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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 392/88
T.A. NO: -----

199

DATE OF DECISION 2-12-1992

Joseph Cherian

Petitioner

Mrs. P.R. Shetty

Advocate for the Petitioners

Versus
Union of India and ors.

Respondent

Mr. P.M. Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, 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 ?

S.K.DHAON
(S.K.DHAON)
Vice-Chairman

MBM*

MD

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.392/88

Joseph Cheriyam,
C/o. Smt. P.R. Shetty,
Advocate, High Court,
C/11-86, M.I.G. Colony,
Gandhi Nagar,
Bandra (E),
Bombay - 400 051.

.. Applicant

-versus-

1. Union of India
through
The General Manager,
Ordnance Factory,
Varangaon.
2. The General Manager,
Ordnance Factory,
Varangaon.
3. Works Manager (A)
Ordnance Factory,
Varangaon.

.. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Shri M.Y. Priolkar,
Member (A)

Appearances:

1. Mrs. P.R. Shetty,
Advocate for the
Applicant.
2. Mr. P.M. Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per S.K.Dhaon, Vice-Chairman)

Date: 2-12-1992

On 28-10-1987 the General Manager,
Ordnance Factory, Varangaon passed an order
imposing a penalty of stoppage of one increment
for a period of one year without cumulative
effect upon the applicant. The Dy. Director/VIG
Ordnance Factory Board on 10-5-1988 dismissed
the appeal preferred by the applicant. The two
orders are being impugned in the present
application.

2. It appears that on 14-6-1986 the applicant was working as Typist and was under the direct control of Shri V.G.Sadhashivan, Foreman P&P. The allegation is that between 9.30AM and 9.45AM on that day the applicant was directed to type out a certain work which was urgently required. Instead of doing the work he left the office and returned at about 11.00AM. It also appears to be an admitted position that thereafter he completed the work assigned to him and handed over the typed matter to the authorities concerned sometime in the afternoon of that day.

3. On 17-6-1986 Shri Sadhashivan in his capacity as Foreman/P&P gave a notice to the applicant calling upon him to explain as to why disciplinary action should not be recommended against him(the applicant). The material contents of the said notice are these: On 14-6-1986 the applicant was asked by Shri A.K.Saxena,Chargeman-II to do some official typing work, the applicant refused to take the papers from Shri Saxena and asked him to contact Shri R.D.Bhavaskar,Chargeman-II. Shri Bhavaskar asked the applicant to do the typing work at about 9.45AM. Shri Bhavaskar reported that the applicant left his seat immediately thereafter without completing the work and also without intimating anything about doing of the work. At about 9.50hrs. the applicant went to Shri Sadhashivan and left the section after informing Shri Sadhashivan that he had some work elsewhere. Inspite of his being directed not to leave the section the applicant went away

without taking any permission and he remained absent till about 11.00AM.

4. The charge memo given to the applicant on 26-7-86 contained the imputation of misconduct/misbehaviour. The material averments in the imputation were these: On being asked by Shri Bhavaskar to do the typing work the applicant left his seat without doing the work. At about 9.45AM the applicant approached Shri Sadhashivan and told him that he ~~was~~ was going to GM's office. Shri Sadhashivan told the applicant not to go to any place and emphasised the urgency of the work. However, the applicant left the office without permission and was missing from the office till 11.00hrs. Before the Inquiry Officer Shri Saxena and Shri Bavaskar were examined. We will read the testimony of Shri Saxena, as material, first. It says : Shri Saxena asked the applicant to type out certain matters. The applicant asked Shri Saxena that he should contact Shri R.D.Bhavaskar. The typed matter was handed over to the witness after lunch, sometime in the afternoon, the typing work was neat and purposeful. He did not feel offended when the applicant asked him to contact Shri R.D.Bhavaskar who was incharge of audit group, he did not feel that the applicant had refused to do the typing work. Between 9.30AM and 9.45AM he handed over the typing work to Shri Bhavaskar. According to the witness, the typing work should have taken 45minutes to be completed. He informed the Foreman P&P about the progress of the job at about 10AM. This witness had not stated that he ever informed the applicant

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that the work was of urgent nature.

