CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 209/92

Date of Decision 1st July 1996

Viriato Brutus Pinto — Petitioner

Mr. S P Halwasia, — Amicus curiae/ Advocate for the Petitioner.

Versus

Vice Admiral, Flag Officer ~~Commanding-in-Chief HQ WNC~~ — Respondent

Mr. V S Masurkar — Advocate for the Respondents.

Coram:

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

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

1. To be referred to the Reporter or not? Y

2. Whether it needs to be circulated to other Benches of the Tribunal? N

Member(J)

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001.

O.A.NO. 209/92

DATED: 1st JULY, 1996

Coram: Hon.Shri B.S. Hegde, Member(J)
Hon.Shri M.R. Kolhatkar, Member(A)

Viriato Brutus Pinto,
Quarter No.3. Sector III,
New C.G.S. Quarters,
Wadala (W), Mumbai 31.

(By Mr. S P Halvasia, Counsel
as amicus curiae) ..Applicant

V/s.

H. Johnson,
Vice Admiral,
Flag Officer Commanding-in-Chief,
Headquarters, Western Naval Command,
Bombay 400001.

(By Mr. V.S. Masurkar, Central Govt.Counsel) ..Respondents

ORDER
[Per: B.S. Hegde, Member(J)]

By this O.A. the applicant is challenging the Appellate Authority order dated 30.8.1991 and also states that he had filed appeal against Disciplinary Authority order dated 17.1.1991 by which he was removed from service and the Appellate Authority has confirmed the order of removal of applicant from service.

2. The applicant was appointd as Assistant Stores Keeper on 10.10.1983 in the Naval Dockyard at Bombay. His father Luis Pinto was in the service of Navy and has worked nearly 39 years and he was allotted CGS quarters at Wadala. After the retirement of the father the said quarter was regularised in the name of the applicant. It is an undisputed fact that till 1986 the applicant was attending to his duties regularly without any problem. In the

year 1986 the applicant's father died. After his father's death the applicant developed a severe mental depression and he was under treatment of a Doctor. According to the Doctor the disease is "Social Phobia, depression with obsessive compulsive Neurosis and Nervousness". Thereafter, the applicant was irregular in attending to office and he absented from duties. Firstly from 17.11.1988 to 1.9.1989 and on the second occasion from 13.9.1989 to 31.5.1990 without any leave application which was treated as unausthorised absence. Against the first absence a chargesheet was issued on 13.6.1989 for which no reply has been filed by the applicant. During the preliminary enquiry the applicant admitted the charges and alleged to have stated that he has neither applied for leave in advance nor submitted prior leave application with medical certificates. Since his guilt was established the competent authority after considering the report of the Inquiry Officer ordered reduction in pay of the applicant from Rs.1050 to Rs.950 in the pay scale Rs.950-1500 for a period of one year with effect from 20.11.1989 and also directd that the applicant will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. This the applicant has not challenged.

3. The applicant has filed this O.A. not through an Advocate but by himself. When the O.A. came for admission, Mr. Sushilkumar Halasia, Advocate appeared as an amicus curiae and sought permission of the Tribunal for amendment of the O.A. and also filed M.P.No. 562/92 dated 27.7.1992 for productiong of certain documents. Since none of the documents requested for were not produced/furnished by the Respondents, he was handicapped in amending the O.A. Since the applicant himself is not in a sound state of mind he had come to the rescue of the applicant and wanted to amend the O.A. but he could not do so for want of necessary documents which are to be furnished by the

respondents. As stated above, his first punishment was not challenged by the Applicant.

4. For the second absence of the applicant the respondents issued a charge sheet for the unauthorised absence from 13.9.1989 to 31.5.1990. An Inquiry Officer was appointed and he directed the applicant to be present during the enquiry on 27.8.1990, which was attended by the applicant and the inquiry was completed on the same day and the finding of the inquiry officer is that the applicant remained unauthorisedly absent from duty for the aforesaid period and he admitted his lapse and accordingly find him guilty of the charges leveled against him. On receipt of the same, the Disciplinary Authority vide his order dted 17.1.1991 imposed a major penalty of removal from service.

