

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.136/86.

Shri C.Motiaiyan,
 Room No.12,
 Chita Camp, Trombay,
 Bombay - 400 086.

... Applicant.

V/s.

1. Establishment Officer,
 Bhabha Atomic Centre, Trombay,
 Bombay - 400 085.

2. Secretary, Union Government
 Ministry of Science and Technology,
 New Delhi.

3. Union of India through the Secretary
 Department of Science & Technology,
 New Delhi.

... Respondents.

Coram: Vice-Chairman, B.C.Gadgil,
 Member (A), J.G.Rajadhyaksha

Appearances:

- 1) Shri L.S.Krishnamurthy, Advocate for the Applicant.
- 2) Shri M.I. Sethna, Advocate for the Respondents.

Tribunal's Order :

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

Dated 22.10.1986.

This is an application under Section 19 of the Administrative Tribunal Act, 1985.

The applicant has filed Civil Suit No.375/81 in the City Civil Court, Bombay challenging his dismissal from service. The said suit has been transferred to this Tribunal and has been numbered as Transferred Application No.136/86. The applicant joined service in 1967 as a 'Helper' with the Bhabha Atomic Research Centre. Initially, he was Helper '8' and then promoted as Helper 'A'. The incident in question took place on 13.10.1978 and on the basis

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of that incident a departmental enquiry was held against him. The applicant was doing the duties as a Sweeper in that morning. The allegation of the department is that he was searched by the Assistant Security Officer Mr.Nabi when the applicant was going out of the campus from Gate No.1 and that at that time some ^{metallic} pieces were found tied around his stomach or waist with string or pieces of cloth. A panchanama was made in the presence of two panchas Mr.V.K. Rai and Mr.Kurien and the said metallic pieces were attached. In due course, a departmental enquiry was held. The charge was that applicant failed to maintain absolute integrity inasmuch as he attempted to commit theft of the said metallic pieces. Mr.Narayanswami was appointed as an Enquiry Officer. He conducted an enquiry and submitted his report that the said charge was proved. On 10.12.1979, the applicant was dismissed from service. His appeal was dismissed on 26.5.1980.

The contention of the applicant is that he found those metallic pieces while doing his job of sweeping and that he collected them with a view to deposit them in a drum which was meant for the purpose. However, before he did so, he was invited by a friend for a cup of tea in the canteen. He took tea and thereafter, Mr.Nabi approached him before the applicant could dump those metallic pieces in the appropriate drum. This case was rejected by the Enquiry Officer and his finding has been accepted by the disciplinary authority.

It was contended before us by Mr.Kurien that the evidence before the Enquiry Officer was grossly insufficient. He submitted that the second Pancha Mr.Kurien ought to have been examined in

the enquiry. He also commented that absence of a police complaint should be taken into account for an adverse inference against the Respondents. In our opinion, these submissions are without any substance.

During the course of the hearing Enquiry Papers were made available for perusal and after scrutiny they were returned to Respondents' Counsel Mr. Sethna. We have gone through the enquiry papers and found that the evidence of Mr. Nabi, the Assistant Security Officer and the two Panchas M/s. Rai and Kurien is cogent and consistent and it indicates that the metallic pieces were found tied around the waist of the applicant when he was searched in their presence. Thus this is not a case of absence of evidence. On the contrary there is trustworthy evidence which the Enquiry Officer has accepted.

Another comment that was made before us is that, a notice under sec. 80 was given prior to the filing of the suit and the Department had not given any reply. In our opinion, the absence of any reply would be insignificant, particularly, in a case where the concerned person had been ~~removed~~ ^{dismissed} from service after holding a departmental enquiry.

It was lastly urged that the quantum of punishment is too harsh. It was submitted that the applicant had a clean record for about 12 years and that dismissal from service would render him destitute. These aspects would not always be relevant. Everything would depend upon the facts of each case. Here the applicant was found attempting to commit theft of some metallic pieces. Mr. Sethna submitted that the Respondent Organization is a sensitive organization

and such nefarious activity on the part of an employee must be checked and a serious view taken. According to him dismissal from service would be the appropriate punishment.

We accept this submission of Mr. Sethna and find that there is no case for reduction of punishment. Before concluding we may also observe that, ordinarily this Tribunal will be slow to interfere with the quantum of punishment unless the punishment is grossly disproportionate and harsh. Much depends not only on the gravity of the mis-conduct but also on other attending and ancillary facts.

The result is that the application is dismissed. Parties to bear their own costs of the application.

B.C. Gadgil
(B.C. GADGIL)
VICE-CHAIRMAN.

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER (A)

pcg/-