

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:424/96

DATE OF DECISION: 23 August 2000

Shri Dudku Damu Khairnar Applicant.

Shri D.V. Gangal Advocate for
Applicant.

Versus

The Union of India and others. Respondents.

Shri R.K.Shetty Advocate for
Respondents

CORAM

Hon'ble Shri D.S.Baweja, 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
other Benches of the Tribunal? *No.*

(3) Library.

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:424/96

the 23rd day of AUGUST 2000

CORAM: Hon'ble Shri D.S. Baweja, Member (A)

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

Dudku Damu Khairnar
C/o D.D. Bhole,
UDC/C.S., Ordnance Factory,
Bhusawal, A.N.K.Union
President,
Present post - Durwan,
Ticket No. 83.

...Applicant.

By Advocate Shri D.V.Gangal.

V/s

1. The Union of India through
The Secretary,
Ministry of Defence,
Production, New Delhi.
2. The Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory,
Bhusawal.

...Respondents.

By Advocate Shri R.K. Shetty.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for a declaration that order of punishment dated 21.4.1994 and the order relating to treating the period of suspension dated 18.1.1995 (in OA wrongly mentioned as 2.9.1995), "The suspension period will not count for any purpose except pension and he will not be entitled to get anything more than the subsistence allowance already granted to him for the said period of suspension" are illegal, deserves to be quashed and set aside with further declaration that the period

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of suspension from 14.10.1985 to 11.4.1994 be treated as duty for all purpose and charge sheet dated 7.3.1982 be quashed being illegal one.

2. During the pendency of OA, appeal against the order of punishment dated 21.4.1994 is decided vide order dated 19.4.1996. By way of amendment, which is allowed, further declaration is sought that the said order dated 19.4.1996 be quashed being illegal one.

3. At the commencement of the hearing the learned counsel for the applicant facing the question for multiple relief stated that he does not press for the relief in respect of order dated 18.1.1995 (Annexure A1) communicated vide order dated 20.1.1995 (Annexure A2) and seeks liberty to agitate the matter by way of separate OA. We allow the applicant the said liberty in view of the fact that the said matter is being agitated within the period of limitation by this OA and it relates to a separate cause of action being multiple relief.

4. The applicant alongwith Shri M.D. Kumawat was prosecuted under Section 376 of the Indian Penal Code before the Assistant Sessions Judge, Jalgaon in Sessions Trial No.70/86. He was convicted alongwith Shri M.D. Kumawat under Section 376 of the Indian Penal Code with rigorous imprisonment for 5 years and fine of Rs. 300/-. An appeal (Criminal Appeal 18/87) was preferred by the applicant alongwith Shri Kumawat before Sessions Judge. After hearing the same the applicant and Shri Kumawat were acquitted by judgement and order dated 12.11.1991. The applicant was served with charge-sheet which mentions the charge of indiscipline and also mentions the list of documents on the basis.

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of which the charge is sustainable. The documents mentioned are the judgements of the Asstant Sessions Judge dated 19.2.1987 and the judgement of the Sessions Judge in criminal appeal No. 18/87 dated 12.11.1991. In respect of list of witnesses by whom the Articles of charge are stated to be sustainable show 'Nil'. The charge is that the conduct of the applicant is immoral, indecent and un-becoming of a Government Servant and Thus he violated Rule-3(1)(i)(ii)(iii) of the CCS (Conduct) Rules 1964. The Enquiry Officer has held the applicant guilty whereas co-accused in the criminal trial, Shri M.D. Kumawat was held to be exhonored. The applicant preferred an appeal against the penalty order dated 21.4.1994 which was also rejected vide order dated 19.4.1996.

5. The girevance of the applicant is that as he alongwith Shri M.D. Kumawat was acquitted by the Court of Sessions in Criminal appeal No. 18/87, which is a competent Court of justice, it is not open to the authorities to issue charge sheet based on the findings of acquittal recorded by the Court. Consequently the charge sheet itself is illegal and deserves to be quashed. The Enquiry Officer has arrived to the finding that the applicant is guilty on the basis of judgement of the Sessions Court in Criminal Appeal No. 18/87. It is contrary to CCS (Conduct) Rules 1964. The Enquiry Officer has also arrived to a finding that the applicant is guilty and Shri M.D. Kumawat is being exhonored on the basis of the same evidence recorded in the criminal trial. It is not open to the authorities to re-assess the evidence or scrutinise the judgement of criminal Court and held that some charges are proved. In fact there was

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no charge for which the applicant was held guilty by the Criminal Court. The applicant has been wrongly held guilty of sexual intercourse with Smt. Shakuntala on 11.10.1985 between 5.45 P.M. to 7.00 P.M. with consent. Entire disciplinary action in the instant case is vitiated as the same does not amount to mis-conduct. Hence this OA for the above said relief.

6. The claim is resisted by the respondents and the OA is *sought* to be dismissed alongwith costs.

7. The learned counsel for the applicant relied on Article 311 (2) of the Constitution of India proviso (a) which is as under:

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply)

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

On perusal of the same we are of the considered opinion that if a person is convicted on criminal charge the finding of criminal Court can be taken into consideration for penalising him.

