

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.86/1996

DATED: Wednesday this, the 18th DAY OF OCTOBER, 2000

Shri Haridas Dattu Jadhav Applicant.

(Applicant Shri S.P.Kulkarni, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri R.K.Shetty, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. No

B.N. Bahadur
(B.N. Bahadur) . .
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.86/96

DATED: This Wednesday the 18th DAY OF OCTOBER, 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

1. Shri Haridas Dattu Jadhav,
Ex. Tractor Driver (H.S. Grade-II)
Ticker No.1243/ Y & E.
Ordnance Factory, Ordnance Estate,
Ambernath 421 502.
R/at: Quarter No.J-6/2,
Ordnance Estate,
A.T.P.O. D.E. Ambernath,
Dist. Thane 421 502.

..... Applicant

(Applicant by Shri S.P. Kulkarni, Advocate)

Versus

1. The Union of India
through General Manager,
Ordnance Factory,
Ordnance Estate,
At P.O. D.E., Ambernath,
Dist. Thane 421 502.
2. Chairman,
Ordnance Factory Board (Sec. Vig.)
10, Auckland Road,
Calcutta 700 001.
3. Estate Officer,
Ordnance Estate,
Ordnance Factory,
Ambernath,
Dist. Thane 421 502.

.... Respondents

(Respondents by Shri R.K.Shetty, Advocate)

ORDER

[Per: B.N.Bahadur, Member (A)]

The Applicant in this case, Shri Haridas Jadhav seeks the relief from this Tribunal, in substance, for the quashing and setting aside of the punishment order and appellate order imposing punishment and upholding punishment respectively against

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him. The Appellate Order is dated 16.6.1995, (A.2) and the penalty Order (dismissal) is dated 13.12.1993 (Ex.C). The main grievance of the Applicant is that the Inquiry has been carried out in an arbitrary manner, and that there were many procedural lapses, and instances of denial of reasonable opportunity. The core point made in this regard is that the prime witness (Shri Hada) was not examined and that his evidence was crucial as it was the only relevant evidence in the facts and circumstances of the case.

2. The Applicant also alleges that his Appeal has not been considered properly, and that the penalty of dismissal for an attempt to commit theft is extreme, specially because no evidence was really available.

3. The Applicant who was employed as Tractor Driver in the Ordnance factory at Ambernath, had been detailed for duty at Inspection Bungalow on 2.9.1992. While returning from duty on the relevant date, some material was found concealed in the tool box (of tractor), on a surprise check made, and this had resulted in the Inquiry and penalty, as described above.

4. The learned Counsel for the Applicant argued the case of the Applicant in detail, and made the point that the entire sequence of facts shows that there was only the discovery of the material (ingots etc.) but there was no evidence that these were stolen by the Applicant. Applicant was unaware of its existence. It was strongly argued that that the only and prime material witness available viz. witness No.4 Sepoy B Hada was dropped, and this weakens the case of the Respondents, totally. Further, the reasons for not producing the said witness (page 42) are not at all convincing, and the stand taken by the Enquiry Officer in

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para 3 of the report was devoid of merit.

5. The learned Counsel reiterated the points made in the O.A., mentioning that Appellate authority's order is not signed by the Competent authority, thus making the order bad in law and violative even of instructions of Govt. in this regard. Learned Counsel cited the following cases in his support (i) *Dr.D.P.S Luthra vs. UOI 1988 (8) ATC 815* (2) *Ratneswar Karmalkar vs. UOI AISLJ 1998 (2) CAT 138* and (3) *S.C.Sharma vs. UOI AISLJ 1998 (3) CAT 290*.

6. The defence of the Respondents made in the Written Statement is that a check was made on the Tractor which, was being taken out on return, by Sepoy Bhawarsing Hada, and during such check 4 brass ingots were found concealed in cotton waste, in the tool box under the driver's seat of the tractor. The process of Inquiry and placing of Applicant under suspension w.e.f. 2.9.1992 is then described, in detail, and it is stated that full opportunity has been provided to the Applicant to defend himself, and that the process of Inquiry does not suffer on either procedural or substantial grounds. It is stated that Sepoy Shri Hada could not be produced as witness as he was not available, and this fact did not in any way prejudice the Applicant in proving his innocence; nor did it vitiate the proceedings in any manner, as alleged. It is further stated that the charges were established adequately, with the help of prosecution witnesses, which included the Security Personnel, who had knowledge of the facts (para 10 of Page 125).

