

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 636/2000

Date of Decision : 10.6.2003

A.Rajendran

Applicant

Shri B.Ranganathan

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar

Advocate for the
Respondents

CORAM :

The Hon'ble Shri V.K.Majotra, Member (A)

The Hon'ble Shri Shanker Raju, Member (J)

- (i) To be referred to the reporter or not ? *NO*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *NO*
- (iii) Library - *Yes*

V.K. Majotra
(V.K. MAJOTRA)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.636/2000

Dated this the 10th day of JUNE 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

A.Rajendran
C/o A.Ravi,
18 NCH Colony,
Bhandup, Mumbai.

...Applicant

By Advocate Shri B.Ranganathan

vs.

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

2. Admiral Supdt.,
Naval Dockyard,
Mumbai.

3. Flag Officer Commanding,
Western Naval Command,
Bhagat Singh Marg,
Mumbai.

4. Chief of Naval Staff,
Naval Headquarters,
New Delhi.

...Respondents

By Advocate Shri V.S.Masurkar



..2/-

O R D E R (ORAL)

{Per : Shri V.K.Majotra, Member (A)}

Applicant has challenged punishment of compulsory retirement imposed upon him in disciplinary proceedings against him. The applicant had been chargesheeted on the following Articles of Charges :-

"Article - I : Shri A.Rajendran, T.No.55504, C.No.98 committed gross misconduct in that at about 1410 hrs. on 22 Nov 95 he consumed liquor and created nuisance in NCHC Pawai, thereby violated Rule 22 (a)(c) and Rule 3 (1)(ii) of CCS (Conduct) Rules, 1964 and acted in a manner which is unbecoming of a Govt. servant and therefore, had violated Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

Article - II : Shri A.Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22 Nov 95 at about 1430 hrs. under the influence of alcohol he unauthorisedly entered the class room of Shishu Vikas School, NCHC Pawai and tried to outrage the modesty of Smt.J.L.Choudhary, School Teacher and acted in a manner which is unbecoming of a Govt. servant and therefore, has violated Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

Article - III : Shri A.Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22 Nov 95 at about 1415 hrs. he entered in the security office at the main gate of NCHC Pawai and abused the Security Supervisor, Shri Kadam of M/S.Santosh Security Services and tore a calender to bits and pieces under the influence of alcohol and thereby acted in a manner which is unbecoming of a Govt. servant and therefore, has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article - IV : Shri Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22 Nov 95 he in fully drunken state followed Smt. P.D. Kadam from Shishu Vihar School to Sher Building abusing her husband in bad and filthy language and thereby acted in a manner which is unbecoming of a Govt. servant and therefore, has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

...3/-

Article - V : Shri A.Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22 Nov 95 at about 1445 hrs he in a fully drunken state threatened to murder Shri S.K.Awasthi and also abused him and thereby acted in a manner which is unbecoming of a Govt. servant and therefore, has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

The applicant denied the charges. The Enquiry Officer found him guilty of the charges. The applicant was supplied copy of the Enquiry Report. He was given an opportunity of making his submissions on the report of enquiry. he submitted his submissions. The disciplinary authority awarded the penalty of compulsory retirement from service on the applicant. This punishment was confirmed by the appellate authority. His Review Petition dated 5.7.1999 to the Chief Naval Staff against the appellate order was rejected vide Annexure-3 dated 19.4.2000.

2. The learned counsel of the applicant made the following contentions in support of the OA. :- (i) The original complaint was made by Mr.Awasthi who in turn was informed by Mr.Kadam about the incident. But respondents have not examined Mr.Kadam who would have been the main witness. (ii) The Lady School Teachers who had made complaints against the applicant had retracted from their earlier statements. (iii) Out of the four defence witnesses, only three witnesses had ben summoned and examined.

3. The learned counsel of the respondents stated that even if Mr.Kadam who had informed Mr.Awasthi had not been called will not provide any strength to the case of the applicant as Mr.Kadam and Mr.Dikshit who had made his statement on the basis of Mr. Kadam's information and Mr.Awasthi who had given a statement on the basis of Mr.Dikshit's statement have been examined and have given evidence against the applicant to establish charges against him. This contention raised on behalf of the respondents has been made on the basis of the findings of the enquiry report. The relevant portion is as follows :-

"Mainly two State Witnesses, Shri S.K.Awasthi, Security-in-charge and Shri J.V.Dixit, Security Supervisor have been examined in connection with all the Charges I to V. In Answer to Question 11, Shri S.K.Awasthi explained the facts and confirmed his written statement dated 22 Nov 95 also regarding nuisance and misbehaviour created by Shri A.Rajendran, delinquent (Answer to Question 12 & 13). On the basis of the Medical Report dated 22 Nov 95 issued by the Medical Officer, Rajawadi Hospital. He confirmed that Shri A.Rajendran consumed liquor also as alleged (Answer to Question 11).

