

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 441 / 2001

S. H. Pradhan

(By Advocate Shri K. Sivaramkrishnan

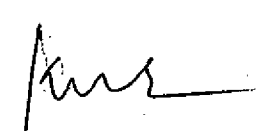
VERSUS

Union of India & or.

(By Advocate Shri V-S. Masurkar.

CORAM : Hon'ble Shri Kuldeep Singh - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

- (i) To be referred to the Reporter or not ? }^{no}
(ii) Whether it needs to be circulated to other Benches of the Tribunal ? }^{yes}
(iii) Library ? }^{yes}


(Shankar Prasad)
Member (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

Coram: Hon'ble Mr. Kuldip Singh - Member (J)
 Hon'ble Mr. Shankar Prasad - Member (A)

O.A. 441 of 2001

Dated this Monday the 30th June, 2003

S.H. Pradhan,
Assistant,
Public Works Department,
Administration of Dadra and Nagar
Haveli, Silvassa 396 230.
(By Advocate Shri K. Sivaramkrishnan) - Applicant

Versus

1. Union of India
 through Secretary,
 Ministry of Home Affairs,
 North Block, New Delhi - 110 001.
2. Administrator of Dadra & Nagar
 Haveli through
 Finance Secretary-cum-Secretary,
 PWD, Silvassa 396 230.
 (By Advocate Shri V.S. Masurkar) - Respondents

O R D E R

By Hon'ble Mr. Shankar Prasad, Member (A) -

Aggrieved by the orders dated 6.10.2000 of the
Disciplinary Authority and the order dated 23.4.2001 of the
Appellate Authority the Applicant has preferred the instant OA.

2. The case of the Applicant in brief is that he was issued a
charge sheet dated 20.9.1994 for an act of omission of 1988.
The Enquiry Officer held the charge to be not proved. However,
the disciplinary authority remanded the matter back for further
enquiry. The next enquiry officer did not conduct the enquiry.
The third Enquiry Officer held him guilty and accordingly the
Disciplinary Authority passed the impugned order. *h*

The further case of the Applicant is that as per the provisions of Section 34, 35 only of the Indian Registration Act he is supposed to take provisions of Registration Act only into account while registering the document. He therefore cannot be charged with not looking into the order of Collector dated 6.5.1986 granting N.A. permission from agricultural to non-agricultural use. The charge is vague and there is no misconduct. The case is squarely covered by the Apex Court decision in State of Punjab and others Vs. Ex-Constable Ram Singh and others. It was stated that land had still not been resumed.

The first Enquiry Officer had found the charge to be not proved. Accordingly the Disciplinary Authority could not have remitted the matter back for fresh enquiry without serving him with a copy of the disagreement note and giving him an opportunity of representing against the same. The provisions contained in newly introduced Rule 15 (1A) of the CCS (CCA) Rules refers. He drew our attention to the decision of the Apex Court in the case of Kunj Behari Misra, CSHA University Vs. B.D.Goyal and other related matters.

It was also urged that the enquiry has taken six years to be completed and therefore on this ground alone the charge sheet deserves to be quashed following the decision of Apex Court in the case of State of Andhra Pradesh Vs. N.Radhakrishnan. *Sh*

3. The case of the Respondents in brief is that the permission for agri-land into non-agricultural use i.e. for construction of residential house had been granted subject to the conditions mentioned therein. It included the condition of personal use and that no part of it was to have been sold, exchanged or transferred to another party without the prior permission of Collector. The permission was also subject to the provisions of Land Revenue Administration Regulation and Rules made thereunder. Rule 47 (e) of Dadra & Nagar Haveli Land Revenue Administration Rule refers. If the Sub-Registrar does not check these conditions there will be chaos in management of land. It was necessary on the part of Applicant to ask executing parties to produce the copy of said NA order as is done by each Sub Registrar and securing compliance of the conditions of NA order.

The non-compliance with this practice is a misconduct. The mutation order has been cancelled and the matter relating to resumption/regularisation of transaction is receiving attention.

The disagreement note has to be communicated only when the Disciplinary Authority is going to impose a penalty. The matter was remitted for further enquiry as the Enquiry Officer had not considered the order granting permission in 1986. This has been indicated in the order also. It was neither a case of de novo enquiry nor of imposing penalty. *Sh*

There has been some delay in concluding the enquiry but the same has been because of exigencies of administration.

The enquiry has been properly conducted and the penalty has been rightly imposed.

4. The Applicant has relied on the decision of the Apex Court in Jeewan Ram Vs. State of Rajasthan, AIR 1954 Raj. 53. The Rajasthan High Court held "We are of the opinion that it was no part of the duty of Sub Registrar to go outside the powers conferred on him under Sections 34 & 35 of the Registration Act and such provisions of other laws which have definitely been made supplemental to the Registration Act".

