

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.84/99

Date of Decision: <sup>h</sup> 24.04.2002

V.D. Sadamate.

Applicant(s)

Shri K.R. Yelwe.

Advocate for applicant

Versus

Union of India & Others.

.. Respondents

Shri R.R. Shetty.

Advocate for Respondents

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

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? | x
- (3) Library ✓

*Shanta Shastri*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 84/99

THIS THE 24TH DAY OF APRIL, 2002

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

V.D. Sadamate,  
Driver-cum-Operator,  
Fire Service Section,  
BARC, Mumbai.

.. Applicant

By Advocate Shri K.R. Yelwe.

Versus

1. Union of India through  
the Secretary to the  
Government of India,  
Department of Atomic Energy,  
Chatrapati Shivaji Marg,  
Mumbai-400 020.
2. The Director,  
Bhabha Atomic Research Centre,  
(Department of Atomic Energy),  
Trombay, Mumbai-400 085.
3. The Controller,  
Bhabha Atomic Research Centre,  
(Department of Atomic Energy),  
Trombay, Mumbai-400 085.
4. The Head, Personnel Division,  
Bhabha Atomic Research Centre,  
Central Complex, Trombay,  
Bombay-400 085.
5. Shri V.A.V. Menon,  
Deputy Establishment Officer,  
Personnel Division,  
Bhabha Atomic Research Central,  
Central Complex, Trombay,  
Bombay-400 085. .. Respondents

By Advocate Shri R.R. Shetty.

...2..

O R D E R

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

By this OA the applicant is challenging the order dated 13.4.98 of the Disciplinary Authority and the order dated 07.8.98 of the Appellate Authority confirming the punishment of withholding two increments for a period of two years without cumulative effect by the Disciplinary Authority.

2. The applicant was appointed as a driver on 08.11.1977 in the traffic section of BARC. Later on he was appointed as driver cum operator in the fire service section with effect from 01.12.1981 and he continues till today. On 29th June, 1995 a show cause notice was issued to the applicant to explain as to why disciplinary action should not be taken against him for his misconduct of refusal to note the change in duty schedule to perform the alternative duty on 06.01.95, 07.01.95, 17.01.95, 18.01.95 and 23.01.95. The applicant replied to the same on 24.7.95 and explained that he has never refused any duty assigned to him. He even submitted that he had performed all the duties i.e. first shift instead of normal duty i.e. first general shift. The Respondent No.4 however issued him a charge sheet on 13th March, 1996 for a regular enquiry. The applicant replied to the memo vide his letter dated 22.3.1996 denying the charges levelled against him. Thereafter, enquiry officer was appointed on 14.5.1996. The enquiry officer submitted his report on 05.01.1998

after holding the enquiry and held the charges as proved. Copy of the enquiry report was forwarded to the applicant to enable him to give his submission/representation. The applicant submitted his representation on 09.02.1998. Thereafter, the Disciplinary Authority imposed the punishment of withholding of two future increments of pay for a period of two years without cumulative effect vide his order dated 13.4.98. An appeal preferred against same on 15.6.98 was rejected on 07.8.1998 confirming the punishment imposed by the Disciplinary Authority.

3. The contention of the applicant is the enquiry related to alleged misconduct of refusal to note the change in duty schedule. It is not a misconduct in respect of any statutory rules or regulation or government order in respect of which penalty has been provided for in the CCS (CCA) Rules. According to the applicant, the enquiry was a mere eye wash and it was pre determined by the authorities to punish him, it is vitiated by the malafides of the authorities and a false charge has been fabricated against the applicant. The applicant submits that he was targeted because the applicant was the seniormost employee in the fire station and had joined the staff union. The respondents wanted to punish him to set an example to other employees. The applicant submits that he did not refuse to perform his duty. The applicant states and submits that by memo dated 29.6.95 he was alleged to have refused to note the

duty change in the register on five days in the month of January, 1995. But in the charge sheet dated 13.3.96 two more dates in the month of April have been added. The applicant contends that he was never informed in writing of the change in duty schedule and therefore noting the change in duty schedule did not arise. Nor is there any rule or order whereby he is required to note the change in duty schedule, such conduct cannot be misconstrued as misconduct under the rules and relevant.

