

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.746/2001.

Dated: 1.12.04

Avinash Malhar Karkhanis

....Applicant(s)

Shri D.V.Gangal

....Advocate for
applicant(s).

Vs.

Union of India & Ors.


....Respondent(s)

Shri V.S.Masurkar

....Advocate for
Respondent(s)

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

- ✓(1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?
- (3) Library.


(ANAND KUMAR BHATT)
MEMBER (A).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.746/2001.

Dated: 1 December 2004

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

Avinash Malhar Karkhanis,
Neelkanth Apartments,
Flat No.3,
Kamtha, (Uran) PIN - 400 702,
Dist : Raigad.
(By Advocate Shri D.V.Gangal)

... Applicant.

v.

1. Union of India, through
Flag Officer Commanding In Chief
Western Naval Command
Shahid Bhagat Singh Road, Fort,
Mumbai - 400 023.
2. The Commodore
Chief Staff Officer (P&A),
Western Naval Command,
Shahid Bhagat Singh Road, Fort,
Mumbai - 400 023.
3. The General Manager,
Naval Armament Depot.,
Karanja,
Dist : Raigad.
(By Advocate Shri V.S.Masurkar)

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

The relief sought in the present application is as follows :

- "a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case which led to issuance of orders dated 14.05.1999, 12.03.2001, 27.04.2001 and 15.08.2001 and after going through its propriety, legality and constitutional validity, it may be declared that the impugned orders dated 14.05.1999, 12.03.2001, 27.04.2001 and 15.08.2001 are illegal and should be quashed;
- b) It may be declared that the Applicant is innocent and deserves to be declared as exonerated in respect of the charge memorandum 14.05.1999;

...2.

J

- c) Respondents be directed not to recover Rs.2,558/- from the salary of the Applicant;
- d) Hold and declare that the Applicant's pay should be restored to Rs.6900/- as on 12.03.2001 and the punishment order issued by the Disciplinary Authority and confirmed by Appellate Authority should be treated as null and void;
- e) The Respondents be directed to promote the Applicant as sr. Foreman of Stores w.e.f. August, 2001, with all consequential benefits;
- f) Cost of this Original Application be provided for;
- g) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case."

2. Facts, according to the applicant are that five numbers of Barrel Holders (for short, BH) were issued to the Factory by the applicant on 8.3.1993 for repairs. They were returned to the Stores Section on 31.3.1994. During the period the said BH were in the Factory between the period 8.3.1993 to 31.3.1994 they were issued by the Factory to Proof House for testing and the applicant received back on 31.3.1995. After that, the applicant has contended that these 5 BH were permanently handed over to the Proof House, as has been mentioned in the Bin Card maintained by the applicant. In 1997, these BH were stolen while in the custody of the Proof House. In spite of the fact that they were ^{to not} in the custody of the applicant when they were stolen, the applicant has been charge sheeted on 14.5.1991. An inquiry was conducted. The Inquiry Officer submitted his report dt. 20.9.2000. The applicant submitted his representation to the Disciplinary Authority (for short, DA) and the applicant was issued with a punishment of reduction of pay from Rs.6900 to Rs.6725 and in addition, an amount of Rs.2558/was directed to be recovered from the pay of the applicant. The Appellate Authority

(for short, AA) confirmed the punishment order by his order dt. 15.8.2001.

3. The applicant has contended that as the BH were permanently handed over to the proof house on 31.3.1995 and were stolen in the year 1997, the applicant cannot be held responsible in any way for the theft. The applicant has been made a scape-goat for an item which is stolen from the Proof House and the staff of the Proof House has gone scot free. There was no negligence or laxity on his part. The IO has been unable to connect the charges levelled against him. The applicant was due for promotion to the post of Senior Foreman/Stores in August, 2001 which was not given to him because of the punishment. The applicant has prayed for quashing of the entire departmental proceedings and punishment given to him and he has also seeking the relief of promotion as Senior Foreman/Stores w.e.f. August, 2001.

4. In the reply submitted by the Respondents, it has been stated that the enquiry has been conducted strictly in accordance with CCS (CCA) Rules. The applicant was afforded sufficient opportunity to defend his case. There is no flaw in the procedure nor violation of principles of natural justice. The applicant did not ensure physical return of BH assembly for Cox Gun and covered up the transaction of account by posting an internal issue voucher dt. 31.3.1995 in the bin card. If the applicant had been more vigilant and got back the BH in time the theft could have been avoided. Six monthly stock taking was also not done. The applicant failed to ensure receipt of BH assembly for Cox Gun before the year ending closing and did not scrutinize

sh
...4.

the bin card before certifying it as correct.

