

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 880 of 2000.

Dated this Tuesday, the 1st day of July, 2003.

CORAM : Hon'ble Shri Kuldip Singh, Member (J).

Hon'ble Shri Shankar Prasad, Member (A).

Shri J. M. D'Souza,
P.No. 92409 w,
Chargeman Grade-II,
Naval Dockyard,
Mumbai 400 023.

... Applicant.

(None for the applicant)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Flag Officer Commanding-
In-Chief, Western Naval
Command, Shahid Bhagat
Singh Road,
Mumbai - 400 023.

3. Admiral Superintendent,
Naval Dockyard, Lion Gate,
Mumbai - 400 023.

... Respondents.

(By Advocate Shri V. S. Masurkar)

ORDER (ORAL)

PER : Shri Kuldip Singh, Member (J).

Aggrieved from the orders passed by the Disciplinary Authority as well as by the Appellate Authority vide which a penalty has been imposed upon the applicant for withholding of increment when falling due in the time scale of pay, attached to

his post for a period of two years with cumulative effect, the applicant has approached this Tribunal assailing both the orders passed by the Disciplinary Authority as well as Appellate Authority.

2. The facts in brief are - that the applicant was proceeded departmentally on the allegations that the applicant had committed a gross misconduct as he at about 22.30 hrs. on 17th July, 1997 entered in Central Machine Shop, C.No. 27 in a drunken state and quarrelled with Shri J.S. Bardeskar, Sr. C/Man and thereby acted in a manner which is unbecoming of a Government servant and thus violated Rule 3(1)(ii) & (iii) of CCS (Conduct) Rules, 1964.

2. The imputation of misconduct and misbehaviour alongwith articles of charge and list of document was served on the applicant. An enquiry was conducted and the enquiry officer recorded the finding holding the applicant not guilty. However, the disciplinary authority disagreed with the finding of the enquiry officer vide annexure A-8 and letter dated 13.08.1998 wherein after considering some evidence the Disciplinary Authority held that he disagrees with the findings arrived at by the inquiring authority and set them aside and considered the charges as framed vide memorandum dated 15.10.1997 proved against the individual. The copy of the enquiry report alongwith the revised findings of the competent authority was also sent to the delinquent official on 13.08.1998 and he was given an opportunity to make submission on the revised findings of the competent authority. The applicant made up his defence which was not

acceptable by the Disciplinary Authority and the Disciplinary Authority after examining his defence passed the impugned order of punishment. An appeal was taken before the Appellate Authority which was also rejected. Seeking quashing of the same the applicant had asserted in the grounds that there is no evidence on record to prove that the applicant is guilty of the charge, thus the finding of the Disciplinary Authority and the Appellate Authority are perverse and are not supported by any documents. It is also alleged that the Disciplinary Authority had not issued any show cause notice to the applicant before disagreeing with the Enquiry Officer's report. Thus, the Disciplinary Authority straightaway recorded the findings without giving any opportunity to the applicant. Besides that, it is also submitted that no personal hearing was granted by the Appellate Authority.

3. The O.A. is being contested by the respondents. The respondents in their reply pleaded that none of the grounds are tenable. Learned Counsel for respondents submitted that the enquiry was held strictly in accordance with rules and all particulars, as required under the law, was given to the applicant to defend himself.

4. We have heard the Learned Counsel for respondents and since no one appears on behalf of the applicant, we decide to proceed under Rule 15 of the C.A.T.F. (Procedure) Rules, 1987.

6. Out of all the grounds taken by the applicant, we find that the ground as taken in para 5 (g) where the Disciplinary

Authority had not issued any show cause notice before differing with the Enquiry Officer's report, to this the Learned Counsel for respondents had submitted that the Disciplinary Authority had supplied a copy of the dissent note before inflicting the penalty upon the applicant. In support of his contention, the Learned Counsel for respondents referred to the dissent note as well as the order passed by the Disciplinary Authority showing the same was supplied to the applicant. However, in our view, the dissenting note as recorded by the Disciplinary Authority shows that after the enquiry proceedings were submitted to the disciplinary authority, the disciplinary authority proceeded to record an order on the enquiry report and in para 5 of the said order the disciplinary authority concluded that he disagrees with the findings arrived at by the Inquiring Authority and set them aside and considered that the charges as framed vide memorandum dated 16.10.1997 stands proved against the individual. The disciplinary authority had not given any opportunity to the delinquent official that he proposes to differ with the findings arrived at by the Enquiry Officer. The law requires that the Disciplinary Authority should have taken a tentative view and an opportunity should have been given to the delinquent official to show cause as to why and on what grounds the Disciplinary Authority intends to differ from the findings recorded by the enquiry officer but the same has not been done in this case but rather, the Disciplinary Authority had straightaway proceeded to record the findings as if the charges are proved against the delinquent official. Thus, the delinquent official has been deprived of the opportunity to put forth his case before the Disciplinary Authority before the disciplinary authority had taken a view against the findings of the Inquiring Authority.

The law requires that the Disciplinary Authority should have taken only a tentative view and not the final view of holding the applicant guilty and a show cause was required to be issued to the applicant since the Disciplinary Authority was proposing to differ with the findings recorded by the Enquiry Officer.

6. Thus, we are of the considered opinion that since the Disciplinary Authority had not followed the rules of natural justice and the applicant has been deprived of the opportunity to defend himself before the Disciplinary Authority arrived at a finding of holding the applicant guilty, the order of the Disciplinary Authority is liable to be quashed and we hereby quash the same and remand the case back to the Disciplinary Authority to give the applicant an effective opportunity to represent his case before the Disciplinary Authority arrives at a final conclusion for differing with the report of the Enquiry Officer.

The O.A. is disposed of with the above directions. No order as to costs.

Shankar Prasad

(SHANKAR PRASAD)

MEMBER (A)

Kuldeep

(KULDIP SINGH)

MEMBER (J)

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