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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 912/92

Date of Decision: 28-10-1997

R C Panigrahi ..... Applicant.

Adv. D V Gangal ..... Advocate for Applicant.

Versus

UOI & Ors. ..... Respondent(s)

Adv. Mr. V S Masurkar ..... Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R G Vaidyanatha, V.C.

Hon'ble Shri. M.R. Kolhatkar, 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

V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 912/92

DATED : THIS 28TH DAY OF OCTOBER, 1997

CORAM : HON. SHRI JUSTICE R G VAIDYANATHA, VICE CHAIRMAN
HON. SHRI M.R. KOLHATKAR, MEMBER(A)

R.C.Panigrahi
C/o. Anthony Swamy
Sector D/E/25 Cheeta Camp
Trombay
Mumbai 400088
(By Adv. Mr. D V Gangal) ..Applicant

V/s.

1. Union of India
through Chief of Naval Staff
HQ New Delhi

2. Flag Officer
(through Vice Admiral)
Commanding in Chief,
Western Naval Command
Shahid Bhagatsingh Road
Mumbai 400023

3. The Commodore
Chief Staff Officer (PA)
Western Naval Command
Shahid Bhagatsingh Road
Mumbai 400023

4. The Admiral Superintendent
Naval Dockyard, Mumbai 400023
(By Adv. Mr. V S Masurkar,
Central Govt. Standing Counsel) ..Respondents

ORDER

[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the Central Administrative Tribunals Act, 1985. The respondents have filed reply. Learned counsel for the respondents has made available the concerned files. We have heard both the sides and perused the record.

2. The facts leading to the filing of this O.A. are as follows: The applicant was at the relevant time working as Fitter in the CTS department of Naval Stores at Mumbai. All the employees are given passes for entering into the premises. The employees are supposed to keep the passes with them and show them while entering the premises of the stores. It appears that the applicant lost four passes one after another in a course of about 2 to 3 yeas. He was imposed penalty for loosing the passes. Again the applicant lost the pass on 5th occasion in 1989 when a regular departmental inquiry was held and the charge was held proved and by order dated 12.6.90 the disciplinary authority passed an order of removal of the applicant from service. The applicant filed an appeal before competent authority. Appeal came to be dismissed as per order dated 25th October 1990. Then applicant preferred a revision application before the Naval Headquarters Delhi which came to be rejected as per order dated 6.6.91. Being aggrieved by these orders the applicant has approached this Tribunal.

3. The applicant submits that he is not guilty of the misconduct alleged against him. His alternative case is that allegation of loss of pass does not amount to misconduct. Then his further contention is that the punishment imposed upon him is grossly disproportionate to the alleged misconduct.

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4. The respondents have filed a reply supporting the action taken by the Administration in holding the departmental inquiry and in imposing the penalties mentioned above. It is their case that the premises of Stores is prohibited area and there is security risk if any body enters without identification card or a proper pass. It is their contention that loss of pass is very serious and hence the respondents are right in imposing the punishment against the guilty after the inquiry.

5. The learned counsel for the applicant has highlighted the contentions mentioned above. His argument is that there is no proper inquiry and the charge is not proved. His next contention is that the alleged omission is not a misconduct and that the punishment imposed is grossly disproportionate to the alleged misconduct.

6. On the other hand the learned counsel for the respondents refuted the above points and contended that the scope of judicial review is very limited and this Tribunal cannot go into the question of the adequacy of finding of guilt or adequacy of the punishment. Even otherwise he supported the findings of the disciplinary authority on merits.

7. In the light of the arguments advanced before us the points that call for determination are :

i) Whether the finding of guilt recorded by the competent authority is justified or not?

ii) Whether the proved facts make out the case of misconduct or not?

iii) Whether the punishment imposed by the disciplinary authority calls for interference by this Tribunal?

iv) What order?

POINT No.(i):

8. In our view the scope of judicial review is limited so for as the merits of the case are concerned as rightly argued on behalf of the Respondents. This Tribunal cannot exercise appellate powers for deciding a matter like this. We are not sitting in appeal over the decision of the disciplinary authority or other competent authority who has passed the order in appeal or revision. Time and again the Apex Court has observed that the High Court or the Tribunals cannot reappreciate evidence and come to an independent conclusion in a matter like this. The scope of judicial review is very limited so for as the merits of the case are concerned. Therefore we cannot go into the question whether the appreciation of

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evidence by the competent authority is correct or not, whether the finding of fact recorded by the competent authority is justified or not. But in a given case if the order of disciplinary authority is perverse, being passed on no evidence or the proceedings are vitiated on the violation of principles of natural justice or there are legal infirmities like the competence of the authority or any other violation of legal formalities, then this Tribunal can interfere with the findings recorded by the disciplinary.

