

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1231/1992

Date of Decision: 14.10.96

Diwakar Bapurao Gaddamwar

Petitioner/s

Shri Utpal Rudra

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri M.G. Bhangde, CGSC


Advocate for the
Respondent/s

CORAM:

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

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)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP AT : NAGPUR

O.A. NO. 1231/92

Dated this 14th day of October 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Diwakar Bapurao Gaddamwar)
aged about 49 years)
Supervisor B Grade)
Non-technical)
Ordnance Factory, Chanda)
P.O. Chandrapur Ordnance)
Factory)
Tahsil : Bhadrawati)
Dist : Chandrapur.)
(By advocate Shri Utpal)
Rudra))

... .. Applicant

v/s

1) The Union of India)
through the Secretary)
Ministry of Defence)
(Production))
South Block)
New Delhi.)
2) Chairman/Director)
General of Ordnance)
Factories Board)
10/A, Auckland Road)
Calcutta.)
3. The General Manager)
Ordnance Factory)
Chanda)
Dist: Chandrapur.)
(By advocate Shri M.G.)
Bhangde, Central)
Govt. Standing Counsel))

... .. Respondents

ORDER

{ Per: Shri B.S. Hegde, Member (J) }

Heard Shri Utpal Rudra for the applicant and
Shri M.G. Bhangde for the Respondents. In this

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O.A., the applicant has prayed for quashing of the impugned order dated 28-1-1983, show cause notice, Disciplinary Authority's order dated 28-3-1989, Appellate Authority's order dated 27-6-1991 and Reviewing Authority's order dated 22-4-1992 respectively. The applicant joined Ordnance Factory Services in the year 1968 and he was posted to Ordnance Factory, Chanda. It is an admitted fact that the applicant is the President of Mazdoor Union, Ordnance Factory, Chanda, one of the recognised Unions. It is stated that the Action Committee had issued a notice of strike to the management of the Ordnance Factory as their demands were not met by the respondent department. It is stated that they were forced to resort to strike; accordingly, strike was organised by the unions from 15-12-1982 to 26-12-1982. The General Manager, Ordnance Factory, Chanda suspended the applicant vide orders dated 10-1-1983 and 20-1-1983 pending departmental as well as criminal proceedings against the applicant. The suspension order was revoked by the Respondents on 1-9-1984 and was reinstated and the applicant resumed duty on 8-9-1984. Thereafter, the Respondents issued a memorandum of chargesheet on 28-1-1983. The applicant submitted a representation in response to the memorandum. Thereafter, enquiry proceedings was initiated and completed. The Enquiry Officer after completion of the enquiry found the applicant guilty under Article II and IV; with regard to the other 3 articles, the same has not been established against the applicant. The disciplinary authority vide dated 28-3-89 agreeing with the findings of the Enquiry

Officer, accordingly awarded the penalty of reduction of pay by two stages in the grade of Supervisor in the time scale of Rs. 1200-2040 with cumulative effect. This reduction will take effect from the date of issue of the order against which the applicant preferred an appeal which he is required to prefer within 45 days; however, he filed his appeal on 28-11-1990 which has been disposed of by the appellate authority on 27-6-1991 stating that considering the gravity of the mis-conduct on the part of the appellant unbecoming of a trade unionist, the contentions of the appellant do not bear any merit warranting interference with the penalty, thereby concurring with the penalty imposed by the disciplinary authority; accordingly, the appeal was rejected. Against this order, the applicant preferred a review petition 13-9-1991 to the Ministry of Defence which has been disposed of on 22-4-1992 stating that there are no reasons or mitigating circumstances warranting alteration of the decision taken by the disciplinary authority and upheld by the appellate authority in Ordnance Factory Board; accordingly, the review petition was dismissed. Thereafter, he filed this OA challenging the aforesaid orders of the respective authorities.

2. The main contention of the applicant is that the charge memorandum issued by the Dy. General Manager is not tenable as he is not the competent authority to issue the charge memorandum; therefore, the charge memorandum having been issued by the Deputy General Manager

who is not competent authority to issue chargesheet gets ^{vitiated.} /
Secondly, the Appellate Authority should be the Director
whereas the appellate order was passed by a Joint
Director/Vigilance, thereby he is not competent to pass
the order. However, when we asked the learned counsel
for the applicant whether he has taken such a pleadings in the
the answer of the counsel is in the negative. ^{OA,}

