

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CAMP : NAGPUR

Original Application No: 512/89

Transfer Application No:

DATE OF DECISION: 20.9.1994

Shri G.W.Rangari

Petitioner

Shri K.D.Deshpande

Advocate for the Petitioners

Versus

Dy. Director, Vigilance, Ordnance
Factory Board, Calcutta. Respondent

Shri R.P.Darda

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri K.D.Saha, Member (A)

1. To be referred to the Reporter or not? NO
2. Whether it needs to be circulated to other Benches of the Tribunal? NO


(K.D.SAHА)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

CAMP : NAGPUR

OA.NO. 512/89

Shri Gajanan W. Rangari

... Applicant

V/S.

Deputy Director, Vigilance,
Ordnance Factory Board,
Calcutta.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri K.D.Saha

Appearance

Shri K.D.Deshpande
Advocate
for the Applicant

Shri R.P.Darda
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 20.9.1994

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the order of his removal passed on 25.4.1988 as well as the order dismissing his appeal and seeks reinstatement with full back wages.

2. The applicant was appointed as a labourer with the Ordnance Factory, Chanda by the letter dated 11.10.1971 and was confirmed on 2.6.1972. He was promoted to the category of DBW 'B' Grade on 5.1.1976 and to the category of DBW 'A' Grade on 2.4.1980. The applicant was a union activist and was a Member of the Works Committee from 1977-1978, and elected Section Committee Member from 1980 to 1981. On the date of incident, November 17, 1983 he was on duty in Building No. 252 at 12.00 noon while some incident had taken place in Building No. 246 at 11.45 a.m.

The applicant came to be suspended on 22.11.1983 for his alleged involvement in the said incident on 17.11.1983 and served with a charge-sheet. On 12.1.1984 the charge against him was that he was found instigating a worker engaged on the production work, telling him not to operate machine and this amounted to gross-misconduct viz. an act unbecoming of a Government servant and lack of integrity in violation to Rule 3.1 (iii) & (i) of C.C.S.(Conduct) Rules, 1964. The enquiry began on 30th April 1984 and was completed ex-parte against the applicant resulting in the removal of the applicant by the order dated 21.3.1985. The applicant's appeal dated 7.5.1985 was dismissed by the Deputy Director/Vigilance, Ordnance Factory Board on 25.4.1988. According to the applicant, the enquiry was to be held by Shri S.P.Yadav, Works Manager/Technical Services who had already held an enquiry against him earlier and in that enquiry he has objected to Shri Yadav's appointment. The main grievance of the applicant is that he had not been served with the notice of the enquiry, that documents were not furnished to him, that though he asked for Hindi translation of the documents, that was not done, he was not allowed to make his defence by engaging a defence assistant and finally the enquiry was not initiated by an officer who was competent to initiate the proceedings and the order of removal was not passed by the officer authorised to do so.

3. All these contentions were denied by the respondents, according to whom the enquiry had been properly conducted, the applicant had deliberately ~~absent~~ from participating in the enquiry and resorted to making applications time and again during the conduct of the enquiry without appearing at the enquiry without any ^{plausible} reason. Whatever documents had

been relied upon had been supplied to the applicant and it was not obligatory on the respondents to supply Hindi translation of the documents. The ~~enquiry officer~~ ~~and the~~ ~~other~~ ~~official~~ official who initiated the enquiry and ultimately passed the order imposing the penalty were all competent to do so.

4. We perused the papers of enquiry. In the OA. itself, the applicant has admitted in para 6 (e) that he was presented with the charge-sheet concerning the incident dated 17.11.1983 on 12.1.1984. We have gone through the order-sheets. The first order-sheet dated 30.4.1984 shows that the applicant did not attend the enquiry and it could not be proceeded with and so it was adjourned to 16.5.1984 by the Enquiry Officer Shri Yadav. On 16.5.1984, 19.5.1984, 29.5.1984 and 12.6.1984 the applicant did not attend and on 12.6.1984 the enquiry officer mentioned in the order-sheet that the enquiry proceedings were conducted ex-parte by examining D.G.Paranjape and G.V.Koli prosecuting witnesses and on 21.6.1984 S.M.Biswas was examined by the Presenting Officer. On 27.7.1984 prosecuting ~~officer~~ ^{or witness} E.S.Mahajan was examined. On the basis of this examination and ~~the~~ ^{the} articles of charge which resulted in his removal by the disciplinary authority, we ^{are} not impressed by the contention that the applicant had no notice of the charge-sheet.