9. In the present case nothing is brought out to show about any illegality or irregularity in the findings recorded by the competent authority. On the other hand, as rightly pointed out by the learned counsel for the respondents, the whole thing depends on the admission of the applicant. The only charge against the applicant is that he was negligent and has lost the pass. This is an admitted and undisputed fact that the applicant has given explanation that somebody forcibly snatched the purse containing the pass. It is also seen that the applicant has lodged a complaint with the railway police about the loss of pass. The question is whether the loss of pass by itself would amount to misconduct or not. The competent authority has recorded a finding that the applicant has lost the passe not for the first time but for the 5th time. Therefore, the finding of fact

recorded by the competent authority that there was negligence or legal misconduct on the part of the applicant in losing the pass is fully justified not only from the evidence on record but also in the admission of the applicant. Hence point (i) is answered in favour of the respondents.

POINT No.(ii)

10. Now the question is whether the loss of pass as admitted and proved by the competent authority amounts to misconduct in the eye of law. The learned counsel for the applicant heavily relied upon a decision of the Apex Court reported in AIR 1979 SC 1022 [UNION OF INDIA Vs. J.AHMED] in support of his contention that even if some negligence or omission is proved it does not amount to misconduct in the eye of law. It may be on facts of that case the Apex Court held that delinquent officer who was the District Magistrate at the relevant time did not take proper steps to avoid riots. It may be a case of error of judgment but may not amount to misconduct in the eye of law. The High Court had taken a view that there cannot be any misconduct or misbehavior involving guilty mind or mens rea. In fact it was one of the contentions pressed before us by the learned counsel for the applicant that unless guilty intention or mens rea is proved an act or omission cannot amount to misconduct.

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The Supreme Court did not agree with the view of the High Court on this point and in para 12 observed that it is difficult to subscribe to this view of the High Court because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct in disciplinary proceedings.

Therefore, the Supreme Court has laid down the law that even without guilty intention or mens rea an act of omission which shows gross or habitual negligence may amount to misconduct within the meaning of disciplinary proceedings.

11. In the present case the admitted facts and records of inquiry produced by the learned counsel for the respondents shows that this is the 5th occasion when the applicant was found missing the passes. On first four occasions also he had lost the pass and the administration had imposed penalties. We find from the perusal of the inquiry file produced by the learned counsel for respondents that on first occasion for missing the pass the applicant was censured, on the second instance increment was withheld for one year and on third occasion the increments was withheld for three years and on the fourth occasion major penalty of reduction in pay from Rs.1260/- to Rs.1200/- per month for a period of one year was imposed against the

applicant. On the last occasion, which is the subject matter of this proceedings, the department has imposed the penalty of removal from service. In any way, the material on record show consistent and habitual negligence on the part of the applicant in missing the pass is proved and that it is not a solitary incident with which we are concerned, and the habitual losing of passes on five occasions would amount to misconduct in the eye of law. Hence point (ii) is also held against the applicant and is in favour of the respondents.

POINT No.(iii)

12. Now remains the question about the quantum of punishment. The learned counsel for the applicant contended that imposition of punishment of removal from service is grossly disproportionate and calls for modification by this Tribunal. On the other hand the learned counsel for the respondents maintained that it is not open for this Tribunal to decide the quantum of punishment and it is for the concerned competent authority to award suitable punishment according to law. The law has been recently declared by the Supreme Court in two decisions which are brought to our notice. In 1996(SCC)(L&S) 80 (B.C. CHATURVEDI Vs. UNION OF INDIA) the Apex Court has ruled that normally the courts and Tribunals cannot substitute their own conclusion on

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penalty and impose some other penalty, but still if the punishment imposed by the competent authority shocks the conscience of the High Court or Tribunal it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. The same view is taken by the Apex Court in another recent judgment reported in 1997 SC SLJ 347 (UNION OF INDIA & ANOTHER Vs. G.GANAYUTHAM). There also the Apex court has observed that normally the courts or Tribunals should not interfere with the punishment imposed by the competent authority except that it is disproportionate to the misconduct, in which case the Supreme Court points out, the court may remit the matter back to the appropriate authority for reconsideration. But however in very rare cases the court may, to shorten litigation think of substituting its own view as to the quantum of punishment in the place of punishment awarded by the competent authority.

