

Central Administrative Tribunal
Mumbai Bench

1. OA No.614/2000
2. OA No.678/2000 ✓

Mumbai this the 17th day of June, 2003.

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

OA No.614/2000

Shri Pramod Madhukar Shetye,
R/o Room No.7, New Shanta
Bhawan Chawl, Ganga Wadi,
LBS Marg, Mulund, Mumbai-400086

-Applicant

(By Advocate Shri A.I. Bhatkar)

OA No.678/2000

Shri A.R. Madiye,
R/o NAD Karanja,
Chunnabhati, Bldg. No.220/9,
PO Uran, Tq. Panvel,
Distt. Raigad

-Applicant

(By Advocate Shri A.I. Bhatkar)

-Versus-

1. Union of India, through
the Flag Officer Commanding-in-
Chief, Headquarters Western
Naval Command, S.B. Singh Marg,
Mumbai-400001.
2. The Admiral Superintendent,
Naval Dockyard, Lion Gate,
Mumbai-4000 23.

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

This common order disposes of these OAs which have culminated into punishment in a common disciplinary proceeding having common question of law and facts.

2. In OA-614/2000 applicant impugns penalty order dated 16.11.98 imposing upon him a penalty of reduction to lower post for a period of three years as well as the

appellate order dated 27.4.2000, upholding the punishment.

3. Whereas in OA-678/2000 a challenge has been made to the respondents' order dated 16.11.98, dismissing applicant from service as well as appellate order dated 8.5.2000, confirming the penalty.

4. Both the applicants working as HSK-I in the Naval Dockyard have been proceeded against in a major penalty on the allegations of having attempted to commit theft of government property and tried to smuggle it through Naval Vehicle on 7.9.1991. In the enquiry applicants have been held guilty by the Enquiry Officer (EO) and having regard to their confession made before the Chief Security Officer.

5. Applicant in OA-678/2000 was also made an accused in case under Section 381-114 IPC, which proceeded before the ACMM in CC-1124/P/91, wherein by judgment dated 20.11.1992 applicant alongwith other co-accused was acquitted for offence as the witnesses have turned hostile and have not supported the prosecution.

6. Learned counsel for applicant impugns the punishment in OA-614/2000 on the ground that the preliminary investigation where the alleged confession was sought from applicant was not voluntary but was under threat, coercion and pressure and is not a valid confession as Naval Dockyard Police is not a designated

police within the meaning of Sections 24 and 27 of the Cr.P.C. and any confession made is not admissible as per law. It is in this backdrop stated that the same is observed to be inadmissible by the Apex Court in *Bhagwan Singh v. State*, (2003) 3 SCC 21.

7. Learned counsel further states that applicant has not been provided with the document, i.e., their alleged confession and only inspection was allowed. It is also contended that preliminary report has not been served upon him which has deprived him of a reasonable opportunity, rendering the punishment a nullity in violation of principles of natural justice and fair play.

8. One of the contentions put-forth is violation of Rules 20 of the CCS (CCA) Rules, 1965. It is further stated that the case is of 'no evidence' and 'no misconduct' as no evidence has come forward in the enquiry to establish the charge on the part of applicant and the EO only on the basis of the testimony of Naval Police Officer without proving the documents on record, i.e., confession statement held him guilty of the charge which was mechanically agreed by the disciplinary authority and confirmed in appeal, rendering the orders unsustainable in law.

9. The aforesaid grounds have also been reiterated in OA-678/2000. However, a plea has been raised of discrimination in punishment, violative of Articles 14

and 16 of the Constitution of India, as applicant, though similarly circumstanced and alleged similar misconduct was dismissed whereas the others have been let off with lesser punishment. He places reliance on a decision of the Apex Court in TATA Engineering & Locomotive Co. Ltd. v. Jitendra Pd. Singh and Another, 2002 SCC (L&S) 909 to substantiate his plea.

10. Lastly, it is contended that having acquitted from the criminal case the punishment imposed in the disciplinary proceedings cannot be sustained.

11. On the other hand, respondents' counsel vehemently opposed the contentions put-forth by applicants and stated that if the case is of some evidence, reappraisal and re-appreciation of evidence in a judicial review is barred. However, it is stated that the documents have been allowed to be inspected and copies were given to the Defence Assistants and confessional statements have been validly proved from the testimony of witnesses and are admissible even in the departmental enquiry. As no legal infirmity has been pointed out in the conduct of the disciplinary proceeding and the orders passed by the disciplinary as well as appellate authority are reasoned, OAs require no interference.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. In so far as the plea of non-furnishing documents is concerned, we find that the alleged confessional statements have been made part of the listed documents. On perusal of enquiry report we find that all the listed documents were inspected by the Defence Assistants on 18.3.97 and complete sets of photo-stat copies were also provided by the Presenting Officer to all the Defence Assistants, as such the plea of applicants as to non-supply of documents holds no water.

