Central Administrative Tribunal, Mumbai Bench

O.A. No. 831 of 1996

Mumbai this the 14th day of September, 2001

Hon'ble Mr. B.N. Bahadur, Member (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri K.B. Darekar
Ex-MTD Grade-I,
By L.R. Sunita K. Darekar
Mankhurdi Agarwadi
Collector's Chawl, near Datta Mandir Road,
Mumbai-88. ..Applicant

By Advocate Shri H.A. Sawant.

Versus

1. The Vice Admiral,
Flag Officer,
Commanding-in-Chief,
Naval Dock-yard,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai-400 001.

2. The Commondore,
Chief Staff Officer (P&A),
Head-Quarter,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai-400 001.

3. The Staff Officer (Civil),
Head-quarter Office,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai-400 001. ..Respondents

By Advocate Shri V.S. Masurkar.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

This application was originally filed by applicant Shri K.B. Darekar to assail an order passed by his disciplinary authority imposing a punishment of compulsory retirement. He

has also assailed an order passed by the appellate authority whereby his appeal against the order of disciplinary authority had been rejected.

2. While the O.A. was pending, the applicant expired and his legal heir has been allowed to be brought on record to pursue the application.

3. Facts in brief, as alleged by the applicant are that he was employed as a Motor Truck Driver, INS Trata C/o FMO, Mumbai and on the relevant day he was employed in Naval Dock-yard. He was proceeded departmentally on the following charges:-

"Article-I

Shri K.B. Darekar, while functioning as MT Driver, Grade-I at Naval Armament Depot, Karanja and while he was detailed on routine transport duty for the third shift on 4th February, 1993, he picked-up altercation at around 2210 hours with J. Subramaniam, SEA I Grade-II No.163833Z of INS Abhimanyu (at present he is attached to MARCOS (E), Kalinga) who arrived at NAD Jetty by routine boat from Naval Dockyard and manhandled the said J. Subramaniam, Sea I with the help of few persons. Thus the said J. Subramaniam, SEA I has sustained severe injury.

Shri K.B. Darekar, MT Driver, Grade-I had been unwilling and subsequently refused to co-operate with the inquiry board constituted by Senior Officer, Karanja to investigate into the incident, which took place on 4th February, 1993 at about 2210 hours at NAD Karanja Jetty. Thus Shri K.B. Darekar, MT Driver Grade-I acted in a manner unbecoming of a Government servant,

violating Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

4. An Enquiry Officer was appointed, who conducted the enquiry proceedings and after completion of the enquiry, Enquiry Report was supplied to the applicant but the applicant did not submit any reply/explanation against the findings recorded by the Enquiry Officer in his report, so the disciplinary authority after going through the report of the Enquiry Officer, held the applicant guilty and passed the order imposing penalty of compulsory retirement from service. The applicant preferred an appeal and the appellate authority vide detailed order dated 20.6.1996 rejected the appeal.

5. In order to assail the impugned orders, the applicant submitted that the charge as framed against the delinquent employee, is not specific and does not contain necessary particulars.

6. The next ground taken by the applicant is that the findings arrived at by the Enquiry Officer are based on no evidence and erroneous conclusion had been arrived at by the Enquiry Officer. The disciplinary authority also did not care to take note of the lacuna or shortcomings in the case, rather accepted the Enquiry Officer's report in a most cursery manner as if he was observing a technical formality only. Similarly the appellate authority had also ignored the important points in

the case and casually affirmed the punishment imposed by the disciplinary authority. Hence, it is prayed that the impugned orders be quashed with all consequential benefits.

7. The respondents who are contesting the OA submitted that the punishment of the compulsory retirement had been imposed on the applicant by following a detailed disciplinary procedure as per the CCS (CCA) Rules, 1965.

8. As regards the contention of the applicant with regard to delay in issuing the charge-sheet is concerned, the respondents submitted that since the matter was under investigation and after the scrutiny of the report of investigation, a charge-sheet was servedd upon the applicant, hence there was some procedural delay but it is neither interntional nor motivated.

9. It is denied that the case is based on no evidence,rather it is submitted that Sepoy Arvinakshan, DSC No.10356730 has stated in his statement that he had seen as to what happened during the incident and the statement of Shri Anil Kumar also involves the driver in assaulting a service personnel, so the fact of the applicant assaulting the service personnel also stands proved, as such it cannot be said that it a case of no evidence.

