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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 728/88

198

~~T.A. No.~~

DATE OF DECISION 25/2/94

MR. P. V. P. Pillai Petitioner

Mr. S. P. Saxena Advocate for the Petitioner(s)

Versus

Ordnance Factory Board Respondent

Mr. A. I. Bhatkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M. R. Kolhatkar, Member (A)

The Hon'ble ~~Mr.~~ Smt. Lakshmi Swaminathan, Member (J)

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 ? ☒

MR Kolhatkar
25/2/94.

(7)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION No. 728/88

Shri P.V.P.Pillai

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Applicant.

Vs.

The General Manager
Ammunition Factory
Kirkee
Pune - 411 003.

The Chairman
Ordnance Factory Road
10 A Auckland Road
Calcutta 700 001.

....

Respondents.

Coram : Hon'ble Shri M.R.Kolhatkar, Member(A)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Appearance :

Shri S.P.Saxena for Shri B.Marlapalle
counsel for the applicant.

Shri A.I.Bhatkar for Shri M.I.Sethna
counsel for the respondents.

JUDGEMENT:

DATED :

25/2/94

I Per : Shri M.R.Kolhatkar, Member(A) I

| In this O.A. under s.19 of A.T. Acr. 1985, the Applicant, was proceeded against departmentally in connection with certain incidents on 15-8-80. The report of the enquiry Officer is dated 2-4-83 on consideration of which the Disciplinary authority (Respondent No.1) on 16-8-83 imposed on the Applicant the penlty of reduction of pay by two stages in the time=scale for a period of one year with cumulative effect. The appeal addressed to Respondent No.2 was rejected on 7-5-1984. The matter came up before the Tribunal in T.A. 369/86 which was disposed of by the Tribunal, by its order dated 15-9-87. The Tribunal, relying on the Judgement of Ramchandra Vs. Union of India (AIR 1986(2) SC 252) disposed of the T.A. by the following order:

1. The order passed by the Appellate Authority i.e the Joint Director, Vigilance, on 7.5.84 is hereby quashed and set aside.
2. We direct that the Appellate Authority shall dispose of the appeal preferred by the applicant

on 16.9.1983 on merits after affording a personal hearing to the applicant and by passing a reasoned, speaking order in conformity with the requirements of rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules 1965 as possible.

3. We further direct that the applicant will be at liberty to approach this Tribunal by filing a fresh application under section 19 of the Administrative Tribunal's Act, in case the decision of the Appellate Authority goes against him.

2. It is not disputed that Applicant was heard personally by Shri K.Dwarakanath, Member(A&E) Ordnance Factory Board Calcutta on 29-1-88 and that she passed a speaking order on 21-7-88 vide Exhibit 'C' to the Application. In the order, the Member(A&E) has analysed prosecution and defence evidence and in particular evidence of Shri V.K.Singh, Deputy General Manager, Administration, Shri Shirke the Driver and Shri Deshmukh, Sub-Inspector of Police. The appeal has again been rejected. It is this appellate order, passed after giving a personal hearing, that the Applicant has impugned in this O.A.

3. The first contention of the Applicant is that he was not involved in the incidents on 15-8-1980 for which he has been penalized. This contention would require a detailed analysis of evidence which is beyond the purview of judicial review entrusted to this Tribunal. On going through the detailed order dated 21-7-88, we are not persuaded that this is a case of "no evidence" which would justify our interference.

4. The next point raised is that the institution of the enquiry was vitiated by vindictiveness of the then General Manager(Shri B.B.Ghose). However, there are no allegations of Malafides against the Enquiry Officer (E.S.Krishnamurthy, Manager Engineering) or the Disciplinary Authority (R.S.Jaiswal, General Manager) or the Appellate

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Authority. This point, therefore, does not have any merit. Thirdly, the Applicant has raised some procedural points regarding the enquiry. They are as below :

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a. The Respondent No.1 has ordered a common enquiry against the Applicant and other employees for the same charges related to an incident on 15-8-80 and the orders for common proceeding should have been signed by the Disciplinary Authority (i.e. Respondent No.1) as per CCS(CCA) Rules 1965.

b. The orders of appointment of the Enquiry Officer and Presenting Officer were signed by a very subordinate officer Shri V.K. Singh Manager Administration of the factory which is also not as per the rules.

c. The chargesheet issued to the Applicant was similarly signed by the said Shri V.K. Singh Manager/Administration, although it ought to have been signed by the Respondent No.1 himself as there existed no general or special order from the Disciplinary Authority authorising Shri V.K. Singh to sign the chargesheet. ||

5. These procedural points do not vitiate the proceedings and we are inclined to accept the argument of the Respondents that in any case, the Tribunal's earlier orders do not permit us to reopen these issues.

6. Fourthly, the Applicant contends as below:

"a. The Appellate Authority, as stipulated in, CCS(CCA) Rules is the Director General of Ordnance Factory and not any other authority. Hence the personal hearing given to Applicant by one of the nine Members of the Ordnance Factory Board, Calcutta is illegal and against the order passed by this Hon'ble Tribunal. A Member of the Ordnance Factory Board is not the appointed Appellate Authority and as such the order No.4580/A/Vig/dated 21.7.88 is illegal and bad in law. The said order also does

not comply with the directions of this Hon'ble Tribunal."

7. To this, the reply of the Respondents is as below:
- "a. In this context. I may also point out that under Rule 24(b), it is stipulated that an appeal may be preferred to the authority specified in this behalf in the schedule to the rules or by special or general order of the President. Where no such authority is specified it also lays down the procedure by which the appeal should be disposed off. Rule 24(b) lays down that in case of Member of Central Civil Service, Group C or Group D or holder of a Central Civil post, Group C or Group D, the Appellate Authority will be the authority to which the authority making the order appealed against is immediately subordinate. In other words the Appellate Authority is the authority who is immediately superior to the authority which had made the order appealed against. In the subject case, the General Manager AFK had passed the order of the penalty in respect of Shri Pillai. He is the authority immediately subordinate to the Member/A&E. Therefore, Member/A&E is considered as Appellate authority in respect of the subject appellant. Therefore, there is no illegality in giving the personal hearing by Member/A&E while disposing the appeal of the Appellant as Appellate Authority."

8. In our view, the Applicant having submitted himself to the hearing at the hands of Member(A&E) cannot be heard to say, at this stage, that the said Member was not the legal Appellate Authority. Moreover, we also keep in view the thrust of the pronouncements made by the Hon'ble Supreme Court in Scientific Adviser to the Ministry of Defence Vs. S. Daniel and others (AIR 1990(2)SC 134). The reasoning of that judgement which overruled the Full Bench judgement of Central

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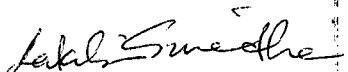
Administrative Tribunal in Gafoor Mia and others Vs. Director DMRL Hyderabad (1988(2) SLJ 277) was on the point of meaning of appointing authority and disciplinary authority^{and} would extend to the instant case also which relates to Appellate Authority. We are, therefore, unable to accept the contention of the Applicant.


9. We, therefore, dispose of this O.A. by passing the following order:

O R D E R

The O.A. is dismissed as being devoid of merit.

No orders as to cost.


(Mrs. Lakshmi Swaminathan)
Member (J)


(M.R. Kolhatkar)
Member (A)