

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 830/91

Transfer Application No:

DATE OF DECISION: 21-12-94

Shri K.S.Taware

Petitioner

Shri S.P.Saxena

Advocate for the Petitioners

Versus

The Director General Ordnance Factories,
Calcutta & Anr.

Respondent

Shri R.K.Shetty

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 ?

M.R.KH/HL

(M.R.KOLHATKAR)
MEMBER (A)

B.S.H
(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(16)

OA. NO. 830/91

Shri K.S.Taware

... Applicant

V/S.

The Director General
Ordnance Factories,
Calcutta & Anr.

... Respondents

CORAM: Hon'ble Member (J) Shri B.S.Hegde
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri S.P.Saxena
Advocate
for the Applicant

Shri R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

Dated: 21-12-94

(PER: M.R.Kolhatkar, Member (A))

In this OA. under Section 19 of the Administrative Tribunals Act, the applicant has impugned the penalty of compulsory retirement imposed on him and confirmed in appeal consequent on disciplinary proceedings initiated against him by the respondents. The facts of the case are as below :- The applicant joined the office of Respondent No. 2 as a Labourer 'B' Grade on 1.11.1972. At the time of his compulsory retirement, he was U.D.C. and had completed over 18 years of service in the Department. The charge against the applicant was as below :-

" Article - I : That the said Shri K.S.Taware, while functioning as UDC in PV Office of Ammunition Factory, Kirkee is charged with gross mis-conduct viz. : 'indulging in undesirable activities within the premises of the Establishment during working hours i.e. indulging in matka betting'."

2. The main ground of challenge of the applicant is that the enquiry officer himself held the charges as not proved. However, the disciplinary authority disagreed with the enquiry officer for the following reasons vide Ex. 'A-7' page 23 :-

- " a) The statement of Prosecution Witnesses Corroborate each other in that the 'Matka Book' and Chit recovered from the place where the accused was apprehended in the gas plant and which he had thrown on seeing the prosecution witnesses.
- b) While the rounds of Security Staff are legitimate, presence of accused in gas plant is un-authorised. Considering Prosecution Witnesses statement and the statement given by accused immediately after being apprehended, I am inclined to conclude that accused is guilty of the charges framed against him.
- c) He has not brought any evidence to prove Prosecution Witnesses as false."

3. According to the applicant, he had pointed out that he had gone to meet the other person, namely, Shri Swamy to convey some message to him and that this say of the applicant has not been taken into consideration by the disciplinary Authority. Secondly, there were material deficiencies in the enquiry. There is a discrepancy as to whether two officers were present or only one officer was present at the time the applicant was apprehended. During the course of the enquiry, the delinquent officer was not generally examined, and, therefore, the cross-examination of the applicant was not proper. The respondents appear to have relied on a letter sent by the applicant vide Ex. 'R-1' page 46 in connection with his suspension in which it is stated "It is true that I was caught by Security Staff while playing matka on 17.8.90 in 'R' Section (Gas Plant) at 4.30 p.m.". This statement was made in a different context and was not part of the enquiry but still it was

taken as a confession of the applicant. The Appellate order is not a speaking order. Lastly, the applicant has relied on the appellate order on 3.9.1991 in respect of Swamy who was the alleged accomplice in the activity of Matka betting. In this appellate order, it is stated that Swamy has given a statement that Matka book belonged to him and he does play "Matka" outside the factory occasionally. According to the applicant, it was not he but Swamy who indulged in Matka gambling and that he had met Shri Swamy on a genuine business and enquiry officer has rightly held that the charges are not proved.

4. We have considered the matter carefully. In our view the alleged deficiencies pointed out by the applicant are not of such a nature as to vitiate the enquiry. They can at best be called irregularities in the conduct of the proceedings. The disciplinary authority chose to differ with the enquiry officer and a show cause notice was given. The reply to show cause notice was considered and it was thereafter that the disciplinary authority gave its final finding and imposed the penalty. The appellate order also cannot be said to be a non-speaking order. Regarding the so called confession by Shri Swamy, the alleged accomplice of the applicant referred to in the appellate order, it does not indicate that the applicant could not have been a partner of Shri Swamy in the activity of Matka betting.

5. It is now well settled that the scope of judicial review of a finding of guilt and quantum of penalty in disciplinary proceedings is severely limited as laid down in the case of Parmanand. It may be that the applicant has otherwise a clean record and is comparatively young in the context of the quantum of penalty. The penalty imposed

on the applicant cannot be said to be arbitrary or dis-proportionate. We, therefore, consider that there is no substance in the OA., which we accordingly dismiss. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S. HEGDE)
MEMBER (J)

mrj.