(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A. No. 349/89 1990
T.A. No.

DATE OF DECISION : 10-08-1990

Shri R.R.Avasthi ---------- Petitioner

Shri M.R.Borkar ---------- Advocate for the Petitioners

V/s.

General Manger, Ordnance Factory, Bhandara, and another. ---------- Respondent

---------- Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I.K.Rasgotra

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporters or not? Yes
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? ✗

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :NEW BOMBAY BENCH
NAGPUR.

O.A.349/89.

Shri R.R.Avasthi ... Applicant.
-versus-
General Manager,
Ordnance Factory, Bhandara
and another ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Sri I.K.Rasgotra, Member(A).

For the applicant- Mr M.R.Borkar, Advocate.

For the respondents- Mr Ramesh Darda, Advocate.

Date of hearing - 9.8.90.

Date of Order - 10.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant, a Wireman, was proceeded against by the issue of a Memorandum of Charges dated 25.5.1985. The imputation was gross misconduct in suppression of material information of his involvement in criminal proceedings. The applicant accepted the charges and pleaded guilty. Accordingly, the Inquiry Officer reported that the charge is established, the Disciplinary Authority by his order dated 25.2.1986 imposed upon the applicant the penalty of removal from service. The appeal preferred by the applicant was rejected by the appellate authority by his order dated 30.1.1987. The applicant filed OA 99/87 before this Tribunal for quashing the order imposing the penalty. By the order dated 21.6.1988, a Bench of this Tribunal setaside the appellate order and remanded the matter to the appellate authority for passing a speaking order after affording the applicant an opportunity of being heard. Accordingly, after hearing the applicant, the appellate authority passed the order dated 23.2.1989 dismissing the appeal.

2. The applicant prays for quashing the order imposing the penalty of removal from service and for reinstatement in

service. It is urged that the case of the applicant that he was never involved in any criminal proceedings has not been appreciated by the Disciplinary Authority or the Appellate Authority. There is also the plea that the penalty that has been imposed is disproportionate to the gravity of the charge.

3. The respondents have filed reply where it is stated that on receipt of the information that the applicant was involved in a criminal proceedings, a show cause notice was issued to the applicant to clarify the allegation levelled against him. It is contended that the order imposing the penalty does not require interference as the appellate authority has passed the order as directed by the Tribunal after affording the applicant an opportunity of being heard. It is stated that since the gravity of the offence committed by the applicant was viewed seriously and, accordingly, the proceedings were initiated.

4. Two points were urged by the counsel of the applicant. Firstly it was stated that as the applicant had since been acquitted in the criminal proceedings, the imposition of the penalty has to be vacated. There is no merit in this plea, as the proceedings initiated against the applicant was for failure on his part to inform his official superior about his arrest in connection with the criminal proceedings. As such, it is not dependent upon the result of the proceedings.

5. The second point that was pressed by the counsel of the applicant was that the imposition of the penalty of removal from service was too harsh and not justified in the nature of the case. It was urged that the Office Memorandum dated 25.2.1955 issued by the Ministry of Home

Affairs which provides that the ~~conduct~~ failure of a Government servant ~~who fails to~~ inform his official superior about his arrest will be regarded as suppression of material information and will render him liable to disciplinary action on that ground alone, further enables the authorities to take action against him on the outcome of the police case, and, as such, the imposition of penalty of removal from service for the mere failure to furnish the information is per se unsustainable. The argument is really impressive. It is always open to the competent authority to impose a penalty on a Government servant who has been convicted on a criminal charge on the basis of the conduct that led to his conviction. Failure on the part of the Government servant to inform the official superior about his arrest in connection with the criminal proceedings forms a specific misconduct rendering him liable for disciplinary action on that ground alone. As such, disciplinary proceedings can well be initiated for the said misconduct, but the imposition of the extreme penalty of removal from service for that misconduct, in our view, is harsh, if not, arbitrary, and whimsical. However, as it has been held in the decision of the Supreme Court in Union of India vs. Parma Nanda, (1989 (10) ATC 30) that 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, and that the quantum of punishment is a matter exclusively within the jurisdiction of the competent authority, we cannot interfere in the matter.

6. In the result, the application is dismissed.

10/8/90

(I.K.Rasgotra)
Member(A)

10.8.1990

(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
9.8.90.