

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

**NEW BOMBAY BENCH
CAMP AT PANAJI**

O.A. No. 643/89
~~XXXXXX~~

198

DATE OF DECISION 12.9.90

Shri M.M.Abraham Petitioner

Shri H.K. Maingi Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri G.U.Bhobe Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

b

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
CAMP AT PANAJI

Original Application No.643/89

Shri M.M. Abraham ... Applicant

vs.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A), Shri M.Y.Priolkar
Hon'ble Member (J), Shri N. Dharmadan

Appearances:

Shri H.K.Maingi, Advocate,
for the applicant and
Shri G.U.Bhobe, Advocate,
for the respondents.

ORAL JUDGEMENT

Dated : 12 Sept. 1990

(Per. Shri N.Dharmadan, Member (J))

A dismissed Preventive Officer is before us. The dismissal was in pursuance of a disciplinary enquiry conducted against the applicant along with another officer of the Customs Department by name B. Ram.

2. The gist of the charges against the applicant is that on 20.12.71 he obtained a sum of Rs.500/- as bribe from Mrs. D'Souza and passed it on to a Preventive Inspector Shri B. Ram, against whom also disciplinary ~~enquiry~~ action was taken. After receiving this amount in this manner he allowed the clearance of the baggage of Mr. D'Souza and his family and thereby he has failed to show integrity and contravened Rule 3 of the CCS (Conduct) Rules, 1964.

3. As indicated above the enquiry was conducted against both these officers by appointing a common enquiry officer. As per Annexure-2 the Enquiry Officer granted permission to the applicant for engaging Shri A.B.Gadgil, Senior Assistant, Secretary, of Marmugao Port Trust as his defence

assistant. The enquiry was posted in June 1974. During the enquiry the Enquiry Officer made the observation that since Shri Gadgil, being an officer not in the Government service he will not be allowed to appear as defence assistant for assisting the applicant in the enquiry. There was no defence assistant for the applicant in the enquiry. Accordingly, the applicant made a request for adjourning the case as per his letter, Annexure-3, dated 4.6.74. In that letter he has stated that there is no sufficient time for him to get another assisting officer immediately. Notwithstanding the request the enquiry was proceeded. The applicant could not get the assistance of an experienced person for defending his case. Ultimately, after the completion of the enquiry, the Enquiry Officer submitted Annexure-5 report finding the applicant guilty of the charges. This was accepted by the disciplinary authority and he has imposed the punishment of dismissal of the applicant as per Annexure-9 order dated 15.9.76. The applicant filed Annexure-10 appeal raising the question of violation of principle of natural justice and that the available evidence in this case will not be sufficient to prove the charge against the applicant. But the Appellate Authority by order dated 22.10.86, after about a period of ten years, rejected the appeal without considering the contentions of the applicant. The applicant again filed a revision petition, Annexure-12, which was also dismissed by passing a similar order, Annexure-I, dated 15.5.1989.

4. The applicant is challenging in this application orders of the disciplinary authority, the appellate authority and the revisional authority mainly on two grounds:

- (i) the enquiry is violative of the principle of natural justice due to the refusal to give the applicant a defence assistant of his choice

merely on a technical ground.

(ii) there is no evidence in this case to find the applicant guilty. His involvement in the transaction is very much limited. If at all anybody has committed any offence of accepting bribe for releasing the baggage it is Shri B. Ram, who was really in charge of the release of the baggage under question.

5. The respondents have filed a detailed reply denying all the allegations raised in the application.

6. We have heard the counsel on both sides and perused the records. The applicant while functioning as a Preventive Officer was also on duty on the date of the incident alongwith Shri B. Ram, Preventive Inspector. But he had denied having actually involved in the release of baggage of Shri D'Souza along with Shri B. Ram by accepting bribe as alleged in the charge. However, he was also charged along with Shri B. Ram and the enquiry was conducted jointly. In the enquiry Shri A.B.Gadgil was appointed as Defence Assistant for both Shri B. Ram and the applicant. After the enquiry both of them were punished. But Shri B.Ram approached the High Court of Bombay and obtained an order which is produced as Annexure-13. The order shows that the punishment imposed against Shri B. Ram has been set aside and he was directed to be reinstated with all back wages. The learned counsel for the respondents submitted that after the order of the High Court the Government implemented the order by reinstating the officer with all back wages. Thereafter they conducted a fresh enquiry in which Shri B. Ram has again ^{been} found to be guilty and the matter is pending in appeal. The applicant has filed appeal against the punishment order and sent repeated reminders. But it was disposed of by passing a laconic order after a lapse of ~~about~~

about ten years. There is no explanation for this long delay. Had the applicant approached the High Court along with Shri B. Ram he also would have obtained the same relief. When we have asked the learned counsel for the respondents as to why the same case course was not adopted in the case of the applicant the answer is that the applicant's matter has been delayed and because of the pendency of the matter before the Tribunal nothing could be done.

