

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 993/92  
Transfer Application No.

Date of Decision : 27.7.95

Dhanyya Swamy

Petitioner

Shri H.Y. Deo

Advocate for the  
Petitioners

Versus

Govt. of India, Min. of Defence,  
South Block, New Delhi. and Anr.

Respondents

Shri R.K. Shetty.


Advocate for the  
respondents

C O R A M :

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

The Hon'ble Shri P.P. Srivastava, Member (A)

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

  
(P.P. Srivastava)  
Member (A)

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 993/92

Dhanyya Swamy

... Applicant.

V/s.

Govt. of India  
Ministry of Defence,  
South Block  
New Delhi.

The General Manager  
Ammunition Factory  
Khadki  
Pune.

... Respondents.

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

Hon'ble Shri P.P. Srivastava, Member (A)

Appearance:

Shri H.Y. Deo, counsel  
for the applicant.

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

JUDGEMENT

Dated: 27.7.95

¶ Per Shri P.P. Srivastava, Member (A) ¶

The applicant who was charge sheeted  
wide charge sheet dated 20.9.90. The charges reads  
as under:

Article - I

that the said Shri D.C. Swamy, Black  
smith HS Gr. II in Services Section of  
Ammunition Factory, Khadki, is charged  
with gross 'Misconduct' viz: " indulging  
in undesirable activities within the  
premises of the Establishment during  
working hours i.e. indulging in matka  
betting. "

An enquiry was conducted by the Enquiry Officer who  
found him guilty of the charges. The Disciplinary  
Authority imposed the penalty of Compulsory retirement  
from service with effect from 10.5.91. The applicant  
submitted an appeal against the compulsory retirement.

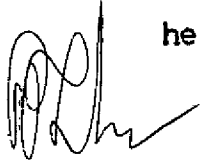
...2...



The Appellate Authority dismissed the appeal of the applicant vide its order dated 30.9.91. Aggrieved by the penalty imposed upon him by the Disciplinary Authority, the applicant approached this Tribunal and sought for the relief that he be reinstated in service with continuity of service from 10.5.91 with full back wages and all other incidental benefits and to hold that enquiry held against the applicant is not proper and findings of the Enquiry Officer are perverse and improper.

2. The learned counsel for the applicant has brought out that the enquiry was not properly conducted and the Principles of Natural Justice were not followed during the conduct of the enquiry. The learned counsel for the applicant has specifically pleaded that the findings of the Enquiry Officer are perverse and no reasonable man would conclude that the applicant is guilty and that the Enquiry Officer has not applied his mind.

3. The applicant has brought out in para 5 certain irregularities in the conduct of the enquiry like: While examination in Chief and cross examination of PW No.1 was going on PW No.2 was present. However nowhere it is shown that this was objected to either by the applicant or by his defence assistance during the course of enquiry. The applicant has also brought out that the Enquiry Officer asked presenting Officer to cross examine prosecution witness which is unfair. However nothing has been brought on record to show that these proceedings are against the law. The applicant has also brought out that sufficient time was not given to the applicant to consider whether he wants to produce any witness or not. From the




enquiry <sup>report</sup> it is seen that in reply to a specific question at page 2 of the enquiry, whether the applicant want to give any witness from his side? His reply was "NO". Otherwise also we are of the opinion that these are minor irregularities and even if these <sup>have</sup> are taken place it cannot be said that Principles of Natural Justice have not been substantially observed. The applicant has also brought out that the findings of the Enquiry Officer are perverse and has stated that on the basis of evidence led in enquiry proceedings no reasonable man would conclude that the applicant is guilty. The applicant has also brought out that no betting material was seized from the applicant on 17.3.90. It is also not proved that book seized from Shri Taware was used for mataka. He has also brought that it is not proved that Shri Taware was accepting betting and the applicant was either assisting him or engaged in betting.


4. The respondents have produced enquiry report and the disciplinary proceedings during the course of hearing. We have perused the report of the Enquiry Officer and after going through it we are of the opinion that this cannot be said that the enquiry is based on no evidence. The pleadings of the applicant are on the question of adequacy of proof and it is well established that the Tribunal would not go in the adequacy of evidence unless it can be shown that the enquiry report is based on no evidence.



5. Although the applicant has mentioned that the Disciplinary Authority has not applied his mind to the enquiry proceedings or findings of enquiry officer nothing concrete have been brought out in this regard. We have perused the order of the Disciplinary Authority as well as the order passed by the Appellate Authority and we are of the opinion that it cannot be said that there is no application of mind by the Disciplinary Authority or by the Appellate Authority.

6. We are therefore of the opinion that the O.A. is without merit and is liable to be dismissed. Accordingly we dismiss the O.A. with no order as to costs.

  
(P.P. Srivastava)  
Member (A)

  
(B.S. Hegde)  
Member (J)

NS