

Central Administrative Tribunal
Mumbai Bench

OA No.1193/96

Mumbai this the 11th day of June, 2003.

Hon'ble Mr. V.K. Majotra, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl)

S.B. Mishra,
22 Indrayani Society,
Lawrence Road,
Deolali-422401.

-Applicant

(Applicant in person)

Versus

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Engineer-in-Chief's Br,
Army Headquarters,
DHQ, P.O. New Delhi-11.

(By Advocate Shri R.K.Shetty)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Impugned in this OA are respondents' orders dated 30.6.93, imposing upon applicant a punishment of compulsory retirement and appellate order dated 23.3.94, rejecting the appeal. Quashment of the aforesaid is sought with all consequential benefits.

2. Applicant while working as Assistant Engineer in M.E.S. was proceeded against in a major penalty proceedings for the allegations of sending a pseudonymous complaint in the name of S.S. Wagh of Nasik to Lt. General P.B. Puri making allegations against M.E.S. officials at Deolali. The allegations were found baseless. Manuscript of the same complaint has been proved by the Government Examiner of Questioned Documents to be in the hand of applicant and the contents of typed complaint tally with the manuscript.

It is further alleged that applicant made false statement to the I.O. Maj I.S. Verma who investigated the complaint by stating that the same was not in his own hand. After applicant was held guilty, a punishment of compulsory retirement was imposed upon him by an order dated 27.7.87 which was challenged in OA-616/90. By an order dated 7.2.92 as the enquiry report was not served upon applicant he was re-instated with liberty to respondents. Applicant submitted his defence, which led to penalty of compulsory retirement, which was affirmed in appeal, giving rise to the present OA.

3. Applicant appeared in person and contended that Government Examiner of Questioned Documents has not been approached directly by respondents but the manuscript was proved by referring the questioned documents through R.K. Tyagi, EE, against whom complaint was filed. As such on the principles of nemo debet esse judex in propria causa the basis of the enquiry is vitiated as well as the punishment imposed. It is further stated that applicant has been punished without any evidence, any misconduct and has been victimised.

4. It is further stated that adequacy of the punishment has not been gone into by the appellate authority which is mandated as per rules.

5. On the other hand, respondents' counsel Sh. R.K. Shetty vehemently opposed the contentions and stated that though applicant was found guilty of the grave acts of misconduct but taking a lenient view the penalty of compulsory retirement has been imposed which is commensurate with the charge.

6. We have carefully considered the rival contentions of the parties and perused the material on record.

7. At the outset, without going into the other merits of the case, we find that whereas applicant has assailed the order of removal on the ground of having been passed against the rules and on false charges the appellate authority has not considered the proportionality of punishment while dismissing the appeal. In the instant case in exercise of his jurisdiction under Rule 23 of the CCS (CCA) Rules, 1965 President has rejected the appeal.

8. As per Rule 27 of the Rules *ibid* in case an order imposing penalty under Rule 11 of ~~the~~^h Rules is assailed in appeal, it is mandated upon the appellate authority as per Rule 27 (2) (c) to consider whether the penalty imposed is adequate, inadequate or severe and then to pass orders. As the aforesaid compliance is lacking in the present case the appellate order cannot be sustained in law.

9. It is now settled by the Apex Court that in proportionality of punishment this Court cannot substitute its own conclusion as to penalty but in the event the same has not been gone into the matter be referred to the departmental authorities to pass appropriate orders. The strength of above is derived from the decision of Apex Court in *Om Kumar v. Union of India*, (2002) 2 SCC 386.

10. Having regard to the above, the OA is partly allowed. The impugned appellate order is quashed and set aside. The matter is remanded back to the appellate authority to pass a fresh order, keeping in view the contentions put-forth by applicant and also consideration regarding adequacy of punishment within a period of three months from the date of receipt of a copy of this order, by passing a detailed and speaking order. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

'San.'

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

CONTEMPT PETITION NO. 29/04
IN
ORIGINAL APPLICATION NO.1193/96

THIS THE 7th DAY OF APRIL, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

S.B. Mishra. .. Petitioner

In person

Vs.

Mr. S.N. Verma .. Contemner

By Advocate Shri R.K. Shetty.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The contempt petitioner has filed this contempt petition alleging that the Respondent No.1 while passing the order dated 22.10.2003 did not mention regarding regularisation of intermittent period and made incomplete and ineffective order. The Respondent No.1 thus not only caused financial hardship to the petitioner but also committed contempt of Tribunal's order dated 11.6.2003.

2. We have heard the applicant in person and Shri R.K. Shetty, learned counsel for the respondents.

3. This Tribunal while disposing of the OA 1193/96 passed the following order:

"Having regard to the above, the OA is partly allowed. the impugned appellate order is quashed and set aside. The matter is remanded back to the appellate authority to pass a fresh

...2.

