

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 590/92

Date of Decision: 26.8.97.

D.A.Pradhan & Ors.

.. Applicant

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

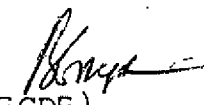
CORAM:

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

The Hon'ble Shri 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 ? b


(B.S.HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 590 B 1992.

26th, this the Tuesday day of August 1997.

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

1. D.A.Pradhan,
Chawl No.62/568,
Ramabai Ambedkar Nagar
(Ramabai Colony), Ghatkopar(E),
Bombay - 400 075.

2. D.M.Sahu,
Avarsha Nagar Chawl,
L.B.S.Marg, Navapada,
Kurla,
Bombay - 400 070.

3. D.D.Shetty,
C/o.Swadesh Dal Mill,
Oriya Ration Shop No.8,
T.J.Road, Sewree,
Bombay - 400 015.

... Applicants.

(By Applicant No.1 in person)

V/s.

1. Flag Officer-CIN-C,
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay - 400 001.

2. Secretary, Ministry of Defence,
South Block,
New Delhi.

3. Secretary, Union of India,
South Block,
New Delhi.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri B.S.Hegde, Member(J))

The applicants have filed a joint application to which the Respondents have raised an objection stating that it is not maintainable in law as the matter pertains to the Disciplinary Proceedings, thereafter appeals etc. which has different factual consideration and therefore the applicants cannot simply have same cause of action. Out of 3 applicants, one of the applicant was present at the time of

hearing of the case. Earlier one Ms.Kerbana, counsel was appearing, thereafter one Shri S.D.Dighe, counsel came into the picture and for 2 or 3 occasions his junior appeared and on request the matter was adjourned for to day (i.e. 22.7.1997). Since it is a 1992 matter and kept for peremptory hearing, the matter could not be adjourned further. Therefore, on the basis of the pleadings of the parties we considered the matter and reserved for the Judgment. On the next date, the junior counsel for the applicant Ms.Shilpa Karbhari came and requested that the matter be re-heard again to which we did not agree and asked her to submit a written arguments, if she so desires. She submitted written arguments and we considered the same. The contention raised in the O.A. and the written arguments are one and the same.

2. The applicant No.1 was employed on 28.8.1978 through Employment Exchange as an unskilled worker to manual work in Naval Dockyard and he was appointed for a period of 3 months temporarily and continued for two years with breaks. It is stated that he was appointed from 14.9.1984 on a regular vacancy on probation of 6 months and thereafter he was chargesheeted on 9.11.1984 on the ground that he secured appointment through fraudulent means. During inquiry, the applicant has admitted his guilt, the Competent Authority on the basis of the findings of the Enquiry Officer passed an order dt. 12.6.1986 confirming the findings of the Enquiry Officer and removed him from service against which the applicant preferred an appeal on 4.8.1987 and was rejected by the Appellate Authority on 9.10.1987 after giving a personal hearing.

Wish

...3.

3. The case of the second applicant is identical to that of applicant No.1. He was also chargesheeted on 16.8.1984 for similar charges. He also admitted the charges and on the basis of the findings of the Enquiry Officer the Disciplinary Authority removed him from service on 11.7.1986. He preferred an appeal on 4.8.1987, the same was rejected by the Appellate Authority on 7.9.1987. He has neither furnished the appointment letter nor the charges levelled against him.

4. The third applicant was initially appointed on 20.4.1977 and regularised on 7.8.1984. The applicant has not furnished appointment order or charge sheet along with the O.A. The removal order was passed after inquiry on 12.6.1986. The applicant preferred an appeal on 12.8.1987 and the same was rejected by the Appellate Authority on 7.10.1987. He also admitted the guilt stating that he has furnished a false certificate which is at page 68.

5. Aggrieved by the removal order the applicants had filed O.A. No.771/1987 which was disposed of by the Tribunal on 18.6.1991 remanding it back to the Appellate Authority to give a personal hearing and dispose of the same.

6. As stated earlier, ^{three} all the applicants have admitted their guilt. The only contention of the applicants is that some of the workers in the Dockyard were awarded lesser punishment and have been retained in service, whereas, the applicants have been removed from service, which is nothing but discrimination and seek for lesser punishment. Insofar as, the fraud committed by the applicant, the Supreme Court in Union of India V/s. M.Bhaskaran (1995(5) SLR 796) has held as follows :

"Employment obtained by workman in the Railway

Hsh

Service on the basis of bogus and forged casual labourer service cadres - Workman guilty of misrepresentation and fraud-Order of appointment can be recalled and were at least voidable at the option of the employer concerned-Merely because the workman has continued in service for a number of years will not create any equity in his favour and would not get any sanctity."

In the instant case, all the three applicants have admitted their guilt that they submitted bogus/forged documents. Therefore, the action taken by the respondents apparently is just and proper. Further The Supreme Court in Union of India V/s. Parma Nanda has held as follows :

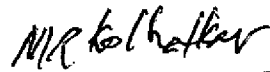
"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

7. In the light of the above, we do not find any merit in the O.A. Even if any oral hearing was given to the applicants, nothing can be improved upon because pleadings are based on records. Since they have already admitted their guilt, it is

hkr

not for the Tribunal to substitute the findings of the Competent Authority, insofar as, the punishment is concerned.

8. In the result, we do not find any merit in the O.A. and the same is dismissed. No order as to costs.



(M.R. KOLHATKAR)
MEMBER (A)



(B.S. HEGDE)
MEMBER (J).

B.