

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 944/93

Date of Decision: 7/8/98

Y.N.Mhatre.

.. Applicant

Shri P.A.Prabhakaran.

.. Advocate for
Applicant

-versus-

Vice Admiral, WNC, & Ors.

.. Respondent(s)


Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

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

- (1) To be referred to the Reporter or not ? *Yes*
- (2) Whether it needs to be circulated to *no*
other Benches of the Tribunal ?


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 944 / 1993.

Pronounced, this the 7th day of August 1998.

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

Y.N.Mhatre,
Bori, Mora-Uran Road,
Near Sangam Theatre,
Tal. Uran,
Dist. Raigad,
Pin : 400 702.

... Applicant.

(By Advocate Shri P.A.Prabhakaran)

V/s.

1. Vice-Admiral,
Flag Officer
Commanding-in-Chief,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai - 400 001.
2. Commodore Chief Staff Officer,
P & A., Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai - 400 001.
3. Inquiry Officer - Commander
Education Office, I.N.S.Angre,
Mumbai - 400 001. Shahid
Bhagat Singh Road, (Sh.P.H.Rahane).
4. Shri S.P.Paladia,
Dy. Superintendent of Police,
C.B.I., C/o. Director General of
C.B.I., Tanna House,
Mumbai - 400 001.

... Respondents.

(By Shri V.S.Masurkar)


O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard the learned counsels appearing for both the parties.

2. The applicant at the relevant time was working as a Class - IV official in the Command Education Office, Naval Headquarters, Western Naval Command, Bombay.

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The Education Office was conducting examination for recruitment of Sailors. The examination used to be held at different centres. The printed question papers used to be put in sealed covers and sent to different centres. It is alleged by the respondents that it came to light that one of the official G.S.Sawant who was an U.D.C. of Machines Maintenance Section, Naval Dockyard had sold copies of question papers to many candidates for consideration. Then G.S.Sawant was arrested. His house was searched, a number of xerox copies of question papers were recovered. It appears G.S.Sawant gave information that the question paper was supplied to him by the present applicant. On this information, the applicant came to be arrested by the Police. His house was searched. Among other things a paper packet having seals of the examination centres came to be seized from the applicant's house. The applicant took the Police and the Panchas' to the Education Office and demonstrated how he used to remove the question paper from the sealed cover and then getting them xeroxed and supplied to G.S.Sawant. Then he would keep back the original question paper inside the sealed packet. The applicant also came to be suspended. The Police have filed a charge sheet against G.S.Sawant. The present applicant was not involved in the Criminal Case. But the department started a departmental enquiry against the applicant for his role in taking out the question paper from the sealed packet and supplying xerox copies to G.S.Sawant.

3. In the departmental enquiry charge was framed against the applicant about his role in taking out the question papers out of the sealed packet and supplying

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xerox copies of the question paper to G.S.Sawant and thereby committing mis-conduct under the CCS(CCA) Rules.

The applicant denied charges.

Number of witnesses were examined on behalf of the department. The applicant did not adduce any evidence. After regular enquiry, the Enquiry Officer reported that the charges are proved. The report of the Enquiry Officer is accepted and the Disciplinary Authority passed an order dt. 3.4.1992 imposing a penalty of removal from service on the applicant. He challenged the same by filing an appeal before the Appellate Authority. After giving personal hearing to the applicant, the Appellate Authority by order dt. 24.8.1992 dismissed the appeal.

Being aggrieved by the orders of the Disciplinary Authority and the Appellate Authority, the applicant has approached this Tribunal.

4. According to the applicant he was made a scape goat for the acts of commission and omission of G.S.Sawant. The applicant was innocent and he has been falsely implicated in the departmental enquiry. He has attacked the departmental enquiry on many grounds. He therefore, prays that the orders of the Disciplinary Authority and Appellate Authority be quashed and the applicant be reinstated in service with full back wages. He is also asking for quashing of the suspension order.

5. The respondents have filed reply mentioning the facts of the case and justifying the departmental enquiry initiated against the applicant. It is stated that the mis-conduct against the applicant stands proved and the orders passed by the Disciplinary Authority and the Appellate Authority are fully justified and do not call for interference by this Tribunal.

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6. At the time of arguments, the learned counsel for the applicant took us through the pleadings and evidence and contended that the guilt of the applicant has not been proved in the departmental enquiry and the findings of the respective authorities are vitiated and liable to be set aside. He also commented on the non-examination of some witnesses and non-production of some documents. According to him, it is a case of no evidence. It was further argued that it is a case of either no evidence or insufficient evidence and therefore the orders of the respective authorities are liable to be quashed. On the other hand, the learned counsel for the respondents by refuting these arguments contended that the orders of the authorities are fully justified and supported by a voluminous evidence on record. He further contended that this Tribunal cannot sit in appeal over the findings of fact recorded by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority.

After hearing arguments we reserved the case for Judgment. Then a week later the counsel for the applicant made a mention in the Court hall that he is producing some authorities on the point of non-examination of the applicant by the Enquiry Officer after the close of the Prosecution evidence. According to him it is a case of violation of a mandatory provision and on this ground alone the Disciplinary Proceedings are liable to be quashed.

7. In the light of the arguments addressed before us, the point for consideration is whether the applicant has made out a case for quashing the order as passed in the disciplinary enquiry.



8. The learned counsel for the applicant contended that the disciplinary enquiry has not been conducted as per rules and further it was argued that it is in violation of principles of natural justice. Reliance was placed on some authorities.

One of the points made out is that the Enquiry Officer say that briefs are not given by the Presenting Officer and the defence. Now the applicant has produced the copies of brief of Presenting Officer and copy of defence brief. As could be seen from the enquiry proceedings order sheet dt. 18.9.1990 (vide page 92 of the paper book of the O.A.) the Enquiry Officer has directed the Presenting Officer to submit his brief by 10.10.1990 and defence to submit its brief by 25.10.1990. Though a copy of the Presenting Officer's brief is produced at page 93 of the paper book, it does not bear any date. Hence it is not possible to say whether it was submitted within the time given by the Enquiry Officer. As far as applicant's brief is concerned, it is at (page 98 of the paper book). The covering letter of the Defence Assistant is at (page 98) and it is dated 22.11.1990 accompanied by the Defence brief. Therefore admittedly defence brief is given by a delay of more than three weeks from the time given by the Enquiry Officer. It is quite likely that the Enquiry Officer has prepared his report prior to the receipt of the briefs of both the Presenting Officer and the Defence. Further, we have perused the enquiry file given by the learned counsel for the respondents and it does not contain the briefs of both the parties.

But a perusal of the Enquiry Report shows that the Enquiry Officer has considered the entire evidence on record and has given findings on appreciating the evidence on record.

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9. The applicant is also challenging the order of suspension. Here suspension order has been issued to ^{by} invoke the disciplinary enquiry. Now the enquiry is completed and punishment of removal is imposed on the applicant. Therefore, the question of quashing the order of suspension does not arise now, since it is merged in the final order passed by the Disciplinary Authority. If, of course, the applicant succeeds in getting the order ~~of~~ punishment quashed, then automatically he will have to be reinstated and then will be entitled to back wages as per rules. If the applicant had earlier ~~come~~ to this Tribunal challenging the legality of the order of suspension then the matter would have been different. But now since final order has already been passed the question of revoking suspension order does not arise.

10. One of the grounds that has now been pressed after we reserved the case for judgment is that the applicant has not been examined after the close of the prosecution case and therefore there is violation of Rule 14(18) of the CCS(CCA) Rules (vide para 6 of the judgment supra). No doubt, Rule 14(18) provides that after the department closes its case, the enquiry authority shall question the delinquent regarding evidence adduced against him by the department to enable him to explain the circumstances appearing against him in the evidence. This Rule is an extension of principles of natural justice. The delinquent must be given an opportunity to explain ^{the} evidence that has been adduced against him in the enquiry. It is a procedural obligation on the part of the Enquiry Officer. In the very nature of things, whenever there is a violation of a prescribed procedure, the enquiry is not vitiated,

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unless prejudice is caused to the delinquent. In the case of a mandatory provision, whether there is prejudice or not¹ prejudice, enquiry is vitiated if there is violation of a mandatory provision.

In our view, bearing the object behind the said rule, we hold that it is not a mandatory provision. But, however, if in a given case this Rule is not followed by the Enquiry Officer and as a result the delinquent lost an opportunity to explain the circumstances appearing against him and prejudice is caused to him as a consequence, then no doubt the enquiry will be vitiated. Even in such a case the matter will have to be remanded to the Enquiry Officer to give an opportunity to question the applicant regarding the evidence against him and then follow the usual procedure of submitting his report and order by the Disciplinary Authority etc.

We are fortified, in our view, that the violation of this procedure will not vitiate the enquiry unless the delinquent proves prejudice by a decision of the Supreme Court in the case of Sunil Kumar Banerjee V/s. State of West Bengal & Ors. (1980 SCC (L&S) 369). That was a case of a disciplinary enquiry against an I.A.S. Officer under the All India Services (Discipline and Appeal) Rules, 1969. Even in those rules there is an identical provision viz. Rule 8(19) which is in pari materia with Rule 14(18) of the C.C.S. (CCA) Rules. The Supreme Court observed that the violation of that rule will not automatically vitiate that enquiry unless prejudice is established^{by} to the delinquent.

11. On the other hand, the learned counsel for the applicant placed reliance on some authorities.

In 1990(2) (A.I.S.L.J.) 100 (Satyapal Arora V/s. Director, Postal Services & Ors.) a Division Bench of this Tribunal at Jodhpur observed that since the applicant



had not been examined under Rule 14(18) the matter was remanded to the Enquiry Officer.

In 1989(10) ATC 774 (Ghanashyam Kabat V/s. Union of India & Ors.), it is observed that non-examination of the delinquent after the closure of the prosecution case is one of the infirmities. There also the case was remanded to the Enquiry Officer to conduct the enquiry in the light of the directions given in the Judgment.

Since our view is fortified by a decision of the Supreme Court mentioned above, we are not inclined to hold that the enquiry is vitiated on the ground of non-examination of the applicant, unless he pleads and proves that he was prejudiced in this behalf.

12. The learned counsel for the applicant did not show us as to what prejudice is caused to the applicant for his non-examination or non-questioning by the Enquiry Officer. His defence is one of ^{total} denial. The evidence adduced against him is one of seizure of some incriminating documents from his house, his demonstration before the Investigating Officer and Panchas as to how he used to tamper and take out the question paper from the sealed packet. The applicant's defence is one of ^{total} denial. Even if those ~~questions~~ ^{had} been put to him, his answer would be that he has not done it or it is false, that his case throughout. That is the case argued before us by the learned counsel for the applicant. Therefore, when his reply is one of total denial, no prejudice is caused to the applicant in not formally putting the questions and recording negative answers. Only one explanation which he has now given is that the diary seized from his house contained address of another delinquent G.S. Sawant and he has now given some explanation that he had some

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transaction with G.S.Sawant regarding some Co-operative Society matter. In our view, finding the address of G.S.Sawant in the diary of the applicant is no incriminating evidence at all. ~~Therefore~~, not putting a question in that behalf is of no consequence. Hence, in our view, having regard to the stand taken by the applicant of denying the seizure from his house and his demonstration before the Investigating Officer, there is no question of any prejudice to the applicant for not formally questioning him under Rule 14(18) of the CCS(CCA) Rules.

13. The learned counsel for the applicant contended by relying on one or two authorities that the burden of proof is on the department and not on the delinquent. There is no necessity to refer any authority on this point and there is no dispute on the question that the burden of proof is on the department and not on the delinquent.

Then reliance was placed on 1989(10) ATC 774) (Ghanashyam Kabat V/s. UOI & Ors.) on another point about non-production of forged documents. In our view, this decision has no application with the facts of the present case.

