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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 393/90

Transfer Application No:

DATE OF DECISION: 28.9.1994

Shri P.Y.Birwatkar

Petitioner

Shri N.P.Bapat

Advocate for the Petitioner

Versus

G.M. Telecom Factory, Bombay.

Respondent

Shri V.S.Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri K.D.Saha, Member (A)

1. To be referred to the Reporter or not ? NO

2. Whether it needs to be circulated to other Benches of NO the Tribunal ?



(K.D.SAHA)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 393/90

Shri Prabhakar Yeshwant Birwatkar ... Applicant

v/s.

General Manager, Telecom Factory,
Bombay & Anr. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri K.D.Saha

Appearance

Shri N.P.Bapat
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 28.9.1994

(PER: M.S.Deshpande, Vice Chairman)

The applicant by this application challenges the finding of guilty recorded against him on 3 heads of charges and penalty of reducing his pay by five stages from Rs.1350/- to Rs.1200/- in the time scale of pay of Rs.1200-1800 for a period of five years w.e.f. the date of issue of the punishment order. It was further directed that he would not earn increments of pay during the period of reduction and shall have the effect of postponing his further increments of pay.

2. The applicant was working as a Security Officer on 21.6.1988 in the Telecom Factory at Deonar. At about 3.45 p.m. when the workers of the morning shift were going out of the gate, two Watchmen while checking the outgoing workmen, one worker named Shri N.N.Koli, belonging to second morning batch was apprehended by Watchman as Koli was suspected to be carrying some material. Koli was first taken to the Security

Inspector S.S. Vidwans and Vidwans brought him to the applicant. The applicant saw the material which was partly concealed in a plastic bag and partly in the tiffin-tin. Koli requested the applicant to let him off. The material was weighed at the instance of the applicant and he tried to contact the Asstt. Engineer of the Assembly Shop. The material was identified as being from the shop and as the applicant started drawing up the Panchnama in the presence of Koli, Pendse and Vidwans, many workers of the second morning shift collected at the place and sensing that their colleague was being proceeded against created riotous situation demanding that the worker should be let-off. The seized material which was about 2.25 kg. was lying on the applicant's table and after some time he found that out of that material which was worth about Rs.40/- about 2 kg. of the material was missing. Since the Panchnama could not be altered, that Panchnama was completed and another report was prepared with regard to the incident in which 2 kg. of the material came to be lost. Koli's superiors were informed of his complicity. The applicant's superior Kadam also visited the applicant's officer during 5.30 and 6.00 p.m. The Panchnama and the report which the applicant had before it were forwarded to his superior Shri Saha. Based on the report which Kadam made on 23.6.1988 the applicant came to be suspended and disciplinary proceedings were initiated against him.

3. The three heads of charges which were framed against the applicant briefly were, that he attempted to defraud the Govt. by means of mis-appropriating Govt. property viz. Brass Stampings terminal tag type-I, weighing 2.00 kgs, out of the quantity of 2.200 kgs. approximately confiscated by the Security staff at 3.45 p.m. on 21.6.1988; secondly, the applicant concealed the facts pertaining to actual quantity of material seized with a view to mis-appropriating part of the material, and thirdly, he intentionally delayed

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submission of report on the incident of theft and fabricated the report to suit his dishonest intention and thereby misled the disciplinary authority and his superior authorities.

4. The learned counsel for the applicant wanted us to go into the entire evidence. 7 out of the witnesses of the department did not support the department's version with regard to the charges. The witnesses who supported the prosecution were Kadam who was not present when the incident regarding the seizure and missing of the goods occurred, Vidwans who was present when Koli was brought to the applicant's office and Bhosle who, according to the applicant, was hostile to him. It is not necessary for us to go into the details of the evidence of the departmental witnesses against the applicant because the fact that a crowd had collected when the seizure was effected and the Panchnama was being drawn up was accepted by the enquiry officer. In Para 6.32 of his report, he stated:-

" C.O. in his defence has stated that second panchnama was completed by 6.00 p.m. on 21.6.88. This has been corroborated by prosecution witness SW-3. Hence cannot be ruled out."

In Para 6.35 he observed that :-

" It is therefore concluded that C.O. had intentionally delayed the submission of report to appropriate authority and also misled his superior authorities till 3.30 p.m. on 22.6.88 by not furnishing them the incidence of gherao, snatching and taking away of the material from his custody and the actual quantity of material seized. To this extent charge is proved."

Vidwans who was working under the applicant at the time of the incident stated in evidence that the crowd was abusing the Security Officer and were pressuring him for not proceeding further. It must be noted that the applicant had made a report on 25.9.1987 against Bhosle, Watch & Ward Inspector for having abused him and

threatened him with dire consequences. The applicant had mentioned in that report that he had witnesses to support the charge and that action should be initiated against Bhosle. Bhosle had also made ^a complaint against the applicant to the police prior to the date of incident. In his evidence which was recorded on 4.1.1990, he stated that he tried to clear the crowd but could not do so and he was afraid that if he were to pursue to clear the crowd, even the remaining 200 gms. would be taken away. He had also stated earlier that after recording the statements ^{of} the persons who had witnessed the incident only 200 gms of material was seized as 2 kg. of material was taken away by someone and the Panchnama was completed at about 4.50 p.m. It is also apparent from his evidence that the other report was also prepared at that time and both the letters were handed over at about 3.00 p.m. on the next day. It is, therefore, clear that there was no material before the enquiry officer to show that the applicant had taken away 2 kg. of the material which was seized. His version that the 2 kg. of the material out of the material disappeared when the crowd had entered his cabin has also corroborated even ^{to support it} by witness Vidwan. This was, therefore, a case of no evidence with regard to the applicant's mis-appropriation of the material and we must say that even Shri Masurkar, learned counsel for the respondents conceded that with regard to first charge, he would not be in a position ^{as this would be a case of no} evidence with regard to that charge.

