

(3)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 510/87

T.A. No.

198

DATE OF DECISION 6-6-1991

Shri L.M.Pradhan Petitioner

Mr.Colin Gonsalves Advocate for the Petitioner(s)

Versus

Ministry of Defence and ors. Respondent

Mr. M.I.Sethana Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, 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 ?

(36)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

Original Application No. 510/87

Shri L.M.Pradhan

...

Applicant

vs

Ministry of Defence
and ors.

..

Respondents

Coram : Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman
Hon'ble Mr. M.Y.Priolkar, Member(A)

Appearances

Mr. Colin Gonsalves Adv.
for the applicant

Mr. M.I.Sethana for the
respondents.

Dated:

Judgement

(Per: Shri M.Y.Priolkar, Member(A))

The applicant in this case while serving as a pipe fitter in the Naval Dockyard, Bombay was removed from service with effect from 2-6-1986, on the charge of demanding illegal gratification from candidates who were called for interview in the Naval Dockyard for aiding their recruitment. On appeal by the applicant, the appellate authority by order dated 30-1-1987, pointed out certain defects in the enquiry proceedings and remitted the case back to the disciplinary authority for conducting the enquiry in terms of the provisions of CCS(CCA) Rules, 1965. After the enquiry report was received back after rectifying the defects, the Appellate Authority concurred with the findings of the disciplinary authority and rejected the appeal on 8-1-1990, confirming the penalty of removal imposed on 2.6.1986.

2. The grievance of the applicant is that according to him, the enquiry was vitiated being in disregard of the principles of natural justice, the findings of the Enquiry Officer are perverse and contrary to the evidence and , in any case, the punishment is disproportionate and harsh.

3. The charges against the applicant were that he "used to get information of the residential addresses of the candidates and thereafter visited them and asked them to pay Rs.3000/- for being employed in the Naval Dockyard " and further, that the applicant "was found in possession of incriminating documents from his locker to obtain unlawful financial gain by fraudulent means". The applicant's allegation that principles of natural justice were violated in conducting the enquiry is based on the grounds that his subsistence allowance was not paid promptly, his request for summoning certain witnesses for his defence were not accepted and certain documents crucial to his defence were suppressed by the respondents. The question of payment of subsistence allowance had been raised by the applicant before us earlier through several miscellaneous petitions and dealt with by us through orders on those petitions giving appropriate directions from time to time. In our order dated 1-11-1989, it has been recorded that the respondents have filed a statement regarding payment of subsistence allowance as per our order dated 1-9-89 and the applicant is paid excess of Rs. 1074. The applicant should, therefore, have no justifiable grievance now in this regard. In any case, some delay in payment of subsistence allowance will not vitiate the enquiry proceedings. We do not also find any substance in the other grounds urged before us to substantiate the allegation of violation of principles of natural justice. In compliance with our interim orders dated 16-9-1987 and 2-6-1988, the applicant was allowed to engage a lawyer

as his defence assistant and he was also granted a personal hearing by the appellate authority, who disposed of the appeal by passing a self-contained speaking and reasoned order dated 8-1-1990. The defence assistant had at no time protested to the Enquiry Officer that the enquiry was being conducted contrary to the provisions of CCS(CCA) Rules, 1965. Further, the applicant himself could have produced Mr. R.N. Gandhi, whose evidence was stated to be very vital for his case, as his defence witness, since Mr. Gandhi was no longer in the employment of in Naval Dockyard.

4. The applicant has also pointed out certain inconsistencies in the enquiry report but, in our view, they are not so serious as to render the Enquiry Officer's findings perverse. The applicant's contention that since no locker was ever allotted to him, he should be absolved of all charges, has been dealt with and rejected in the appellate authority's order dated 8-1-1990. As held by the Supreme Court in the case of Union of India v. Parma Nanad (1989) 10 ATC 30) the adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Enquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. There is no material at all in the presnet case to establish that the imposition of the penalty on the applicant was malafide. The appellate authority's order dated 8-1-1990 is a reasoned order and the findings of the enquiry cannot also be considered, in our view, as perverse or based on absolutely no evidence. It is well settled that in departmental proceedings preponderance of probability will be adequate to establish guilt unlike

criminal proceedings where proof beyond reasonable doubt is required. Taking the totality of the circumstances into account, we do not, therefore, consider this to be a fit case for interference by the Tribunal. This application is, accordingly, dismissed as devoid of any merit with no order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman