

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 134 /1992

Date of Decision: 27-09-96

Hari Parashram Bhalerao

Petitioner/s

Shri S. Natarajan

Advocate for the
Petitioner/s

V/s.

Union of India & 2 Ors.

Respondent/s

Shri S. S. Karkera for

Advocate for the
Respondent/s

Shri P. M. Pradhan

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?

abp.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO. 6, PRESCOT RD., 4TH FLR.,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 134/92.

DATED THIS 27th DAY OF SEPTEMBER, 1996.

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

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

Hari Parashram Bhalerao
at post: Bhalod,
Tal. Yawal,
Dist. Jalgaon.

... Applicant.

By Advocate S.Natarajan

v/s.

1. Union of India through
Director General,
Ordnance Factories,
10-A Auckland Road,
Calcutta - 700 001.

2. General Manager,
Ordnance Factory,
Varangaon,
Tal. Bhusawal,
Dist. Jalgaon.

3. Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

... Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan.

I ORDER I

[Per Shri M.R.Kolhatkar, Member (A)]

In this OA, the applicant has challenged the order of penalty dated 6/3/1991 removing him from service and Appellate Order dated 12/11/91 rejecting his appeal. was in This OA/comprised/a group of OAs which had been earlier disposed of by this Tribunal by common order for failure of departmental authorities to provide copy of the Inquiry Officer's report to the delinquent office, in terms of Ramzan Khan's judgement and respondents were directed to

furnish the Inquiry Officers' report and to consider the say of the applicant before taking further action. The articles of charge and the statement of imputations are as below:-

"ARTICLES OF CHARGE :- That the said Shri H.P.Bhalerao T.No. 3741/TR while functioning as in Ordnance Factory Varangaon is charged with:

- (1) drunkenness while on duty.
- (2) Disorderly behaviour and use of physical force towards a co-worker
- (3) Breach of factory discipline:

STATEMENT OF IMPUTATIONS, etc.

It is reported that on 29/9/84 at about 2045 hours (in night shift in Tool Room, Shri Bhalerao, T.No.3741/TR, under the influence of liquor quarrelled with Shri K.R.Sonar, T.No.5555/TR and manhandled Shri Sonar. The said Shri Bhalerao torn the shirt of Shri Sonar and bitten his finger. Therefore, both were sent to OFV Hospital for medical examination. The Medical Officer on duty reported that Shri H.P.Bhalerao, T.No.3741/TR was under the influence of liquor."

2. The contention of the applicant is that there has been failure on the part of the Inquiry Officer to appreciate evidence in as much as, the applicant had also extensive injury in the face requiring hospitalisation and the Inquiry Officer has glossed over this aspect in his statement that Shri Bhalerao was also beaten by Shri Sonar may be to protest his act. It is alleged that the applicant belongs to scheduled caste and the complainant belongs to upper caste and that the Union was controlled by Upper caste personnel. Apart from these aspects, the grounds for challenging the penalty order and Appellate order are as below:-

- (i) It is first contented that the Memorandum of Charges was issued by authority which was not competent to issue the same. The applicant is a group 'C' employee

and the memorandum of charges was issued by the Works Manager(Administration). It is contented that at the time of issue of memorandum of charges (1984) even the General Manager who is/higher officer to Works Manager issued actually the Memorandum of charges did not have any power to impose the penalty on the applicant until the schedule was amended with effect from 2/1/87. In this connection, the applicant relies on the judgement of the Allahabad Bench of the Tribunal in the case of Sain Singh Rawat v/s. Union of India in (1988)7 ATC 806.

In para-13 of the said judgement, it has been held that the Director General of Ordnance Factories is the only competent person to impose penalties under CCA rules and the General Manager has not been invested with such powers. This reasoning applies with the greater force to/Works Manager.

(ii) Next, it is contented that the copies of the documents listed in Annexure-3 to the charge-memo were not furnished to the applicant. The documents included the statement of witnesses and ought to have been furnished to/applicant to facilitate cross-examination. In this connection, the applicant relies on the case of State of M.P. vs. Chintaman (AIR 1961 SC 1623), State of Punjab vs Bhagat Ram (1975)2 SCR 370 and Kashinath Dixita vs. Union of India (1986 SCC L&S 502).

(iii) Next it is contented that the enquiry was held in denial of natural justice in as much as the Inquiry Officer failed to furnish to the applicant copies of the statements relied upon in Annexure-III. The Inquiry Officer failed to give the copy of the daily order

sheet. The Inquiry Officer called Shri Vasudeva~~u~~ in the midst of examination of defence witness to get some points clarified, and that the Inquiry Officer examined Shri Sonar who was not listed as a witness. Further, it is contended that since the applicant did not examine himself, it was mandatory on the part of the Inquiry Officer under Rule 14(18), to have questioned the applicant on the circumstances appearing in the evidence against him. However, the Inquiry Officer had illegally questioned the applicant at the start of the enquiry. Moreover, no written brief on behalf of the Department or on behalf of the defence were exchanged though required under the rule 14(19).

✓ (iv) Fourthly, it is contended that the report of the Inquiry Officer is a non-speaking one. According to Rule 14 (23) (i) there are minimum components of the report ~~namely~~ - enumeration of articles of charge, defense of Government servant, assessment of evidence, and findings on each articles of charge. But the report of the Inquiry Officer did not comply with these requirements and moreover, although the Tribunal had specifically directed the respondents to consider the representation of the applicant on the Inquiry Officer's report, the ~~Disciplinary~~ authority does not refer to the same.   though It is next contended that even the Appellate Authority apparently gave a detailed order after giving a personal hearing to the applicant, failed to consider the evidence on record.