4. The applicant also contends that the impugned orders are without any application of mind and are in violation of principles of natural justice and fair play. Extraneous things have been taken into consideration by the enquiry officer against the applicant. The enquiry officer being lower in rank than the Disciplinary Authority, cannot be said to be an independent enquiry officer as he is bound to be influenced by his higher authorities. On the other side, on various grounds the applicant prays for the impugned orders to be quashed and set aside and prays further that the arrears of increment to be directed be paid to the applicant at the rate of 21% per annum.

5. The respondents submit that the enquiry was conducted as per procedure laid down. They have denied that the applicant was targeted for agitating promotion

issue through the staff union. The applicant was given ample opportunity to defend his case. In fact, the enquiry officer had been quite considerate in granting postponements of the enquiry at the request of the applicant from time to time. The applicant's request for additional documents was also considered favourably and wherever feasible copies of the same were made available to him. Wherever it was not feasible to provide the copy, he was allowed to inspect the documents and take extracts thereof. He was not denied inspection of the relevant documents or his defence at any time. The disciplinary authority had applied its mind and after due consideration of the enquiry report as well as the submissions made by the applicant had passed the punishment order. The applicant's lack of devotion to duty and acting in a manner unbecoming of a Government servant had been proved in the enquiry against him. Failure to note and perform the alternative duties given to him is a clear violation of the conduct rules. The question of performing normal duty of the applicant was not the substance of the charge. The charge was about failure to note the change in duty schedule and to abide by the order to perform the said changed duty. It was a clear case of insubordination and dereliction of duty. The applicant has alleged that additional dates have been added in the charge sheet. The respondents submit that the applicant had failed to note the change in duty schedule even

*Na*

schedule even after issue of the memo and therefore two more incidents were included in the charge sheet. The respondents have also stated that it was not necessary to give change of duty schedule every time in writing. The introduction of the duty change register itself is to bring to the notice of the individual the changes in duty schedule in writing. According to the respondents, the enquiry officer has arrived at his findings on the basis of the evidence adduced during the enquiry. As the charges were proved, the disciplinary authority was justified in imposing the penalty on the applicant.

6. We have heard the learned counsel for the applicant as well as the respondents and have given careful consideration to the submissions made.

7. We find that the change in duty schedule had been notified in the register and inspite of that the applicant failed to take note of the same and performed the duty in another shift as admitted by him. This charge has been proved in the enquiry. The applicant was given reasonable opportunity at every stage of the enquiry and was even accommodated as per his request by postponing the dates of hearing. We have also gone through the order of the disciplinary authority, which is a reasoned speaking order. The disciplinary authority has taken into consideration the points which were raised by the applicant in his representation dated

09.02.1998 and has dealt with them satisfactorily. It has also been pointed out in this order that in the duty change register maintained by fire service section while all the employees whose duties had been changed had signed the same nothing the change of duty whenever the duty was changed according to the exigency of work, the applicant failed to sign the same which amounts to refusal to note the changes in the duty schedule. This was recorded by the duty station officer in the duty change register. Thus, disciplinary authority had certainly applied his mind before passing the impugned order dated 13th April, 1998. Even the appellate authority's order is a reasoned speaking order. The appellate authority has also dealt with the points raised by the applicant in his appeal and after due consideration has confirmed the penalty imposed by the disciplinary authority.

8. In our considered view, the applicant has not been able to satisfy us that it is a case of no evidence. It is also very clear that he had not noted the change in duty schedule and nor had he worked as per the changed duty schedule. Since both the disciplinary and appellate authorities have passed well reasoned speaking orders taking into consideration all the points raised by the applicant, we do not see any good reason



to quash and set aside the impugned orders.  
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)

Gajan

to ... (s)

*d/24/1/19*  
Order/Judgement made  
to Applicant/Respondent (s)  
*18/1/19*

*u*