

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
XXXXXX 467 1990

DATE OF DECISION 27.9.1991

K.K. Jacob Applicant (s)

Mr. Asok M Charian Advocate for the Applicant (s)

Versus

The Superintending Engineer, Respondent (s)

The Commander Works Engineers,

Office of the Commander Works Engineers,

Kattaribagh, Naval Base, Cochin & Another

Mr. NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan - Administrative Member

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ans*
2. To be referred to the Reporter or not? *Ans*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ans*
4. To be circulated to all Benches of the Tribunal? *Ans*

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

The applicant, Shri KK Jacob, Store Keeper

Grade I in the Office of the Chief Engineer, Military

Engineering Service, Cochin Zone, Naval Base, Cochin

has in this application filed under Section 19 of

the Administrative Tribunals Act challenged the

order dated 2.1.1990 of the first respondent imposing

on him a penalty of withholding of one increment

without cumulative effect (Annexure-A13) and the

Appellate order of the second respondent dated 14.5.90 *Ans*

rejecting the appeal filed against the Annexure-A13

order.

2. Short of details the facts necessary for the disposal of this application can be briefly stated as follows. While the applicant was serving under the Garrison Engineer, Baroda as Stock Holder of projects a theft of Tor Steel alleged to have taken place in the night of 29/30th April 1981 was reported. A loss of Tor steel worth Rs.34,952.14 was noticed. A first information report was lodged with the Police. A Court of Enquiry <sup>was</sup> ~~conducted~~ as a fact finding enquiry. The Court of enquiry came to the conclusion that the loss of steel had occurred due to reasons other than theft like pilferage and the concerned authorities of the department agreeing with the Court of Enquiry recommended that the disciplinary action should be taken against persons connected with the store including the applicant. The decision recommending recovery of a major portion of the loss from Shri Prem Singh, ACE and the applicant and ~~textakm~~ disciplinary proceedings against them was taken on 27.5.1983. Thereafter no action was taken for a fairly long time. As the applicant was not promoted to the next higher post on the basis that disciplinary action was contemplated against him he filed OA K-2/88 which was allowed. The respondents have filed SLP before the Supreme Court challenging the order passed in OA K-2/88. While so,

on 7.9.1988 the applicant was served with a memorandum of charges dated 30.8.1988. The statement of imputations of misconduct in support of the charge read as follows:

"MES-153458 Shri KK Jacob, while working as Store Keeper Grade I in AGE/ B/R No.1 Sub Division under Garrison Engineer Baroda was the stock holder of all project and maintenance stores during 1981. On the night of 29-30 April 1981 an alleged theft of stores was detected in the Store Yard of AGE B/R No.1 in which the said Shri KK Jacob was the stock holder. With a view to assess the exact details of deficiency of stores, necessary physical check of stores was carried out by a Board of Officers during April/May 1981 under the orders of GE Baroda. TOR Steel 12mm Weighing 7.272 MT costing to Rs.34,952.14 was found deficient by the Board of Officers. In order to pin point the responsibility for the aforesaid deficiency, a staff court of inquiry was convened by the Station HQ Baroda under their No.1222/15/Q2 dated 5 May 1981. The Offg GOC-in-C Southern Command has given his direction on the Court of inquiry proceedings that the loss is due to theft and gross neglect during the night of 29/30 April 81 and further directed that departmental action in terms of CCS (CC&A) Rules 1965 be taken for recovering a portion of the penal deduction of the loss amount of Rs.34,952.14 from the stock holder MES-153458 Shri KK Jacob, Store Keeper Grade I".

The charge was that the applicant while working as  
was  
Store Keeper Grade I in Baroda /found responsible for  
the loss of TOR steel 12 mm, quantity 7.272 MT worth  
to Rs.34,952.14 during 29/80 April 81. In his written

statement of defence the applicant stated that, as he was only a stock holder of the store-yard he was not responsible for the security measures and he cannot be held liable to the loss occurred due to theft in the night. He also contended that the inordinate delay in conducting the enquiry amounted to violation of principles of natural justice, and that the decision to initiate the proceedings at that late stage was intended to harass him for having filed an application before this Tribunal challenging his non-promotion. Anyway, an enquiry was held and the Enquiry Officer submitted a report, copy of which is at Annexure-R1 in which the following conclusion was arrived at by him.