14. Another submission by the learned counsel for the applicant is about non-examination of G.S.Sawant as a witness by the Prosecution. According to the materials on record G.S.Sawant who is also a civilian official of the Navy was arrested by the Police and he gave information that he got xerox copies of the question papers from the applicant. The prosecution relies on this information only to show how the applicant came to be

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arrested and how his house was searched and about interrogation of the applicant. In this case the prosecution is not depending upon the statement of G.S.Sawant to implicate the applicant. That is given as the circumstance to show how the case of the applicant is taken up. But that is not the basis of the proof against the applicant. Therefore, non-examination of G.S.Sawant is not fatal to the prosecution case. In this case the prosecution is not depending on the statement of G.S.Sawant implicating the applicant. Even if G.S.Sawant had been examined, in the very nature of things, he would not have stated that he received the question papers from the applicant and he passed it to different examinees. If he had made such a statement in the enquiry then he would be implicating himself in the criminal case which is pending against him. Therefore, Sawant would not have supported the prosecution if he had been examined in the departmental enquiry against the applicant, since he himself is facing prosecution in the criminal case on the same allegation. The learned counsel for the applicant relied on two decisions viz. (1) ATR 1986 CAT 446 - Binoy Paul V/s. UOI & Ors. (2) (1997) 36 ATC 388 - Shriniwas Sharma V/s. Union of India & Ors., where it is observed that no reliance can be placed on the alleged confessional statement of co-delinquent when his evidence was not recorded in the disciplinary enquiry. There is no dispute about this proposition of this law.

Since G.S.Sawant was not examined in the disciplinary enquiry, we cannot attach any value to his information to the ^{Investigation} Enquiry Officer that he received the question papers from the applicant. Even the enquiry officer has not held

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the charge is proved due to statement of G.S.Sawant to the Investigating Officer. In those two cases there were no other evidence except the statement of the co-delinquent who was not examined in the enquiry.

15. In the present case enquiry has been held against the applicant. He had the benefit of a Defence Assistant to defend him and to cross-examine the witnesses. The witnesses have been cross-examined in detail. The delinquent did not adduce any evidence during the enquiry. Now, therefore, the only question is whether the evidence produced by the prosecution is sufficient to prove its case or not. That means, we are entering into the realm of sufficiency of evidence or appreciation of evidence. Presently, we will point out that in view of the recent decisions of the Apex Court this Tribunal cannot sit as an Appellate forum to discuss evidence, re-appreciate evidence and then come to a different finding on questions of fact.

Now let us see what is the case against the applicant. The applicant was working as a Peon in the Education Office of the Navy. The examination is held for recruitment of Sailors from time to time. The allegation against the applicant is that he tampered with the sealed question paper packet and used to take out question paper and get them xeroxed and give the xerox copies to Mr.G.S.Sawant who used to sell the question papers to the candidates for consideration.

When the Navy came to know this malpractice a complaint was lodged against G.S.Sawant who is shown as first accused and V.P.Tevatia, who is also a Petty Officer in the Navy as accused No.2. The applicant is not shown as an accused in the F.I.R. The F.I.R. was lodged

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on 21.7.1988 against those two accused in F.I.R. No. RC 49(A)/88-Bom. Then G.S. Sawant came to be arrested and during interrogation he furnished the name of the applicant as the supplier of the question papers. Then the applicant was arrested and his house was raided on 28.7.1988. Then some documents came to be seized from the house of the applicant under Panchanama by the Police including a secret envelop bearing impression of seals pertaining to the examination in question. Except the wholesale denial, the applicant has no explanation as to why the examination packet containing impression of seals was found in his house. Some xerox copies of the question papers were also found in the house of the applicant. Why the applicant should have the ^{secret} cover and question papers in his house. He was never a candidate in the examination. He is a Peon in the Office. Therefore, the very presence of these two documents in his house raised suspicion about him.

Then the applicant himself pointed out the xerox shop by name Bharat Stores owned by Motilal Sawale. This is recorded in the Panchanama (Ex. 4). The Panchanama is proved by two Panchas and the Investigating Officers. The contents of Panchanama show that the xerox copies had been obtained from the Xerox Machine kept in that shop. This is again an incriminating circumstance against the applicant since he himself pointed out the Xerox Shop. It may be that the owner of the xerox shop could not identify the applicant due to lapse of time, that is why he was not examined during the departmental enquiry, but the fact that the applicant pointed out that shop



and the verification proved that the ^{seized} sealed question papers were xeroxed in the machine of that shop is a circumstance pointing to the guilt of the applicant.