10. It is further submitted that the Manager and Assistant Manager on duty though were not the eye witnesses to the incident but the report furnished by them had been collected by them from other duty personnels/eye witnesses, who were present at the time of quarrel.

11. It is denied that the charge-sheet is vague, rather it is stated that the same was issued in general terms on the basis of available material evidence.

12. It is further submitted that the Enquiry Officer had recorded his findings on oral/documentary evidence adduced before him and the charged official had not produced any oral/documentary evidence in his defence, rather he was afforded an opportunity by the Enquiry Officer. Thus it is submitted that it is not a case of 'no evidence'.

13. To the allegations of the applicant that he had been acquitted in the criminal trial, the respondents pleaded that they are not aware of the criminal case rather the disciplinary authority is competent to simultaneously institute disciplinary proceedings in accordance with the CCS (CCA) Rules, 1965.

14. The respondents also deny any lapses on the part of the Enquiry Officer, disciplinary authority or the appellate

authority with regard to observing of the CCS (CCA) Rules or their failure to point out any short-comings in their case, rather the respondents submitted that the case against the applicant stands fully proved and the OA merits dismissal.

15. We have heard the learned counsel for the parties and gone through the records of the case.

16. The learned counsel for the applicant has submitted that the charge-sheet issued to the applicant was quite vague and has not been issued in accordance with the CCS (Conduct) Rules, 1964 and to support his contention he has also relied upon a case reported in 1988 (8) ATC 847 (Calcutta) entitled as Mantosh Kumar Deb Vs. Union of India & Others and submitted that in this case also since the charge-sheet issued to the applicant was vague and that deprives the applicant from making an effectvie reply and defence and thus principles of natural justice have been violated.

17. However, to our mind, this contention of the learned counsel for the applicant has no merit because in the case of Mantosh Kumar Deb (Supra), the allegations as per the charge-sheet was that the applicant leaves work-spot without permission and unnecessarily moves from section to section

despite objection. However, the time, date and place of the alleged misconduct was not disclosed, so in those circumstances the court held that the adequate opportunity had been denied and principles of natural justice stood violated. But in the case in hand we find that the charges, as levelled against the applicant, specifically says that the applicant while working as MT Driver Grade-I in Naval Armament Depot, Karanja had been detailed on routine transport duty for the third shift on 4th February, 1993. He picked-up altercation at about 2210 hours with J. Subramaniam, SEA Grade-II NO.163833Z of INS Abhimanyu who arrived at NAD Jetty by routine boat from Naval Dockyard and was manhandled by the applicant.

18. Thus going through the charge-sheet issued to the applicant we find that there is not even an iota of ambiguity or vagueness. ach and every allegations are specific and have been properly mentioned in the charge-sheet. Besides that, he was also served with the statement of imputations of misconduct/misbehaviour in support of the Article of Charge, which further elaborated each and every specific allegations against the applicant. As such we find that the ruling cited by the learned counsel for the applicant does not apply to the present case nor the contention raised by the applicant has any merit.

19. The next contention of the learned counsel for the applicant is that the Enquiry Officer had not applied his mind to the material facts of the case and, therefore, had wrongly arrived at the conclusion and the punishment awarded to the applicant is based on wrong conclusion arrived at by the Enquiry Officer. On this aspect the learned counsel for the applicant submitted that the Enquiry Report is practically based on no evidence and no prudent man can arrive at the conclusion that it was the applicant who had entered into altercation with Shri J. Subramaniam in the Naval Dockyard. The counsel for the applicant also submitted that as per the list of witnesses, there were six witnesses cited by the department out of whom two were not eye witnesses and two were not produced. There was only statement of Naik Arvindakshan and Shri Anil Kumar and they do not link the applicant with the altercation, as alleged in the charge.

20. In reply to this, the respondents submitted that the statement made by Shri Arvindakshan and Shri Anil Kumar do mention as to what happened on the day of incident and the statement of Shri Anil Kumar also shows the involvement of the applicant in assaulting the service personnel.

21. As regards another witness Kuldip Yadav is concerned, his presence could not be procured as he was not available.

22. During the course of arguments we had called for the Enquiry Report and have gone through the statement of witnesses recorded by the Enquiry Officer.

23. Suffice it would be to say that in a departmental enquiry the Tribunal while exercising the power of judicial review is simply to satisfy itself whether the case is based on no evidence at all or there is 'some' evidence on record which may on the basis of doctrine of preponderance of probabilities is sufficient to bring the charge home to the delinquent official.