13. The learned counsel for the respondents invited our attention to the case reported in (1997)5 SCC 62 [PUNJAB STATE CIVIL SUPPLIES CORPN.LTD., CHANDIGARH & ORS Vs. NARINDER SINGH NIRDOSHI] wherein the Supreme Court has set aside the judgment of the High Court which has

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reduced the punishment. It was pointed out that competent authority is empowered to impose punishment appropriate to the situation and the High Court was unjustified in interfering with the punishment. It is pointed out that the nature of punishment depends upon the magnitude of the misconduct. That is a case where the delinquent officer was charged for misappropriation of wheat bags. Therefore, the Supreme Court observed that if the competent authority itself had taken a lenient view by ordering reversion the High Court was incorrect in reducing the punishment. In our view though the argument that Tribunals/courts cannot substitute its own view regarding the quantum of punishment is correct, in a given case where the punishment is grossly disproportionate to the misconduct and shocks the conscience of the Court, then this Tribunal or Court has power to interfere with the punishment imposed by the competent authority.

14. Coming to the facts of this case there is no allegation, much less proved, that the applicant lost the passes with ulterior motives. It is not even the allegation that the applicant has misused the passes by inviting the story of loss. It is also not alleged, much less proved, that any body has misused the passes which had been given to the applicant. It is true that the area is prohibited area and the authorities are justified

in making possession of a pass a must to enter the premises. We are also conscious of the fact that there is a security risk if the lost pass falls in the hands of a third person who may misuse the same or commit tress pass on the premises of the stores. But in this case there is no allegation that the applicant was responsible for the misuse of the pass. On the other hand there is no allegation that the pass was misused by anybody. Further the applicant has given some explanation when he has allegedly lost the pass on the 5th occasion that he had lodged a complaint with the Kurla Police about the loss of pass. Hence it is not a case of the applicant loosing the pass deliberately or intentionally. It may be a case of negligence and he is liable to account for it, but it cannot be said that the applicant's conduct is so grave as to call for dismissal or removal from service. In our view in the facts and circumstances of this case the penalty imposed by the authority appears to be highly disproportionate to the misconduct proved against him and it shocks the conscience of this Tribunal. We repeat that there is no allegation, much less proved, that the applicant lost the pass deliberately with ulterior motive. It is nobody's case and therefore in the circumstances the punishment imposed is too drastic and calls for interference by this Tribunal.

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15. We have seen the view expressed in the recent judgment of the Apex Court in 1997(2)S.C.S.L.J., 347 (supra) where it is pointed out that in such a case where the Court or the Tribunal comes to the conclusion that the punishment calls for interference, normally the court is to remit the matter back to the disciplinary authority to reconsider the punishment and to pass appropriate orders according to law. We are inclined to adopt this procedure in this case.

16. In CCS(CCA) Rules 1965 Rule 11 provides for penalties. Minor penalties are provided in Rules (i) to (iv) Major penalties are provided in (v) to (ix). In the present case the question of minor penalty does not arise because the administration had already imposed three minor penalties and one major penalty for the previous lapses on the part of the applicant in losing passes on four different occasions.

17. As far as the Major penalties are concerned, penalty (viii) provides for removal from service. In this case the penalty imposed is removal from service which comes under 11(viii). Since we have come to the conclusion that the removal from service itself is grossly disproportionate to the misconduct proved the question of giving next higher penalty provided in (ix) about dismissal from service does not arise. It is therefore,

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seen that short of removal from service or dismissal from service which are provided in Rule 11(viii) (ix) The competent authority to reconsider the issue and pass any other major penalty provided in rule 11 other than removal and dismissal from service. Point No.iii is answered accordingly.

18. In view of the answer to the points as above, the application has to be partly allowed. We feel that the applicant should be given opportunity to make a representation regarding the punishment within four weeks from the date of receipt of a copy of this order to the disciplinary authority and the disciplinary authority should pass appropriate order of punishment within two months thereafter. Since we are holding that the applicant is guilty we only set aside the punishment of removal from service and remit the matter back to the competent authority to levy any other major penalty. The question whether the applicant would be entitled to any backwages or allowances does not arise for consideration.

19. In the result the O.A. is allowed partly. The finding of the disciplinary authority confirmed by the appellate authority and revision authority regarding the guilt and misconduct of the applicant is confirmed. However, the order of penalty imposed by the disciplinary authority order dated 12.6.90, confirmed by the appellate

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and revision authorities is hereby set aside. The matter is remitted to the disciplinary authority to decide afresh the question of imposing any of the major penalties provided in Rule 11 short of removal or dismissal from service. The applicant is permitted to make a representation to the disciplinary authority on the question of punishment within four weeks from the date of receipt of a copy of this order and the disciplinary authority is directed to pass appropriate order within two months thereafter. The applicant is not entitled to any backwages or allowances. In the circumstances of the case there would be no order as to costs.

M.R. Kolhatkar

(M.R.Kolhatkar)
Member(A)

(R.G.Vaidyanatha)
Vice Chairman

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