5. It is true, that the applicant has agreed of his absence from 13.9.1989 but however stated that on account of medical advise he was asked to undergo the treatment and therefore, he did not attend to his duties for whcih he has sent the medical certificates from the competent authority of J.J. Group of Hospitals. During the course of hearing, it was stated that he is unable to file reply to the charge sheet because he was suffering from mental depression as mentioned earlier and it was difficult to attend to duties. He also stated that he approached the office accompanied by medical certificate dated 11.10.1989 stating that he is unfit for joinging the duties. Though he has been directed by the authorities to go to St. George Hospital, since no facility was available at St. George Hospital for the specified treatment, the applicant was referred to J.J. Hospital and the applicant did report to J.J. Hospital accordingly. The authorities sought for second medical opinion of the J.J. Hospital. The applicant was called on 5.3.90 but he did not appear on that date as he was not keeping well and thereafter also he did not attend. It

is noticed in the inquiry proceedings that the letter received from the Dean of J.J. Hospital dated 10.5.1990 states that the applicant was called on 5.3.1990 but he did not appear before the Board and thereafter also on subsequent dates i.e., 19.3.1990; 2.4.1990; 16.4.1990; 20.4.1990 and 30.4.1990. The Inquiry Officer after considering the various aspects found him guilty of the charges leveled against the applicant viz., that the applicant was absent from duty unauthorisedly from 13 September, 1989 to 31 May 1990. The Disciplinary Authority vide its order dated 17.1.1991 passed the order of "Removal from Service". It is staed in the order of the Disciplinary Authority that the inquiry report was given under letter dated 20.9.1990 which was received by the applicant. However, he failed to reply, which implies that he has no defence to offer. The Applicant preferred an appeal against the punishment order on 26.2.1991 and the same was rejected on 11.7.1991 confirming the order of the Disciplinary Authority order dated 17.1.1991 of "Removal from Service". Thereafter, the applicant preferred a Review of the punishment order vide his letter dated 2.9.91 and that too came to be rejected on 25.2.1992.

6. The main crux of the argument of the Ld. Counsel for the respondents is that there is no miscarriage of justice and the inquiry proceedings were carried on in accordance with the laid down procedure and the applicant was given sufficient opportunity to defend/rebut his charges, which he failed to do so and has further pleaded guilty of the charges, thereby the respondents in their wisdom considering the background of the entire case passed the order of removal dated 17.1.1991 against which he preferred an appeal on 29.1.1991 which after hearing the applicant was rejected on 30.8.1991. The applicant had filed a review petition against this on 2.9.1991 which was rejected on 25.2.92. Ld. Consel for the respondents vehimently urged that the applicant has challenged the Appellate Authority order and not the Disciplinary

Authority order and also stated that the applicant has also not impleaded the necessary parties and hence the O.A. is required to be dismissed for non-joinder of parties. In support of his contention the Ld. Counsel for the respondents has relied on the following decisions:

6.1 MRS. OM PRABHA JAIN Vs. ABNASH CHAND & ANOR.
AIR 1968 SC 1083 (V 55 C 212)

This relates to the ordinary rule of law that evidence is to be given only on a plea properly raised and not in contradiction of the plea. Considering the facts of the present case, we are of the view that judgment is not relevant.

6.2 SHRI N D DHABALE Vs. UNION OF INDIA & ORS.
1995(2) ATJ, C.A.T., BOMBAY, 131

It has been held in this judgment that it is not for the Tribunal to re-appreciate the evidence and substitute the findings once the competent autority passes his order. In that case the applicant was involved in certain cases of fraud. In the isntant case, it is not the case of the applicant that he was involved in any fraud. In this case the applicant was not in a sound state of mind to put forward his grievance before the authorities independently. As the case stands in a different fotting, the ratio of that decision would not apply to the present case.

