

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1077/96

Date of Decision : 17.1.2002

K.S.Jumade, Applicant
None Advocate for the Applicant.

VERSUS

Union of India & Ors. Respondents
Shri R.R.Kavande Advocate for the Respondents

CORAM :

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

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓

Shanta S
(SMT.SHANTA SHASTRY)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CAMP : NAGPUR

OA.NO.1077/96

Thursday this the 17th day of January, 2002.

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

Hon'ble Smt.Shanta Shastry, Member (A)

Kawdu Sopan Jumade,
R/at Shiwaji Nagar,
Bhadravati, Post Tahsil
Bhadravati, Dist.Chandrapur
(Maharashtra).

...Applicant

None for the applicant

vs.

1. Union of India
through its Secretary,
Ministry of Defence
(Production),
South Block, New Delhi.
2. The Chairman/Director General
of Ordnance Factories,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. General Manager,
Ordnance Factory,
Chanda, at Bhadravati,
Dist. Chandrapur, M.S.

...Respondents

By Advocate Shri R.R.Kayande

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O R D E R (ORAL)

{Per : Smt. Shanta Shastry, Member (A)}

The applicant has assailed the order dated 14.11.1995 passed by the Respondent No.2 and received by the applicant on 30.1.1996 whereby the appellate authority has moderated the punishment of dismissal to compulsory retirement.

2. The applicant was serving at Ordnance Factory, Chanda as Orderly. Disciplinary proceedings were initiated against the applicant issuing a charge memo to him and after holding the enquiry, the applicant being held guilty of the charges, the penalty of dismissal from service was imposed by the disciplinary authority on 16.4.1992. The same was confirmed in appeal on 24.9.1992 by Respondent No.2. The applicant filed OA.NO.550/93 against the aforesaid order in the Tribunal. The Tribunal allowed the OA. vide judgement dated 18.7.1995 directing the Respondent No.2 to give an opportunity of hearing to the applicant. Accordingly, the applicant appeared before the Respondent No.2 on 18.10.1995 at Calcutta. He filed written notes of arguments before the Respondent No.2 on the same day. Thereafter, the Respondent No.2, i.e. appellate authority passed the order on 14.11.1995 which according to the applicant was communicated to him on 30.1.1996 modifying the punishment from dismissal to compulsory retirement.

3. The applicant has challenged this order of compulsory retirement. One of the grounds taken is that the enquiry proceedings were instituted by an incompetent authority. According to the applicant, the enquiry officer was appointed by a subordinate of the disciplinary authority, the chargesheet was issued by an incompetent authority so also the appointment of the enquiry officer was by the subordinate of the disciplinary authority.

4. The applicant has pleaded that the daily record of the enquiry revealed that the applicant was seriously injured and was admitted in the hospital while Shri V.L.Ramaswamy was not at all seriously injured yet punishment was inflicted against the applicant without considering the injury. According to the applicant, the enquiry officer was biased and without any evidence he recorded the findings of guilt. The appellate authority did not even consider the unblemished record of the applicant while inflicting the punishment. The applicant feels that there was no justification to impose the penalty on him when he was not at fault. The applicant has therefore prayed to quash and set aside the impugned order dated 14.11.1995 and to direct the respondents to reinstate him in the post of Orderly with full back wages and continuity in service and also to award cost.

5. The respondents have filed their reply and they submit that the appellate authority had passed the impugned order after careful consideration and after giving due opportunity of personal hearing to the applicant as per the directions of the

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Tribunal in OA.NO.550/93. It has also been pointed out that the decision to issue the chargesheet to the applicant was taken by the General Manager, i.e. the disciplinary authority though it was communicated by a subordinate officer on behalf of General Manager. Therefore, no fault can be found with the issuing of the chargesheet by a subordinate officer of the disciplinary authority. It has been further submitted that the Court of Enquiry was appointed by the disciplinary authority himself and the order appointing such Court of enquiry was issued under the signature of the disciplinary authority. Therefore, the contention of the applicant that the chargesheet was issued and the enquiry officer was appointed by an incompetent authority is denied. The enquiry proceedings also have clearly established that the applicant is guilty. The appellate authority carefully considered the appeal of the applicant and had concluded that the penalty imposed by the disciplinary authority for proved misconduct of serious nature was well warranted. However, he took an extremely lenient view and modified the order to compulsory retirement. The allegation of the applicant that the appellate order was passed without proper application of mind and without there being any evidence has been thus denied.