5. Shri D.V.Gangal, Counsel for the applicant reiterated the written pleadings. He stated that the date of theft has not been given in the charge sheet. The applicant has been transferred from the section in June, 1996 and the theft took place when the material was in Proof House. The applicant had ^{sent it} ~~seen~~ a report on 8.6.1996 (Exhibit - R-2). In addition, he mentioned the fact of writing several memos to his Officers during the course of the inquiry. In the Proof House one Madhukar K.Bam was posted who was proceeded against for theft. However, he has been let off with a minor penalty of censure and token recovery of Rs.2,558/-. About six monthly stock taking Shri Gangal has stated that the theft occurred much later and therefore, the fact that stock taking was not done timely is not material. The counsel for the applicant has cited the following cases :

(a) Union of India & Ors. v. J.Ahmed {AIR 1979 SC 1022}. It has been held that lack of efficiency, failure to attend highest standards of administrative ability etc. do not constitute mis-conduct.

(b) Yoginath D.Bagde v. State of Maharashtra & Anr. {1999 (2) SC 324}. It has been held by the Apex Court that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, It would be open to the High Court, as well as, the Apex Court to interfere in the matter. Thus, in exercise of its jurisdiction under Article 226

or 32 of the Constitution the High Court can re-appraise the evidence.

(c) Om Kumar and Ors. v. Union of India {2001 SCC (L&S) 1039}. In this case, even though charges were serious, the senior officers were let off with minor or not very serious major punishments.

(d) Dr. Y.R.Midha v. Union of India and Ors. {2002 (2) AISLJ CAT 43}. This matter relates to mala fide intent in issue of charge sheet.

6. For the respondents, Shri V.S.Masurkar stated that the entire argument of the Learned Counsel for the applicant is tangential. The applicant, in ^{no} ~~any~~ way, has been charge sheeted for the theft. The Article of Charges had ^{two} ~~three~~ components. :

(a) He issued two numbers of CWP containing cox gun barrel holder on 18.12.1993 to Proof House and subsequently covered up the transaction by posting the entry dt. 31.3.1995 in the bin card during the year end closing in 1994 without ensuring the physical return of the BH assembly.

(b) He did not carry out six monthly stock taking and therefore, the store in question was involved in theft which resulted in loss of Rs.51,166.50.

Shri Masurkar stated that a Board of Inquiry was constituted and based on the preliminary inquiry both the applicant and Madhukar K.Bam were charge sheeted. The charge sheet of the applicant

3

does not mention theft at all. The applicant did not produce any witness. The applicant was duly promoted after one year when the punishment period was over. In all 8 persons were punished. Shri Masurkar stated that the comparison ^{with} ~~that~~ Madhukar K. Bham is inappropriate for the reason that Madhukar K. Bham and the applicant belong to different departments, Bam was proceeded against ^{for} a minor penalty whereas the applicant was proceeded against ^{for} a major penalty. Bam had also gone in OA, which was dismissed. Both for applicant and Bam sealed cover procedure was adopted. However, after punishment sealed cover for the applicant was not opened. The proportionality of the punishment has been discussed in detail by the AA in his order dt. 15.08.2001. The applicant woke up after almost three years when he wrote to Manager (JMO) on 6.6.1996 that the BH sent to Factory on 19.11.1993 has been sent to Proof House and no action taken on the stores during the past three years. The BH is not a consumable item that it can be issued permanently to Proof House and in any case, this is not the case that was put forward by the applicant before the Inquiry Officer. The applicant was promoted as Foreman/Stores on 14.11.1997. The charge sheet was issued to him on 14.5.1999 after the punishment period was over, ^{he} ~~he~~ was duly promoted as Sr. Foreman/Stores w.e.f. 27.9.2002.

7. In rebuttal, Shri Gangal had stated that if the applicant was not considered liable for theft, why the recovery was made from him. The mention of Board of Inquiry by the counsel for the

...7.

respondents is relying on extraneous documents and the charge sheet does not show that any such inquiry was conducted. This preliminary inquiry was conducted at ~~my~~^{the applicant's} back. Shri Gangal stated that in case the charge sheet and punishments are quashed, the applicant will get promotion from a back date.