7. On going through the records we are of the view that because of the absence of a defence assistant the applicant was not able to face the enquiry in a proper manner and defend his case. There was ~~no~~ defence assistant for defending his case. It is an admitted fact that though Shri A.B.Gadgil was appointed as his defence assistant, he never appeared and later the enquiry authority has taken the view that he cannot appear because of the fact that he is not a Government servant. The enquiry authority agreed the appointment of Shri Gadgil as per Annexure-2 without raising any such objection. He ought not have taken a different stand in the course of the enquiry & denied the assistance of a competent officer as defence assistant to the applicant. He also did not care to appoint another officer in the place of Shri Gadgil. It is also further admitted that the enquiry was conducted without the appointment of any other defence assistant to assist the applicant. So the applicant has raised an argument that he was not able to cross examine the witnesses effectively and that he was handicapped. His request for adjournment also was not granted. He has brought to our notice various portions in the enquiry report to highlight that there is no satisfactory or convincing evidence to sustain the charge levelled against him.

8. We have gone through the orders passed by the disciplinary authority in the light of the available evidence. The disciplinary authority has not dealt with the question of violation of principle of natural justice on account of the refusal of the defence assistant to the applicant. Same infirmity is seen in the two other orders challenged by the applicant. This is a very important aspect which ought to have been considered by the authorities. The further question raised by the applicant is based in the evidence that this is a case of no evidence and the enquiry report is perverse. This contention has also not been fairly dealt with either in the order of the disciplinary authority or in the orders passed by the appellate authority and the revisional authority.

9. He has also brought to our notice some of the decisions of the Supreme Court and the Central Administrative Tribunals to support his argument that when there is a violation of principle of natural justice on account of the failure of the enquiry authority to provide a defence assistant of his choice the whole enquiry will be vitiated and the same should be set aside.

10. It is unnecessary for us to go through all these decisions. It is a settled proposition of law that when an enquiry has been conducted by the enquiry authority in an unfair manner without even giving delinquent employee the facility of a defence assistant to face a charge resulting in prejudice to him there is a miscarriage of justice and the enquiry cannot be sustained. The enquiry itself is violative of the principles of natural justice. The same infirmity appears to have affected the enquiry

in the applicant's case. Even though the enquiry authority has appointed a defence assistant his services were refused later on a technical and arbitrary ground that he is not a Government employee. At the time of granting permission no such objection was there. But even if it was found to be objectionable later the enquiry authority ought to have stopped the enquiry at that point of time and called upon the applicant to suggest another name and ^{he} should have been given sufficient time for the same. Instead in the case the very application filed by the applicant for time to find out and engage a defence assistant of his choice was rejected and enquiry was continued. It resulted in prejudice to the applicant and there is miscarriage of justice. The learned counsel for the applicant endeavored to submit before us that the view taken by the Enquiry Officer that the defence assistant is not a Government servant is also not correct. But in the view that we are taking in this case it is not necessary for us to go into that question.

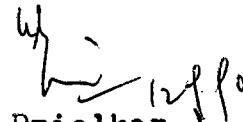
11. Having regards to the facts and circumstances of the case we are fully satisfied that this is a case where the entire enquiry process conducted by the disciplinary authority is vitiated on account of the violation of principle of natural justice and the whole proceedings are liable to be set aside. Accordingly, in the interest of justice, we quash the impugned orders passed by the disciplinary authority, appellate authority and the revisional authority and direct the respondents to reinstate the applicant in service. Having regards to the facts and circumstances of the case we are of the view that the reinstatement of applicant shall be made with all consequential benefits but he shall be paid only 25% of

the monetary benefits which he would have earned had he been in service from the date of dismissal from service. So the respondents may reinstate the applicant with all service benefits but only with 25% of the total salary and other allowances as indicated above.

12. In the result the applicant thus is allowed to the extent indicated above. We make it clear that the respondents are at liberty, if they so desire, to conduct a fresh enquiry against the applicant in accordance with law. There will be no order as to costs.


(N. Dharmadan) 12.9.90.

Member (J)


(M.Y. Priolkar) 12/11/90

Member (A)

Compliance of Tribunal's
Judgment dt. 12.9.90,
reel from respondents
vide letter dt. 21/11/90.

By
21/11/90.