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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 814/89
~~Transfer Application No.~~

Date of Decision : 7.4.1995

Shri N.D. Dhabale — Petitioner

Shri G.K. Masand — Advocate for the Petitioners

Versus

Union of India & Others — Respondents

Shri M.I. Sethna — Advocate for the respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

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

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal?

ssp.

(B.S. Hegde)
Member (J)

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO. 814/89

Shri N.D. Dhabale ... ... Applicant

v/s

Union of India & Ors. ... ... Respondents

CORAM

1) Hon'ble Shri B.S. Hegde, Member (J)

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

APPEARANCE

1) Shri G.K. Masand, counsel for the Applicant

2) Shri M.I. Sethna, counsel for the Respondents

JUDGEMENT DATED: 7.4.1995

(Per: Hon'ble Shri B.S. Hegde, Member (J))

1. The Applicant in this O.A. is challenging the impugned orders dated 4-4-1988 and 23-5-1988 respectively dismissing him from service.

2. The undisputed facts are that the Applicant was working as a Cashier during the period 1984-1986; the applicant was found to have involved in certain cases of fraud in respect of LTC advances approximately involving Rs. 89,000/-; about 23 LTC advance applications from outstation officials were received in the office of DET., Amravati. Though these applications were fictitious, these were processed by one Shri S.N. Deshmukh, dealing assistant and checked by one Shri A.L. Sawarkar, Section Supervisor officiating as Junior Accounts Officer in the same office. The dealing assistant did not prepare money order forms for sending the amounts to outstation

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as is the normal practice. Instead, after obtaining the sanction from A.O., he used to hand over the sanctions to the Cashier, the Applicant, with the instructions that the amounts and the sanctioned memos should be handed over to Shri Sawarkar who would arrange payments to the outstation officials etc, which is against the Rules. Accordingly, charge sheet was issued against the Applicant on 30-12-1986 mentioning 8 articles of charges for which the Applicant has given his reply on 9-1-1987. Pursuant to the aforesaid charge sheet, the Enquiry Officer held the enquiry on 13-7-1987 and the Petitioner was permitted to have a Defence Assistant of his choice and the enquiry lasted for 15 days. During the disciplinary proceedings, he was also permitted to cross-examine the witnesses if he wanted to do so. The Enquiry Officer submitted his report on 6-10-1987 stating that all the charges have been proved except Article VII.

3. The Disciplinary Authority vide his letter dated 4-4-1986 stated that he has no hesitation to record that all the 8 (eight) charges framed against the Applicant are proved beyond doubt; the offence committed by the charged official, the Applicant are very grave and deserve very stringent, severe and deterrent punishment. In his order, the Disciplinary Authority has dealt with various contentions of the Applicant and also the statement of Shri Sawarkar saying that the LTC advance had been distributed between the dealing assistant Shri Deshmukh, Junior Accounts Officer himself and the Cashier in the ratio of 50:40:10 percent. Accordingly, he observed that it is really beyond

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anyone's comprehension that such huge payments meant for outstation staff were actually being disbursed through Shri Sawarkar without charged official's direct involvement and benefit in the form of pecuniary gain to himself. On the basis of the documentary evidence it has been clearly established that there was a premeditated and planned conspiracy between the D.A., JAO and the Cashier and that they were hands in gloves to systematically and calculatedly defraud the Government. It is unbelievable and strange that an official who is working as Cashier for more than 15 years (as stated by him) could not trace such a huge fraud taking place in his own section. By handing over the amount of LTC advances to Shri Sawarkar unauthorisedly instead of reporting it to the higher authorities, he has wilfully abetted the fraud violating sub-para of Rule 103 of E.H.B. Volume-I etc. and in the result the Applicant was dismissed from service with immediate effect from the date of issue of these orders etc. Against this, the Applicant preferred an appeal to the Appellate Authority, the Chief General Manager, Maharashtra Circle. He gave a personal hearing to the Applicant on 6-12-1988 and rejected the appeal on 22-2-1989 confirming the order of dismissal passed by the Disciplinary Authority.

4. We have heard the arguments of the learned counsel for the Applicant as well as the Respondents and perused the pleadings. The only point that arises for consideration is whether there is any procedural irregularity in the enquiry or any injustice has been done to the Applicant on account of non-adherence to

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the procedure or examination of witnesses etc. On perusal of the record, we find that no injustice has been done to the Applicant as far as either procedural or substantive aspects of enquiry are concerned. He was given fullest opportunity of defending himself in the manner his Defence Assistant thought fit. Even at the appeal stage, he was accorded personal hearing and he was permitted to make all submissions that he desired. Therefore, it will be seen that the challenge to the findings and order for purported lacuna in the disciplinary proceedings calling upon the Court to re-appraise the evidence decided as the case may be is not warranted.