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7. It is also averred in the Written Statement that the Appellate Order is just and proper and that it is made by the Appellate Authority, after considering all facts, and after giving a personal hearing to the Applicant.

8. Arguing the case on behalf of the Respondents, their learned Counsel, Shri Ravi Shetty, for Shri R.K.Shetty, asserted that the Tractor driver is in charge of the Tractor and this implied his responsibility in the discovery of the material in the tool box, as described. Shri Shetty contended that Sepoy Hada has given a statement, and that there was nothing more that could be said in evidence. The said Shri Hada was transferred to Delhi, and could not be made available. Shri Shetty argued that the non production of this witness held no prejudice to the Applicant. The case of *State of Tamil Nadu vs. Perumal* [1996 (SCC L&S 1290)] was cited by Shri Shetty in support of these arguments.

9. Shri Shetty also dealt with the grievance of the Applicant regarding non-signing of the Order by the Appellate Authority, and made the point that as per Rule 24 (i) (ii) of C.C.S. CCA Rules, the Member of Ordnance Factory Board (OFB) is above the G.M. and therefore a decision taken by the Member was perfectly in order. Original file No.8038/V&P/67/92 was produced for perusal of the Tribunal by the Respondent's counsel who cited the case of *Saini* [1999 (2) SC SLJ 2123]. He concluded by saying that if he so wished the Applicant could have called Sepoy Hada, as his witness.

10. Briefly rearguing the case the learned Counsel for Applicant Shri S.P.Kulkarni, contended that the case law by learned Counsel Respondent was irrelevant, and not applicable.

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Only one person had seen the Applicant and he was not produced as witness. He could have been easily made available as he was only transferred to Delhi and without his evidence this was a case of "no evidence."

11. We have seen all the papers in the case, including the original file submitted and have perused the case laws cited and all other papers. We have considered the arguments made by Learned Counsels on both sides.

12. The first point relates to the evidence with special emphasis on the argument that the one and only crucial witness was not cited and his evidence not brought on record even though he could easily be available. We are not assessing here the evidence *per se* but in the facts and circumstances brought out and the arguments raised it is clear that Shri Hada's not being brought out as a witness will need to be gone into carefully. It is clear that he was a crucial witness and the only one present at the time of discovery of the ingots, and in fact had made the search himself. Without a doubt, therefore, he is rightly a crucial witness. It is also proved that none of the other witnesses have the the same position as his, Since the others were not present at the time of detection. Thus, it goes without saying that the dropping of Shri Hada as a witness raises crucial questions. It must be noted in this connection that the allegedly stolen material were found in a tool box which was not locked and not on the person of the applicant. Thus, the question of conscious possession arises and it will have to be concluded that the Applicant was not in conscious possession of the alleged stolen articles.

13. It is also worth mentioning that before the alleged stolen articles were recovered from the tool box of the Tractor

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there was no complaint regarding the theft of the alleged brass ignots. It is necessary to mention that these allegedly stolen ignots are not identified to be belonging to the Department. All these circumstances, leads us to conclude that the Applicant was not in conscious possession of alleged stolen brass ignots, and the alleged ignots were not proved to be the ^h stolen ^h ~~one~~.

14. It is also clear ^h that the reason for non production of Shri Hada is not at all convincing. He had only been transferred to Delhi, and hence could easily have been produced as a witness. This also remains as a major flaw and the ~~ratio~~ ^{ratio} decided by this Tribunal in the case of S.C. Sharma and Dr. D.P.S. Luthra are fully applicable to the present case. The non production of this witness badly hits the case of the Respondent.

15. We are conscious of the fact that in Departmental Enquiries, the standard of proof required is not the same as that of criminal cases that is to say beyond reasonable doubt. The evidence on record ^h available only proves the fact that the applicant who was driver of the said Tractor was found in possession of brass ignots ⁱⁿ his tractor tool box, which was not locked and his statement recorded on the spot clearly suggests that after taking charge of the tractor he has gone to the toilet and when he returned thereafter, when the tractor was searched brass ignots were found. Thus the evidence on record even if it is accepted it has to be concluded that the Applicant was not guilty of the theft of brass ignots and not in possession of the stolen property. Thus it is a case of no evidence.