According to the applicant, he had been sending applications to the enquiry officer for further dates and details have been given in clause (m) of para 6 of the application to which the respondents have replied in para 11 of their reply. We looked into every application as well as the correspondence between the applicant and the enquiry officer and it is difficult for us to accept the submission on behalf of the applicant that the applicant's reasonable

request for granting adjournment was not heeded by the enquiry officer. It appears that the whole conduct of the applicant was such as to make progress of the enquiry impossible and we find that there was justification for the enquiry officer to proceed ex-parte against the applicant finding that no purpose will be served by granting the adjournments.

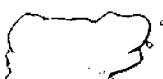
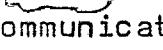
5. The applicant's contention was that copies of all the documents had not been furnished to him despite his request. What the applicant had been asking for was Hindi translation of the documents. The respondents have referred to the position in this respect in their written statement and it is apparent that it is not as a rule that Hindi translation of the documents ought to be supplied in every case. With regard to the disciplinary proceedings in respect of Class-III and Class IV employees, it was decided that it may not always be possible to have the proceedings in Hindi and that the request for conducting the proceedings in Hindi may not be entertained, unless it was pointed out that there was a mandatory requirement to furnish Hindi translation of it. The action to furnish Hindi translation would not help the applicant. We, therefore, see no merit in this submission of the applicant.

6. With regard to the contention that the enquiry officer was biased against the applicant, a reference is found in Para 6 of the application in which it was stated that during the earlier enquiry when Shri S.P.Yadav had been appointed as enquiry officer the applicant had objected to his appointment. Nothing more has been stated. It is not the contention in the OA. that the applicant had raised a similar objection in the present enquiry and that objection had not been entertained and decided. In view of this, we see no substance in the allegation of bias against the enquiry officer against the applicant.

7. The learned counsel for the applicant urged that he had asked for leave to appoint one G.F. Deogade on 4.8.1984 as well as for Hindi translations of all the documents. It must be noted that the enquiry was completed on 6.8.1984. By the letter dated 30.7.1984 the applicant had written to the enquiry officer stating that the letter about enquiry was received by him at 3.00 p.m. on 28.7.1984, i.e. the day after the scheduled date and so he could not attend the enquiry and that he should be given the Hindi translation of the documents. Since the enquiry had already been completed on 6.8.1984, the belated request of the applicant could not have been considered. On 4.8.1984 the applicant had sent an application in English asking for Hindi translation of the documents. As we have already pointed out, by that time the witnesses had already been examined in the absence of the applicant. We wonder why the applicant could not have appeared before the enquiry officer instead of writing these letters ~~as sought by~~ ^{and made} the request ~~in person~~ ^{which he}. The applicant's ~~very~~ conduct in keeping away from the enquiry will show that he had no desire to participate in the enquiry and the various applications he made were only a device to see that the enquiry against him does not proceed. We, therefore, see no justification for the plea that he had not been given an opportunity to defend himself. It was his own conduct which made it impossible for him to make out his defence at the enquiry and the applicant cannot be allowed now to contend that he had not been given a fair opportunity to defend himself.

8. Shri Deshpande, learned counsel for the applicant urged that the enquiry was initiated by the Deputy General Manager Shri G.Krishnamurthy. The Memorandum at Exhibit 'A' to the application shows that the enquiry was initiated by

16

Shri Krishnamurthy, Deputy General Manager/Admin. for and on behalf of General Manager, OFCH. The objection regarding the power of the several authorities was not raised in the original petition but came to be raised by an amendment to the petition. It is obvious from Exhibit 'A' itself that the initiation was not  by the Deputy General Manager but ^{only}  it was the communication  was sent under the signature of Deputy General Manager.  The order of removal dated 21.3.1985 was passed by S.S.Natarajan General Manager. The contention of Shri Deshpande was that since the applicant was appointed by the D.G.O.F. as a Labourer, the initiation of the disciplinary proceedings and the ultimate removal either by D.G.M. or G.M. is not competent. The order of D.G.M. has not been produced by the applicant. The respondents produced the order dated 2.3.1972 issued by the Ministry of Defence, Government of India on delegation of powers under the proviso to Rule 9(1) of the CCS(CCA) Rules, 1965 to General Managers of Ordnance Factories to make appointments to Class III and Class IV Non-Industrial and Industrial posts and it reads :-