Then we come to another important evidence against the applicant. The evidence on record shows that the applicant took the Investigating Officer and Panchas to the Naval Examination Office. He then demonstrated before them as to how he used to tamper the sealed packet by removing the question papers from the sealed packet and taking xerox and then again bring the original and keeping it inside the sealed packet. This has been spoken to by the Investigating Officers and two panchas. It may be that the Naval Officer, Commodore Godbole was examined as a witness in the enquiry, admitted that this demonstration was not done in his presence, since he was asked to sit in his room. In our view, the other evidence of the Investigating Officer and the two panchas are sufficient to show the involvement of the applicant.

15. Number of witnesses were examined during the enquiry. Some witnesses were given up as not necessary. We have ourselves perused the statements of witnesses recorded during the enquiry who are 1) V.S.Natekar, 2) S.K.Johri, 3) R.V.Patil, 4) M.G.Desai, 5) R.K.Bulchandani, 6) R.K.Mungekar, 7) Gautam Bhor, 8) Cdr. P.W.Godbole, 9) Lt. Kulwant Singh, 10) S.K.Pandey and 11) S.P.Palandia. We find that some of the witnesses were on ^{Ban}behalf of the officers, some of them are taken from Textile Commissioners Office. Their evidence prove the contents of the Panchanama and the role played by the applicant. It is purely a question of appreciation of evidence on record.

The Enquiry Officer by a considered and speaking order referred to the evidence and came to the conclusion that the charge is duly proved against the applicant.

The Disciplinary Authority accepted the report of the Enquiry Officer and passed the final order dt. 3.4.1992. Then the Appellate Authority gave a personal hearing to the applicant and noted the arguments addressed on behalf of the applicant, which we find kept in the enquiry file. Then the Appellate Authority passed a speaking order dt. 24.8.1992, a copy of which is at (page 29 of the paper book-book of the O.A.). He has also applied his mind to the facts of the case and has confirmed the order of the Disciplinary Authority.

16. This is not a case of there being no evidence. This is a case where there ^{were} ~~were~~ sufficient evidence of 3 number of witnesses. It may be, if ^{we} ~~you~~ are sitting in appeal against the impugned order, we may re-appreciate the evidence and take a different view. If ^{we} ~~you~~ are sitting as an original authority we may re-appreciate the evidence in a particular way and take ^{our} ~~our~~ view. But we are not sitting here either as original authority or Appellate Authority. We are exercising judicial review. The scope of judicial review is very limited. We are only concerned with any irregularities or illegalities in the "decision making process" and not in the "actual decision" itself. We had an occasion to decide many cases of this type and had occasion to consider many recent decisions of the Apex Court on this point. Our view regarding scope of judicial review is fortified by few recent



decisions of the Supreme Court which are as follows :-

In 1998 (1) SC SLJ 74 (Union of India & Others V/s. B.K.Srivastava) the Bench of this Tribunal at Allahabad has set aside the findings of the Disciplinary Authority by re-appreciating the evidence. The Supreme Court allowed the appeal and set aside the order of the Tribunal. In para 6, the Supreme Court observed that the Tribunal was not right in its approach and it has acted more as a court of appeal which it was not entitled to do so. In para 7 at page 78, the Supreme Court again observed as below :

"The Tribunal could not sit in appeal against the orders of the Disciplinary and Appellate Authorities in exercise of its power of judicial review."

Again in para 8 it has observed as follows :-

"There has been lawful exercise of power by the Disciplinary and Appellate Authorities. There has been no abuse of power. In these circumstances, the Tribunal should have stayed its hands. It is no part of the function of the Tribunal to substitute its own decision when enquiry is held in accordance with rules and punishment is imposed by the authorities considering all the relevant circumstances and which it is entitled to impose."


In another recent judgment in 1988 (1) SC SLJ 78 (Union of India & Ors. V/s. A.Nagamalleswar Rao) the Supreme Court has again reiterated the principles that the approach of the Tribunal in interfering with the orders of the Disciplinary Authority was erroneous, as it had proceeded to examine the matter as if it was hearing an appeal. In the last part of para 5 at page 80, it is observed as follows :-

"It is really surprising that inspite of the clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the Inquiry Officer as if it was a court of appeal."

