

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 338/96

Dated this Tuesday the 9th day of October, 2001.

Prabhakar S. Salunke Applicant.

Shri B.K. Masand Advocate for the Applicant.

VERSUS

Director of Admn. Employees. & Anr.
Respondents.

Shri V.D. Vadhawkar. Advocate for the Respondents.

CORAM :

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library No

OS*

B.N.B
(B.N. Bahadur)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 338 OF 1996

Dated this the 9th day of October, 2001

Coram: Hon'ble Mr. B.N. Bahadur - Member (A)
Hon'ble Mr. Kuldip Singh - Member (J)

Prabhakar S. Salunke,
R/o at E/10-5,
Barve Nagar, Ghatkopar (West)
Bombay - 400 086.
(By Advocate Shri G.K. Masand) - Applicant

VERSUS

1. Director of Administrative Employees,
State Insurance Corporation,
Kotla Road, New Delhi.
2. Regional Director,
Employees State Insurance
Corporation, ESIC Building,
Lower Parel, Bombay - 400 013.
(By Advocate Shri V.D. Vadhavkar) - Respondents

ORDER

Per: Hon'ble Mr. B.N. Bahadur - Member (A)

The Applicant in this case challenges the order made by the respondent no. 2 viz. order dated 19.10.1994 (Exhibit-'A') through which order the applicant has been imposed the punishment of reduction in one stage for a period of two years. It is also ordered that applicant will not earn any increments during the period of reduction i.e. the order has permanent effect.

2. The facts of the case, as brought out by the applicant, are that he was working in Regional Office of Respondents, when on 13.6.1988 he was directed to report to the Manager of the local office at Delisle Road. By the same order he was sought to be relieved from duties in the afternoon of 13.6.1988 with a direction to report at Delisle Road immediately. He could be relieved due to official work only on 6.00 p.m. on 13.6.1988. The applicant avers that he fell sick on the following day i.e. 14th June and reported for duty only on 16.6.1988.

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OA 338.96

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He submitted an application for leave on 14th and 15th June which was duly recommended and sanctioned. Later, on 16.1.1989, the applicant reported for duties around 9.55 a.m. being late due to delayed train connections and it is the grievance of the applicant that whereas another co-worker who was similarly late was not in any way checked for being late, the Manager of the local office Shri Karnail Singh marked him absent. There was some acrimony between the two and whereupon Shri Karnail Singh got up from his seat to confront the applicant and while so doing he tripped and fell down resulting in his turban falling down. Upon this he made a false complaint to the effect that the applicant had physically assaulted him. Thereupon the applicant was charge sheeted (dated 3.5.1989) and charged with remaining absent on 13.6.1988 and yet receiving salary and thus defrauding the Corporation and also for being habitually absent without prior intimation. Thirdly he was charged for assaulting his superior. An enquiry was thereafter conducted where also certain infirmities are alleged by the applicant in the matter of recording of evidence as detailed out in Paras 6 and 7 of the OA and in certain portions beyond. It is with this grievance that the applicant is before us, seeking the relief as mentioned above.

3. The Respondents have filed a reply through a written statement where the claims of the applicant are resisted. The facts are then given set out in regard to the employment details and it is stated that it was only on 4.7.1988 that a Casual Leave Application was submitted by the Applicant. It is alleged that

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the applicant was not present in the previous office on 13th June also being absent in an unauthorised manner. A memo was issued to him on 8.11.1988 in this regard after which an Earned Leave Application was submitted by the applicant on 16.11.1988. Thus it is seen that certain variations in factual details are seen in this statement.

4. It is further alleged in the written statement of the respondents that the applicant physically assaulted/pushed the local office Manager whereupon he fell down and sustained minor injuries. (The applicant has not admitted pushing the officer.) The charges made in the charge sheet are then described in detail and it is stated that all the procedure including supply of enquiry report was followed and that after going through the entire evidence on record the disciplinary authority imposed the major penalty on the applicant, as described. It is further stated that the applicant preferred an appeal to the Director (Administration) who is the appellate authority, and who in turn rejected the appeal vide order dated 25.7.1995 (Exhibit 'B') observing that in fact the applicant deserves to be punished more severely. The further part of the written statement elaborates the facts and also attempts to meet, para-wise, the averments made in the OA.

5. We have heard the learned counsel on both sides and perused the record in the case. Arguing the case of the applicants, the learned counsel Mrs. Marne (for Shri G.K.Masand) first took us to the facts of the case and also took us over the impugned order dated 19.10.1994. It was alleged that there was

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no proper application of mind and the orders have been made in a mechanical manner. It was also argued that the effect of the quantum of punishment is infact far more severe than is intended per se by the order. The learned counsel went at some length to explain why the order will have a cascading effect in the permanent effect that is ordered. She also raised a point to the effect that the crossing of efficiency bar, which the applicant was entitled to was kept in the sealed cover and that this could not be done as per rules. The sealed cover procedure is only recommended for promotion matters.