24. On examining the enquiry file, we find that there is enough evidence to prove that the applicant was on duty at the relevant time on the Naval Dockyard on transport duty and an altercation had ensued when the Seaman J. Subramaniam wanted to put his bicycle on the truck since both the tyres of this cycle were punctured/deflated and the applicant had raised an objection that the cycles are not allowed over which the altercation toook place and the Seaman was assaulted by the applicant as well as by 4 other persons, who came their, on exhortation of the applicant.

25. By no strech of imagination it can be said that it is a case of no evidence or the findings arrived at by the Enquiry Officer are preverse enough to quash the Enquiry Report. It is

also a well settled law that while exercising the power of judicial review, the Tribunal is not required to reappreciate the evidence. The Tribunal is only to see whether there is some evidence against the applicant or not or the findings arrived at are totally pervese. The Enquiry Report submitted by the respondents reveals that it is not a case of 'no evidence' nor the findings arrived at by the Enquiry Officer are perverse, so we find that on this score also the applicant is unable to assail the findings arrived at by the Enquiry Officer.

26. The next ground taken by the applicant is that since he had been acquitted in a criminal case which is based on same facts, so the applicant should have been exonerated in the enquiry and the departmental proceedingss should have been dropped. To our mind again this contention of the learned counsel for the applicant is untenable because on the criminal side the prosecution is required to prove the charge against the accused beyond reasonable doubt whereas in the domestic enquiry the charge against the delinquent official can be proved even ignoring the technical rules of evidence and applying the doctrine of preponderance of probabilities, simulatenously departmental enquiry is also permitted under the service jurisprudence.

27. The learned counsel for the applicant next submitted that

the punishment awarded to the applicant is disproportionate to the misconduct alleged and on that score he has relied upon the judgment reported in 1989 (5) SLR page 569 entitled as Dharam Pal Vs. State of Haryana and Others wherein it was held as follows:-

> " Constitution of India, Articles 226 and 311 - Dismissal - Dismissal from service after enquiry - Charges of consuming liquor and chasing the colleague with an intention to bodily harm him - Penalty imposed should not be disproportionate to the charges levelled and proved - Dismissal order quashed and case remanded to Diciplinary Authority to reconsider quantum of punishment".

28. The learned counsel for the applicant also relied upon a case reported in 1982 (2) SLR page 629 entitled as Bhim Sing Sardar Sing Vs. District Supdt. of Police and Others, wherein it was held as follows:-

> " Constitution of India, Article 226 - Writ Jurisdiction - Quantum of penalty - Court competent to interfere with the quantum of penalty imposed is grossly disproportionate to misconduct proved - Amounts to arbitrary exercise of penal powers".

29. Both the above rulings cited by the counsel for the applicant suggest that if the punishment awarded to delinquent official is so diproportionate that it shakes the conscious of the court only then the court should interefere and normally the court should not interfere and in this case since the punishment

awarded is on account of misconduct of assault on Seaman by a Goverment employee while he was on routine transport duty to transport such like persons but still picking up quarrels and assaults him, the penalty awarded is only compulsory retirement, which to our mind cannot be said to be disproportionate to the misconduct committed by the applicant.

30. The next point taken by the applicant is that the disciplinary authority should have gone through the report of the Enquiry Officer and charge-sheet issued and he should have pointed out lacuna and shortcomings in the case whereas the disciplinary authority had accepted the report in a most cursery manner. But to our mind this contention of the applicant has again no merits because the disciplinary authority does mention in his order that he had taken into account all the circumstances of the case and had also mentioned that the applicant had failed to submit any reply to the Enquiry Report, which means that the applicant himself had not challenged the Enquiry Report before the disciplinary authority and it is only after considering the Enquiry Report, the disciplinary authority had awarded the punishment of compulsory retirement, which shows that the disciplinary authority had considered the material available to him and since no defence statement was available so he was to rely upon the enquiry report submitted by the Enquiry Officer and based on that, he had passed the impugned order vide

Annexure A-2, as such it cannot be said that this order had been passed without applying mind. Similarly the order of the appellate authority which is quite in detail had considered each and every contention raised by the applicant in his appeal and thereafter he had passed a reasoned and speaking order thereon. Appellate authority had also given an opportunity of personal hearing.

31. Thus, we find that there is no lacuna and no case has been made out for violation of any of CCS Rules or the principles of natural justice.

32. Hence, we find that the OA does not call for any interference and the same is dismissed. No costs.

(Kuldip Singh)
Member (J)

(B.N. Bahadur)
Member (A)

Rakesh