Therefore, we hold that we cannot re-appreciate

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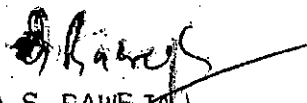
the evidence. This we are saying because the learned counsel for the applicant read over the evidence and pointed out some discrepancies, some contradictions and argued about the sufficiency of evidence etc. In our view, these contentions are in the realm of appreciation of the evidence which cannot be done by this Tribunal. However, in order to satisfy our consciences, we have gone through the enquiry files and found statements of number of witnesses examined, number of Panchas and we are satisfied that the ultimate finding of guilt recorded by the Enquiry Officer and confirmed by the Disciplinary Authority and the Appellate Authority are based on materials on record, and do not call for interference by this Tribunal.

17. No arguments were addressed regarding the question of penalty. Even otherwise this Tribunal's jurisdiction to interfere with the quantum of punishment is also very limited. According to the recent decisions of the Supreme Court, this Tribunal cannot interfere with the question of penalty unless it shocks its ^{conscience} ~~conscious~~, even then it has to remit the matter to the appropriate authority to take a decision on the question of penalty. Since the allegation against the applicant is a serious allegation of tampering with a sealed packet and taking out question papers, the penalty of removal from service cannot be said to be dis-proportionate to the mis-conduct. As already  stated even the learned counsel for the applicant fairly did not address any argument on the question of penalty. In our view, the order of the Disciplinary Authority imposing a penalty of removal from service and confirmed by the Appellate Authority does not call for interference

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by this Tribunal. Consequently the prayer for quashing the order of suspension does not survive. The question of applicant getting the other consequential reliefs like arrears of salary, seniority, interest etc. do not arise for consideration.

18. In the result, the O.A. fails and is hereby dismissed. In the circumstances of the case there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN 71298

B.

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

REVIEW PETITION NO.49/98 in OA No.944/93.

DATED THE 17th DAY OF SEPTEMBER, 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S.Baweja, Member(A).

Shri Y.N.Mhatre,
C/o.Shri P.A.Prabhakaran,
Counsel for the Applicant

... Review Petitioner.

V/s.

Vice Admiral, Flag Officer,
Commander-in-Chief, Western Naval Command,
through Shri V.S.Masurkar,
Counsel for the Respondents.

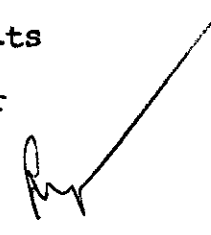
ORDER BY CIRCULATION

[Per Shri R.G.Vaidyanatha, Vice Chairman]

1. This is a review petition filed in respect of the final order dated 7/8/98 passed by this Tribunal in OA.944/93. We have perused the review petition and the entire record.

2. Most of the allegations made are in respect of the brief submitted by the applicant and the brief submitted by the Presenting Officer. We have decided the original application on merits. A case has to be decided on the evidence produced by both sides ^{Briefs} which are in the nature of arguments. Hence, even if there is some discrepancy in the production of briefs by the applicant or Presenting Officer, it has no bearing on the final decision. We have already observed that the order passed by Competent Authority is passed on proper appreciation of the evidence on record.

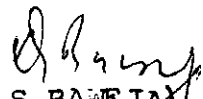
3. Some of the grievances made in the review petition pertain to merits. In the review petition we cannot decide the grievance of the applicant on the merits of the case. If the applicant is aggrieved by the order passed by this Tribunal, his remedy is elsewhere and

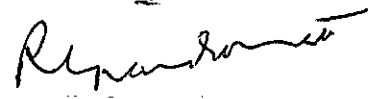


certainly not in the form of a review petition.

4. scope of review is very limited. Review is permissible under order 47 Rule (1) of Code of Civil Procedure. There is no apparent error on record and further no new material is brought to show that the order should be reviewed. Hence, we do not find any merit in the review petition.

5. In the result, review petition-49/98 is rejected on circulation.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.10/01 in OA.NO.944/93

Dated this the 25th day of October 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Yashwant Narayan Mhatre,
R/o Bori-Uran Road,
Near Sangam Theatre,
Tal & Post Uran,
Dist. Raigad,
Maharashtra.

