

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A. NO: 158/89 199
T.A. NO:

DATE OF DECISION 11.11.91

Shri V. Thiraviam

Petitioner

Shri S. Paul Sundarrajan

Advocate for the Petitioners

Versus

Union of India and 3 others

Respondent

Shri R.K. Shetty.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. D.K. AGRAWAL, MEMBER (J)

The Hon'ble Mr. M.M. SINGH, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

D.K. Agrawal
(D.K. AGRAWAL)
MEMBER(J)

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(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 158/89

Shri V. Thiraviam

... Applicant.

V/s.

Union of India and three others.

.... Respondents.

CORAM: Hon'ble Shri D.K. Agrawal, Member (J)

Hon'ble Shri M.M. Singh, Member (A)

Appearance:

Shri S. Paul Sundarrajan for
the applicant.

Shri R.K. Shetty for the
respondents.

JUDGEMENT

Dated: 11.11.91

[Shri D.K. Agrawal, Member (J)]

This application is directed against the punishment order dated 15.12.86 passed by the disciplinary authority as modified vide appellate authority order dated 13.10.88 reducing the penalty from removal from service to compulsory retirement. The facts are that the applicant employed as Durwan in Ammunition Factory, Kirkee, Pune was charge sheeted for misconduct committed on 5.6.86 in as much as he was found involved in the theft of soil belonging to the Factory. The Enquiry Officer held that the applicant was not guilty. The disciplinary authority i.e. General Manager of Ammunition Factory, Kirkee, Pune however vide an order dated 15.12.86 disagreed with the finding of Enquiry officer and passed an order of removal from service. The applicant thereafter filed OA No. 593/89 which was decided on 7.10.87 with a direction to the Appellate Authority to decide the application with speaking order after giving personnel hearing to the applicant. After having considered the representation of the applicant as well as oral submissions, the Appellate Authority by an order dated 13.10.88 modified the order of penalty as to one of compulsory retirement with effect from 15.12.86. The

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order of the Appellate authority clearly mentioned that the applicant will be entitled to all the retirement benefits.

We have given careful consideration to the arguments raised by the learned counsel of the parties. We have also perused the statement rendered by the witnesses before the enquiry officer namely, Shri E.B. M Malle, B.P. Nirkat, and Shri S.S. Damodare who happened to know the applicant intimately. They have given eye witness account as to how the applicant was involved in the theft of soil. In the circumstance it cannot be held that the instant case was one of no evidence or material to hold the applicant guilty of misconduct. This being the position the Tribunal cannot enter into appraisal or appreciation of evidence. The learned counsel for the applicant urged that no reason has been disclosed as to why the applicant was not apprehended on the spot. The department, in our opinion cannot be said to have committed serious irregularity either in not apprehending the applicant or not keeping a record of the Truck number. It depends on the presence of mind of the witnesses present at the spot how they react the time of incident. We cannot draw an adverse inference only because either the applicant was not apprehended or the Truck number was not recorded. It is also an established rule that the Tribunal or the High Court is not required to re assess the evidence recorded before the Enquiry Officer. It is also an established rule that once misconduct of the delinquent employee is proved the competent authority has to determine the quantum of punishment. Thus perusal of the pleadings or the record of enquiry does not call for our interference. In our opinion the appellate authority has taken quite a lenient view in modifying the punishment of removal of service to one that of Compulsory retirement and also permitting the applicant

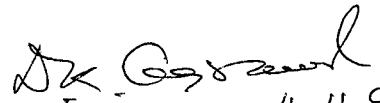
Dr. Aggarwal

to enjoy the terminal benefits. We therefore find no merit in the case.

In the result the application is dismissed with no order as to cost.



(M.M. SINGH)
MEMBER(A)



(D.K. AGRAWAL)
MEMBER(J)

11.11.91