(v) Lastly, it is contended that this is a case of no evidence 

deserving the findings and therefore the penalty order and the Appellate Order are required to be quashed. In this connection, the applicant relies on the following additional judgements, namely:-

1. R.C.Tiwari vs Delhi Milk Scheme
(1987)3 ATC 573

in which it is laid down that

While the Courts cannot go into the sufficiency of evidence but it can reappreciate it to see whether the findings are perverse or without any reason.

The applicant also relies on

2. Govind Lal Chopra vs Union of India
(1988)7 ATC 040

in which the Tribunal granted the relief on the ground inter-alia of the order of the Disciplinary Authority being a non-speaking one and for violation of Principles of Natural Justice.

3. Ashok Kumar vs. State of UP.
(1987)3 ATC 581

in which it is held that

Unless the prosecution produces the maker of the report, examines him and affords opportunity to the charged official to cross-examine him, held, the said report could not be relied on for finding the charge established in the context of the reliance placed by the respondents on the report of the Medical Officer who was not examined.

3. The respondents have opposed the OA. According to them the powers are delegated to the Works Manager to issue charge sheet and therefore the Inquiry cannot be vitiated on this account. It is stated that Shri Sonar was examined because he was the complainant and his complaint was that he was man handled by the applicant. When Shri Sonar was examined, the applicant did not raise any objection at that time and applicant did have an opportunity to cross-examine Shri Sonar and therefore it is not correct for the applicant at this stage to raise the objection regarding examination of Shri Sonar.

4. Regarding the Medical Certificate, it is stated that the Medical Officer had certified after examination of the

applicant on the day after the incident that the applicant was under the influence of liquor.

5. The respondents contend that the reference to the caste of the applicant and the caste of the complainant has no bearing on the merits of the case. It is also pointed out that the applicant is challenging the fresh order of penalty dated 6/3/91 and not the earlier order of penalty.

6. Regarding furnishing of various documents, it is contended by the respondents/ his representation to the Appellate Authority shows that he had access to all the proceedings and therefore it cannot be said that any prejudice has been caused to him because of non-supply of proceedings like Daily Order sheets, etc. The respondents rely on *Indradeo Singh vs. Union of India & Others 1992(3)(CAT) SLJ 62* decided by Calcutta Bench on 30/1/92.

7. So far as the question of competence of the Works Manager to issue charge sheet is concerned, the contention of the applicant that the enquiry was vitiated because Works Manager was not the disciplinary authority cannot be accepted. It is now well settled that any controlling Officer can issue charge sheet and it is not necessary that he should be the officer who is competent to impose penalty on the delinquent officer.

8. Regarding prejudice if any caused because of failure to furnish documents, etc, it is to be kept in view that the fresh order of penalty was passed by Disciplinary Authority after remand of the case and therefore it cannot be said that the failure of the Departmental Authorities to supply the copies of earlier ~~material caused~~ prejudice to the applicant in his defence. Although Shri Sonar complainant might not have been listed in the list of witnesses, since the applicant had

opportunity to cross examine him, no objection can be taken to his being examined.

9. Regarding the order of the disciplinary authority, being a non-speaking one, the failure to refer to the charges, etc cannot be said to be fatal to the disciplinary authority's ~~xxx~~ order. The mere fact that he has not referred to the fact that he has considered the representation of the applicant in relation to the Enquiry officers' report, does not also imply that he had ~~xxxxx~~ not considered the same because the disciplinary authority's order as a matter of fact was subsequent to the representation and it was among the materials considered by the disciplinary authority. Mere failure to recite that he has ~~xxxxxxxx~~ considered a particular document does not vitiate the order of the disciplinary authority.

10. Regarding various case laws cited by the applicant, it may be observed that ~~much~~ of this case law has become ~~absolute~~ consequent on the Supreme Court Judgement in AIR 1996 SC 1669 in State Bank of Patiala vs. S.K. Sharma in which the Supreme Court has dealt with exhaustively ~~xx~~ the Principles to be followed in the context of Disciplinary ~~Inquiry~~ and the order of the punishment imposed by an employer on an employee. The Hon'ble Supreme Court has held that the ultimate test is always ~~xxxxx~~ the same, namely the test of prejudice or the test of fair hearing. In the instant case, the applicant was charged with drunkenness while on duty and disorderly behaviour and use of physical force towards a co-worker and Breach of Factory discipline., and the charge is supported by documentary evidence in the form of Medical Certificate and the evidence of co-workers who were present at the time of the incident including the

complainant who was not initially listed as a witness.

The Court has observed that

"1. An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

2. A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

3. In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.

4. (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

4. (b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former,

then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B.Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same viz. test of prejudice or the test of fair hearing as it may be called."

11. In the light of these principles, we are of the view that this cannot be stated to be a case where prejudice has been caused to the applicant or it can be said that a fair hearing has not been given to the applicant. Most of the objections raised by the applicant are of a technical nature and there has been a substantial compliance with the procedure laid down under the rules.

12. However, considering the ~~nature~~ of incident, which is of a one time nature, and ~~about~~ 14 / the penalty of removal from service appears to be disproportionate, but this is a matter on which respondents are required to take a view. We therefore dispose of this case by remanding the same to the Appellate Authority to re-consider the case ~~at~~ the point of view of the past service of the applicant/ the conduct of the applicant which appears to be of a one time nature, the respondents are in a position to moderate the penalty. ~~If~~ It is open to them to do so. The action in this regard may be completed in the next 3 months.

Subject to the above, we find that the OA has no merit and therefore the same is dismissed except to the extent of limited relief granted by us.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

Hegde

(B.S. HEGDE)
MEMBER (J)

abp.