6. None is present on behalf of the applicant either in person or through an Advocate. The learned counsel for the applicant had sought adjournment of the case yesterday, i.e. on 16.1.2002. Shri R.K.Shrivastava on behalf of Shri M.M.Sudame, learned counsel for the applicant again stated today that Shri

Sudame was unable to come. The request for adjournment further is rejected. Since the matter pertains to the year 1996, we have proceeded in the matter in terms of Rule 15 of the CAT (Procedure) Rules, 1987 to dispose of the same on the basis of the available pleadings.

7. We have perused the OA. and have heard the learned counsel for the respondents. It is seen from the order of the appellate authority passed on 14.11.1995 that the appellate authority has passed a very detailed, reasoned, speaking order and had taken into consideration the objections raised by the applicant. Also he has come to the conclusion that there was sufficient evidence to prove the charge against the applicant based on the corroboration by the P.W. as well as medical examination that the applicant had assaulted the Foreman after bolting the door. No procedural irregularities have been committed while conducting the enquiry. In our considered view, the applicant has taken two major points, namely, issuing of the chargesheet and appointing of enquiry officer by an incompetent authority and he was not given opportunity of being heard. In view of the explanation given by the appellate authority in his order as well as based on the record it is clear that the decision to give the chargesheet was taken at the level of the disciplinary authority, i.e. General Manager. In view of this, it cannot be held that the chargesheet was issued by an incompetent authority. We are satisfied on this point.

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8. The other allegation was that he was not given any opportunity of being heard and there was no evidence. This again we find is not borne out by facts. He was given the opportunity of being heard and also it has been clearly brought out in the order of the appellate authority how there is enough evidence to show that the charge against the applicant was proved. We do not find any irregularities or violation of principles of natural justice in this matter. In our considered view, therefore the application has no merit. Accordingly, the OA. is dismissed without any order as to costs.

Shanta S-

(SMT. SHANTA SHASTRY)

MEMBER (A)

S.L. Jain

(S.L. JAIN)

MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

REVIEW PETITION NO. 2008/2002
IN
ORIGINAL APPLICATION NO. 1077/1996

THURSDAY, THIS THE 23RD MAY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

Kawadu Sopan Jumdé. .. Applicant

Versus

Union of India & 2 others. .. Respondents

ORDER

Hon'ble Smt. Shanta Shastry. Member (A)

This review petition has been filed by the applicant in OA No.1077/96 which was dismissed vide order dated 17th January, 2002. The applicant submits that he received the certified copy of the judgment only on 05.3.2002. Thus, the applicant is within the period of limitation as it has been filed on 11.3.2002.

2. The applicant has taken the ground that the Tribunal ought to have granted adjournment to the counsel for the applicant since he was held up in the High Court and ought not to have decided the case without hearing the counsel for applicant and therefore, the judgment and order dated 17.01.2002 is liable to be recalled and OA deserves to be restored and set for final hearing afresh. Secondly the applicant submits that the Tribunal failed to appreciate that the inquiry proceedings itself was vitiated having been instituted

by an incompetent authority and the said defect of enquiry was incurable under law, therefore no punishment could be inflicted on the applicant. The applicant has further submitted that the Tribunal failed to appreciate that in ~~an~~ identical circumstances in OA No.698/1993 the Tribunal quashed and set aside the order of penalty on the ground that the same was not issued by the competent authority and directed reinstatement of the applicant. A copy of the judgment and order has been attached. According to the applicant the departmental authorities as well as the Tribunal failed to appreciate that it was Shri Ramaswamy who had beaten the applicant and lodged a false report against the applicant and this was proved by the discharge slip and OPD card issued by the Ordnance Factory, Chanda. The applicant is therefore claiming for recalling of the order dated 17.01.2002.

3. We have perused the grounds taken by the applicant. Though the counsel for the applicant was not present at the time of hearing, the matter was decided on merits on the basis of the available records. Merely because the counsel was in High Court, ^{it} cannot be a ground for adjournment. The matter regarding the charge sheet being issued by an incompetent authority has been dealt with in para 7 of the judgment and order dated 17.01.2002. The judgment and order dated 26th September, 2001 in OA No.698/93 was not before the Tribunal at the time of the hearing. The Tribunal has

satisfied itself that the charge sheet was issued by the competent authority in that the decision to issue the charge sheet had been taken at the level of Disciplinary Authority, the actual charge sheet can be signed by a lower authority even, there is no bar to it. The applicant's allegation that the Tribunal failed to appreciate that it was V.L. Ramaswamy ^{who} had beaten the applicant and lodged false report is not correct. This fact has already been taken into consideration while deciding the matter and this pleading had already been taken in the OA also. In view of the discussion and reasons recorded above, in our considered, no review is called for. Accordingly, the RP is rejected.

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

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dt: 23.5.2002
Order/Judgement despatched
to Applicant/Respondent (s)
on 4.6.2002

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