

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:478/2000

the 24<sup>th</sup> day of JULY 2000

CORAM: Hon'ble Shri D.S. Bawejia, Member (A)

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

Chandrakant Shankarrao Marne  
Residing at 1197/2,  
Ramanarain Bungalow,  
F.C. Road,  
Opp. Mantri House,  
Shivaji Nagar, Pune.

...Applicant.

By Advocate Shri S.V. Marne.

V/s

1. The Union of India through  
the Ordnance Factory Board,  
10-A, Ankland Road,  
Calcutta.
2. The General Manager,  
Ammunition Factory,  
Khadki, Pune.
3. The Works Manager/Admn.I  
For General Manager,  
Ammunition Factory,  
Khadki. ....Respondents.

By Advocate Shri Ravi Shetty.

O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985, seeking a declaration that the report of the Enquiry Officer and the letter dated 27.6.2000 are illegal and be quashed, and afford reasonable opportunity to defend in the departmental enquiry and all the provisions of CCS(CCA) Rules as regards Defence Assistant be followed:

2. The applicant was appointed as Orderly by order dated 5.2.1983, was transferred and posted at the Ammunition Factory, Khadki. He was served with the chargesheet, Enquiry Officer has

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submitted his report dated 26.5.2000. In pursuance of the enquiry report, the Disciplinary Authority has issued memo dated 27.6.2000.

3. The grievance of the applicant is that he has been falsely implicated on the imaginary misconducts. During the course of enquiry, the Enquiry Officer has failed to communicate to the Controlling Authority of the Defence Assistant to spare him for acting as Defence Assistant of the applicant, also not requested to relieve the said Defence Assistant on the dates fixed for enquiries. Thus the applicant was constrained to participate in the departmental enquiry without Defence Assistant. On 19.5.2000 no prosecution evidence was recorded by the Enquiry Officer. The statement of prosecution witnesses were recorded on 23.1.2000 and 24.1.2000. Thus false evidence <sup>on</sup> record is created. The applicant was served with notice dated 20.5.2000 to inspect the documents on 24.5.2000, within five days. Thus the five days notice ends on 29.5.2000. Before expiry of the period of five days the Enquiry Officer has completed the proceedings of the enquiry on 26.5.2000. Thus the applicant is deprived of an opportunity to inspect official records and submit the list of defence witnesses as per Rule 14(11) of the CCS(CCA) Rules 1965. The applicant was denied to lead his defence evidence in the departmental enquiry. Hence this OA.

4. Before we proceed to examine the submissions of the learned counsel for the applicant, it is necessary to mention that so far the applicant has not submitted his reply to the Enquiry Officer's report dated 26.5.2000 in compliance of letter dated 27.6.2000 by Disciplinary Authority.

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5. The learned counsel for the applicant relied on ATR 1986(2) CAT 643 Shri Charan Singh V/s Union of India and others decided by Principal Bench which deals with Section 20(1) of the Administrative Tribunals Act 1985 and it is held that

"It is not as if this Tribunal cannot entertain application unless the aggrieved employee avails all the remedies provided under the Service Rules."

"However, whether a petition under Section 19 should be entertained without insisting upon the applicant to exhaust all the remedies in a matter to be considered on the facts and circumstances of each case and no hard and fast rule can be made in this regard."

On perusal of the order the fact as disclosed is that applicant was reverted from Class III post to Class IV post and moved the Tribunal and the order is

"The order of reversion was stayed and he was directed to file an appeal within two weeks before the appellate authority."

6. The learned counsel for the applicant relied on (1991) 16 ATC 184 S. Pandian and others V/s Union of India and another decided by CAT Madras Bench which deals with Section 20(2) of Administrative Tribunals Act 1985 and it is held that

"If several employees have identical grievance, submission of representation by one of them suffices - Further held, objection cannot be raised once the application is admitted by CAT."

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7. On perusal of the facts it found that  
" One of the applicants filed an appeal against reduction  
of his subsistence allowed but this appeal was not been  
disposed of within six months. Besides, the impugned  
order is violative of natural justice and also  
non-speaking. The application has already been admitted  
and the matter setdown for final hearing. The objection  
regarding non-exhaustion of departmental remedies is  
therefore rejected"

8. The learned counsel for the applicant relied on Full  
Bench Judgements CAT Vol. II. B. Parameshwara Rao V/s The  
Divisional Engineer, Telecommunications, Eluru and Another  
decided on 12.4.1990 which deals with Section 20(1) of  
Administrative Tribunals Act 1985 and lays down the proposition  
that

"the use of the word "ordinarily" connotes a  
discretionary power in the Tribunal but as indicated  
earlier, that power has to be exercised in rare and  
exceptional cases and not usually or casually"

The facts further disclosed that after submission of the  
appeal to the Appellate Authority - a month later without waiting  
for the result of the appeal, filed the application before the  
Tribunal and it is held that no application should be ordinarily  
be admitted by the Tribunal unless the applicant has exhausted  
alternative remedy i.e. filing appeal and waiting for six months  
in the present case.

