

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 444/2000

Date of Decision : 22.8.2003

H.L.Gupta

Applicant

Ms.D.Fernandes for  
Shri Suresh Kumar

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.K.Shetty

Advocate for the  
Respondents

CORAM :

The Hon'ble Shri Justice S.R.Singh, Vice Chairman

The Hon'ble Shri S.K.Agrawal, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library?

  
(S.R.SINGH)  
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.444/2000

Friday this the 22nd day of August, 2003.

CORAM : Hon'ble Shri Justice S.R.Singh, Vice Chairman

Hon'ble Shri S.K.Agrawal, Member (A)

H.L.Gupta,  
Chargeman Gr.I,  
Case Shop,  
Ordnance Factory,  
Varangaon.

...Applicant

By Advocate Ms.D.Fernandes  
for Shri Suresh Kumar

vs.

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

2. The Chairman,  
Ordnance Factory Board,  
10-A, Auckland Road,  
Calcutta.

3. The General Manager,  
Ordnance Factory,  
Varangaon - 425 308.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri Justice S.R.Singh, Vice Chairman}

Heard Ms.D.Fernandes holding brief for Shri Suresh Kumar,  
learned counsel for the applicant. Shri R.K.Shetty, learned  
counsel appearing for the respondents.

Ques

..2/-

2. While the applicant was holding the post of Chargeman, he was served with the charge Memorandum dated 17.1.1995 and according to the Statement of Articles of Charges framed against the applicant, he was charged for abusing, manhandling, assaulting and beating up Shri L.C.Sharma, Chargeman and causing injury to him and also having conducted in a manner unbecoming of the Government servant and thereby having violated Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964. An enquiry was conducted into the charges levelled against the applicant. Enquiry Report dated 11.11.1995 was received by the applicant on the very date at 10.20 a.m. A perusal of the letter dated 11.11.1995 would indicate that the applicant was required to submit his representation "within 15 days of receipt of this letter". Surprisingly, the disciplinary authority without waiting for the representation of the applicant passed an order of punishment on 11.11.1995 itself, thereby imposing the penalty of withholding of one increment for a period of one year with cumulative effect with further direction that during the period the applicant would earn his normal increment which is otherwise due. The penalty was effective from the date of the order. The period of suspension was ordered to be treated as period not spent on duty for all purposes.

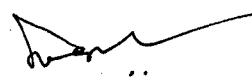
3. Submission made by the learned counsel appearing for the applicant that though the applicant was required to submit his representation within 15 days of the receipt of the enquiry report but the order of punishment was passed on the date the applicant received the enquiry report, this, according to the learned counsel violated Rule 16 of the CCS (CCA) Rules, 1965.

Ques

Shri R.K.Shetty, learned counsel representing the respondents has very well stated at the Bar that the order of punishment was passed without waiting for the representation of the applicant on the date a copy of the enquiry report was served on the applicant. Though the appeal filed by the applicant against the order passed by the disciplinary authority came to be dismissed by order dated 14.5.1999, the original order of punishment passed by the disciplinary authority being an order passed in breach of principles of natural justice is binding the appellate order is bound to also follow.

4. In the circumstances, the application succeeds as below:-

The impugned order is quashed with liberty reserved to the disciplinary authority to proceed from the stage of so call notice after receipt of enquiry report. It is, however, provided that in case the department intends to proceed further in the matter, the appropriate <sup>final</sup> <sub>decisions</sub> shall be taken by the disciplinary authority expeditiously within a period of four months from the date of receipt of this order. No order as to costs.



(S.K.AGRAWAL)

MEMBER (A)



(S.R.SINGH)

VICE CHAIRMAN

mrj.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, MUMBAI.

REVIEW PETITION NO.65/2003.  
IN  
ORIGINAL APPLICATION NO.444/2000.

Dated: 02.09.2004.

Hon'ble Shri Anand Kumar Bhatt, Member (A),  
Hon'ble Shri S.G.Deshmukh, Member (J).

H.L.Gupta ...Applicant.  
(By Advocate Ms.D.Fernandes)

Vs.