...Petitioner

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India through
Vice Admiral, Flag Officer
Commanding-in-Chief,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai.
2. Commodore Chief Staff Officer
(P&A), Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Rule 17 of CAT (Procedure) Rules, 1987 for review of an order passed in OA.NO.944/93 dated 7.8.1998.

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2. The applicant filed Review Petition No.49/98 which was decided by the Bench by Circulation vide order dated 17.9.1998.

Thereafter, the applicant has preferred this Review Petition No.10/01 on 23.2.2001.

3. The learned counsel for the respondents opposed the application on the ground that there is no provision in the Administrative Tribunals Act, 1985 or the Rules made there under i.e. CAT (Procedure) Rules, 1987 to file a second review and a review application is to be filed within 30 days from the date of receipt of a copy of the order sought to be reviewed as such the review application is barred by time. He further submitted that it is an abuse of the process of the Tribunal and the application deserves to be dismissed with cost.

4. The cause for filing this review petition is that in Special Case No.18/89 decided on 25.4.2000, the accused Gopal Shridhar Sawant is acquitted of the charges punishable under Section 380/411 of the I.P.C. and Section 5 (1) read with Section of the P.C.Act 1947. The applicant claims that he has received the information about the said judgement only in December,2000. He claims that Shri G.S.Sawant received the certified copy on 12.10.2000 which was shown to him in December,2000. He further claims that as the copy was not legible, he obtained the copy in January,2000 and soon thereafter filed the Review Petition.

PSA - - .3/-

5. It is worth mentioning that in Special Case No.18/89 the applicant was not one of the accused persons. The learned counsel for the Review Petitioner relied on para 3 which is as under :-

" Originally, CBI had also nabbed Yeshwant Narayan Mhatre, an associate of the Accused Gopal Shridhar Sawant being involved in this shady deal of question papers in the Navy. Later for want of sufficient material, CBI recommended only departmental action against Yeshwant Narayan Mhatre to the Navy and dropped him as Accused from this action."

On the basis of said narration, the Review petitioner claims that the order passed in OA. dated 7.8.1993 be reviewed.

6. We agree with the submission of the learned counsel for the respondents that there is no provision either in Administrative Tribunals Act, 1985 or CAT (Procedure) Rules, 1987 to file a second Review petition and the Review petition filed by the applicant is beyond 30 days. As such, we are of the considered opinion that the Review Petition does not lie.

7. The learned counsel for the Review Petitioner relied on 1999 SCC (L&S) 810 - Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., 1999 SCC (L&S) 153 - Chandraprakash Madhavrao Dadwa & Ors. vs. Union of India & Ors., 1998 SCC (L&S) 162 - Union of India vs. V.K.Bhaskar.

Signature

..4/-

8. On perusal of Capt.M.Paul Anthony's case, we are of the considered opinion that in the said case the charged official was acquitted in the criminal case while in the present case, the Review Petitioner was not even prosecuted, As such, there is no finding of the Criminal Court. The narration of the facts which the prosecution stated before the Criminal Court cannot be a ground for review.

9. The case of V.K.Bhaskar deals with Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 19(i) ~~which~~ has no relevance to the matter in question. The case of Chandraprakash Madhavrao Dadwa & Ors. deals with Article 137 of Constitution of India read with Supreme Court Rules, 1966. It has been held that when SLP has been dismissed in limine, but keeping in view that in another case involving similar facts and issues, relief had been granted and that after the dismissal of the SLP, Government issued an order which supported the petitioners' case, review was allowed. In our considered view, the review petitioner cannot get any support from the said authority for the reason that neither that was a case of second review nor a case in which narration of prosecution case entitled the applicant to have review of the order passed in OA. and thereafter in review.

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Dr -

10. In our considered view, the Review Application is nothing but a misuse of the process of the Tribunal, it deserves to be dismissed and is dismissed with cost amounting to Rs.1,000/payable by the Review Petitioner to the respondents within one month from the date of receipt of a copy of this order.

Shanta 9-

(SMT. SHANTA SHASTRY)

MEMBER (A)

P. S. Jain -

(S. L. JAIN)

MEMBER (J)

mrj.

dt-25/10/01
order/Judge ~~sent~~ attached
to Applicant/Respondent (s)
on *08/11/01*

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