(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 194/91

~~Transfer Application No~~

DATE OF DECISION: 8-3-94

Shri Amarjit Singh Gujral Petitioner

Shri V.M.Bendre Advocate for the Petitioners

Versus

~~Union of India and others~~ Respondent

Shri R.K. Shetty. Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri R. Rangarajan, Member (A)

1. To be referred to the Reporter or not ? No
2. Whether it needs to be circulated to other Benches of the Tribunal ? No

(R.Rangarajan)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(16)

Original Application No.194/91

Shri Amarjit Singh Gujral ... Applicant.

V/s.

Union of India
through the Secretary,
Department of Defence Production
Ministry of Defence
Govt. of India, New Delhi.

Chairman
Ordnance Factory Board,
10 -A Auckland Road,
Calcutta

General Manager
Machine Tool Proto Type Factory
Ambernath,
Thane. ... Respondents.

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

Hon'ble Shri R. Rangarajan, Member (A)

Appearance:

Shri V.M.Bendre, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT Dated: 8-3-94

(Per Shri R.Rangarajan, Member (A))

Applicant while functioning as a Senior planner was proceeded against under Rule 14 of CCS(CCA) Rule 1964, for short the rules, by a issue of charge memorandum dated 18.10.79 (A-I). There were three charges relating to (i) irregular attendance (ii) unauthorised absence from duty with effect from 28.8.79 and (iii) violation of clause (ii) and (iii) of rule 3 of the CCS(Conduct) Rules 1964. An enquiry was conducted. The enquiry officer held that articles of charge 1 and 2 are substantiated. As regards the article 3 he had held that this charge cannot be said to be conclusively proved. Agreeing with the enquiry officer, the disciplinary authority imposed upon the plaintiff the penalty of removal from service

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by order dated 10.3.80 (A-16). The appellate authority by the order of 12.1.81 (A 19)modified the penalty to one of reduction of pay by two stages without cumulative effect in the post of chargeman Grade II with effect from the date of his joining duty. He assailed both the orders of Disciplinary and appellate authority on various grounds and prayed for quashing both the aforesaid orders by instituting a civil suit which was transferred to this Tribunal and registered as TA 52/88. This T.A. was decided on 6.2.90 (A-20) by this Tribunal whereby the impugned order of the appellate authority was quashed and the matter was remitted back to the Appellate authority for fresh consideration of the appeal submitted by the plaintiff in accordance with law and in the light of what is stated in the Tribunal's order.

2. In pursuance of the above judgement of this Tribunal in TA No. 52/88 fresh orders were passed by the Appellate authority by his order dated 5.7.90 on the appeal submitted by the applicant whereby the Appellate authority confirmed the order of the disciplinary authority removing the applicant from service (A-23). The applicant now assails the orders of the removal from service of the Disciplinary authority and the orders of the Appellate authority in confirming the same in this O.A. He further seeks for his reinstatement in service with all consequential benefits.

3. The applicant interalia raised the following contentions before us: -

i) He states that he was appointed by the Director General/Ordinance factories by his order dated 30.12.64 as Trade Apprentice and hence there is no delegation of powers to any subordinate authority to issue charge sheet to him under CCS(CCA) rules except the Director General

Ordinance factories. Hence issue of charge sheet by Assistant Manager(Administration) is without jurisdiction and void in law.

(ii) As the Director General/Ordinance factory is the appointing authority, he alone can remove him from service and passing of the removal order by the General Manager of the factory is without authority and hence held to be void.

(iii) Enclosure to the charge memerandum was not not served on him thereby effectively preventing him from defending the case. He alleges that a sealed cover was handed over to him on 29.1.79 containing the charge sheet. This is not the usual procedure to serve the charge sheet. This cover contained only the memorandum of charges and no enclosures were appended to it, thereby deliberately preventing him from giving proper reply to the charges.

(iv) He was held back in a parellel enquiry on 7.1.80 and as such he was not able to attend the enquiry in this case on 7.1.80 when certain important documents pertaining to this enquiry was taken on record thereby deliberately eliminating his presence and shutting the opportubity to go through documents on record including the charge sheet and the annexures.

(v) (i) Charge sheet was vague and hence he was not able to defend his case effectively. The charge of irregular attendance was not substantiated by the evidenees on record. Shri K.A. Gambani P.W.I. deposition does not substantiate his irregular attendance and the same was not discussed by E.O. in proper perspective and the order of the appellate authority is also silent on this issue.

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ii) The enquiry proceedings dated 16.1.80 was not supplied to him even when asked for the same thereby supporting the material on record with malafide intention thereby preventing him from defending his case.

iii) Fair and reasonable opportunity was not afforded to him to place the view point of the applicant.

vi) i) The order of the disciplinary authority is not a speaking one meaning that there is no application of mind by the disciplinary authority while awarding him the punishment.

ii) The order of the appellate authority also suffers from the vice of non-application of mind as it does not follow the direction given in the judgement of the Tribunal in TA 52/88 dated 6.2.80.

4. The first contention raised is in regard to the competency of the Assistant Manager (Administration) to issue the charge sheet. Sub-rule (2) of rule 13 of CCS(CCA) rules clearly states that a disciplinary authority competent to issue any of the penalties specified in clause (i) to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for imposition of penalties specified in clause (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties. As per this rules the Assistant Manager (Administration) being any of the competent to issue penalties (i) to (iv) of Rule 11 has issued the major penalty charge sheet. Further it is also seen from the file that the General Manager's approval had been taken to issue the charge sheet before it was actually issued to the applicant. The legal position is that charge sheet

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should be in the name of the punishing authority or with its authority, consent or approval. This would make it an act of the punishing authority and not an act of third party. It would be enough to show that such charges were issued against the deliquent servant either with express or implied approval of the appointing authority. This legal position has been complied fully in this case.

5. It was held in (1990) ATC 641 (A Philip V/s. Director General/ Ordinance factories) that as per Rule 14(3) of the CCS(CCA) Rules the disciplinary authority shall draw or cause to be drawn up the substance of the imputation or mis- conduct or mis-behaviour in a definite and distinct articles of charge and from the above provision it is clear the charge may be either drawn up by the disciplinary authority himself or upon his order. In this case the memorandum of charges was signed by the Assistant Manager (Administration) for General Manager on the express approval of General Manager. Hence it is found that the charge framed and issued to the applicant is in confirmity with the rule.

6. The second contention is that the General Manager who imposed the penalty of removal from service on the applicant is not competent to do so as he is not the appointing authority and it is the Director General /Ordnance factories alone is competent to remove the applicant from service. The learned counsel for the applicant relied on the schedule of powers part V - Civil posts in Defence services- of Swamy's compilation of CCS(CCA) Rule wherein it is indicated that Director General /Ordinance factories is the appointing authority and competent to issue all penalties under the rules for class III and IV posts. It was further submitted by the Applicant's counsel that at the material time of imposing punishment to the applicant

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in 1980 none else other than the Director General / Ordnance factories can issue the order of removal as per the delegation of powers and imposition of the penalty of removal by General Manager is in excess of his powers.

7. As per order of the Ministry of defence letter dated 11.2.80 (Exhibit R-2) the General Manager Ordinance factories have been vested with concurrent full powers for recruitment of non gazetted officers upto and including Assistant foreman. The relevant portion of the letter reads as under:-

> " Whereas under item 12 of Annexure -I to the Ministry of Defence letter No. 4(11)/63/II/ D(FY) dt. 14.2.64 conveying delegation of administrative and financial powers by the President to the DGOF, the DGOF has full powers of recruitment of NGOs and NIEs.."
>
> " Whereas under item 7(c) Annexure -II of the Ministry of Defence letter referred to, the General Managers of Ordnance factories have been vested with concurrent full powers for the recruitment of N.G. officers upto and including Assistant foreman."

8. The contention of the learned counsel for the applicant is that this order is dated 11.2.80 and as the applicant was imposed penalty of removal earlier to this order this may not empower the General Manager/ Ordnance Factories to exercise the powers of DGOF in removing him from service. A careful perusal of this order will indicate that this order of 11.2.80 is only by way of reiteration of power conferred on the General Manager / Ordinance Factories way back in 1964. As per the Ministry of Defence letter No. 4(11)/63/II/D(FY) dt. 14.2.64. General Managers have full concurrent powers to recruit N.G. Officers

upto and including Assistant foreman right from 14.2.64. As the applicant was only a Chargeman Grade II at the time of his removal from service General Manager /Ordinance Factories has full powers to remove him from service because of the powers conferred on him from 1964 onwards by the above said letter. Further the order of removal dated 10.3.80 was signed by the General Manager himself who by the above said letter is competent to appoint the applicant in non-gazetted service as Chargeman Grade II. Even the appointment order of applicant on 30.12.64 had been signed by the then General Manager /Ordinance Factoriesonly. Hence we see no violation of any statutory rules much less use of powers arbitrarily in removing the applicant from service. Hence both the contentions that issue of charge sheet by a subordinate authority to the Director General/ Ordinance Factories and General Manager/ Ordinance factories and his removal by General Manager /Ordinance factories are irregular cannot be sustained and hence fails.

9. The third contention is that the enclosures to the charge memorandum was not served on him for effective rebuttal of charges. This point as stated by the learned counsel for the applicant, had been brought to the notice of the enquiry officer many times during the enquiry. The applicant's counsel pointed out that this issue was brought to the notice of enquiry officer on 27.12.79, on 4.1.80 etc, but no action was taken to comply with his request of supplying him the enclosures to the charge memorandum. This in the opinion of the learned counsel for the applicant had vitiated the enquiry proceedings.

10. It was brought to our notice by the respondents that the enclosures to the charge memorandum

No. 5101/110 dated 13.10.79 was in fact received by him and as a token of having received the enclosures he has given his acknowledgement on 8.12.79 (Ex. R-6) This position has been made clear in the report of Enquiry officer also. The relevant portion in the enquiry report reads as follows:

> " With a view to make the position more clear the matter was also referred to the General Manager/Disciplinary authority, who made it clear that the claim of Shri A.S.Gujral not receiving the enclosures and therefore not attending the enquiry is not tenable. At this stage even, an opportunity was given to Shri Gujral to see the enclosures if he so desires. He has failed to take advantage of this opportunity. He was informed in writing also vide enquiry authority letter No.MIC(ASC)/ ENQ/1 dated 14.1.80 duly received by him on the same day. ".

11. In our opinion this allegation that because of non supply of enclosures to the memorandum of charges had placed him in defenceless position cannot be taken on face value. In fact the letter of acknolwegement signed by him dated 8.12.79 clearly indicates that he received the enclosures. Even if he had not got them he could have easily obtained the same from the disciplinary authority. There was no impediments for him to obtain the same. As per the extracts quoted above from the enquiry officer's report it is clear that he was offered the above documents but for reasons best known to him, he did not avail the opportunity of seeing the records. The allegation that the enclosures were not given to him to shut him out of enquiry or to prevant him from making effective

defence is not borne out from any records. If he has not chosen to see the records even when offered he has to blame himself for that and none others. We see no substance in this contention and hence rejected.

12. The fourth contention is that he was held back on 7.1.80 in another enquiry and thereby prevented his presence in this enquiry on that date when some important documents were taken on record. From the proceedings of enquiry officer dated 7.1.80 it is seen that the reasons for the absence of the applicant on that day was not intimated to him though he was present in the factory. At the bar it was told that he was attending another enquiry in the planning office which is about 10 minutes walk from the ATS section where the enquiry in this case was going on. If the applicant is genuinely interested in attending this enquiry and seeing the documents taken on record on 7.1.80 it could have been easily achieved by him by requesting the enquiry officer to give a convenient time for this enquiry when he can attend or alternatively see the records subsequently. No such attempt appears to have been made by the applicant. Records also do not reveal that any such grievance was made out at that time. It appears to be a belated thought on the part of the applicant to bring this grievance on record to show breach of principles of natural justice. We are not inclined to accept the view that he was not given opportunity to see the documents taken on record on 7.1.80. If he wanted to see them he had plenty of opportunity and failed to avail them. We also see no breach of principles of natural justice on the part of respondents for reasons mentioned above.

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13. By the fifth contention the applicant was wanting to bring out some loopholes in the enquiry proceedings. He tried to substantiate the same ~~but~~ by saying that the first charge of irregular attendance is not correct as he was submitting the medical report at each and every stage and the deposition of PWI corroborate the same. The enquiry officer failed to appreciate these facts in his report.

14. A study of the enquiry report will clearly reveal that this point was examined by the Enquiry officer in his report while analysing this, Article of charge. It has been said that his frequent absence from duty had resulted in backlog of duties which had to be shared by others. This had caused lot of burden to the other staff and set back in the funtioning of the factory. What was meant to be brought out by the charge of irregular attendance was that his frequent reporting sickness ~~such~~ non attendance had been a set back to the factory working. This point had been amply brought out from the evidence on record and it cannot be said that the Enquiry officer failed to appreciate the deposition of P.W.I. Even the appellate authority in his order dated 5.7.90 had discussed regarding his irregular attendance in para 5 of his order taking note of evidence on record and had come to the conclusion that there was truth in this charge. The applicant sought to justify his absence stating at the time of hearing ~~leave~~ that he was sick and hence it was beyond his control to attend to the work. These points should have been brought out at the enquiry and it is not for the Tribunal to examine them at the time of hearing. Hence these pleadings of the bar will not exonerate him of the charge.

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15. He tried to create infirmity in the enquiry proceedings by stating that the enquiry proceedings dated 16.1.80 was not supplied to him. The respondents deny of any sitting on 16.1.80 and hence expressed their inability to give proceedings of that date. Even presuming that there was a sitting on 16.1.80, applicant failed to prove how the denial of proceedings on that date had caused prejudice to him in defending his case. We see no substance in this allegation and has been rightly pointed out by the respondents that this infirmity is being created to set aside the proceedings.

16. The allegation that fair and reasonable opportunity was not afforded to him to defend his case has to be substantiated from records only. As this statement is a bald one and as can be seen from the enquiry report and the order of appellate authority there is no evidence to prove this statement. We do not subscribe to this view point of the applicant and reject the same.

17. The sixth and last contention is that there is no application of mind by the disciplinary and appellate authority while passing the order of his removal from service. The applicant states that the order of the Disciplinary authority dated 5.3.80 is a non speaking one and hence the disciplinary authority failed to apply his mind while passing that order. It is settled law that where the disciplinary authority accepts the findings of the enquiry officer he need not once again make a reasoned order (Ramkumar V/s. State of Haryana - 1988 SCC (L &S) 746). In this case the disciplinary authority had accepted the findings of the enquiry officer and passed the order of removal from service. We see no irregularity or breach of natural justice in passing this order.

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

R.P.No.628/94
in
O.A.No.194/91.

Shri Amarjit Singh Gujral ... Review Petitioner.

V/s.

Union of India,through the
Secretary,
Department of Defence Production,
Ministry of Defence,
Government of India,
New Delhi.

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

General Manager,
Machine Tool Proto Type Factory
Ambernath,
Thane. ... Respondents.

CORAM: Hon'ble Shri Justice M.S.Deshpande, Vice Chairman,
Hon'ble Shri R.Rangarajan, Member(A).

Appearance:
Shri V.M.Bendre,Counsel for the applicant.
Shri R.K.Shetty,Counsel for the respondents.

JUDGEMENT Dated: 19/7/94.

(Per:Hon'ble Shri R.Rangarajan,M(A))

The applicant in this R.P. was removed from service w.e.f. 10-3-80 for irregular attendance and unauthorised absence from duty and the same was upheld by the appellate authority by the order dt.5-7-80. Assailing these orders, he filed O.A.No.194/91 which was dismissed by the order dt. 8-3-94. Against this dismissal order of the O.A., he has filed this Review Petition.

2. The first contention of the applicant is that for similar offence, staff were given lesser punishment such as stoppage of increment with cumulative effect etc. The applicant was singled out by removing him from service for unauthorised absence which is severe. At the time of pleading at the bar, no such contention was raised.

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New contentions which were not raised during the pleading at the bar or in the O.A. cannot be entertained in the Review Petition. Further, each case has to be dealt with on it's merit and there cannot be set orders for punishment. Recently the Supreme Court held that the Tribunal is not competent to go into the quantum of punishment. Hence this contention has no merit.

3. The second contention is that the letter of appointment is dt.30-12-63 and not 30-12-64 as recorded in the judgement and this is apparently an error. The letter of appointment as Trade Apprentice annexed as Annexure III to this R.P clearly shows that it is dt.30-12-64. We have taken the same date while stating and analysing the contentions in our judgement. Nowhere it is stated that he has joined on 13-1-64. Hence there is no typographic error in the said order. As the delegation of powers for appointment upto the level of Asstt.Foreman was delegated to the General Manager of the Ordnance Factories on 14-2-64, the G.M. of Ordnance Factories is competent to award major penalties upto the level of Assistant Foreman from that date. As the applicant was only a Senior Planner at the time of award of punishment, we see no violation of any constitutional provision. Hence this contention also fails.

4. The third contention is that the proceedings of 16-1-1980 was intentionally removed by the Enquiry Officer. This contention has been gone into detailed fashion vide para-16 of the judgment dt.8-3-1994. Hence there is no need to further examine this contention. Even the plea that enquiry proceedings dt.16-1-1980 was not supplied to him is only to create infirmity in the proceedings and cannot be sustained. Hence the third contention also has no merit.

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5. By other contentions, the applicant is urging us to go through the various submissions mentioned in the various paragraphs of the O.A. and to review the order dt.8-3-1994 on that basis. The order dt.8-3-1994 is on the basis of submissions in the O.A. and the pleadings at the bar. Hence, there is no need to further scrutinise the submissions. This contention also has no merit and is fit only to be rejected.

6. Para-14 of the judgment dt.8-3-1984 deals fully regarding the effect of his absence on the functioning of the unit in which he worked. His request absence had created backlong in duties. Hence, there is nothing to doubt that his irregular attendance had resulted in the setback in the functioning of the section in which he worked.

In the result, we find the R.P. has no merits for fresh consideration and fit only to be dismissed. Accordingly, we do so. No costs.

(R.RANGARAJAN)
MEMBER (A).

(M.S.DESHPANDE)
VICE CHAIRMAN.