that -
>
> (1) The statement dt.8.8.91 of Shri Das is not at all tenable to prove Shri Gorai is free from guilty.
>
> (2) From the enquiry report and other testimonials, it is established that Shri Gorai is guilty of the charges.
>
> (3) In several occasions Shri Gorai have been punished on theft cases."

4. So far as the decision of the appellate authority at clauses (1) and (2) was concerned, we would certainly not prefer to re-assess the evidence in this regard, more so when the appellate authority has already applied his mind in terms of our order passed in O.A. 500 of 1993. It has been rightly pointed out by the counsel for the respondents that as per principle laid down by the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu vs. A.Raja Pandian reported in 1995 (1) SCC, 216, it was not open for the Administrative Tribunals to sit as a Court of Appeal over a decision based on the findings of the inquiring authority in departmental proceedings. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. Placing reliance on this principle laid down by the Hon'ble Supreme Court, we could not be persuaded to so as to interfere with the decision of the appellate authority with regard to guilt of the applicant. We would rather say that the appellate authority has rightly taken a decision upholding the allegation of guilt against the applicant.

5. So far the conclusion of the appellate authority at serial No.(3) with reference to certain occasions of theft committed by the applicant was concerned, the impugned order simply states that on several previous occasions the applicant had committed such theft. There is no reference of those thefts. It would not be out of place to mention that while disposing of earlier O.A.500/93, this Tribunal categorically observed as follows:-

> "The appellate authority, instead of taking into consideration of the earlier penalty of which there was no scope in the instant DA proceeding, would have done well, if only it had discharged its duties under the extant rules with care and caution, which would avoid harassment to the applicant and embarrassment to the respondents. Thus, the order of the appellate authority

shows not only improper but also inadequate application of mind."

6. In view of our earlier observation as above, it was expected of the appellate authority to have ignored the earlier findings of theft, if any committed by the applicant. If all the earlier events are taken into account, it would over weigh the judicial balance in determining the adequate punishment for a particular guilt. It goes without saying that if a delinquent is charged of a particular guilt, the punishment has to be confined to that alone in an ordinary course, otherwise, the punishment inflicted may not be commensurate with the gravity of the offence which was the subject-matter of the disciplinary inquiry. We may go even further to say that if at all the respondent-authorities thought it necessary that the earlier conduct of the applicant should also be looked into and considered, they should have framed additional charge of habitual theft being committed by the applicant. In the instant case, there was no such additional charge. There was not even reference made of such past event of theft in the order of appellate authority. Therefore, we are of the view that while upholding the quantum of punishment, the appellate authority should have ignored the earlier findings of theft so as to commensurate the punishment with the guilt for which the applicant was actually proceeded against. We are of the view that if the earlier events of theft had not been casually taken note of, the appellate authority would have inflicted some lesser punishment. In this regard we have rather preferred to move on the line as suggested by the Hon'ble Supreme Court in the case of State Bank of India & others vs. Samarendra Kishore Endow and another (1994 (1) SLR page 516) wherein the case was remanded back to the appellate authority to consider whether a lesser punishment is not called for in the facts and circumstances of the case.

7, For the reesons aforesaid, this O.A. is allowed in part. The impugned order of the appellate authority is quashed and set aside in so far as it relates to the quantum of punishment. The appellate authority is directed to reconsider the quantum of punishment and to pass an adequate order with reasonings within four months from the date of communjicationn of this order. It shall be open for the appellate authority to give an opportunity of hearing to the applicant, if so prayed for, with regard to quantum of punishment. There shall be no order as to costs.

(L.R.K.Prasad)
Member(A)

12.6.2000

(S.Narayan)
Vice-Chairman

Mahto