14. In so far as violation of Rules 14(18) *ibid*, i.e., non-questioning applicants by EO is concerned, having regard to the decision of the Apex Court in Ministry of Finance v. S.B. Ramesh, 1998 SCC (L&S) 865 violation of Rules 14 and 18 was held to have vitiated the enquiry only when the EO had recorded exparte evidence and had not afforded an opportunity to the petitioners therein to cross examine the witnesses. But in the cases before us as applicants were given an opportunity to cross examine the defence witnesses, in absence of any prejudice caused to them, violation of Rules 14(18) *ibid*, would not vitiate the enquiry and the decision of the Apex Court is distinguishable and would not apply to the facts of the present cases.

15. As regards plea of not proving the documents during the course of enquiry, i.e., their confessional statements is concerned, we find that both the prosecution State witnesses have categorically stated in their testimony that applicants have confessed of their

guilt before them on their own volition without any threat, pressure or coercion. By their testimony these confessional statements are amply proved. It is to be noted that in a disciplinary proceeding the strict rules of evidence and Cr.PC would have no application. The disciplinary proceedings cannot be equated with a criminal trial where the proof is strict but disciplinary proceedings are based on the rule of pre-ponderance of probability. The concept of admissibility of hear-say evidence also has no application. What is to be seen is that the relevant material has been put to the notice of the delinquent official for rebuttal. As applicants have cross-examined the witnesses their aforesaid plea cannot be countenanced.

16. In so far as the plea of confession before a Police Officer is concerned and resort to the decision of the Apex Court would not be applicable as firstly it is in the context of criminal proceeding and secondly the Naval Police Officer or Security Officer is not designated as Police within the meaning of Cr.PC and as the confessions have been recorded by the Chief Security Officer in the presence of another State witness the same has admissibility in the disciplinary proceedings, where the pre-ponderance of probability is a rule and the rule of evidence as to admissibility of admission has no application.

17. However, we find that the Apex Court in State Bank of Bikaner v. Sri Nath Gupta, 1997 (1) SCSLJ 5 has

validated the admissibility of statement under Section 161 of Cr.PC in the disciplinary proceedings. The confessional statements made before the Naval Officer can be equated with the statement under Section 161 Cr.PC made before a Police Officer and once these statements are admissible the same analogy apply to the confessional statement as well. It is a settled principle of law that a confession/admission which is proved to be free, fair and without under pressure or threat is admissible as a piece of evidence against the delinquent official in a disciplinary proceeding. Moreover, from the perusal of the record it transpires that the same has been proved to be voluntary and in this view of the matter no further proof is required to hold the guilt of applicants. In a disciplinary proceeding judicial review is very limited and if some evidence is on record and the findings are neither perverse nor based on no evidence, reappraisal is precluded. We find that the conclusions arrived at pass the test of a reasonable common prudent man and in that event we cannot re-appraise the evidence by substituting our own views. This is supported by the decision of the Apex Court in Syed Rahimuddin v. Director General, CSIR, 2001 (9) SCC 575. 1

18. We have also perused the findings of the EO, which are based on evidence brought on record proving the guilt of applicants and also the orders passed by the disciplinary and appellate authorities. In OA-614/2000 we do not find any legal infirmity as the orders are reasoned.

19. In so far as the plea of acquittal in criminal case and un-sustainability of punishment is concerned, Apex Court in a recent decision in Secretary, Ministry of Home Affairs v. Tahir Ali Khan Tyagi, 2003 (1) ATJ 257 held that on hostility of prosecution witnesses in a criminal case when they are won over, on acquittal the departmental proceedings can be initiated and be allowed to come to a logical conclusion.

20. From the perusal of the decision of the trial court, it appears that the witnesses who were co-delinquents in the disciplinary proceedings have not supported the prosecution and were declared hostile and as such acquittal on this ground is not a honourable acquittal on merits and would not over-ride or affect the punishment in the disciplinary proceedings.

21. However, in OA-678/2000 we find that whereas the other delinquents have been punished with a lesser punishment applicant has been imposed upon an extreme punishment of dismissal, which, to our considered view, is a hostile discrimination violative of Articles 14 and 16 of the Constitution of India. In Jitendra Pd.'s case (supra) the Apex Court has set aside the punishment being discriminatory. In all respects applicant is at par with the co-delinquent in so far as misconduct alleged is concerned, yet has been awarded a severe punishment, which cannot be sustained in the eye of law.

22. In the result, for the foregoing reasons, though finding no merit in OA-614/2000 the same is

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dismissed, however, OA-678/2000 is partly allowed. Impugned orders are quashed and set aside. Respondents are directed to pass a fresh order of penalty in consonance with the punishment awarded to the co-delinquents within a period of two months from the date of receipt of a copy of this order. However, till that time applicant shall remain under deemed suspension and the intervening period would be decided in accordance with rules and instructions on the subject. No costs.

Let a copy of this order be placed in the case file of OA-678/2000 as well.

(Shanker Raju)
Member (J)

(V.K. Majotra)
Member (A)

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