6. Arguing the matter in regard to the facts of the case the learned counsel for the applicant stated that the applicant was well and truly on duty till late afternoon on 13.6.1988 and this was clear from the relieving orders. Such a charge was totally unfounded and in that case the applicant could well have applied for three days leave instead of asking for two days leave on 14th and 15th June. Further more, when leave had been regularised, it was open for the respondents to make such a charge.

7. Arguing the case on behalf of the respondents, their learned counsel Shri V.D.Vadhavkar first took us to certain facts of the case as reflected in sub para (f) of Para 2 (Page 57) and reiterated that the applicant was guilty of serious misconduct in trying to assault senior officer Shri Karnail Singh Sohbi. The learned counsel further stated that the punishment has been

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imposed on the applicant after following due procedures. He argued that there was no violation in terms of procedure and that all opportunity to defend himself has been provided to the applicant. Thus, there was no violation of the principles of natural justice. Nor could, it be said that the penalty inflicted was disproportionate to the misdemeanour. In fact, it was argued by the learned counsel that the penalty awarded was lenient, considering the gravity of the misconduct.

7. The learned counsel for the respondents drew our attention to the copy of the communication at page 79 which is made by the applicant. It is stated by the applicant himself that he had pushed the officer for which he is sorry. This is no doubt preceded in the note by applicant's assertion that the officer had abused him saying "you are my servant". The learned counsel made the point which clearly establishes the factual position of his having pushed/assaulted Shri Singh.

8. Shri Vadhavkar stated that the matter argued by counsel for applicant in regard to the efficiency bar and the alleged mis-application of the procedure of sealed cover being used for stopping at efficiency bar was not the subject matter of this OA. It is not covered by the pleadings, nor was a relief sought, he argued.

9. It is first seen that, admittedly, the award of penalty to the officer that is being challenged has been preceded by a regular departmental enquiry. The applicant has sought to point out a few flaws in the procedure and thus are in terms of the descriptions that are contained in Para 6. We have gone through



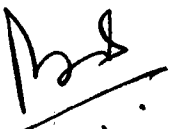
this, and find that they relate to recording of evidence. None of them is of a type that can be construed to be violative of procedure or of denial of the principles of natural justice. In fact the more serious attack during the arguments was on the subject matter of the charges themselves. The point made was that only because of prejudice of Shri Karnail Singh and applicant having "confronted" him the case came to be foisted on him as it were and that he has become a victim. In the first place it is seen that a clear malice has been alleged against the aforesaid Shri Karnail Singh. We however find that no one including Shri Karnail Singh has been made a party in the case and hence the question of malice in fact lies on a weak wicket. In view of the facts before us we do not find any evidence to consider this a case of malice in law, either. In fact we cannot ignore the communication pointed out by learned counsel Shri Vadhavkar, a copy of which is available on Page 79. It is stated therein as under:-

"At that time I asked Manager as only why he has cross my muster and no others staff members. And then he abused me saying you are my servant and then I pushed him for which I am very much sorry. Even today he is challenging me before all staff members which you may please conformed.

Yours faithfully,
sd/-

V. D. C."

Assuming it is correctly alleged that the officer abused him by saying that "you are my servant", the applicant has indeed stated that he pushed an officer and apologised.



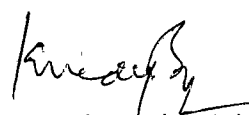
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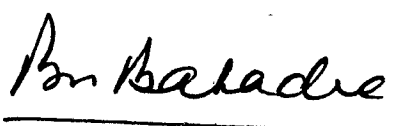
10. Be that as it may, we revert to the fact that this whole issue has been gone into through a regular departmental enquiry. Since there is no infirmity in terms of procedure and there is no violation on the principles of natural justice, and nor is there anything in the order that we can term as perverse, We are not in a position to interfere with the order in terms of well settled law by the Hon'ble Apex Court in this regard. Also, there is certainly no ground in the facts before us that this is a case of no evidence. Far from it, there is evidence available. We will of course neither go into the adequacy of the evidence nor try to reassess it as indeed a well settled position of law for Tribunals.

11. Now coming to the point of Efficiency Bar, it is not agitated as a relief sought in the OA. An issue like this which is agitated at the stage of argument cannot be gone into and therefore we are not going into it.

12. Another argument taken was to the effect that the penalty was very harsh and that its effect was very damaging to the applicant. Suffice it to say that considering the facts of the case, the evidence before us and arguments made, we are not convinced that this is a case of grossly disproportionate penalty. There is no ground for our interference for reduction of penalty on this count.

13. In view of the above discussions, we do not find any case for interference in the matter. The OA is therefore dismissed with no order as to costs.


(Kuldip Singh)
Member (J)


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