

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Off. No. 543/92
DA.NO. 543/92 & 545/92

Announced this the 16th day of July 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Mohd. Shafi Hussain Kazi
49/1956, C.G.S.Colony,
Antop Hill, Bombay-400 037.

By Advocate Shri J.G.Gadkari ... Applicant

V/S.

1. Collector, Central Excise
Bombay-II Piralal Chambers,
9th Floor, Parel, Lalbaug,
Bombay-400 012.
2. Union of India through
Respondent No. 1.

By Advocate Shri V.D.Vadhavkar ... Respondents
for Shri M.I.Sethna

O R D E R

(Per: Shri D.S.Baweja, Member (A))

DA.NO. 543/92 and DA.NO. 545/92 have been filed by the applicant challenging different orders of disciplinary authority and the appellate authority imposing punishment. However, the grounds advanced for challenging of the impugned orders in both the OAs. are identical and the question of law involved is also common in both the OAs. In view of this, both the OAs. are disposed of by a common judgement.

2. DA.NO. 543/92 : The applicant is employed as Driver in the Central Excise Department, Bombay-II. The applicant was issued a chargesheet for major penalty on 10.6.1988 with seven charges. The enquiry officer was appointed as per order dated 3.9.1988. The enquiry officer submitted his report on 27.12.1989.

The disciplinary authority passed an order dated 29/30.8.1990 imposing a punishment of reduction to two stages in the existing scale and postponement of increment for two years. The applicant made an appeal against the same and appellate authority as per order dated 24.6.1991 rejected the same. Feeling aggrieved, the present application has been filed on 1.6.1992.

3. The applicant has brought out the background which led to the alleged misconduct for which the applicant has been punished. The applicant submits that all the Drivers in the Central Excise Department were performing the general duty from 8.30 a.m. to 6.06 p.m. However, as per order dated 8.2.1988, shift system was introduced only for the Drivers working in Collectorate-II. The applicant alleges that shift system was introduced as the Drivers were recording the use of staff car for private purposes in their log-books. Since the introduction of shift duty system was unauthorised, illegal and discriminatory, all the Drivers refused to work beyond the normal working hours as no overtime allowance was payable to them under the shift duty system. The applicant submits that for non carrying out the orders which were illegally issued, the applicant has been taken up for misconduct.

4. The applicant has challenged the impugned orders on the following grounds :- (a) The disciplinary action taken against the applicant is discriminatory.

All the 7 Drivers had refused to obey the shift duty system as per the Circular dated 8.2.1988. However, only 3 Drivers including the applicant were issued chargesheet while no action has been taken against the other 4 Drivers for the same alleged misconduct. (b) The applicant was only supplied the copies of the daily order sheets but not the copies of the actual enquiry proceedings. The Statement of the witnesses recorded have not been made available to the applicant. Though the applicant has received the copy of the enquiry report but he submits that in the absence of statement of the witnesses, he could not make an effective representation against the findings of the enquiry officer. (c) The punishment imposed is harsh and excessive.

5. DA.NO. 545/92 : In this case also the applicant was issued a chargesheet dated 10.6.1988 for major penalty for one charge for unauthorised absence. The enquiry was conducted and the disciplinary authority imposed punishment of reduction to one stage in the existing scale and postponement of one increment for 1 year as per order dated 21.8.1990. The appeal made against the punishment order was also rejected as per the order dated 26.6.1991. Feeling aggrieved, this OA. has also been filed on 1.6.1992. The other facts of the case with regard to the background relating to issue of chargesheet and the grounds for challenge are the same as detailed earlier in respect of DA.NO. 543/92.

6. Respondents have contested both the applications through the written replies. The respondents have given the background and the circumstances under which the shift duty system was introduced for the Drivers. Contesting the grounds of the challenge of impugned orders, the respondents have submitted that the applicant has not been discriminated ^{as} 4 Drivers out of the 7 Drivers were not issued any chargesheet as they had attended normal duties. As regards the non-supply of the statement of the witnesses, the respondents contend that the complete proceedings of the enquiry including the statement of witnesses and daily order sheets have been furnished to the applicant and he has acknowledged the same. The respondents submit that there is no violation of principles of natural justice and the applicant refused to participate in the enquiry inspite of repeated opportunities ^{being} given to him and, therefore, there was no option but to proceed ex-parte against the applicant.

7. The applicant has not filed any rejoinder reply in both the OAs.

8. We have heard Shri J.G.Gadkari, learned counsel for the applicant and Shri M.I.Sethna along with Shri V.D.Vadhavkar, learned counsel for the respondents and the material brought on record has ^{also} been carefully considered.