State Witness Shri J.V.Dixit, Security Supervisor of the colony in answer to Question 59 explained the facts regarding nuisance and misconduct committed by the delinquent and in answer to Question 60, he confirmed his written statement dated 22 Nov 95. In Answer to Question 61, he confirmed his signature alongwith the signature of Shri Vishnu Kothu, AMIRW (Estate) on the letter dated 23 Nov 95 addressed to Sr.Inspector of Police, Parksite Police Station and Staff Minute Sheet dated 24 Nov 95 to DGM (P&A) respectively. In answer to Question 94 & 95, he confirmed that the delinquent Shri A.Rajendran was under the influence of alcohol on 22 Nov 95."

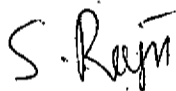
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4. As regards retraction of the Lady Teachers from their earlier statements, the learned counsel for the respondents stated that the two lady teachers have not disowned the statements given by them. As a matter of fact, if these witnesses had not turned hostile, the severest punishment would have been awarded to the applicant. The learned counsel stated that the other witnesses have given evidence against the applicant and the retraction from earlier statements by some witnesses should be considered by the Court weighing the same against the principles of preponderance of probability which resulted in closure of the school for some time.

5. In judicial review, we are conscious of the limitation of the Court. We cannot go into the correctness of the charge as also we can not re-appraise the evidence adduced in the enquiry. However, in the evidence of Awasthi and Dixit, we do find some evidence against the applicant. We are in agreement with the learned counsel of the respondents that the two lady teachers who had made the complaints had not disowned their statements and the facts and circumstances of the case as revealed in the departmental enquiry do establish the charges against the applicant under Articles I, II, IV and V when we have regard to the principle of preponderance of probability.

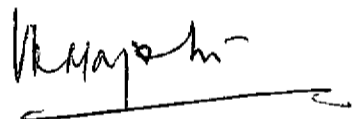
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6. However, whereas we do not find any fault with the findings in the disciplinary proceedings against the applicant, we are indeed shocked by the quantum of punishment imposed on the applicant which, in our view, is not commensurate with gravity of offence. In this view of the matter, whereas we are not interfering with the aforesaid charges having been proved against the applicant in the disciplinary enquiry, we quash and set aside the orders passed by the appellate and reviewing authority and remand the case to the appellate authority to reconsider the aspect of proportionality of punishment and pass fresh order which should be commensurate with the gravity of offence imposing a punishment which should be less severe than the punishment of compulsory retirement. The appellate authority should pass fresh orders taking into consideration the observations made above as also after affording an opportunity of hearing to the applicant within a period of two months from the date of receipt of a copy of this order. No costs.



(SHANKER RAJU)

MEMBER (J)



(V.K. MAJOTRA)

MEMBER (A)

mrj.

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

Dated this Monday the 16th day of August, 2010

Coram: Hon'ble Shri Jog Singh - Member (J)
Hon'ble Shri Sudhakar Mishra - Member (A)

Contempt Petition No.36 of 2004

in
O.A.636 of 2000

A.Rajendran

(None)

- Applicant

Versus

Shri A.R.Tandon,
Vice Admiral,
Flag Officer Commanding,
Western Naval Command,
Bapat Singh Marg,
Mumbai.


(By Advocate Shri V.S.Masurkar)

- Respondent

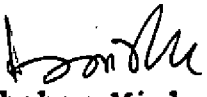
O R D E R (Oral)

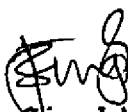
Per: Shri Jog Singh, Member (J)

The present Contempt Petition has been preferred for non-implementation of Order dated 10.06.2003 passed in OA No.636/2000 (A. Rajendran Vs. Union of India & others). Heard the learned counsel for respondents and perused the file. At the outset it has been brought to our notice by learned counsel for respondents that the respondents have approached the Hon'ble High Court of Judicature at Bombay in Writ Petition No.5326 of 2004 (Union of India Vs.



A.Rajendran) and the matter is sub judice. In the circumstances, no orders are required to be passed at this stage. The Contempt Petition is accordingly disposed of. However, in case any eventuality arises after the disposal of the said Writ Petition by the Hon'ble High Court, the applicant will be at liberty to re-agitate the matter by appropriate proceedings and in accordance with the rules. Notices discharged.


(Sudhakar Mishra)
Member (A)


(Jog Singh)
Member (J)

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21/8/81
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