

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 589 /1996

Date of Decision: 14 Feb. 1997

Chandras C. Panchal

Petitioner/s

Dr. K.K.Khanna

Advocate for the  
Petitioner/s

V/s.

U.O.I. & ors.

Respondent/s

Mr. V S Masurkar

Advocate for the  
Respondent/s

CORAM:

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

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?

  
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING No.6  
PRESCOT ROAD, MUMBAI 400001

O.A.No. 589 OF 1996

DATED : 14<sup>th</sup> FEBRUARY, 1997

CORAM : Hon. Shri B S Hegde, Member(J)  
Hon. Shri M. R Kolhatkar, Member(A)

Mr. Chandrahas C. Panchal,  
215 Jodia Mansion,  
Ferguson Road,  
Lower Parel,  
Mumbai 400013  
(By Senior Advocate  
Dr.K.K.Khanna with  
Adv. Mrs. Megha Bhawe

..Applicant

V/s.

Union of India  
through Commander,  
Naval Dockyard  
Centre No.27,  
Lion Gate,  
shahid Bhagat Singh Marg,  
Mumbai 400023  
(By. Mr. V S Masurkar,  
Central Govt. Standing Counsel)

..Respondents

ORDER

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[Per: B S Hegde, Member(A)]

1. Heard Dr.Khanna Ld. Counsel for the applicant. Mr. V S Masurkar, Ld. Counsel for the respondents. In this O.A. the applicant is praying for quashing of the Disciplinary Authorities order dated 17.3.1993, Appellate Authorities order dated 23.11.1994 and for his reinstatement in service from 17.3.1993 condoning break in service with back wages etc.

2. The applicant is a handicapped person and is appointed on compassionate grounds as a Turner in center 27 Section (CES), Naval Dockyard and was given light duty. His grievance is that his wages were not paid. Accordingly he approached this Tribunal by filing OA

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No.851/92 which was disposed of by the Tribunal with a direction to the Respondents to complete the enquiry within three months. According to the direction of the Tribunal, the respondents instituted an inquiry against the applicant and thereafter he was awarded the penalty of removal from service vide order dated 17.3.1993. Thereafter he submitted a representation dated 8.5.93 to Superintendent, Naval Dockyard, Mumbai, who was not his Appellate Authority. Subsequently he filed another O.A.No.681/94 praying that he should be re-instated with full back wages. O.A.No.681/94 was also disposed of by the Tribunal on 1.8.94 with the direction that the representation of the applicant dated 8.5.93 be treated as appeal under C.C.S.(C.C.A.) Rules, 1965 and be decided within three months. The said appeal was heard by the Appellate Authority and was rejected vide order dated 23.11.94. Once again the applicant filed another O.A.No.361/95 praying for quashing the removal order and reinstate him with full back wages. O.A.No.361/95 was dismissed by the Tribunal vide its order dated 29.9.95.

3. The charge against the applicant was that he used to punch his muster card at the gate but physically remains absent from his place of actual duty place, which is at C-No.27 in the Naval Dockyard, Mumbai. This fact was regularly reported to the Timekeeping Office and he was marked absent since he was not performing his given duties. Accordingly he was chargesheeted under Rule 16 of the CCS(CCA) Rules, 1965 for his absence from duty

*ASK*

from 6.1.92 to 10.1.92. The applicant refused to acknowledge the chargesheet and also did not submit any statement of defence. Consequently he was awarded the penalty of withholding of increment for a period of 13 months without cumulative effect. The applicant also refused to accept the said punishment order. Thereafter the applicant was issued a Major Charge Sheet which he refused to accept and filed an application O.A.No.851/92 in the Tribunal which was disposed of on 20.11.92 with the direction to complete the proceedings within a period of three months. The applicant himself defended his case and though sufficient opportunity was given to the applicant to defend his case. The inquiry proceedings were completed as per Rules and inquiry report also was given to the applicant before imposition of penalty. He did not submit any representation against the inquiry report. Subsequently the disciplinary authority passed a self-contained speaking and reasoned order on 17.3.93 imposing the penalty of removal from service. As stated earlier the applicant never submitted any representation against the punishment and the representation was made as per the directions of the Tribunal which was disposed of by the Appellate Authority on 23.11.1994. Against the judgement in O.A.No.361/95 which was disposed of on 29.9.95, the applicant had filed Review Petition No. 3/96 which was disposed of by circulation on 18.1.1996.