8. We have considered the case. As is clear from the components of the charge sheet, the applicant has not been proceeded against for his involvement in the theft, but for negligence and acts of omission which ~~has~~^{have} resulted in the theft. The counsel for the applicant has cited the Apex Court Judgment in the case of J. Ahmed (supra) and Yoginath Bagde (supra) to prove the contention that lack of efficiency cannot be called mis-conduct and if the findings are perverse and not supported by evidence on record or the findings are such which no reasonable person would have reached, it would be open for the High Court, as well as, the Apex Court to interfere in the matter. However, the charges are not lack of efficiency, but non-completion of the task which was assigned to him, as well as, not accomplished what was expected of the applicant in a routine way. The applicant's contention that the Barrel Holders were issued on a permanent basis to the Proof House is not believable as it is not a consumable item that it can be issued permanently to the Proof House and exhausted. It is also found correct by the Inquiry Officer that the applicant tried to cover the transaction by posting an entry without ensuring the physical return of the BH. In addition, the applicant did not carry out the six monthly stock taking which is prescribed as his routine duty. In judicial review, the Tribunal cannot sit on appeal against the

decision of DA and AA. The Tribunal cannot interfere with the finding of Inquiry Officer or Competent Authority ~~where~~^{wherein} they are not arbitrary or utterly perverse as has been held in Union of India v. Parama Nanda {AIR 1989 SC 1185}. In B.C.Chaturvedi v. Union of India & Ors. {JT 1995 (8) SC 65}, it has been held that:

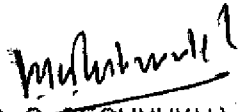
"The High Court/Tribunal while exerting the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief either directing the disciplinary authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent resources in support thereof".

This is not the case where the punishment is so severe that it shocks the conscience. Although the punishment is a major punishment, yet it is one of the less harsh major punishments. The principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense it was in outrageous defiance of logic or moral standards as has been held in State of Karnataka & Ors. v. H.Nagaraj {JT 1998 (9) SC 37}. We have in the past interfered with the punishment only when it is of terminal nature i.e. dismissal or removal and have generally refrained from interfering in the quantum of punishment in ~~their~~^{other} cases. The jurisdiction of the Tribunal in the cases of departmental inquiries and the findings recorded therein is limited. The interference is possible where it is found that domestic inquiry is vitiated because of non-observance of principles of natural

justice; denial of reasonable opportunity; findings are based on 'no evidence' and the punishment is totally disproportionate with the proved misconduct of the employee as has been held by the Apex Court in Indian Oil Corporation Ltd. & Anr. v. Ashok Kumar Arora {1997 (3) SCC 72}. The applicant has not been able to point out any serious irregularity in the departmental inquiry which may vitiate the entire proceedings. Opportunity has been given to the applicant to defend himself to the best of his ability. The applicant has also tried to lay emphasis on the fact that from the Proof House one Bam was given a much lesser punishment where the theft had actually occurred. It has been explained by the respondents that, whereas, the applicant was charge sheeted for major penalty and Bam was for minor penalty and therefore there is difference in the punishment meted out. In Balbir Chand v. Food Corporation of India Ltd. and Ors. {1997 (3) SCC 371}, it has been held that merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment lest the same mistaken view would be repeated. It has also been held in State of Bihar v. Kameshwar Prasad^{Singh &} {2000 SCC (L&S) 845} that the concept of equity has arisen under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. The respondents have explained that Bam was supervisory officer, whereas, this is not the case so far as the nature and duties of the applicant is concerned. The applicant has stated that because of the penalty his promotion was affected. It is seen that after the period of punishment was

over, he was promoted as Senior Foreman (Stores) w.e.f. 27.9.2002 before he superannuated on 31.10.2002. Therefore, it is not correct to say that he was overlooked for promotion. In Yoginath Bagde's case (supra) which is cited by the applicant, the Apex Court has said that re-appraisal of the evidence by High Court and the Apex Court is possible only if the findings are perverse and are not supported by evidence on record or if the findings accorded are such to which no reasonable person would have reached. This is not the case of mala fide and cannot be termed as a case of 'no evidence' so far as the charges are concerned. It can be said that the inquiry has been conducted against the applicant only after the actual theft was committed for which the applicant was directly not responsible; however, the applicant has been charge sheeted for acts of negligence and omission which made it possible for the theft and some part of the responsibility for the loss to the Government has come to the applicant. The applicant has also stated that the Board of Inquiry on the basis of which the applicant was proceeded against was done at his back. However, for any such preliminary inquiry there is no provision under CCS (CCA) Rules that the applicant has to be given opportunity to explain himself. CCS (CCA) Rules apply only after a charge sheet has been issued and ^{any} ~~in~~ fact finding inquiry prior to issue of charge sheet is not covered by CCS (CCA) Rules.

9. To sum up, we are satisfied that no ground is made out to interfere in the case. O.A. dismissed. Costs easy.


(S.G. DESHMUKH)
MEMBER (J)


(ANAND KUMAR BHATT)
MEMBER (A)

B.