

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Application No.359/86

Satpal Jain,
C/o. Shri S.S.Jain(P.S.I.),
No.2, Police Officers Qtrs.,
Love Lane, Byculla,
BOMBAY - 400 027.

... Applicant
(Original Plaintiff)

vs.

1. Union of India,
through
The Secretary,
Govt. of India,
Ministry of Defence,
NEW DELHI.
2. The Officer Commanding
Central Ordnance Depot,
Dehu Road,
PUNE

... Respondents
(Original Defendants)

Coram: Hon'ble Vice-Chairman B.C.Gadgil

Hon'ble Member(A) L.H.A.Rego

Appearances:

1. Shri C.Nathan
Advocate
for the applicant.
2. Shri J.D.Desai(for
Shri M.I.Sethna)for
respondents.

ORAL JUDGMENT

Date: 16-11-1987

(Per B.C.Gadgil, Vice-Chairman)

Regular Civil Suit No.1702/81 of the file
of the Civil Judge, Sr.Division, Pune is transferred
to this Tribunal for decision.

2. At this stage there are certain undisputed
facts. The applicant joined service in 1952. Later on
he was transferred to the Central Ordnance Depot.,
Dehu Road. In 1976 he was Sr.Chargeman in that organ-
isation. He was due for promotion. However, on

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20-12-1976 a departmental enquiry was initiated against him. The Departmental Promotion Committee held its meeting in that month and the applicant was found eligible for promotion. However, he was not granted that promotion on account of the above mentioned departmental enquiry.

3. The said departmental enquiry was held by an Inquiry Officer. He submitted his report on 6-2-1981. The Disciplinary Authority, on 3-6-1981 imposed a penalty of reduction of pay by two stages with cumulative effect. The applicant preferred an appeal thereon on 15-6-1981. He thereafter filed the suit in question on 16-9-1981 challenging the said inquiry and the consequent imposition of penalty. The Appellate Authority allowed the appeal on 11-12-1981. It was found that the chargesheet was not signed by a competent authority and hence the entire proceedings were invalid. A fresh enquiry was directed. Thereafter on 18-12-1981, a fresh chargesheet was framed by the appropriate authority. A notice dtd. 31-12-1981 was sent to the applicant. However, that notice was received back as unclaimed on 16-1-1982. The Inquiry Officer held the fresh enquiry on 18-1-1982 and submitted his report. On its basis the Disciplinary Authority imposed on 22-1-82 the penalty of reduction of pay by two stages with cumulative effect upto 31-1-1982. It is on this date(i.e. 31-1-1982)that the applicant retired.

4. Though the Appellate Authority directed a fresh enquiry after quashing the earlier one, the respondents informed the Civil Court on 31-3-1982(vide Ex.15), that the chargesheet framed against the applicant was withdrawn and that he was being given revised pension

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and gratuity. It was also stated that the suit had thus become infructuous. The applicant amended the plaint by claiming that in view of this statement in Ex.15 he would be entitled to pension in the post of Foreman and prayed that an appropriate decree be passed.

5. The defendants resisted the suit on various grounds. However, it is not necessary to reproduce all the contentions raised by them.

6. As stated earlier, the applicant was found eligible for promotion to the post of Foreman in 1976. However, he was not granted this promotion on account of ~~his~~ ^{the} punishment imposed on him in the first departmental enquiry held against him on 20-12-1976. The said enquiry was brought to an end by the Appellate order. The enquiry was found to be invalid by the Appellate Authority who asked the Disciplinary Authority to hold a fresh one. Thus on 11-12-1981, there was no departmental enquiry which could have come in the way of the applicant for getting promotion to which he was eligible on the basis of the recommendation of 1976 DPC. In our opinion the applicant is right when he claims such promotion.

7. The second enquiry was initiated on the basis of the chargesheet issued on 18-12-1981. It is in this enquiry that the applicant was again found guilty and a penalty of reduction of pay by two stages upto 31-1-1982 was imposed with cumulative effect. It was contended on behalf of the applicant that this enquiry is vitiated on two grounds. In the first ~~phase~~ ^{place} it is submitted, that in the face of the intimation (Ex.15) to the Civil Court the respondent cannot contend that

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the applicant has been found guilty in the second enquiry. We are not much impressed by this submission, inasmuch as Ex.15 is dated 31-3-1982 while the punishment under the second enquiry was imposed earlier on 22-1-1982. The most that can be said in favour of the applicant is that a mistaken statement was made which did not include the fact about the penalty in the second enquiry.

8. The applicant, however, appears to be on strong ground, as regards the validity of the second enquiry. It is common ground that a notice issued to the applicant about that enquiry was returned unclaimed. Not only that, the penalty order that was sent to the applicant on 25-1-1982, was also received back undelivered. It is only on 29-4-1986 (when the applicant made a grievance about his pension etc.) that he was informed about the second enquiry and the penalty inflicted thereunder. It is true that a departmental enquiry can be held ex parte. However, the important question would be, as to whether it was legal and proper to proceed ex parte, in a particular set of facts. An impression is created in our mind, that the second enquiry was hurried through, as everything took place within barely a period of one month. No notice was served on the applicant. There is nothing to indicate that the applicant avoided to receive the notice. This can be clear from the fact, that he could not get even the penalty order. Thus in the absence of a proper notice, the applicant was prevented from taking part in the enquiry. This has prejudicially affected his rights, inasmuch as the rules of natural justice have not been followed. We further hasten to add, that

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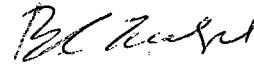
non-service of a notice would not always lead to a conclusion, that there was a breach of rules of natural justice. Much would depend upon the facts of each case and in this particular case, we are satisfied that such rules have been vitiated. Thus the penalty imposed on 22-1-1982 is liable to be quashed.

9. The result is that the applicant succeeds and we pass the following order :

O R D E R

The imposition of penalty dtd. 22-1-1982 (whereby the applicant's pay has been reduced by two stages with cumulative effect upto 31-12-1982) is quashed. The applicant was already found suitable for promotion to the post of Foreman / by the DPC at its meeting held in 1976. The respondents are directed to grant the promotion due to the applicant, to the post of Foreman, on the basis of the recommendations of the DPC at its meeting held in 1976 and to pay all monetary benefits arising from such promotion. It is needless to say that the pension of the applicant and other retiral benefits should be paid to him on such basis.

Parties to bear their own costs.


(B.C.GADGIL)
Vice-Chairman


(L.H.A.REGO)
Member(A)
16-XI-87