

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. : 139 OF 1992.

~~Transfer Application~~

Date of Decision SEPTEMBER 27, 1995

Shri M. L. Shikhilkar,

Petitioner/s

Miss Poonam Malaviya,

Advocate for  
the Petitioners

Versus

Union Of India & Others,

Respondent/s

Shri R. K. Shetty,

Advocate for  
the Respondents

CORAM :

Hon'ble Shri. Justice M. S. Deshpande, Vice-Chairman.

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 ? no

  
(M. S. DESHPANDE)  
VICE-CHAIRMAN.

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(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 139 OF 1992.

M. L. Shikhilkar ... .. Applicant

Versus

Union Of India & Others ... .. Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

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

APPEARANCE :

1. Miss Poonam Malaviya,  
Counsel for the applicant.
2. Shri R. K. Shetty,  
Counsel for the respondents.


ORAL JUDGEMENT

DATED : SEPTEMBER 27, 1995.

¶ PER.: SHRI M. S. DESHPANDE, VICE-CHAIRMAN ¶

1. By this O.A., the applicant challenges the findings of guilty recorded against him and the punishment of dismissal from service.

2. The applicant was employed as Blacksmith with the respondents and came to be charged on 24.12.1985 in conspiring with one Shri L. D. Shitole and indulging in unauthorised activities inside the factory during working hours which amounted to money lending. The imputations were showed that when the Security Officer carried out a surprise raid in the Section on 8.11.1985 at about 4.45 p.m. which was the pay day and asked the applicant to open the cupboard, the applicant first said that he did not have the key but later on when the security officer wanted to break open the locker, he produced the key and opened the locker.



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On opening the locker, a large sum of money was ~~taken up~~ <sup>found to be</sup> in cloth bag. The cash was counted and it was found to be Rs. 30,080.00. The applicant pleaded ~~at~~ not ~~being~~ guilty to the charge. The Enquiry Officer in his report dated 14.12.1989 observed that the applicant was aware that Shri Shitole was doing money lending and for that applicant's cupboard was being used, quite likely, by force because Shitole was an influential person but there was no direct indulgence by the applicant in money lending because had he been a partner for money lending, he would not have left such a large sum of money behind and gone out and that Shri Shitole by virtue of his influence had forcibly taken the locker of the applicant and was using it as a safe place for keeping his cash. It was also observed that the applicant might have agreed ~~for~~ <sup>to</sup> this arrangement under pressure and duress and to keep him silent, Shitole had given him Rs. 300/- extra. The finding therefore was that, the charge of indulging in unauthorised activities inside the factory during working hours i.e. money lending ~~is was~~ not established.

3. The Enquiry Officer while writing the order, framed a new article of charge to the effect that the applicant allowed his locker to be misused by Shitole and he failed to inform about this to the authorities. The applicant was found guilty of this charge because of the mention that the applicant might have been given Rs. 300/- extra by Shitole. The Disciplinary Authority took the view that the Enquiry Officer had the power under Rule 14 para 23 of C.C.S. (CCA) Rules, 1965 to frame a new article of charge. The provision under the caption "Explanation" reads as follows :



"If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge :

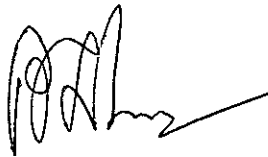
Provided that the findings of such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge."

The Disciplinary Authority has referred to his having ~~been~~ given a reasonable opportunity to the applicant to give his explanation to the new charge. The applicant's representation dated 17.03.1990 specifically mentions that no opportunity had been given to him by the Enquiry Officer and there were no admitted facts. Apparently, the only ~~stand~~ <sup>ground</sup> against the applicant was that an amount of Rs. 300/- was found with him and there was no admission of all the ingredients of new charge. It was therefore incumbent that the Enquiry Officer should have given an opportunity to the applicant to show cause in respect of the new charge. This the Enquiry Officer did not do before recording his finding of guilty of new charge. The exercise carried out by the Disciplinary Authority was only giving an opportunity after the finding was recorded and not prior to recording of the finding and this post-decisional opportunity would not meet the requirements of proviso to Rule 14 para 23 of the C.C.S. (CCA) Rules. We are, therefore, satisfied that there was such a vice in the enquiry as <sup>would</sup> ~~to~~ invalidate the entire enquiry and the finding of guilty could not have been properly reached by the Disciplinary Authority.

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4. In the result, we allow the application and set aside the order dated 17/18.07.1991 and the order dated 30.04.1990 and direct that the applicant be reinstated to his previous post within three months from the date of communication of this order to the respondents. The Competent Authority will consider the claim of the applicant for wages for the intervening period also within three months from the date of communication of this order.

5. The O.A. is disposed of with the above directions. No order as to costs.



(P. P. SRIVASTAVA)

MEMBER (A).



(M. S. DESHPANDE)

VICE-CHAIRMAN.

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