3. As against this, the Respondents in their reply
negatived the various contentions made by the applicant
in this O.A. and submitted that the Criminal Court has
rendered its judgement subsequently, after the order of
penalty passed by the disciplinary authority has no bearing
on the departmental action against the Government servant
since the trial on criminal charge and disciplinary
proceedings on misconduct in service are of different
nature. It is true that the criminal case has ended in
the acquittal of the accused persons as prosecution failed
to prove the charge. The main charge against the applicant
was that he alongwith others instigated the workers not
to attend the work and were blocking the roads abusing
and threatening the particular leader of the union willing
to go to the factory and the applicant was one of the
leaders who was blocking the road. It is an undisputed
fact that the General Manager is the appointing authority
and disciplinary authority in this case and the proceedings
are instituted and finalised according to the rules, thereby
the contention of the applicant that the chargesheet was
issued by a lower authority is not tenable which is permissible

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under the rule 14 (3) of the CCS (CCA) Rules. In this connection, the learned counsel for the Respondents draws our attention to the decisions of Calcutta Bench and Madras Bench respectively (1) A. Philip v/s Director General of Ordnance Factory (1990) 13 ATC 641, 23 (1990) 2 SLJ (CAT) 630 wherein the very same contention has been dealt with by the Tribunals and held that as per rule 14 (3) of CCS (CCA) Rules, the disciplinary authority shall draw or cause to be drawn up the substance of imputation of misconduct or misbehaviour in a definite and distinct articles of charge. It is clear from the above provision that the charge may be either drawn up by the disciplinary authority himself or by his order. In this case, the memorandum of charge is signed by the Dy. General Manager for and on behalf of the General Manager. It is found that the charge framed is in conformity, with the rule. The aforesaid decisions of the Tribunal is fully applicable to the facts of this case and the same is binding on us because in this case also Memorandum of Articles of Charge is signed by the Dy. General Manager for and on behalf of the General Manager; therefore, there is nothing illegal in the order passed by the Dy. General Manager and the action of the Respondents is fully within the Rules.

4. Heard both the counsel. The contentions of the applicant is not sustainable both on facts as well as under the rules. Under rule 14 (3) of the CCS (CCA) Rules 1965, it is permissible to draw the charges by an authority lower than the appointing authority on behalf of the

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General Manager. Since the applicant has already undergone the punishment imposed by the Respondents as back as 1989, the question of quashing the said chargesheet at this stage is not warranted. Further, the Apex Court has held in catena of cases that the Administrative Tribunals cannot interfere if punishment has been awarded after holding enquiry, if considered harsh, the proper course is to remit the case to the Appellate or the Disciplinary Authority as the case may be. The Tribunal cannot reappraise and going into the sufficiency of evidence. It cannot sit as a Court of appeal over a decision based on the findings of the Disciplinary Authority or the Appellate Authority unless the order passed by the competent authority is malafide. The Tribunal has no power to substitute its own discretion for that of the Authority.

5. In this connection, the learned counsel for the applicant draws our attention to the decision rendered by the Calcutta Bench in Pran Sankar Kundu v/s Union of India & Others (1993) ATC 808 wherein it is held that "irregularities in issue of chargesheet and imposition of penalty by an incompetent authority can be rectified by the department by issuing corrigenda". He also relies upon another decision of the Principal Bench in J.D. Gupta v/s UOI & Ors. (1992) 21 ATC 725. Both the cases stand in a different footing and are not applicable to the facts of this case and thus were distinguishable but in this case, the punishment is imposed by the General Manager, who is competent to issue the same. The chargesheet was given by the



Dy. General Manager for and on behalf of the General Manager which is found to be legal. Therefore, both the decisions do not apply to the facts of this case and as such there is no merit in the contentions raised by the applicant. In the result, we do not see any merit in the OA and the same is, therefore, dismissed with no order as to costs.

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

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

ssp.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 2/97 in
Original Application No. 1231/92

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

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

Diwakar Bapurao Gaddamwar
Supervisor B Grade (N/T)
Ordinance Factory, Chanda,
P.O. Chandrapur Ordance Factory
Tahsil Bhadrawati District
Chandrapur.

... Applicant.

V/s.
Union of India and others.

... Respondents.

Tribunal's order on Review Petition by Circulation

¶ Per Shri B.S. Hegde, Member (J) ¶

Dated: 22.8.97

The applicant has filed this Review Petition seeking review of the judgement dated 14.10.96. By this application the applicant is trying to re-argue the matter. The O.A. was considered on merit. The Review Application cannot be utilised for rearguing the case on the same ground. "Once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

In the result, we do not find any merit in the Review Petition. Accordingly the R.P. is dismissed by Circulation.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)