" In exercise of the powers conferred upon me by the proviso of Rule (1) of Rule 9 of the CCS(CC&A) Rules, 1965, read in conjunction with the Schedule thereto published in the Official Gazette as S.R.O.No. 3521 dated 25.9.71 and in supersession of previous orders issued in this regard, I hereby delegate to the General Managers/Officer-in-Charge/Officer-in Temp.charge of Ordnance Factories the power to make appointments to Class III and Class IV employees borne on both Non-Industrial and Industrial Estts. excepting those specified in the Annexure to this letter."

The Annexure does not include the category to which the applicant belonged. The contention of the applicant was that since the applicant was appointed in 1971 by the D.G.O.F., the Notification dated 2.3.1972 would not clothe the G.M. with the power of initiating the disciplinary proceedings and passing the order of removal. The respondents also

referred to the Notification dated 26.11.1986 by which the Central Civil Services (Classification, Control and Appeal) Rules were amended by the Amendment Rules of 1986. Item (xi) (b) shows that in respect of All Grade C posts other than (a) above and Grade D posts in Ordnance Factories, Ordnance Equipment Factories the appointing authority is the General Manager and the Authority competent to impose penalties and penalties which it may impose (with reference to item number in rule 11) would be the General Manager who would be competent to impose all the penalties. With regard to the contention on behalf of the applicant was that the rule which came to be amended in 1986 designating the General Manager as the appointing authority as well as disciplinary authority competent to impose the penalty, would not have retrospective effect.

9. Reliance was placed on several decisions of the Tribunal and High Courts which would have supported the contention of Shri Deshpande. However, the controversy is now set at rest in Scientific Adviser to the Ministry of Defence & Ors? vs. S. Daniel & Ors. (1991) 15 ATC 799 dealing with the contention which has now been raised before us. It was observed in Para 17 as follows :-

" It has been brought to our notice that notifications have since been issued (for example on August 29, 1979 in the case of the DERL and January 2, 1987 in the case of ordnance factories) by the President under Rule 12 empowering certain authorities to exercise disciplinary powers. We need hardly say that any disciplinary proceedings initiated by such authorities from the date when such notifications came into effect will be perfectly valid."

In view of these observations of the Supreme Court, both under the communication dated 2.3.1972 as well as the Notification dated 26.11.1986 the General Manager had the power of initiating proceedings against the applicant and also imposing any penalty that was

covered by the rules. Since these were the valid instructions on the powers vested in him, no exception can be taken either to the initiation of the proceedings or to the imposing of the penalty by the General Manager.

10. Shri Deshpande urged that the witnesses have not signed either on the depositions or order-sheet though the rules required this. We do not think that the rules in this regard can be regarded as mandatory, but only as directory. Any non-compliance thereof would not nullify the enquiry.

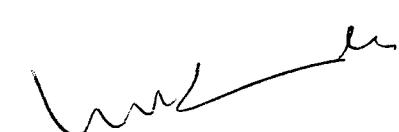
11. Lastly, on merits it was urged that there was no evidence on the basis of which the applicant could have been found to be guilty. Though it would not normally be open to us under Article 226 of the Constitution to go into evidence, we went into the entire evidence with the assistance of the learned counsel. We find that there were positive efforts by the applicant asking the workers to desist from work. The four witnesses examined by the prosecution supported the charge that was framed against the applicant. Shri Deshpande urged that it would have been impossible for the applicant to speak while he was away from the place where the incident occurred, but that would be a question of appreciation of evidence. It is not for the Tribunal to reassess the evidence for finding whether the material before the enquiry officer or the disciplinary authority was sufficient or adequate. If there was some evidence which could have been accepted, unless it was bordering on it being of the category of no evidence at all, our interference would be barred.

12. In the result, we see no merit in the application, it is dismissed.


K.D. SAHA)

mrj.

MEMBER (A)


(M.S. DESHPANDE)

VICE CHAIRMAN