

(04)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 1082/92 & 1130/92

Transfer Application No:

DATE OF DECISION: 15/03/1995

L.A. Jaiswal

P.T. Raut

Petitioner

Shri. M.M. Sudame

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri. R.P. Darda


Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice chairman

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 ?
no.


(M.S.DESHPANDE)
VICE CHAIRMAN.

J*

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A. 1082/92 & O.A. 1130/92

O.A. 1082/92

L.A. Jaiswal

.. Applicants

O.A. 1130/92

P.T. Raut

Vs.

1. Union of India through
Chairman, Ordnance Factories Board.

.. Respondents

2. The General Manager, Ordnance
Factory, Ambazari, Nagpur

CORAM : 1. Hon'ble Shri Justice M.S.Deshpande, Vice Chairman
2. Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearances

1. Shri.M. M. Sudame, Counsel
for the applicants
2. Shri. R.P. Darda, Counsel
for the respondents

ORAL JUDGMENT

DATED : 15/03/1995

{ Per Shri Justice M.S.Deshpande, Vice chairman }

By these two applications, the applicants challenge the dismissal after departmental enquiry, imposed on them.

2. The applicants were serving as Darban and they were charge-sheeted by the order dated 26.5.1984, having helped an outsider to scale the Ordnance Factory wall and having thereby committed misconduct. The applicants denied the charge. The Enquiry Officer, after considering the evidence available before him exonerated the applicants. The Disciplinary Authority however after considering the evidence, by its Memorandum dated 10/02/1992 made the following observations :

"I have gone through the report of the Enquiry Officer and the representation of the charge-sheeted Government servant and have recorded my dissenting findings. A copy of my dissenting findings is enclosed. If you wish to make a representation of submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter to enable him to take a suitable decision, on consideration of your reply."

3. The Disciplinary Authority has also forwarded with that letter his dissenting findings wherein he pointed out why he was differing from the view taken by the Enquiry Officer. After the applicants ^{gave} ~~given~~ their replies to the show-cause notice, the Disciplinary Authority considered each of those objections raised and by order dated 26/05/92 ~~rejected~~ the objections raised and imposed penalty of dismissal from service on the applicants.

4. The learned counsel for the applicants urged that an opportunity as contemplated in 1969 SLR-657 (Narayan Misra V. State of Orissa) by the Supreme Court had ~~not~~ been given to the applicants. There, the Conservator of Forests used against the delinquent officer the charges of which he was acquitted without warning him that he was going to use them and it was held to be against all principles of fair play and natural justice. In the order of the Disciplinary Authority, which ^{is} ~~was~~ extracted ^{above}, the Disciplinary Authority categorically stated that he was differing with the findings of the Enquiry Officer and also made available his reasons why he intended to record the dissenting findings. The order clearly shows that the findings were not final but only tentative and that the Disciplinary Authority would reconsider the entire position after considering the representation of the applicants. In our view, the order dated 10/02/1992 was not a final order

but it gave only reasons for a tentative contrary findings. By Order which was passed later considering each and every objection that could be raised on behalf of the applicant, the objections were rejected.

5. The learned counsel for the applicants took us to the evidence recorded by the Enquiry Officer. It is apparent that there ~~were~~ some discrepancies with regard to the time noted in the vehicle register and the time of incident but this position was not considered by the Disciplinary Authority, ^{& to be important} and he observed that the enquiry was ordered after 8 months of the incident and there was no reason for the prosecution evidence to falsely involve the applicants.

6. The learned counsel for the applicants also urged that the height of the wall was about 18 ft., and one of the applicants could not have scaled the wall. But this point was also considered by the Disciplinary Authority stating that the height of the wall was only 8 ft., and one of the witnesses, Shri. Khanorkar, stated that a telephone cable was found hanging at the site of bastion. After going through the evidence which was recorded, we find that there was evidence on the basis of which, the Disciplinary Authority could have ^{recorded} ~~accorded~~ the findings. Sufficiency or adequacy of the evidence cannot be a ground for us to interfere under Article 226, with the findings of the facts which are based on evidence. All that we have to consider is whether the inference was ^a possible ^{one} and about that there is no doubt in the present case. We therefore see no merit in the challenges raised to the impugned orders. The applications are dismissed, with no order as to costs.

M. R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

M. S. Deshpande
(M. S. DESHPANDE)
VICE-CHAIRMAN