"CONCLUSION

Undersigned has come to conclusion that even if alleged theft has taken place on the night of 29/30 Apr 81 and matter reported to Police Station, yet it was not possible to take away 7.272 MT of steel in a short time of 3 hrs through restricted opening of 1.35x1.22 of under those conditions. Time required to lift 7.272 MT of steel and to load in a vehicle placed at a distance of 63 meter is 5 hrs and 36 minutes approx, Under these conditions, say 6 hrs. As such 50% of the steel can be taken away due to theft only between 1200 to 0300 hrs. Shortage of balance 50% of steel is not due to theft but is due to accumulation shortage. Hence neglected his duties and hence charge is proved."

In the course of the enquiry though the applicant requested that Brig. K.V.Mathai, then Station Commander

and Major N.K.Narasimhan, Presiding Officer of Court of Enquiry may be allowed to be cross-examined by him, this request was turned down by the Enquiry Officer.

The Disciplinary Authority, the first respondent held the applicant guilty of the charges mentioned in the Annexure-A3 charge sheet and by the impugned order at Annexure-A13 imposed on him the penalty of withholding of one increment without cumulative effect.

The applicant preferred an appeal to the second respondent which was rejected by him by the order at Annexure-A16. The applicant has averred in the application that the Inquiry Authority has conducted the enquiry in violation of the principles of natural justice, that the initiation of the disciplinary proceedings after inordinate delay prevented him from effectively defending his case, that the Disciplinary Authority has not applied his mind to the observations of the Enquiry Authority and the facts and circumstances stated in the representation made by the applicant regarding the acceptability of the enquiry report, that the finding of the Disciplinary and Inquiry Authorities are based on no evidence and are therefore perverse, that the Appellate Authority has failed to apply his mind on the grounds raised by the applicant in the appeal memorandum, and that, therefore, for these reasons the impugned order at Annexure-A13 and A16 are unsustainable in law.

Therefore the applicant prays that the above orders may be quashed and the respondents may be directed to pay the arrears of emoluments of the applicant treating that the punishment has not been imposed on him.

3. The respondents in the reply statement have contended that the enquiry had been validly and properly held, that the findings are supported by evidence, that the appeal has been properly considered and disposed of, and that as only a very minor penalty was imposed on the applicant he has no legitimate grievance.

4. We have gone through the pleadings and documents produced carefully and have also heard the arguments of the counsel on either side.

5. The applicant has a case that the whole enquiry was initiated for the reason that it was held after a lapse of 7 years from the date of the alleged occurrence and 5 years after the fact finding enquiry was held. In this connection the learned counsel invited our attention to the decision of the Supreme Court in the State of Madhya Pradesh Vs. Bani Singh and another, reported in AIR 1990 SC 1308. In that case the departmental enquiry proceedings were initiated against Shri Bani Singh by issuing a charge-sheet on 22.4.1987 in respect of certain incidents



that have happened in the year 1975-76. Shri Bani Singh filed OA 102/87 before the Jabalpur Bench of the Central Administrative Tribunal for various reliefs including quashing of the disciplinary proceedings on the ground that the initiation of the proceedings after such an inordinate delay was unjustified. The Tribunal allowed the prayer for quashing the charge-sheet. The department filed the appeal before the Supreme Court. It was contended that the Tribunal had gone wrong in not allowing the departmental proceedings to be proceeded with merely on the ground of delay. The Hon'ble Supreme Court observed as follows:

" The appeal against the order dt.16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case

there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

6. In this case the irregularities alleged to have been committed by the applicant was in April 1981. The court of enquiry in its report dated 27.5.'83 recommended departmental action to be initiated against Shri Prem Singh, AGE and the applicant. The charge sheet against the applicant was issued only on 30.8.'88. In the written statement of defence submitted by the applicant (Annexure-A4) the applicant had contended that the belated enquiry would be unfair and violative of principles of natural justice, ~~xxxxxxxx~~ as it was impossible for him to defend himself effectively by adducing evidences in regard to matters which took place more than 7 years ago. The enquiry was held discarding this contention raised by the applicant in the written statement. The learned counsel for the applicant vehemently argued that the ratio of the decision in Bani Singh's case is applicable to this case and therefore on that very ground the entire disciplinary proceedings against him are liable to be quashed. It is true that in the reply statement filed on behalf of the respondents in this case there is no proper explanation for the inordinate delay caused in the disciplinary proceedings against the applicant. But as the disciplinary proceedings ~~xxxxxxxx~~ were proceeded with since the applicant

did not challenge the initiation of the disciplinary proceedings before this Tribunal. If it is found that a proper enquiry had been held and if there is sufficient proof of <sup>the</sup> misconduct with which the applicant is charged with the proceedings cannot be quashed merely on account of the delay and laches in initiation of the disciplinary proceedings. The difference between this case and the case under citation is that in the case under citation Bani Singh approached the Tribunal for having the charge-sheet quashed before submitting himself to the disciplinary proceedings. Here, since the applicant has participated in the proceedings and since the proceedings have been completed, it may not be fair to quash the proceedings, on the ground of delay and laches alone.

7. The learned counsel for the applicant vehemently argued that the enquiry is vitiated for the reason that the Inquiry Authority refused an opportunity to the applicant to examine the witnesses whom he wanted to examine. It is evident from the enquiry report that the Inquiry Authority did not offer the witnesses for examination by the applicant during the enquiry. The reason stated in the report is that, as the necessity to call witnesses did not arise during the enquiry the request for examination of the witnesses was not granted. The necessity to examine the witnesses was

not for proving the charges but for the applicant to establish his innocence. The Inquiry Authority should have allowed the applicant to examine the witnesses in order to make a proper defence. We are of the view that a reasonable opportunity to defend his case has been denied to the applicant by refusing to call the witnesses cited by him, and that for this reason the entire enquiry proceedings were vitiated.

8. It is contended on behalf of the applicant that the finding of the Disciplinary Authority that the applicant is guilty of the charge is absolutely perverse and unwarranted from the evidence on record. We have gone through the entire enquiry report and the order of the Disciplinary Authority basing on the enquiry report. Going through the enquiry report, we find that the Inquiry Authority has adopted a strange procedure in holding the enquiry. No witness at all was examined at the enquiry. The enquiry proceedings were held on 21.3.1989, 19.4.1989 and 25.7.1989. On 21.3.1989 the Enquiry Officer asked the applicant whether he admitted <sup>the</sup> charge or denied it. The applicant denied the charge. He was then asked as to whether he wanted to examine any witness. <sup>The applicant</sup> gave the names of 9 witnesses to be examined. Thereafter enquiry was adjourned to 19.4.1989. The proceedings dated 19.4.89 reads as follows:

"1. The proceedings were taken by me in my office on 19.4.89 at 1000 hrs. when the

Following were present:

a) Shri SM Mahalingam  
BSO, GE(P) Cochin - Presenting Officer

b) Shri KK Jacob  
SK Gde I Ty og GE - Charged Official Cochin

2. The charged official Mr.KK Jacob was asked that you can be allowed to cross examine only those witnesses whose statements are recorded in the course of court of inquiry. Please review list of witnesses to be called for.

Further it is seen that you had already cross examined some witnesses. Please intimate as to why further these witnesses are required.

3. On this Shri KK Jacob has stated that the recommendations of Station Commander Brig KJ Mathai and Presiding Officer of C of I Maj NK Narasimha are different as such these witnesses are required.

As regards Maj RN Misra, GE and Shri NS Rao, AGE B/R-3 (stock verification officer) are concerned, their statement were not recorded by staff C of I, but these witnesses are required due to the following

a) Adm/Security arrangements made by GE Maj RN Misra

b) Shri NS Rao, AGE B/R III is required to know why stock taking has been done in different dates for the same item.

4. The following witnesses are not required as these have been already cross examined by me (Mr KK Jacob). In case necessity arises during course of inquiry, the request for the same will be made by Mr KK Jacob.

- 1) Shri PD Dalvi, Chowkidar, GE Baroda
- 2) Shri Maghul Babu, Chowkidar, GE Baroda
- 3) Shri Pratap Singh Amar Singh, Chowkidar, GE Baroda
- 4) Shri BL Kanoja, Fitter, GE Baroda
- 5) Shri Prem Singh, AGE B/R I

M Mr.KK Jacob states that in case the above witnesses asked vide para (3) above are not made available, then he will not participate in further inquiry.

Mr. KK Jacob further states that the inquiry should be held at Baroda to enable him to get the witnesses and documents for this very old case.

Inquiry was then adjourned and next date of hearing was fixed on 23.5.89 at 1030 hrs.