5. With regard to 2nd and 3rd heads of charges, the applicant's version was that he had informed his immediate superior Shri Saxena at 9.00 p.m. on 21.6.1988 on telephone. Shri Saxena was not examined as a witness. Shri Masurkar wanted us to look into the statement of Saxena ^{to ascertain} whether that statement would not have ^{supported the} version of the applicant. However, jurisdiction it is not for us to go into all this while exercising ^{under}

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Article 226 of the Constitution and to look into the material which was not produced at the enquiry. It is, however, evident that both the reports with regard to the incident were transmitted at the instance of the applicant on the next day. Shri Kadam was one of the superiors of the applicant and he had visited the scene of the occurrence between 5.00 p.m. and 6.00 p.m. as is apparent from the evidence of Vidwans. Kadam's version was to the effect that the applicant confirmed that he had weighed the material and it was 200 gms. and it was then kept in tiffin box, but when he made enquiries with the applicant on 22.6.1988 the applicant informed him that the detailed statement could be sent immediately and that the quantity confiscated on the previous day was more than 2 kg. but only 200 gms. were shown and taken on record. Kadam, therefore, wanted action to be taken against the applicant because in his view this amounted to serious mis-conduct and showed doubtful integrity deserving major disciplinary action. It is not for us to re-assess the evidence but it is obvious that the loss of the material was noticed when the Panchnama was prepared and immediately thereafter the next report came to be written and this is borne out by the evidence of Vidwans. The charge against the applicant is about concealing the quantity of the material seized and giving belated information to the superiors. Considering the sequence in which the events occurred, it is difficult for us to believe that any person reasonably reading the evidence could have come to the conclusion which was reached by the enquiry officer. In fact, the entire evidence purported to show that the applicant was all set to inform the superior authority of the shortage of the material which was seized and the report which he prepared immediately was dispatched and was in the hands of the



superior very next day. It is impossible ~~to say~~ that the finding of the enquiry officer in these circumstances as was based on evidence or was such ~~could have been~~ rendered reasonably. We have no doubt that the finding was arbitrary and cannot be supported. ~~These~~ circumstances would, therefore, call for our interference.

6. Learned counsel for the applicant urged that the enquiry officer Shri Saxena was biased against him because he had told Shri Saxena of the incident before he started the enquiry and also had made a complaint against Shri Saxena and had asked that he could not function as ~~an enquiry officer.~~ However, later he withdrew the complaint, though the applicant would have been able to call Saxena as a defence witness had he not been the enquiry officer. Shri Roop Narain who was initially the disciplinary authority, ~~had~~ passed the suspension order on 28.6.1988 ~~but~~ ultimately became, by virtue of promotion he got, the appellate authority and the appeal came to be decided by Shri Roop Narain. In Rattan Lal Sharma vs. Managing Committee Dr. Hari Ram (Co-education) Higher Secondary School and Ors. AIR 1993 SC 2155, it was observed that :-

"One of the cardinal principles of natural justice is: 'Nemo debet esse judex in propria causa' (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in Secretary to Govt. Transport Dept. v. Munuswamy, 1988 (Suppl) SCC 651: (AIR 1988 SC 2232), that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in State of U.P. v. Mohd. Nooh, 1958 SCR 595 : (AIR 1958 SC 86). In the said case, a departmental enquiry was held against an employee. One of the

witnesses against the employee turned hostile. The officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding *inter alia* that the rules of natural justice were grievously violated."

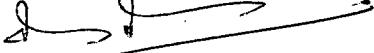
in that case it was also observed that :

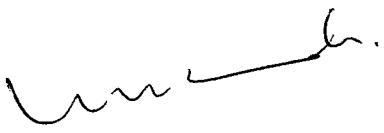
"if the plea though not specifically raised before the subordinate Tribunals or the administrative and quasi-judicial bodies is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontested facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved."

7. Irrespective of the fact that the applicant had withdrawn the complaint which he had made against Shri the Saxena, who held enquiry, though initially it was his grievance that Shri Saxena should not hold enquiry, it was obvious in the present case there could have been a reasonable apprehension of bias of the enquiry against him in the present circumstances. It appears in the present case that the apprehensions were real because when there was a case of no evidence to support the findings or the evidence was such that no reasonable man and a perverse would accept at the enquiry it was accepted finding came to be recorded against the applicant.

8. In the present circumstances, the finding of the disciplinary authority and the punishment imposed upon him cannot be supported. We hereby quash the punishment imposed upon him and direct that his suspension period should be treated as on duty and he should be paid his wages by restoring all the increments which have been

withheld with all consequential benefits. The amounts due to the applicant shall be paid to the applicant within four months from the date of communication of this order to the respondents. No order as to costs.


(K.D. SAHA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.