

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORAL ORDER IN O.A. No.12/1996

Hon'ble Member (A) may kindly see
the above judgment for approval/signature.

[Signature]

(KULDIP SINGH)
MEMBER (J)

HON'BLE MEMBER (A)
SMT. SHANTA SHAstry

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.012/1996

Dated: 02.01.2001

S.A.Narayanan

Applicant.

Shri S.P.Kulkarni

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Kuldip Singh, Member (J),
Hon'ble Smt. Shanta Shastry, Member (A).

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

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

[Signature]
(KULDIP SINGH)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.012/1996.

Tuesday, this the 2nd day of January, 2001.

Coram: Hon'ble Shri Kuldip Singh, Member (J),
Hon'ble Smt. Shanta Shastry, Member (A).

S.A.Narayanan,
A-Block 528,
Near Railway Gate,
Ulhasnagar,
At P.O. Ulhasnagar,
Dist. Thane - 421 004. ... Applicant.
(By Advocate Shri S.P.Kulkarni)

Vs.

1. Union of India through
Chairman and Director General of
Ordnance Factory Board,
Government of India, Ministry of
Defence, 10-A, Auckland Road,
At P.O. Calcutta - 700 001.
2. General Manager,
Ordnance Factory,
Ambernath - 421 502,
Indian Ordnance Factories,
Ministry of Defence, Govt. of India,
Ambernath - 421 502.
3. The Principal Secretary,
Ministry of Defence, Govt. of India,
Raksha Bhawan, Sansad Marg,
New Delhi - 110 001. ... Respondents.
(By Advocate Shri R.K.Shetty)

: O R D E R [ORAL] :

{Per Shri Kuldip Singh, Member (J)}

The applicant in this case has assailed the order dt.
26.9.1994 passed by the respondents by which the applicant is
made to retire compulsorily from service.

2. The applicant was proceeded departmentally on the
following Articles of Charges :

ANNEXURE - I

Article - I

That the said Shri S.A.Narayan, Chargeman Gr.II
Ordnance Factory Ambarnath since 30.6.1989 while holding
the post of Supervisor/EM during the period 12.5.1981 to

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01.07.1984 has committed an offence of obtaining Passport for visiting foreign country and leaving the country (India) without prior permission of the competent authority i.e. GM/OFA and is therefore charged with Gross-Misconduct-Obtaining a Passport for visiting foreign country and leaving the country (India) without prior permission of the competent authority.

Article - II

That the said Shri S.A. Narayan, Chargeman Gr.II/Ordnance Factory Ambarnath since 30.6.1989 while holding the post of Supervisor/EM during the period from 12.5.1981 to 01.7.1984 has committed an offence of taking up private employment while in Govt. Service and is therefore charged with Gross-Misconduct-Taking up private employment while in Govt. Service.

Article - III

That the said Shri S.A. Narayan, Chargeman Gr.II Ordnance Factory, Ambarnath since 30.6.1989 while holding the post of Supervisor/EM during the period from 12.5.1981 to 01.7.1984 has committed the offence of suppressing material information and therefore is charged with Gross-Misconduct-Supressing material information.

ANNEXURE - II

Article - I

That the said Shri S.A. Narayan, now Chargeman while in Govt. Service of Ordnance Factory Ambarnath w.e.f. 4.9.1972 obtained a Passport for visiting foreign country, left the country (India) and proceeded to Sultanate of Oman in or around 1982 without obtaining prior permission of the General Manager Ordnance Factory Ambarnath. The above act on the part of Shri S.A. Narayan is unbecoming of a Govt. servant in violation of Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article - II

That the said Shri S.A. Narayan while in Govt. Service at Ordnance Factory Ambarnath proceeded to Sultanate of Oman in or around 1982 and took up private employment as Electrician for a period of about 4 1/2 months. This act on his part is unbecoming of a Government Servant being violative of Rule 3 (1) (iii) of CCS (Conduct) Rules 1964.

Article - III

That while the said Shri S.A. Narayan, had left the country (India) as above for taking up private employment suppressed the aforesaid information and requested for two months Earned Leave from 03.2.1982 to 03.4.1982 vide his application dt. 02.02.1982 for some domestic work and thereafter sent application dt. 03.4.1982 seeking extension of leave with medical certificate dt. 03.4.1982 from Dr. Talreja of Ulhasnagar

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... 3.

and another application dt. 08.6.1982 with unfit medical certificate dt. 05.6.1982 issued by Dr.R.B.Abhichandani of Ulhasnagar for covering his absence for one month from 01.6.1982. He failed to disclose the fact that he had proceeded to foreign country during the aforesaid period of his absence."

The Enquiry Officer after conducting the enquiry, submitted his report. In the report he had come to the conclusion that Article - I framed against the applicant has been partly established i.e. for obtaining Passport without prior permission of the Competent Authority, but he has held that the charge is not established for leaving the country (India) without prior permission of the Competent Authority. As regards Article - II is concerned, it is reported that the charge is not established. In respect of Article - III, the Enquiry Officer has come to the conclusion that the charge for suppressing the information of possessing a Passport and ^{of b} renewed the same without No Objection Certificate is partly proved. However, it stated that further that suppressing other informations like leaving the Country (India) and taking up Private Employment while in Govt. Service is not established.