4. The Ld. Counsel for the respondents submits this Original Application is not maintainable on two grounds -

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firstly the application is bared by time, secondly the application is not maintainable on the ground of Resjudicata. Since the respondents have followed the direction of various orders passed by the Tribunal and there is no flaw in the inquiry proceedings and the proceedings were conducted in accordance with the relevant Rules, since the applicant was unauthorisedly absent, the question of paying any salary to him does not arise. Regarding terminal benefits, leave salary etc., since he has been removed from service in accordance with the due process of law, he is not entitled to get any terminal benefits. Though action was taken by the respondents to settle the P.F. account, insurance of the applicant by supplying the necessary forms, the applicant refused to submit any forms on the ground that some litigation is pending in the court and thereby the respondents cannot be blamed for non-payment of P.F. and CGEIES amounts. The very fact that the applicant has filed various OAs and seeking directions from the Tribunal itself indicates the conduct of the applicant. The applicant had totally stopped coming to the Machine Shop since 6.1.1992 although he used to punch his attendance card every day. It is not his case that he was not given sufficient opportunity to present his case. Since he did not cooperate with the authorities even in acknowledging the charge sheet and the punishment, the respondent is left with no other alternative but to initiate major penalty inquiry proceedings and had to pass the aforestated impugned order of removal from service.

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5. The applicant was absent from place of his duty on the following days:

06.01.92 to 10.01.92	0830 to 1445 hours
11.01.92	0830 to 1245 hours
24.01.92 to 27.01.92	Whole day
01.02.92 to 29.02.92	Whole day
01.03.92 to 26.03.92	Whole day
30.03.92 to 31.03.92	Whole day
01.04.92 to 30.04.92	Whole day

6. The contention of the Ld. Counsel for the Applicant is that he has done his work during the days referred to above by the respondents and to confirm the same the original muster roll may be called and perused. Accordingly, we directed the Respondents to furnish the muster roll in respect of the applicant for our perusal and verification. Pursuant to our direction the respondents submitted the original muster roll from January 1991 onwards and on perusal of the same we find that the applicant was absent from the place of his duty as detailed in para 5 above.

7. The question of payment of wages does not arise since the applicant was absent from place of work, as detailed in para 5 above, till he was removed from service on 17.10.93.

8. Ld. Counsel for the applicant has also urged that applicant being a handicapped person sufficient

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opportunity was not given to defend his case. On perusal of the record we find that the applicant did not want to cooperate with the respondent department in the inquiry and the order passed by the competent authority.

9. In the light of above, keeping in view the decision of UNION OF INDIA Vs. PARMA NANDA, AIR 1989 SC 1185, and other cases regarding disciplinary matters that it is not open for the Tribunal to reappraise the evidence and then give a different conclusion other than the competent authority. 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.

10. Besides that the contention of the Ld. Counsel for the respondents is also relevant in the issue at hand i.e., principles of Resjudicata would come into play because the applicant has time and again challenged the

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order in the O.As. which were disposed of. In view of this the applicant cannot re-agitate the matter once again on the same ground.

11. Though the point of limitation is raised by the respondent's counsel, we do not want to dismiss the O.A. on that ground. Even otherwise also on merits the applicant has not established his point that he was present on duty on the dates stated in para 5 above, and on perusal of the record it is observed that the applicant was absent from the place of his duty and accordingly the respondents proceeded to issue a charge sheet and conducted an inquiry as per the direction of the Tribunal.

12. In the result, we do not see any flaw in the inquiry proceedings nor in the findings of the Inquiry Authority, Disciplinary Authority, or the Appellate Authority. Accordingly the O.A. is dismissed. No order as to costs.

*M.R. Kolhatkar*

(M.R. Kolhatkar)

Member(A)

*B.S. Hegde*

(B.S. Hegde)

Member(J)