6.3 STATE BANK OF INDIA & ORS. Vs. SAMARENDRA KISHORE ENDOW & ANOR.
1994 SCC (L&S) 687.

In that case the applicant had claimed flase Travelling Allowance Bill thereby concealed the facts of the case. Courts or Tribunals cannot interfere

with the punishment once the punishment has been inflicted after holding enquiry. In the instant case the charge against the applicant is that of unauthorised absence. In that case, it has been held that if it is considered that the punishment imposed is harsh, the proper course is to remit the case back to the Appellate or Disciplinary Authority. The Supreme Court could interfere with the punishment imposed in a departmental enquiry, there is no corresponding power or jurisdiction to the High Courts and Tribunals for exercising such power or jurisdiction. The issue involved in this case is different.

6.4 DEV DUTT Vs. UNION OF INDIA & ORS.
AISLJ VII-1993(2), 318

The charge against the applicant is that case was unauthorised absence from duty for a number of years and leaving the headquarters without prior permission, challenged on the grounds of procedural irregularities in obtaining confessional statement and conducting enquiries and non-speaking orders. The applicant gave a statement before the enquiry officer in which he admitted that he absented himself from duty unauthorisedly. Thus the enquiry officer was within his right to give the finding that the applicant had accepted the charge and pleaded guilty. Regarding his family circumstances, the enquiry officer was not to give a finding on that. Appellate Authority had also considered the matter and the statement of the applicant and held that the applicant had himself admitted his guilt before the Enquiry Officer. The applicant's revision application to the President had also been dismissed by a speaking order. Therfore, it cannot be said that the enquiry proceedings have been vitiated and thus the removal order was rightly passed. Mercy and magnanimity can be bestowed only when the case is made out. The applicant in the instant case, remained absent from duty for a number of years and the respondents have taken the view that he is not fit to be retained in Government service.

6.5 PARMA NANDA Vs. STATE OF HARYANA & ORS.
AIR 1989 SC 1185

It has been held by the Supreme Court in that case that the Tribunal cannot interfere with the penalty imposed on delinquent employee by the competent authority on ground that it is not commensurate with delinquency of employee. In that case also the applicant had committed fraud of preparing pay bills. This is case is not relevant to the present case as none of the ingradients of that case are present in the present case.

6.6 COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH & ANOR Vs.
K.G.S. BHATT & ANOR; 1990 SCC (L&S) 45

In this case it has been observed by the Supreme Court that the Tribunals to decide cases without being bound by strict rules of evidence. The decision on individual disputes of seniority, promotion, reversion, suspension, pay fixation etc., are not ordinarily interfered with even though it is viewed as erroneous. The Tribunal may fall into some legal errors but if substantial justice has been rendered to a person, the Supreme Court will not interfere with such a decision.

7. This is an exceptional case where the applicant is not in sound state of mind and was not in a position to defend himself adequately. He was under treatement from Doctor right from 1986 onwards and has not supressed any facts before the Inquiry Officer and could not assign or explain the reasons for which he was absent. Though he had furnished medical certificates of absence, the same was not taken into consideration by the competent authority. Again and again the respondents were asking for a second medical opinion of the applicant. The Ld. Counsel for the Applicant Mr. Halwasia brought to our attention that due to non-furnishing of required documents by the respondents