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8. On perusal of Article 311 (2) of the Constitution of India it is clear that before dismissal, removal or reduction in rank can be ordered an enquiry is a must after affording reasonable opportunity of being heard.

9. The learned counsel for the applicant relied on 1972 SLR 355 in the case of Union of India V/s Sardar Bahadur decided on 28.10.1971 by the Apex Court of the land. Para 10 of the judgement is relevant for deciding the present case, which is as under:

We do not think that the statements should have been received in evidence as the appellant had taken no step to produce the persons who made the statements for cross-examination of the respondent. It was the duty of the appellant to have produced these persons whose statements were sought to be proved for the cross-examination of the respondent. In State of Mysore V. S.S. Makasur, (3) this Court said that the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the Inquiring Officer was right in refusing to act upon the statements relied on by the appellant. As there was no material before the Inquiring Officer to show that P.S. Sundaram mentioned in the

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cheque is P.S. Sundaram, the Deputy Secretary, we think the High Court was justified in holding that these charges had not been proved.

10. In the present case the Inquiry Officer has scrutinised the judgement of the Sessions Court and has arrived to the finding of guilt in respect of the applicant. The learned counsel for the respondents argued that as the Session Court has held the applicant guilty of sexual intercourse with the consent which is a finding of fact recorded by the Sessions Court, the Enquiry Officer, the Disciplinary Authority and the Appellate Authority are right in arriving to a conclusion that the applicant is guilty of the same. It is suffice to mention that had it been the finding of the guilt by the Sessions Court in respect of Section 376 of Indian Penal Code, we must have agreed with the counsel for the respondents. As sexual intercourse with a woman with the consent is no offence in Indian Penal Code and it is only one of the ingredients of the offence under Section 375 Indian Penal Code which is punishable under Section 376 Indian Penal Code, the findings cannot be made a basis of holding the applicant guilty.

11. The respondents issued the charge sheet under Rule 14 of CCS (CCA) Rules and concluded the enquiry without following the procedure prescribed therein on the basis of the evidence or findings which is not relevant under any provisions of law.

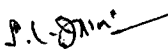
12. The learned counsel for the applicant argued that sexual intercourse with a woman with consent is not a mis-conduct and hence the applicant cannot be held guilty in respect of a conduct which is not a misconduct. Hence, the charge sheet itself

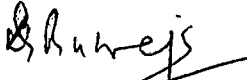
P.L. Sharma

deserves to be quashed. We are not inclined to agree with the submission of the learned counsel for the applicant for the reason that the charge relates to sexual intercourse with Smt. Shakuntala on 11.10.1985 between 5.45 P.M. to 7.00 P.M. in the Factory premises below the neem tree. The conduct of even an ordinary citizen cannot be said to be decent in such situation. It is an immoral conduct alongwith indecent. While the conduct of the government servant is expected to be moral one. In such circumstances we are not inclined to agree that it is not a conduct which is derogatory to Government servant or unbecoming of a Government Servant.

13. In the result we do not find that the penalty awarded to the applicant by the Disciplinary Authority on 21.4.1994 which is confirmed by the Appellate Authority by order dated 19.4.1996 deserves to be upheld. At the same time it is not a case where charge sheet can be quashed, but it is a fit case where the matter deserves to be remanded to the Enquiry Officer to enquire into the matter from the stage of recording evidence and to proceed with the matter under Rule 14 of CCS(CCA) Rules 1964. As the matter is old one it is expected that the enquiry should be completed within a period of six months.

14. In the result the OA is allowed, the penalty order dated 21.4.1994 and the appellate order dated 19.4.1996 is quashed and the matter is remanded back to the Enquiry Officer to enquire into the matter as per Rule 14 of the CCS (CCA) Rules 1964 and complete the enquiry within a period of six months. No order as to costs.


(S.L. JAIN)
Member(A)


(D.S. BAWEJA)
Member(A)

C.P. No. 15/01
fwd for
order 27/4/01.

js
15/3

37) 02.04.2001.

C.P.No.: 15/2001

Applicant by Shri S. V. Marne.

2. In O.A. No. 424/96 vide order dated 23.08.2000 the order passed is as under :

"In the result, the O.A. is allowed, the penalty order dated 21.04.1994 and the appellate order dated 19.4.1996 is quashed and the matter is remanded back to the Enquiry Officer to enquire into the matter as per Rule 14 of the CCS (CCA) Rules, 1964 and complete the enquiry within a period of six months."

3. The grievance of the Applicant is that the Inquiry Officer has relied on the statements recorded by the Criminal Court and again passed an order. It may be a cause for filing an appeal and get the matter disposed of rather than filing a contempt petition. No notice on contempt petition issued. The C.P. No. 15/2001 stands disposed of.

order
M 9/14
S.L. JAIN
MEMBER (J).

os*

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

DI 214101
order/Judgement despatched
to Applicant/Respondent(s)
on 12/4/01

NO
ON
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