The said judgment is Para 6 gives an example of supplemental provisions under other acts.

It has been strongly urged on behalf of the Respondents that all other Sub Registrars are looking into the NA permission before registering the document. This shows that there is a practice of referring to such documents. It is also clear that the man in whose favour the permission had been granted earlier was also to have executed an agreement. It has not been stated by the Respondents if the same has to be necessarily registered. *h*

Diversion of agricultural land for non-agricultural use is an important aspect of public policy. Besides this till Urban Land regulations regarding land use, requirement of constructions eg. set off etc. are put in place they may have to be regulated by executive instructions. The executive power under Article 77/Article 162 extends to such actions.

Under the circumstances, this ground is of no avail.

5. A plain reading of Para 6 of the judgment in State of Punjab & others Vs. Ram Singh, Ex-Constable relied upon by the petitioner themselves indicates that transgression of established and definite rule of action or code of conduct is a misconduct.

A three Judge Bench of the Apex Court in B.C.Chaturvedi Vs. Union of India, 1995 (6) SCC 749 has held that having assets disproportionate to income is a misconduct even though when it has not been as a specified misconduct.

Similarly in State of Tamil Nadu Vs. A.C.J. Britto, 1997 (3) SCC 337 the Apex Court has widely interpreted the clause for good and sufficient reasons in the context of imposing penalties under Tamil Nadu Subordinate Service (Discipline & Appeal) Rules *h*

to include unspecified misconduct. The said rules are pari materia to CCS (CCA) Rules.

Hence the argument that the said act is not a misconduct has no legs to stand upon and fails.

6. Yet another argument was that even though there has been only one Article of Charge the Enquiry Officer has held him guilty of two charges. As a matter of fact Article II was statement of imputations elaborating the charge. This ground was not taken before the Appellate Authority and hence cannot be raised now as per the decision of the Apex Court in Deokinandan Sharma's case, 2001 SCC (L&S) 1079.

7. The next ground is that before remitting the matter to a new Enquiry Officer the applicant should have been heard.

We note that this ground has not been taken before the Appellate Authority and hence cannot be raised as per the decision in Deokinandan Sharma's case (supra).

Coming to the facts one finds that the Enquiry Officer had not at all considered Collector's order dated 6.5.1986 imposing restrictions on the transfer and therefore the matter has been remitted back along with this comment. the said letter had been cited as a prosecution document. *h*

8. A plain reading of Section 15 of CCS (CCA) Rules indicates that three situations are envisaged namely -

(a) Rule 15 (1) provides for remitting the matter back for further enquiry.

(b) Agreeing with the report of Enquiry Officer and

(c) Rule 15 (2) provides for disagreeing with the report of Enquiry Officer on the basis of evidence on record. It is only in the last two cases that copy of the enquiry report and disagreement note, if any, has to be served as per the rules.

Punjab National Bank Vs. Kunj Behari Misra, 1998 (2) SC SLJ 117, is an authority where the disciplinary authority has disagreed with the recommendations of Enquiry Officer in terms of Para 7 (2) of the concerned regulations of the Bank. It is therefore not applicable to the facts of the case.

State Bank of India Vs. A.K. Shukla, 2001 (2) SC SLJ 127 was also considering the same issue and the Apex Court has followed the ratio in Kunj Behari Misra's case.

In CSHA University vs. B.D. Gopal, 2001 (2) SC SLJ 233, the Vice Chancellor had directed that matter should be enquired into a fresh and fresh appointing officer be appointed. The case is distinguishable on facts.

In the instant case we find that the Enquiry Officer had without considering the NA permission order held that the delinquent was not guilty. The said document had also been cited as a document by which the charge was to be sustained. The matter has been remitted back for considering this document. Rule 15 (1A) covers only the later two situations. The enquiry is accordingly not vitiated.

9. The Apex Court in Radhakrishnan's case 1998 SCC (L&S) 1044 has held as follows -

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to

perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rule but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

It is clear that it does not lay down an absolute law that in every case the proceedings have to be quashed. The Court has to balance the two considerations as pointed out in the judgment.

In the instant case the first Enquiry Officer submitted his report without examining the relevant document. The second enquiry officer did not do anything and a third enquiry officer had to be appointed. Having regard to these we are of the view that there is explanation for the delay and that the Applicant has not been prejudiced.

10. The main ground taken before both the Disciplinary Authority/Appellate Authority was that the Applicant the Applicant was bound only by Indian Registration Act and instructions of Registration authorities. This aspect had been considered. We have also come to the conclusion that the same has been rightly rejected. *Am*

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11. Under the circumstances, the OA being devoid of merits, is rejected. No costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

Kuldip Singh
(Kuldip Singh)
Member (J)

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