9. As detailed earlier, the applicant in both the OAs. has challenged the impugned orders of imposing penalty on two grounds. The first ground of the challenge is that the applicant has been discriminated on the plea that though all the 7 Drivers refused to work as per the Shift System introduced, only 3 Drivers which included the applicants have been issued charge-sheet for misconduct. The respondents have contested the claim of the applicant submitting that 4 Drivers out of the 7 Drivers who have not been issued charge-sheet attended their normal duties and, therefore, there is no discrimination. The applicant has not controverted this statement through the rejoinder reply. Further, the discrimination as mentioned by the applicant on the plea of other Drivers being not taken up is not tenable. It is for the competent authority to come to the conclusion whether any misconduct has been committed by a particular employee. Even accepting that all the Drivers refused initially to disregard the shift duty system, the question of taking of a particular Driver for misconduct will depend upon the gravity of misconduct committed. The plea of discrimination cannot be advanced on the basis that other Drivers were not chargesheeted. In any case, the respondents have categorically stated that the Drivers who were not chargesheeted, had attended their normal duties. Keeping this ^{in view, the} allegation of discrimination does not survive.

10. The second ground for challenge is that the applicant has not been given the complete proceedings of the disciplinary inquiry as only the copies of daily order sheets have been given and copies of the statement of the witnesses have not been furnished. The respondents, on the other hand, have contended that the complete enquiry proceedings have been furnished to the applicant and his acknowledgement has been obtained. As directed, the respondents have made available the original file containing the disciplinary proceedings. We have carefully gone through the same and find that the daily order sheets which have been supplied to the applicant contain the statement of witnesses as recorded by the enquiry officer. Further, it is noted that though the statement of witnesses have not been recorded in the question answer form but the replies given by the witnesses to the questions asked by the enquiry officer have been recorded in respect of the witnesses. Keeping this in view, we are unable to accept the contention of the applicant that complete proceedings of the enquiry have not been furnished to him and therefore he could not make an effective defence against the findings of the enquiry officer.

11. Though the applicant has challenged the impugned order only on the two grounds in the OA, as discussed above, during arguments, the applicant's counsel made a strong plea that the disciplinary proceedings are vitiated on the ground that there has been violation of Rule 14(11) of CCS(CCA) Rules.

From the facts of the case, it is noted that ex-parte enquiry was conducted against the applicant in both the OAs. The applicant has admitted that he did not participate in the enquiry. Perusal of the disciplinary proceedings file in both the OAs, reveal that several opportunities had been given to the applicant for participating in the enquiry but he did not attend on any of the dates. Further the ground of violation of provisions of Rule 14 (11) is not borne by the facts as enquiry officer has followed the procedure laid down in this Rule in both the OAs. In the case of the OA.NO.543/92, we find that notice dated 21.2.1989 under Rule 14(11) was issued by the enquiry officer to the applicant which was received by him on 28.2.1989. Similarly, in respect of OA.NO.545/92, notice vide letter dated 21.2.1989 was issued to the applicant which was also acknowledged by him. In view of this documentary evidence available on the record, the contention raised by the applicant is not tenable and we do not agree that disciplinary proceedings get vitiated due to non-compliance of Rule 14(11). As stated earlier, the applicant had not participated in the enquiry inspite of repeated opportunities which compelled the respondents to proceed ex-parte. From the facts revealed from the disciplinary proceedings file in both the cases, we are satisfied that the applicant had not participated in the enquiry for any valid grounds. The applicant, therefore, cannot come around and take the plea of violation of principles of natural justice. In this connection, we refer to what is held by Hon'ble Supreme Court in the judgement in the case of Bank of India vs. Apurba Kumar Saha (1994) 27 ATC 54 which has been cited by the respondents during the arguments.

12. The applicant has also advanced the ground that the punishment order is harsh and excessive. The ^{imposition of} punishment consistent with the magnitude of misconduct and evidence in support thereof is within the competence of the disciplinary authority. The Tribunal is not expected to normally interfere with the punishment imposed in the exercise of the judicial review as Tribunal is not an appellate jurisdiction. The interference with the punishment could be made, however, if it shocks the judicial conscience. The relief could be moulded in exceptional cases or otherwise direct the competent authority to reconsider the case. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of B.C. Chaturvedi vs. Union of India, (1996) 32 ATC 44. In this connection, it would be relevant to reproduce Para 18 of the judgement as under :-

" 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. In the present case, it is noted that the chargesheet has been issued for the misconduct for disobeying of the orders regarding shift duty system. Irrespective of the fact that in the present case whether the shift duty system was in violation of the rules or not, the Drivers were expected to obey the orders. They could have challenged or could have represented against the shift duty system before the appropriate authority. Non-compliance of the order is a serious misconduct. In spite of this, we notice that only a minor penalty has been imposed. The penalty imposed does not shock the judicial conscience and we are, therefore, of the view that the penalty imposed is not harsh and excessive which calls for judicial interference either to mould the relief or direct the disciplinary authority to reconsider the imposition of punishment. In view of this, we are unable to appreciate this contention of the applicant.

14. In the light of the above deliberations, none of the grounds advanced for challenging the impugned orders survive and, therefore, ^{both} the DAs are devoid of merit and deserve to be dismissed and are accordingly dismissed with no orders as to costs.

(D.S. BAWEJA)
MEMBER (A)

(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.