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9. The learned counsel for the respondents relied on (1995) 29 ATC 113 Transport Commissioner, Madras -5 V/s A Radha Krishna Moorthy decided by the Apex Court which lays down

"The truth and correctness of the charges was not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary enquiry."

10. The learned counsel for the applicant has filed alongwith the OA the order in his own case 614/91 decided on 5.8.1994 which was in respect of his termination of services. The order regarding termination was quashed and set aside, laying down the principles for terminating the service, which has no relevance.

11. The learned counsel for the applicant has filed alongwith the OA the order in his own case 938/99 decided on 3rd December 1999 and argued that an interim order was passed in the said OA and after hearing the respondents, the matter was decided. The OA was disposed of at the admission stage on the statement made by the learned counsel for the respondents keeping all contentions on merits are left open. Thus the matter was not decided but only disposed of recording the statement of the learned counsel for the respondents.

12. On perusal of the submission by the learned counsel for the applicant, it is made out that in the case of Charan Singh V/s Union of India and others, an order regarding reversion of the applicant was passed, hence the said case is distinguishable as no order is passed in this case and the disciplinary proceedings are yet to be finalised by the Disciplinary

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Authority. In case of S.Pandian and others V/s Union of India the respondents failed to decide the appeal within the period of six months, hence the Tribunal entertained the O.A. In case of B. Parameshwara Rao V/s The Divisional Engineer, Telecommunications, Eluru and another the power to admit the OA before exhausting the departmental remedies is to be excercised in rare and exceptional cases and not usually or casually. We do not find that this is a case which can be termed as rare and exceptional case.

13. In the case of Transport Commissioner, Madras V/s A.Radha Krishna Moorthy deals with the proposition that the truth and correctness of charges was not a matter for the Tribunal to go into particularly at a stage prior to the completion of the disciplinary enquiry. Hence whether the charges against the applicant was false or fabricated, the point cannot be examined at this stage.

14. The applicant has to wait for the decision of the Disciplinary Authority after filing his representation in pursuance of the notice dated 27.6.2000. Not only this even after the decision of the Disciplinary Authority, he has to exhaust the departmental remedies by filing an appeal to the Competent Authority challenging all the grounds which are being agitated before this Tribunal.

15. (1992) 21 ATC 670 in the case of Union of India and others V/s A.N. Saxena it has been held that the Tribunal may be very careful before granting stay in a disciplinary proceedings at an interlocutory stage.

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16. In JT 1994(1) SC 658 Union of India V/s Upendra Singh the Apex Court has held as under:

"In its order dated September 10, 1992 this Court specifically drew attention to the observations in A.N. Saxena that the Tribunal ought not to interfere at an interlocutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to be produced at the inquiry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the inquiry officer appointed by him) and found that the charges are not true. It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view... If we do not keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law, the exercise of jurisdiction

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becomes rudderless and unguided; it tends to become arbitrary and capricious. There will be no uniformity of approach and there will be the danger of the jurisdiction becoming personalised. The parameters of jurisdiction would vary from Judge to Judge and from Court to Court (Some say, this has already happened.) Law does advance. Jurisprudence does undoubtedly develop with the passage of time, but not by forgetting the fundamentals. You have to build upon the existing foundations and not by abandoning them. It leads to confusion; it does not assist in coherence in thought or action.

In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to look into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court."

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17. As the applicant has not yet been held guilty of the charges levelled against him and no reply to the Disciplinary Authority order dated 27.6.2000 has been filed, the applicant is free to agitate all of his grievances before the Disciplinary Authority which according to law is excepted to consider the same. If not satisfied with the finding of the Disciplinary Authority he can raise the said pleas before the Appellate Authority also. No interference can be made with disciplinary proceedings at the interlocutory stage.

18. In such circumstances the OA deserves to be dismissed and is dismissed accordingly at the stage of admission with no order as to costs. Interim relief ordered on 18.7.2000 stands vacated.

SLJ/  
(S.L.JAIN)  
Member (J)

DSB/  
(D.S.BAWEJA)  
Member (A)

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