5. Coming to the testimony of Shri R.D.

Bhavaskar, as material, his testimony is this:

In reply to question No.7 which was :"While handing over the bunch of papers for typing to Shri Joseph Cherian, did you express the urgency of the job ? The answer given was "On receipt of the bunch of papers from Shri A.K.Saxena Ch/m P&P I handed over to Shri Joseph Cherian UDC and told him these papers are to be typed." The applicant accepted the papers and kept them on table.

Thereafter he went to the Foreman P&P, he did not make any complaint against the applicant on 14-6-86, he got the typing work ~~done~~ from the applicant on that very day. The H.O.S./P&P informed him through Mr.Saxena that he could get the typing work done by the applicant. He did not expect that the bunch of papers given to the applicant for typing at 9.45AM could be completed by that time(9.45AM). The applicant did not express his inability to start the typing work immediately. It is thus clear that this witness too did not inform the applicant that the typing work ^{was} of an urgent nature.

6. The crucial witness is Shri Sadhashivan.

Before starting his deposition he wanted to have a look at the complaint given by him earlier. The Enquiry Officer put only one question to him and that was : "When was the typing work completed by Shri Joseph Cherian ? The answer given was "The question does not arise. My reported complaint was about the refusal of work assigned to the individual."

This witness was examined on 29-6-87. As the proceedings commenced before the Enquiry Officer on that date at 15.15hrs. the proceedings were adjourned to 30-6-87 at 15.00hrs. On 30-6-1987 the Enquiry Officer directed the applicant to commence the cross examination of Shri Sadhashivan. The applicant pointed out that since the cross examination of witness No.2 had not been completed he may not be compelled to crossexamine Shri Sadhashivan. The Enquiry Officer ruled that no further cross examination of witness No.2 would be permitted. Thereafter only two questions were put by the defence and the proceedings were adjourned to 1-7-1987 i.e. next day at 15hrs. A few questions were put to the witness on that day and the proceedings were adjourned for the day to resume on 24-7-1987. The Enquiry Officer stated that Shri V.G.Sadhashivan was not required to be present for the day's sitting. He also informed the applicant that cross examination of Shri Sadhashivan may be continued if found necessary at later stage and after recording the statement of defence. The applicant objected that since the cross examination of Shri Sadhashivan had not been completed he will be prejudiced, if he was called upon to enter into the defence. The proceedings were adjourned to 27-7-87. It appears that the Enquiry Officer abruptly closed the evidence of Shri Sadhashivan without giving an opportunity to the applicant to further cross examine the witness.

7. We have perused the testimony of Shri Sadhashivan, though it is incomplete. Even in the incomplete testimony he did not state before the Enquiry Officer that he had informed the applicant

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that the typing work assigned to him was of an urgent nature. Shri P.M.Pradhan, learned counsel for the respondents, urged that the punishing authority and the appellate authority having arrived at the conclusion that the applicant disobeyed the orders given to him we would be exceeding our jurisdiction, if we interfere ~~in~~ ^{with} the findings and reappraise the evidence ourselves. We are not doing so. We have referred in detail the testimony of three witnesses. We have also referred to the charge memo. In substance, the charge was that the applicant inspite of being told that the typing work assigned to him was of an urgent nature, instead of completing the same left the office and returned at 11.00AM and thereafter completed the work. Therefore, the crucial question of the fact which was required to be determined by the Enquiry Officer, Punishing authority and the Appellate Authority was as to whether the applicant was every told that he was being assigned some typing work which required urgent attention. No evidence was laid on this crucial question of fact. Therefore, any finding given by any authority that the applicant left the place without completing the work even though ^{was} he knew that the work ^{is} of an urgent nature ^{any} will be perverse in the absence of ^{any} material whatsoever in support of it.

8. We, therefore, come to the conclusion that the punishment awarded to the applicant is not sustainable. The application succeeds and is allowed. The order passed by the punishing authority ^{and} ^{are} as well as the appellate authority ^{is} ~~is~~ quashed. There shall be no order as to costs.

(M.Y.PRIOLKAR)
Member(A)

(S.K.DHAON)
Vice-Chairman