

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 133 /1992

Date of Decision: 30.8.96

L.D.Shitole

Petitioner/s

Ms.Poonam Mahajan

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for the
Respondent/s

CORAM:

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

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

(1) To be referred to the Reporter or not ? X

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? X


(P.P. SRIVASTAVA)

MEMBER (A)


(B.S. HEGDE)

MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 133/92

30th this the day of August 1996

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

Laxman Dinkar Shitole
C/O Shri Anil V.Anturkar
Advocate High Court,
528, Narayan Peth,
Behind Modi Ganpati Temple,
Pune 411 030.

By Advocate Ms.Poonam Mahajan ... Applicant
V/S.

1. The Union of India
Ministry of Defence,
New Delhi.
2. The Chairman/Director General
Ordnance Factory Board,
10A- Ockland Road,
Calcutta.
3. The General Manager,
Ammunition Factory,
Khadki, Pune.

By Advocate Shri R.K.Shetty
C.G.S.C. ... Respondents

O R D E R

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

The applicant was working as Blacksmith
in the Ammunition Factory, Khadki, Pune when
he was issued a Charge-sheet dated 24.12.1985
and was charged as under :-

" Article - I

that the said Shri L.D.Shitole,
T.No.R/578, while functioning as
Blacksmith HS Gr.II R Section of
Ammunition Factory, Kirkee is charged
with 'Misconduct' viz: Unauthorised
possession of large sums of money.



Article -II

that the said Shri L.D.Shitole T.No.R/578, while functioning as Blacksmith HS.Gr.II in R Section of Ammunition Factory, Kirkee is charged with 'Misconduct' viz: Illegal activities inside the factory during working hours- i.e. Money lending."

An enquiry was conducted in which the applicant participated. The enquiry officer found the applicant guilty of the charges on account that the charges against the applicant are established. The enquiry officer's report dated 14.12.1989 is placed at 'Annexure-A-6'. The disciplinary authority there-upon imposed the penalty of dismissal from service vide order dated 30.4.1990 (placed at 'Annexure-A-8'). The applicant thereupon submitted an appeal against the order of the disciplinary authority which is dated 4.6.1990. The appeal of the applicant was also dismissed by the appellate authority vide order dated 5.8.1991 which is placed at Annexure-'A-10'. The applicant has thereafter approached the Tribunal through this OA. for quashing the orders of the disciplinary authority as well as the appellate authority.

2. Counsel for the applicant has brought out that the enquiry officer's report is based on in-sufficient evidence to prove the charges that the applicant was carrying on the business of money lending within the factory premises. The counsel for the applicant has argued that none of the witnesses examined by the respondents has said that the applicant was carrying on the business of money lending and there is no direct evidence on this point.



of the proceedings in as much as in last but one para in the last sentence that the appellate authority has submitted the report of the Bhandi Fund while no such report of the Auditor of Bhandi Fund was part of the proceedings during the enquiry and no reference to this Auditor's report has been made by the enquiry officer or the disciplinary authority.

6. The counsel for the applicant has also argued that many points which have been raised by the applicant in his appeal have not been dealt with by the appellate authority and to that extent the appellate authority's order is a non-speaking order and did not deal with the appeal properly. Counsel for the applicant has also specifically pleaded that the penalty is harsh and out of proportion. During the course of argument the counsel for the applicant has produced standing order issued by the respondents dated 15.7.1981 wherein the type of punishment to be inflicted for each types of mis-conduct had been guided. The counsel for the applicant has drawn our attention to item 11 of the above order wherein offence of repeated money lending, ^{for} the scale of penalty 'upto stoppage of two increments without cumulative effect' has been prescribed. The counsel for the applicant has therefore argued that the appellate order should have considered the appeal of the applicant for adequacy of punishment in the light of the above instructions.



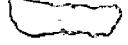
The counsel for the applicant has elaborately discussed the findings to show that even the circumstantial evidence is not such as to show the probability that only the applicant is guilty.

3. The counsel for the applicant has not brought out anything on record as well as during the arguments to show that the enquiry officer has not conducted the enquiry according to the laid down procedure or that the disciplinary authority has violated any procedure while dealing with the case. The counsel for the applicant has not also pleaded that this is a case of no evidence but has brought out the inadequacy of the evidence to prove the charges.

4. It is now well established that the Tribunal's role in judicial review should be confined to see that the proper procedure is followed and the Tribunal should only interfere in the disciplinary process if the punishment is based on no evidence, or is biased or prejudice. In the present case, since no procedural defects have been brought out and the enquiry officer's report cannot be considered as based on no evidence, we are of the opinion that no fault can be found out in the enquiry officer's report as well as the disciplinary authority's order which would warrant intervention by the Tribunal.

5. As far as the appellate order is concerned, the counsel for the applicant has brought out that the applicant has submitted a detailed appeal. The counsel for the applicant has argued that the appellate authority has taken into account certain material while deciding the appeal which is not part

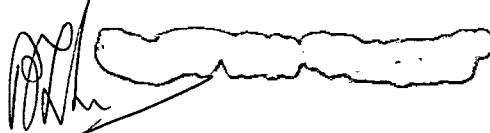


7. Counsel for the respondents, on the other hand, has submitted that the appellate authority's order is a reasoned order and although each point has not been commented in detailed, the appellate order has covered all the points brought out by the applicant. As far as the quantum of punishment is concerned, the counsel for the respondents has argued that the provisions in the standing orders are only for the purpose of guidance and the penalty is to be determined with reference to the evidence and the gravity of situation, which in this case has been assessed  by the appellate authority as penalty imposed  is well warranted and justified.

8. After considering various arguments  on the appellate authority's order, we are of the opinion  not that the appellate authority has  dealt with each and every point raised by the applicant in his appeal, also the appellate authority has taken into account of report of the Auditor of Bhandi Fund which document was not available on record  with the  enquiry officer.

9. In these circumstances, we are of the view that the appellate authority's order cannot be sustained in the eyes of the law as it has not dealt with all the points raised by the applicant as well as has taken into account some external materials which were not available on record. The appellate order dated 5.8.1991 is, therefore, liable to be quashed.

10. As far as the adequacy of punishment is concerned, it is a fact that the appeal of the applicant submitted before the appellate authority does not mention anything about the instructions of the factories as brought out by the counsel



during the argument about the type of punishment to be awarded for each offence. We would, however, like to only mention that although these instructions are not binding on appellate authority, they may be taken into account while considering the adequacy of punishment.

11. We, therefore, quash the appellate order dated 5.8.1991 and direct the respondents to consider the appeal of the applicant dated 4.6.1990 which is already on record by passing a speaking order on all the points raised by the applicant in his appeal. We have already mentioned in para 4 that the disciplinary authority's orders do not warrant any intervention by us. The OA is disposed of with the above directions. There will be no order as to the costs.



(P.P. SRIVASTAVA)

MEMBER (A)



(B.S. HEGDE)

MEMBER (J)

mrj.