

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 152/96 /199

Date of Decision: 13.9.96

S.B.Singh

Petitioner/s

Shri D.V.Gangal

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr.V.S.Masurkar

Advocate for the
Respondent/s

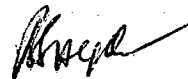
CORAM:

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 ?

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(B.S.HEGDE)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.152/96.

13th, this the day of September 1996.

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

S.B.Singh,
Quarter No.101/1
NAD Colony,
Post-NAD Karanja,
Dist. Raigad 400 704.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India through
the Chief of Naval Staff,
Naval Head Quarters,
New Delhi - 110 011.
2. The Flag Officer,
Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Marg,
Bombay.
3. The General Manager,
Naval Armament Depot,
Naval Dockyard,
Gun Gate,
Bombay - 23.
4. The General Manager,
Naval Armament Depot,
NAD, Karanja,
Dist. Raigad - 400 704.
5. Lt. Cdr S.N.Mohanty
College of Naval Warfare,
Naval Station,
Karanga C/o.Fleet Mail Office
Bombay - 400 001.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri B.S.Hegde, Member(A))

Heard Shri D.V.Gangal, counsel for the
applicant and Shri V.S.Masurkar, counsel for the
Respondents.

2. In this O.A., the applicant has prayed mainly for two reliefs. Firstly, to quash the charge sheet dt. 7.2.1996 and secondly, seeking promotion to the post of Chief Draughtsman, Group 'B' post w.e.f. 15.12.1995. The applicant was also granted interim relief on 16.2.1996. When the O.A. was pending he was given a promotion in April, 1996, whereby the second relief is not an issue to be considered.

3. The main ground of attack in this O.A. is that the charge sheet issued by the respondents does not disclose any mis-conduct therefore there can be no disciplinary action against the applicant. Further contention is that the conduct of S.N.Mohanty who has been appointed as a Chairman of the Board of Inquiry was unbecoming of an ordinary Citizen, especially when he was admitted in the Hospital he forced him to give his statement and the charge sheet must disclose his legal duty and it is violation of duties. In the instant case, he submits there was no legal duty on the applicant to give any evidence, since the applicant was not on duty. Therefore, unless the applicant is on duty no conduct can be described as mis-conduct and further that tendering evidence before the disciplinary enquiry is the duty of a government servant and such duty is performed when the employee is on duty and not when he is in hospital and on medical leave. It came on record that the applicant

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refused to give evidence to the Board of Enquiry lawfully considered by the administrative authority, thereby issued memo of charge sheet directing him to co-operate with the Board of Inquiry. It is also noticed that the applicant had taken a stand that unless the permission/authorisation from General Manager, Karanja is produced he will not give any reply to any question.

4. The respondents in their reply denied the various contentions of the applicant and contended that the charge sheet has already been issued to the applicant and therefore, the truth in the charges is to be decided in the inquiry proceedings. Therefore, they submitted that ~~the~~ staying of the disciplinary proceedings is not warranted at this stage. The promotion of the applicant was ordered on 28.11.1995 subject to disciplinary action contemplated or pending against him. Since the Headquarters had already directed to issue major charge sheet the action of the respondents is justified and in accordance with law. Since the applicant is already promoted on 16.4.1994 and while granting the medical leave on 9.6.1995 it was made crystal clear that he was directed to forward unfit medical certificate to the Respondents office and also stated that the President, Board of Inquiry investigating the Abduction and Criminal Assault of SK Chand SEA-I that he is required for the Board of Inquiry. Since the applicant

was hospitalised for treatment in the hospital and since he was not able to attend the Board of Inquiry, the Board of Inquiry had visited the Hospital on 13.6.1995 and intended to take evidence of the applicant, which he refused to do so and raised all technical pleas that they have not obtained the permission of the General Manager and he would not give any evidence unless the General Manager directs him to do so and also stated that unless the Board of Inquiry takes prior permission of the Hospital authorities, they are not expected to visit the Hospital for the purpose of taking evidence of the applicant. Admittedly, it is not the case of the applicant that he was unable to give any evidence without without the permission of the concerned Doctor.

It is noticed that the applicant was required to give evidence before the Board of Officers appointed by NQWNC to inquire into the incidence of abduction and criminal assault of one Shri S.K.Chand, SEA-I, RP-III on 11.4.1995. The applicant asked for a medical leave by his application dt. 23rd May, 1995 requesting for 15 days leave. The competent authority while permitting him to take leave had categorically stated that the Board of Inquiry is constituted to investigate the abduction and criminal assault on Shri SK Chand and he is required for the Board of Inquiry. In order to facilitate the inquiry the Board of Inquiry visited the hospital on 13.6.1995, however, the applicant did not give any evidence before the Board on that day.

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Based on the report made by the Board's President, the Headquarter directed the sub-ordinate officer to take action on the applicant and explanation was called for from the applicant. Accordingly, a major charge sheet/Memo was issued.

5. During the course of hearing, the learned counsel for the applicant draws our attention that the letter of the respondents dt. 9.6.1995 wherein they had not mentioned the date, venue and other details regarding the giving of the evidence by the applicant and the request made by the competent authority to the medical authority on 12.6.1995 that if only the patient is suitable and fit his evidence can be given, such a proposition is not warranted on a perusal of the letter. It is not the case of the applicant that he is unable to give any evidence on account of his illness. It is noticed that he refused to render any help to the Board of Inquiry and questioned the authorities decision to take evidence while he was in hospital. As stated earlier, while granting leave, he was being informed about the proposed Board of Inquiry to take a visit to the hospital and take evidence of the applicant which is not unknown to the applicant. In support of his contention the Learned Counsel for the respondents relied upon the decision of the Supreme Court in TRANSPORT COMMISSIONER, MADRAS-5 Vs. A. RADHA KRISHNA MOORTHY, (1955 SCC (L&S) 313) wherein it has been held as follows:

"The truth and correctness of the charges was not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary enquiry. Even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are perverse. The jurisdiction of the Administrative Tribunal is akin to that of High Court under Article 226 of the Constitution. It has power of judicial review. It only examines the procedural correctness of the decision making process. For this reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law."

6. In the light of the above, it is not for the Tribunal to hamper the proposed investigation initiated by the Respondents and the Tribunal cannot assume the roll of the appellate authority or substitute the findings of the competent authority. In our view the facts of this case is squarely covered by the ratio laid down by the Apex Court. As stated earlier the promotion of the applicant has already been materialised and the proposed disciplinary proceeding has been stayed by the Tribunal. In the circumstances, in our opinion, it would not be appropriate for us to interfere with the disciplinary proceedings and the ad-interim order passed staying the operation of the proposed disciplinary enquiry stands vacated. Accordingly the O.A. is disposed of at the admission stage itself. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)