he was handicapped in amending the O.A. though he had prayed for an amendment by filing M.P. No. 562/92 which was disposed of by the Hon. Tribunal on 14.7.92, and also implead necessary parties as required under the rules. The question for consideration is whether non-supply / non-furnishing of necessary documents would vitiate the enquiry. Before passing of the removal order of the applicant whether any show cause notice is required to be given to the applicant. Ld. Counsel for the applicant submitted that the absence of the applicant is without any ulterior motive but only due to his mental disorder. He contended that the averments in the O.A. are not denied by the respondents in their reply and the certificates furnished by the applicant are not questioned. Since most of the documents are not available with the applicant and inspection of the documents was not given to the applicant, though the respondents were directed by the Tribunal, he could not amend the O.A. in the absence of documents. Regarding the non-impleading of necessary parties Union of India, the applicant had filed the O.A. himself and was not in a sound mental order. The Ld. Counsel for the applicant prayed that considering the state of mind of the applicant such lapse may be condoned by the Tribunal. He contended that such a plea is not taken by the respondents in their reply but was argued only at the time of hearing of the case. Regarding the contention of the respondents that the applicant is only challenging the Appellate Authority order and not the Disciplinary Authority Order, the Ld. Counsel orally submitted, that the order of the Disciplinary Authority merged with the order of the Appellate Authority order.

8. The applicant has challenged the Appellate order and also referred to the Disciplinary Authority order in the O.A. Therefore, the contention of the respondents that the applicant has only challenged the Appellate Authority order is not tenable because the Appellate Authority is confirming the order passed by the Disciplinary Authority, the principle of merger would operate.

Though the J.J. Hospital report was brought to the notice of the Inquiry Officer, and J.J. Hospital did not intimate the applicant to be present on 5.3.90 his absence on 5.3.90 before the Medical Board cannot be treated as a lapse on his part especially keeping in view his unsound mind.

9. The applicant vide his letter dated 16.3.90 addressed to the Material Organization, Ghatkopar (W), Bombay, has intimated that though he was issued with the fitness certificate on 5.2.1990 he was advised to undergo psychotheropy, which is a one and half month's course and thereby requested the authorities to allow him to complete the course so that he may not remain absent thereafter. No reply has been sent by the respondents to that letter. It is not denied that actually at the instance of the respondents the applicant had gone to J.J. Hospital and taken the advice of the Doctors.

10. In the light of above, the only conclusion that can be drawn is that the applicant is mentally unstable and he was not in a position to defend his case for his unauthorised absence from duty. Further, on perusal of the various orders passed by the Disciplinary Authority, Appellate Authority, none of the authorities have taken into consideration the background of the absence of the applicant and also not considered the medical certificate given by J.J. Hospital and other Hospitals. In otherwords, the authorities have not considered that he was mentally unsound and was unable to defend himself. If they had considered that aspect, we are certain that they would have come to the conclusion that the applicant's services are required to be protected and they would have taken a sympathetic view and would not have passed such a drastic order. Keeping in view the medical certificates produced by the applicant and considering his age in service, the Appellate Authority ought to have considered his case sympathetically and a lenient view must have been taken.

11. We are aware, that it is not open for us to interfere with the order of the conpetent authorities or to reappraise the conclusions arrived at after holding an enquiry in all those cases where the enqiry was held in normal circumstances and in accordance with the rules. But this specific case cannot be treated as normal one because the applicant could not represent either through and kind of assistance or to defend himself except admitting his absence from duty and question the competent authority, because he was not in a sound state of mind to state the correct position.

12. In the circumstances, the O.A. is required to be allowed not on any discrepancies in the inquiry proceedings but on the ground that the authorities failed to take notice of the mental condition of the applicant and the certificates produced by him which were issued by various Doctors are not taken into consideration before passing the impugned orders. Therefore, it is manifestly clear when a person is in unsound mind, he should not be treated as a culprit or indisciplined person, but should be treated as patient who need compassion and should be rehabilitated. In the instant case, the authorities held the enquiry in a mechanical manner and applied the normal procedure in imposing the punishment.

13. Accordingly we are compelled to allow the O.A. and thus the impugned order dated 17.1.1991 removing the applicant from service and the Review Order dated 25.2.1992, which was passed by the competent authority while the O.A. was pending, are hereby quashed and set aside. The respondents are given three months time to review the entire background of the case of the applicant and pass appropriate order other than dismissal, removal or compulsory retirement as the case may be. No order as to costs.

the Appellate Order dt.11.7.91

(M.R.Kolhatkar)
Member(A)

(B.S.Hegde)
Member(J)