3. After the report was submitted to the Disciplinary Authority, the Disciplinary Authority dis-agreed with the findings arrived at by the Enquiry Officer and came to the conclusion that the charges as alleged ~~are~~ proved and for this purpose the Disciplinary Authority had relied upon the statement made by Shri S.F.Coutinho who was P.W. - 3 who had stated that he had made investigation of an anonymous complaint himself and that he had called the delinquent official to his Office Chamber and after interrogation had submitted his note and as per the note, it was ~~suggested~~ ^{stated} that the delinquent official had made certain confession regarding the Passport and visiting foreign country. But, after that note was furnished the delinquent official was

given an opportunity to submit his defence and the applicant submitted his defence and then the impugned order of compulsory retirement was passed.

4. While challenging the same, the applicant has taken a ground that it is a case of 'no evidence'. There is nothing on record to show that the delinquent official had renewed his Passport or that he had gone abroad and had taken an employment with the Government of Oman and the statement made by Shri S.F.Coutinho, P.W.- 3 during the enquiry is not corroborated by any independent evidence and the same could not have been relied upon. Thus, the entire enquiry proceedings has no iota of evidence to show that the charges against the applicant ~~had~~ been proved.

5. We have heard the counsels for both the Applicant and the Respondents. The short question to be examined in this case is whether the delinquent official had committed any misconduct which is proved as per the Articles of Charges or it is a case of 'no evidence'.

6. We are conscious that the Tribunal while exercising powers of judicial review is not to re-appreciate evidence. But, in case it comes to the conclusion that it is a case of 'no evidence' then certainly the Courts or Tribunals can interfere and quash the enquiry proceedings, as well as, the impugned order. The only evidence which is important in this case is that of the statement of Shri S.F.Coutinho who in answer to Question No.4 had stated that he had called the delinquent official to his Chamber and the delinquent official broke down in his presence and requested that he should take a lenient view in his case, looking towards his children. He also stated that in case he losses his job, there will be nobody to look after them. Then he had asked him whether

he had gone abroad some time in 1980-81 for a period of 2 1/2 months and he had also admitted that he had accepted employment as Electrician in Sultanate of Oman.

7. The learned counsel appearing for the respondents submitted that the objection that it is an hear-say evidence and cannot be relied has no force, rather it can very much be relied upon in the departmental enquiries and that the Court is to see preponderance of probabilities and not to technically weigh the evidence to see that the Articles of charge is proved beyond reasonable doubt as it is done in criminal cases but for domestic enquiry purpose hear-say evidence is admissible. On the point of hear-say evidence he has relied on a decision in the case of

State of Haryana Vs. Ratanlal (1997 SCC (L&S) page 298).

8. To our mind, this contention of the learned counsel for the respondents has no merit because in this case when the delinquent official was interrogated by Shri Coutinho, he was summoned in response to a notice issued to him on 25.7.1991 for the purpose of conducting an enquiry. He was neither given any opportunity nor he was told that this statement would be used during the course of regular enquiry to be conducted under CCS (CCA) Rules. Besides, that, when this note of Mr.Coutinho was given to the delinquent official he had immediately denied having made such a statement and particularly the Paragraph - 1 of the letter dt. 11.10.1991 (R-2) in which the delinquent official has stated that he does not subscribe to the views expressed in para 1 of his letter vide his letter dt. 26.10.1991. Thus, even the so called admission made by the delinquent official which is relied by the Disciplinary Authority while dissenting from the views taken by the Enquiry Officer itself is highly tainted one

one and had also been retreated and on the basis of the same alone the inference drawn by the Disciplinary Authority could not have drawn without any corroborative evidence. Except this note of Shri Coutinho, there is no other evidence which may link the delinquent official with the Articles of Charges and as such we are of the considered opinion that it is a case which is based on no evidence at all, the department had not made any effort to collect evidence either from the Passport Office or from the Indian Embassy to prove that the applicant had gone abroad and worked there.

9. As regards the question of possessing of Passport is concerned the applicant had admitted that he was in possession of Passport, but before entering into the Government Service. As far as the counsel for the Respondents' submission that the delinquent had not disclosed the fact of possessing Passport at the time of entry into the government service, we find that the entire findings recorded by the Enquiry Officer, as well as, the Disciplinary Authority are vitiated and cannot be sustained and the impugned order is liable to be quashed. As It is also not stated as to how this non-disclosure is violative of any rules or regulation. Renewal of Passport is not proved, so we ^{also} ^{are of the view that there is no} ^A think is no evidence to prove any charge.

10. Accordingly, in view of the above, we quash the impugned orders and direct the respondents to reinstate the applicant in service within a period of three months from the date of receipt of a copy of this order with all consequential benefits. No costs.

Shanta S
(SHANTA SHAstry)
MEMBER(A)

Kuldeep S
(KULDIP SINGH)
MEMBER(J)

B.