

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY

198

T.A. No. 135/87

DATE OF DECISION 7/4/1988

Shri Mohan Zatlmal. Petitioner

Shri S.M. Dange, Advocate for the Petitioner(s)

Versus

Government of India, through the General Manager, Ordnance Factory, Bhusaval. Respondent

Shri.J.D. Desai, for Shri.M.I. Sethna. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G. RAJADHYAKSHA, MEMBER (A)

The Hon'ble Mr. M.B. MUJUMDAR, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
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? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No.135/87

Shri Mohan Zatlmal,
R.No.71, Nanak Nagar,
Bhusawal, Dist. Jalgaon.

.. Applicant.

vs.

Government of India, through
the General Manager,
Ordnance Factory,
Bhusawal, Dist. Jalgaon.

.. Respondent.

Comra: Hon'ble Member(A) Shri J.G. Rajadhyaksha.
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

1. Shri S.M. Dange, Advocate
for the Applicant.
2. Shri J.D. Desai for Mr.
M.I. Sethna, Counsel for
the Respondents.

ORAL JUDGMENT

Date: 7/4/1988

¶ Per: M.B. Mujumdar, Member(J) ¶

Regular Civil Suit No.450/82 filed by the applicant Shri Mohan Zatlmal of Bhusawal is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The applicant was working as a Press Operator 'B' grade from 9.1.1963 in the Ordnance Factory at Bhusawal. Along with memorandum dt.26.11.1979 a statement of 3 charges was served on him. The first charge was that while working as Press Operator 'B' grade in Drum Shop section of the Ordnance Factory at Bhusawal at about 05.25 hrs. on 30th October, 1979 he was found accepting satta betting and writting the same in the satta book in the Drum Shop. The second charge was that at about the same time he was wasting Government time while on duty and the last charge was that at about the same time he was neglecting government duty.

3. At first one Shri V. Haridoss, Manager of the Ordnance Factory was appointed as the Enquiry Officer, But due to his transfer, Shri Sher Singh, Manager of the Ordnance Factory was appointed as the Enquiry Officer. One Shri Banerjee was appointed as the Presenting Officer and the applicant appointed Shri U.B. Upadhyaya, High Skilled Worker, as his Assisting Officer.

4. Four witnesses were examined before the Enquiry Officer. The Enquiry Officer also asked some questions to the applicant. By his report dt. 8.2.1984 the Enquiry Officer held that the first charge regarding accepting Satta bets was not proved but the 2nd and 3rd charges were proved. After receiving that report, the Disciplinary Authority i.e. the General Manager of the Ordnance Factory by the order dt. 22.4.1982 accepted the findings of the Enquiry Officer and imposed the penalty of stoppage of next increment for one year with cumulative effect on the applicant. Without preferring a departmental appeal the applicant served a notice dt. 26.7.1982 on the respondents under section 80 of the Civil Procedure Code and on 11.10.1982 filed the suit in the Civil Court.

5. The applicant has made two prayers in the suit. The first is for declaring the order of penalty dt. 22.4.1982 as illegal, baseless, etc. Secondly, he has requested for a decree of Rs.1,800 towards loss of pay, D.A., Bonus and costs.

6. The respondents had filed their written statement when the suit was pending in the Civil Court. The issues were also framed by the learned Civil Judge transferred to this Tribunal.

7. We have heard Shri S.M. Dange, learned advocate for the applicant and Mr. J.D. Desai (for Mr. M.I. Sethna) for the respondents. We have also carefully gone through the relevant records.

8. As already pointed out, the Enquiry Officer has exonerated the applicant of the first charge regarding accepting bets. However, he has held that the second and third charges were proved. While holding that the second and third charges were proved he has relied on the statement of Shri R.N. Singh, who had confirmed his earlier statement. But on going through the evidence of Shri Singh we find that he was giving evasive answers and he was not supporting the prosecution version. To question no.12 which was regarding his earlier statement he replied that he had signed the statement without reading it. To another question, he replied that he did not remember anything as the incident had occurred more than 2 years back. In short he was hostile to the prosecution.

Hence the Presenting Officer felt that he would not add anything more to the prosecution case and hence he did not ask any further questions to him. In short the Presenting Officer dropped this witness as he was not supporting the charges. In view of this position, there was no question of the applicant's defence assistant asking any questions to him in cross-examination. We, therefore, feel that Enquiry Officer was not justified in relying upon the evidence of Shri R.N. Singh while holding that the second and third charges were established.

9. We have also gone through the other evidence and we do not find that there was any material to support the second and third charges. In fact, the second and third charges were depending on the first charge. When the first charge was held not proved, there was no scope, in view of the evidence on record, to hold that the second and third charges were proved.

10. The Enquiry Officer has mentioned in his report that the fact that the applicant was idle between 05.15 to 5.20 was not contested by the applicant at any stage during the enquiry. However, we do not find any material in support of this statement. All the charges were denied by the applicant. All the witnesses except Shri R.N. Singh were cross examined on his behalf. In the answers given by him to the questions put by the Enquiry Officer also, he did not admit anything. We are therefore, required to hold that the finding of the Enquiry Officer that the second and third charges were proved cannot be supported by any evidence, and it is liable to be quashed and set aside.

11. In the result we quash and set aside the impugned order of penalty passed by the General Manager of the Ordnance Factory at Bhusaval on 22.4.1982. The applicant will be entitled to all consequential benefits, including arrears. There will be no order as to costs.

(J.G. RAJADHYAKSHA)
MEMBER(A)

(M.B. MUJUMDAR)
MEMBER(J)