

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 106/91

~~Transfer Application No:~~

DATE OF DECISION: 7.10.94

Dr. A.S. Khanra Petitioner

Applicant in person Advocate for the Petitioners

Versus

Director General, CSIR & Anr. Respondent

Shri K.P. Anil Kumar, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

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

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S. Hegde)  
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

(10)

O.A. NO. 106/91

Dr. A.S. Khanra ... Applicant

v/s

Director/General, CSIR ... Respondents  
and Anr.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE:

1. Applicant in person
2. Shri K.P. Anil Kumar, Advocate for Respondents.

JUDGEMENT

DATED: 7.10.96

(Per: Hon'ble Shri B.S. Hegde, Member (J))

1. The Applicant has filed his O.A. challenging the removal order dated 17th August 1982 by which the Appellate Authority confirmed the penalty imposed by the Disciplinary Authority of removing the Applicant from service. Accordingly, the Applicant has prayed that the removal from service of the Applicant passed by the Respondent No. 2 be quashed and set aside and the Respondents be directed to reinstate the Applicant to the post of Scientist in the Organic & Synthesis Division, NCL, Pune etc.

2. The Applicant joined as Junior Scientific Assistant in the year 1971 and continued with the Respondent organisation till 17-8-1982, which is one of the laboratories owned and possessed by the Council

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of Scientific & Industrial Research (CSIR). The Applicant while working as Scientific Assistant has been served with a chargesheet and disciplinary inquiry has been initiated against him and after hearing the parties, the Enquiry Officer gave his findings as at Annexure 10 stating that all the three charges stand fully established by evidence and record. There is no relevant defence whatsoever to defend the Defence side even to lessen seriousness of the charges. The Disciplinary Authority vide its order dated 17th August 1982 agreed with the findings of the Enquiry Officer and holds that the charges are established and accordingly he imposed the penalty of removal from service. The Applicant preferred an appeal which has been disposed of by the Appellate Authority on 12-3-1983 (Annexure X-3). Aggrieved by the findings of the Disciplinary Authority confirming the penalty of removal from service of the said Applicant Dr. Khanra.

3. This decision of the Appellate Authority was challenged in O.A. No. 520/87 before the Tribunal which was disposed of by quashing the Appellate Authority's order dated 12-3-1993 and directed the Appellate Authority to hear and dispose of the appeal of the Applicant dated 27-9-1982 and after affording personal hearing to the Applicant and on merits and by passing a reasoned order in conformity with rule 27(2) of the Central Civil Services (Control, Classification & Appeal) Rules 1965 within four months from the date of receipt of a copy of this order. The Appellate Authority vide its order dated 28th August 1990 complied with the directions given by the Tribunal and gave an opportunity

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to the Applicant to appear in person but he failed to present himself on both the dates fixed for personal hearing. Ultimately after considering the case in its totality, the Appellate Authority came to the conclusion that there is no need to change the penalty passed by the Disciplinary Authority in the facts and circumstances of the case and accordingly confirmed the penalty imposed by the Disciplinary Authority removing the Applicant from service.

4. In this O.A., the Applicant has challenged the aforesaid Appellate Authority's orders on the ground that the Respondent has not given sufficient opportunity to the Applicant and the principle of natural justice has not been adhered to. The short question for consideration is whether the competent authority i.e. the Appellate Authority pursuant to the direction given by the Tribunal by its order dated 3-1-1990 has given sufficient opportunity to the Applicant to present his case and disposed of his appeal on merits. On perusal of the Appellate Authority's order, it is seen that though the Applicant has been given two opportunities to appear in person, he did not present himself nor given any justifiable reasons to abstain himself from the hearing. In the circumstances, the Appellate Authority had no ~~any~~ other alternative but to consider his appeal dated 27-9-1982 and dispose of the same in accordance with the law and thereby it cannot be said that the Respondent has violated the directions of the Tribunal nor not adhered to the principles of natural justice. The Respondents in their reply raised

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under Dr. A.V.  
Rama Rao,  
Scientist 'F'  
(Dy. Director)

a preliminary objection that the Application is barred by the doctrine of res judicata. It is an undisputed fact the Applicant opted to work in the Organic Division, and the charges levelled against the Applicant have been amply proved in the matter of penalty, which has been confirmed both by the Disciplinary Authority as well as the Appellate Authority. They contend that the enquiry has been held regularly in accordance with the provisions of the CCS (CCA) Rules and there is no violation of any of the provisions of the Rules and principles of natural justice and urged that the petition be dismissed as without any merits. We have heard the learned counsel for the Respondents - none for the Applicant. Since the Applicant has submitted a written statement, which has been taken on record and we are able to dispose of the O.A. on that basis. As stated earlier, the point is whether the Appellate Authority has adhered to the directions given by the Tribunal and passed a speaking order. Though opportunities were given to the Applicant, he did not avail of it. Accordingly, the Appellate Authority has passed a speaking order confirming the penalty imposed by the Disciplinary Authority. In this connection, the Respondents rely upon the decision of the Supreme Court in Union of India v/s Parma Nanda AIR 1989 SC 1185 wherein the Court held that "the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer or

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or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on the evidence even if some of it is found to be irrelevant or extraneous to the matter."

5. In light of the above, the facts of this case is fully covered by the aforesaid Supreme Court judgement because the Applicant has not attributed any malafide on <sup>the part</sup> ~~behalf~~ of the Respondents, while imposing the penalty nor has he stated that the enquiry has not been conducted in accordance with the rules. In the circumstances, we are of the view, that the application is unsustainable which is devoid of merits and the same is accordingly, dismissed but with no order to costs.

M.R. Kolhatkar  
(M.R. Kolhatkar)  
Member (A)

B.S. Hegde  
(B.S. Hegde)  
Member (J)