Union of India & Ors. ...Respondents.  
(By Advocate Shri R.K.Shetty)

: O R D E R :

{Anand Kumar Bhatt, Member (A)}-ORAL

Review Petition has been filed by the Respondents against the order dt. 22.8.2003 of the Tribunal in OA No.444/2000. The case was that departmental proceedings were taken up against the applicant. An inquiry was conducted. Enquiry Report was received by the applicant on 11.11.1995 at 10.20 a.m. The applicant was required to submit his representation within 15 days of the receipt of the said inquiry report. However, the Disciplinary Authority (for short, DA) without waiting for the representation of the applicant passed an order of punishment on 11.11.1995 itself. In the review petition filed by the Respondents (in the OA), ground has been taken that after receiving the copy of the inquiry report on 11.11.1995, representation was filed by the charged officer on the same day at 11.10 a.m. Therefore, the order passed by the DA on the same day on which the inquiry report was received by the charged officer (for short, CO) is in order. The DA's order was received by the CO ON 13.11.1995. The 15 days' time given to the CO, is the outer limit and after the receipt of the representation from the applicant the DA was fully justified in passing the order.

There is error apparent on the face of the record in the order of the Tribunal dt. 22.8.2003 which should be corrected. Shri Shetty also pointed out that now the applicant has retired on 31.7.2004.

2. For the applicant in the O.A. Ms. D.Fernandes said that the application/representation by the applicant dt. 11.11.1995 which was given by him at 11.10 a.m. to the respondents (Exhibit - R-6 on page 120 of the paper book in the OA) is only a request for revocation of suspension. She also pointed out that Shri R.K.Shetty, the Counsel for the respondents stated at the bar on the day of hearing that orders of punishment was passed without waiting for the representation of the applicant on the date copy of the Enquiry Report was served on the applicant.

3. We have considered the case. The operative portion of the order of the Tribunal in OA No.444/2000 is as follows :

"3. Submission made by the learned counsel appearing for the applicant that though the applicant was required to submit his representation within 15 days of the receipt of the enquiry report but the order of punishment was passed on the date the applicant received the enquiry report, this, according to the learned counsel violated Rule 16 of the CCS (CCA) Rules, 1965. Shri R.K.Shetty, learned counsel representing the respondents has very well stated at the Bar that the order of punishment was passed without waiting for the representation of the applicant on the date a copy of the enquiry report was served on the applicant. Though the appeal filed by the applicant against the order passed by the disciplinary authority came to be dismissed by order dt. 14.5.1999, the original order of punishment passed by the disciplinary authority being an order passed in breach of principles of natural justice is binding the appellate order is bound to also follow.

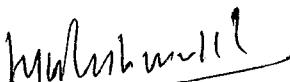
4. In the circumstances, the application succeeds below :-

The impugned order is quashed with liberty reserved to the disciplinary authority to proceed from

the stage of so call notice after receipt of enquiry report. It is, however, provided that in case the department intends to proceed further in the matter, the appropriate final decisions shall be taken by the disciplinary authority expeditiously within a period of four months from the date of receipt of this order. No order as to costs."

Shri R.K.Shetty, learned counsel for the respondents had stated <sup>in the OA</sup> at the time of hearing <sup>DA</sup> that DA had passed the order without <sup>any st</sup> waiting for the representation of the applicant on the same date <sup>t</sup> that the copy of the Enquiry Report was served on the applicant. Under the circumstances, the respondents cannot make an about <sup>t</sup> now and say that the representation was received, especially in <sup>counsel for the OA</sup> view of the assertion of the <sup>L</sup> charged officer that the said representation was only for revocation of suspension. The Tribunal gave liberty to the DA to proceed from the stage of so called notice after receipt of Enquiry Report. As the charged memo was already issued to the applicant, the respondents <sup>can do</sup> very well continued with the inquiry even after the retirement of the charged officer.

4. Review Petition is rejected.

  
(S.G. DESHMUKH)

MEMBER (J)

  
(ANAND KUMAR BHATT)

MEMBER (A)

B.