16. The Learned Counsels for Respondents have sought support from the case of *T.N vs. Perumal*. We have seen this case. It is held that authorities are bound to supply only relevant documents and not each and every document asked for by the

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delinquent officer. Also that it is the duty of the Tribunal to record a finding whether non supply of a particular document has prejudiced the case of the defendant. Now in view of the discussions above, it is clear that the ratio settled here is not applicable. This is not a case of a document not supplied. It is the case of a crucial witness not being cross examined and in fact the only crucial witness. Certainly and without doubt, this has resulted in ^a prejudice to the applicant in this case, and the relevant case law has been cited elsewhere in the present order.

17. In view of above discussions this O.A. is hereby allowed and the impugned appellate Order 16.6.1995 and penalty Order (Dismissal) dated 13.12.1993 (Ex.C) are set aside. In regard to the relief sought at 8 (c) & (d) ^{para 10} we hold that these are multiple reliefs and in view of this and the Orders ⁱⁿ the O.A. 386/94 already made on 17.10.94 the matter stands concluded in this respect.

18. No orders as to costs.

S.L.Jain
(S.L.Jain)
Member (J)

SJ*

B.N. Bahadur
(B.N. Bahadur) 18/10/2000
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. No. 93/2001 IN O.A. No. 86/96.

Dated this Friday, the 4th day of January, 2002.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

Haridas Dattu Jadhav

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Applicant.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Shri S. K. Mohanty,
General Manager,
Ordnance Factory,
Ordnance Estate P.O.,
Ambernath,
Dist. Thane - 421 502.

2. Shri S. K. Dagar,
Works Manager/Admin.;
Ordnance Factory,
O.E. Ambernath Post Office,
Dist. Thane 421 502
(Alleged) Contemnor.

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Respondents.

(By Advocate Shri R. R. Shetty
for Shri R. K. Shetty).

TRIBUNAL'S ORDER :

This Contempt Petition has been moved impleading S. K. Mohanty, General Manager, Ordnance Factory, Ordnance Estate P.O. Ambernath, Dist. Thane, to whom notice was issued by us on 14.09.2001 to the effect that prima-facie case is made out for wilful disobedience of the order dated 18.10.2000 passed in O.A. No. 86/96 (Haridas Dattu Jadhav V/s. Union of India & Others).

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We did not issue notice to S. K. Dagar, Works Manager, Ordnance Factory, Thane. We are informed that S. K. Mohanty became Chairman, Ordnance Factory, about a year back and the order was to be given effect, if at all, by the present General Manager, S.P. Jain. Under such circumstances, no notice could be issued to S. K. Mohanty and the C.P. against S. K. Mohanty fails. Notice to S. K. Dagar has not been issued at all and the C.P. against him is also liable to be dismissed.

2. We may also point out that the order passed in O.A. on 18.10.2000 is subject matter of Writ Petition No. 4512/2001 : Union of India & Ors. V/s. Haridas Dattu Jadhav wherein following interim order has been granted by the High Court of Judicature at Mumbai.

"Interim Order in terms of prayer clause (c)"

Though a copy of Writ Petition has not been filed but Counsel for Contemnor Respondents has produced his office copy of Writ Petition wherein prayer (c) reads as follows :

"That pending the hearing and final disposal of this Writ Petition, the portion of the interim order dated 18.10.2000 passed by Hon'ble C.A.T., Mumbai Bench, Mumbai, be kindly ordered to be stayed in the interest of justice."

In view of the said order of Hon'ble High Court, the order passed in O.A. becomes ineffective during the pendency of interim order of the High Court.

Under such circumstances, the Contempt Petition fails. The Learned Counsel for Applicant points out that in case the

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Applicant succeeds before the Hon'ble High Court and the order is not given effect, then the Respondents will become liable for wilful disobedience of the order. We do not want to express any opinion on this point at this stage. In case, any wilful disobedience after passing of the order by the Hon'ble High Court takes place, then it is always open for the applicant to approach appropriate forum for redressal of his grievance, if any.

Contempt Petition dismissed and notice to S. K. Mohanty discharged.

(B: N. BAHADUR)
MEMBER (A).

B. sent
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN.

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