Sd/- Sd/- Sd/-  
Charged official Presenting Officer Inquiry  
Officer"

Then the enquiry was held on 25.7.1989 on which date it was concluded. On 25.7.1989 the Enquiry Officer asked the Presenting Officer to present his case. Instead of presenting the case through witnesses and documents it appears that the Presenting Officer has only stated the case in support of the charge without examining any witnesses or without marking any document as exhibits. Then the Enquiry Officer asked the applicant to give his defence, that also not in any form of defence evidence but only as an oral statement of what he had to say in regard to the charge. Then the Enquiry Officer put certain questions to the Presenting Officer. Thereafter the Enquiry Officer asked the applicant whether he has got anything more to say. It was basing on this enquiry that the Enquiry Officer has submitted a report concluding that 50% of the loss of TOR steel would have occurred due to theft, that the loss of the balance 50% would have occurred only due to accumulation shortage, and that, therefore the charge is proved. This conclusion was arrived at by the Enquiry Officer on the basis of his findings after the enquiry which are seen recorded as follows:

"FINDINGS"

From the records produced as well as from the hearing of arguments of both parties, the undersigned has come to the following conclusion.

- 1) It is correct that Shri KK Jacob SK Gde I (Ty) SK Gde II (Pt) was store keeper for projects stores only and not project and maintenance.
- 2) There was an attempt of theft of stores on the night of 29/30 Apr 81 in the store yard of AGE B/R-1 Sub Div and the theft took place from 1200 to 0300 Hrs.
- 3) The size of the opening through which the steel bars were taken out was restricted to 1.35Mx1.22M. Fencing wire 66 cm from bottom and 66 cm from top were intact.
- 4) FIR were lodged with the police station Makarpura on 30th Apr 81 by offg GE Shri V.V.S.Sharma.
- 5) Weight of each bundle is 90 Kg approx. Bundles are U shaped measuring 6 Meter in length and 1 (one) meter in width.
- 6) The gap between stocks of steel bundles was 90 Cm. Distance between fencing and stack was also 90 cm.
- 7) Hedges and bushes were existing along fencing and sufficient working space was not available.
- 8) There were only one opening in the fencing.
- 9) Board of officers ordered to check the deficiency of steel found 7.272 MT of TOR steel less in quantity.
- 10) The time required to lift 7.272 MT (approx 84 bundles) and to load in a vehicle parked at a distance of 63 Meter is definitely more than 3 (three hours) under these conditions. The minimum time required for lifting this is  $84 \times 4 = 336$  minutes ie 5 Hrs and 36 minutes is say approx 6 hrs.
- 11) Even Mr KK Jacob has stated that it will take more than 3 hrs.

*(Signature)*

- 12) Security measures were adequate.
- 13) Gate passes since 1976 to 1981 Apr has been checked by board of officers ordered by Stn HQ and no irregularity in accounting was found.

CONCLUSION

Undersigned has come to conclusion that even if alleged theft has taken place on the night of 29/30 Apr 81 and matter reported to Police Station, yet it was not possible to take away 7.272 MT of steel in a short time of 3 hrs through restricted opening of 1.35x1.22 of under those conditions. Time required to lift 7.272 MT of steel and to load in a vehicle placed at a distance of 63 meter is 5 hrs and 36 minutes approx. Under these conditions, say 6 hrs. As such 50% of the steel can be taken away due to theft only between 1200 h to 0300 hrs. Shortage of balance 50% of steel is not due to theft but is due to accumulation shortage. Hence neglected his duties and hence charge is proved."

The findings of the Enquiry Officer as stated by him are based on the record produced and after argument of the parties and not based on any evidence recorded by him. No record is seen to have been admitted in evidence at the enquiry. So, we are at a loss to understand how those records which were <sup>not</sup> part of the evidence in the enquiry could be relied on by the Enquiry Officer to reach in any finding. The witnesses were not examined by the Enquiry Officer during the enquiry for the reason that they were already examined by the Court of Enquiry in the year 1982-83 when the fact finding enquiry was held. If the evidence recorded at the fact finding enquiry was sufficient then it was not necessary to order an enquiry at all in the

disciplinary proceedings. The fact finding enquiry was conducted in the year 1982-83 for the purpose of finding out as to what was the cause for the loss of steel. The evidence recorded there cannot be read as evidence in a disciplinary proceedings initiated against the applicant. Evidence has to be recorded and the documents to be relied on for reaching the finding should be marked in the enquiry proceedings. We find that nothing like that had been done by the Enquiry Officer. Further the conclusions arrived at by the Enquiry Officer that only 50% of the steel might have been lost by theft and that the remaining 50% might have been lost for reasons other than theft and for that reason the applicant should be held liable are also absolutely unwarranted in the nature of the enquiry held. The Disciplinary Authority has in the order dated 2.1.1990 at Annexure-A13 accepted the report of the enquiry and held that the applicant is guilty of the charges mentioned in the statement of imputations. There is no discussion of the evidence and no application of mind in the impugned order at Annexure-A13. What is stated by the Disciplinary Authority in his order as to how he concluded the applicant is guilty of the charges reads as follows:

" Having carefully considered the Inquiry Report and the defence statement submitted by Shri KK Jacob, SK 1 of GE

Cochin, I have come to the conclusion that the said Shri K.K.Jacob, SK 1 is partially responsible for the loss of stores ie. 7.272 MT of TOR Steel 12 MM costing Rs.34,952.14 (Rupees thirty four thousand nine hundred and fifty two and paise fourteen only) from the store yard of AGE B/R No.1 under GE Baroda, tantamounting to negligence of duties and is guilty of the charges mentioned in the statement of imputations attached to the memo of charges sheets."

The applicant is not a night watchman of the store but only a stock holder. For theft or shortage which occurred during the night the applicant cannot be held responsible. In the statement of imputations attached to the memorandum of charges Annexure-A3 it was averred as follows:

"The Offg. GOC-in-C Southern Command has given his direction on the court of inquiry proceedings that the loss is due to theft and gross neglect during the night of 29-30 Apr 81 and further directed that departmental action in terms of CCS (CC&A) Rules 1965 be taken for recovering a portion of the penal deduction of the loss amount of Rs.34952.14 from the stock holder MES 153458 Shri K.K.Jacob, Store Keeper Grade I."

So, even according to the statement of imputations the loss was cost due to theft and neglect during the night of 29/30 Apr 1981. The applicant who is not a night watchman of the store cannot be held responsible if there has been loss of steel during the night owing to theft or for other reasons.

Therefore, the finding of the Disciplinary Authority

*M*

that the charge against the applicant has been proved is based on absolutely no evidence at all and therefore the finding is perverse. The punishment order issued by the Disciplinary Authority, Annexure-A13 therefore is liable to be quashed. The Appellate Authority ~~has~~ <sup>(M)</sup> issued ~~an~~ <sup>order dated 14.5.90</sup> at Annexure-A16 rejecting the appeal of the applicant from complete ~~suffers~~ <sup>(M)</sup> lack of appreciation of mind. After stating the points raised in the appeal memorandum what is stated in the impugned order at Annexure-A16 meeting the above grounds is as follows:

" AND WHEREAS on consideration of the appeal and connected documents, I find that the factual position and points raised in the appeal is as under:-

- a) As per Inquiry Report, the charges framed against the appellant are proved.
- b) As per findings of the Staff Court of Inquiry, the loss has occurred due to the reasons other than theft.
- c) Disciplinary action has already been taken against all others involved except Shri. Magbul Khan, Chowkidar who retired from service on 30 Jun 83.

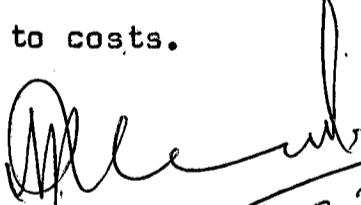
AND NOW THEREFORE, in exercise of the powers under Rule 27(2) of CCS (CC&A) Rules 1965, I hereby reject the appeal of Shri KK Jacob, SK Gde 1 of GE Cochin as the punishment has been awarded on the basis of established charges after following laid down procedure."

We are of the view that a mere extraction of the above portion of the appellate order without any ~~misnomer~~ <sup>(M)</sup>

discussion is sufficient to show that the appellate order is completely devoid of application of mind.

9. In the facts and circumstances as discussed above we are convinced that the impugned orders at Annexure-A13 and A16 are absolutely perverse and liable to be quashed.

10. In the result, the application is allowed. The impugned orders at Annexure-A13 and A16 are set aside ~~and~~ declaring that the punishment order at Annexure-A13 is illegal and unjustified. We direct the respondents to pay to the applicant the arrears of emoluments which were withheld in implementation of the impugned order at Annexure-A13. This direction should be implemented by the respondents within a period of 2 months from the date of communication of this order. There is no order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

27.9.91

  
(N.V.KRISHNAN)  
ADMINISTRATIVE MEMBER

27.9.1991