5. The learned counsel for the Applicant Shri Masand has raised various grounds in the O.A. such as, that the charges levelled against the Applicant is vague and the charge sheet is based on pre-determination of guilt; the Enquiry Officer had held the preliminary enquiry and final enquiry on the same day without giving due opportunity to the Applicant thereby, violating the principles of natural justice which is the essence of every quasi judicial enquiry; the Enquiry Officer acted as a Judge as well as Prosecutor which is against the rules and the whole exercise of the enquiry is a farce as the Enquiry Officer had identified himself as Disciplinary Authority and also the disciplinary proceedings were initiated by an authority lower in rank than the Appointing Authority and the findings of the Enquiry Officer is based on surmises and conjunctions etc. All the contentions have been rebutted and denied by the Respondents. The learned counsel for the Respondents submitted that there is no procedural infirmity in the enquiry and the Applicant was given sufficient opportunity to defend himself and in fact during the course of inquiry, admitted

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the charges; therefore, they contend that the Tribunal exercising the jurisdiction under Art. 226 of the Constitution do not sit and try the case as an appellate body and thus the application is misconceived and deserves to be dismissed in limini. We have gone through the evidence during enquiry and other records placed on file and we are satisfied that various contensions raised in the O.A. cannot be sustained as there is no merit and is not based on record. The same are liable to be rejected. Having found out no infirmity or arbitrariness in the conduct of the disciplinary proceedings we thought fit not to go into the details of the case.

5. The learned counsel for the Applicant during the course of the hearing draws our attention to Rule 80 of the P & T Manual which reads as follows :-

> "Prosecution
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> 80. Prosecution should be the general rule in all those cases which are found fit to be sent to the court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental action should not precede prosecution. In other cases, involving less serious offences or involving malpractices of a departmental nature, only departmental action should be taken and the question of prosecution should generally not arise."

Therefore, he submits, that it is not open to the Respondents to initiate disciplinary proceedings against the Applicant. On the other hand, they should have prosecuted him under the Criminal law. The Respondents in their reply had furnished Annexure 'A' issued on

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1-11-1983 by D.G.P. & T. New Delhi which clearly envisages that this aspect has been dealt with by the Department in consultation with the nodal Ministries of the Government of India and it was held that criminal trial is different from disciplinary proceedings and there should normally be no bar to continue disciplinary proceedings while a criminal trial is pending in a Court of Law unless these are specially stayed by an order of the competent Court of Law. Since there is no direction of the Court not to go ahead with the disciplinary proceedings keeping in view the guideline given in the aforesaid O.M., it is clear that there is no bar in the disciplinary proceedings being conducted simultaneous with the criminal proceedings. In the instant case, the Respondents have taken a conscious decision to initiate the disciplinary proceedings and to complete the same within the stipulated period. Therefore, the contention of the Applicant has no merit and the same is not sustainable.

6. Considering all aspects of the case, the learned counsel for the Applicant was gracious enough to submit that considering the facts and circumstances of the case, the Tribunal may consider whether the punishment awarded to the Applicant is commensurate with the guilt and on this background, the Tribunal may remand back to the competent authority to re-consider the sentence. As against this, the learned counsel for the Respondents draws our attention to the decision of the Apex Court in U.O.I. v/s Parma Nanda AIR 1989 SC 1185 which reads as under -

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> "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislation or rules made under the proviso of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

Therefore, he submits that in view of the ratio laid down by the Apex Court, it is not open to the Tribunal to consider any appeal against punishment awarded by the Disciplinary Authority to enhance or substitute the sentence as the case may be. The aforesaid ratio of the Supreme Court is further reiterated by the same Court in Govt. of Tamilnadu v/s A. Rajapandian (1995) 29 ATC 89 (SC) wherein it was held that reappreciation of evidence by the Tribunal is not permissible. It has been held by the Apex Court that by a string of authorities the Administrative Tribunal cannot act as a Court of

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appeal over a decision based on the findings of Inquiry Authority in disciplinary proceedings. Where the Tribunal had not found any fault with the proceedings conducted by the Inquiry Authority, it had no jurisdiction to reappreciate the evidence and set aside the order of dismissal on the ground of insufficient evidence to prove the charges etc.

7. In the light of the above, since the Applicant had admitted the guilt during the course of the inquiry, we are of the opinion, that it is not for us to reappreciate the evidence and substitute the findings and thus the order passed by the competent authority is in accordance with the rules. In the result, we see no merit in the O.A. and the O.A. is accordingly dismissed. However, considering the request of the learned counsel for the Applicant and in order to render substantial justice to the Applicant, we hereby give liberty to the Applicant to make a suitable mercy petition to the President of India seeking reduction in penalty and if the petition is submitted within a period of two months from the receipt of this order and on receipt of the same, the Competent Authority may pass appropriate order considering the contentions made in the mercy petition within a period of three months thereafter. The O.A. is disposed of in the light of the above, but no order as to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

B.S. Hegde
(B.S. Hegde)
Member (J)

ssp.