

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1005/93

Date of Decision 22/4/1996

Govind Bapurao Meshram

Petitioner

Mr. D. B. Walthare

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr. M. G. Bhangade

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

M.R.Kolhatkar

(M.R. KOLHATKAR)

M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
CAMP AT NAGPUR

O.A. 1005/93

Pronounced  
~~5/10/93~~ this the 22<sup>nd</sup> day of April 1996 at  
CORAM: HON'BLE SHRI B.S. HEGDE, MEMBER (J) Mumbai  
Mar

HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A)

Govind Bapurao Meshram  
R/o. Juni Somwari Peth Wasti,  
Ward No.11, Near Motiramji Telang,  
P.O. Hanuman Nagar,  
Nagpur - 440 009

(BY advocate Shri D.B. Walthare)

.. Applicant

-versus-

1. Union of India  
through  
Secretary,  
Ministry of Defence,  
New Delhi - 110 001.

2. The Secretary (A/Vig.)  
Ordnance Factory Board,  
10, Auckland Road,  
Calcutta - 700 001.

3. The General Manager,  
Ordnance Factory, Ambajhari,  
Nagpur 440 021.

4. Inquiry Officer,  
Ordnance Factory, Ambajhari,  
Nagpur - 440 021.

(By counsel Shri M.G. Bhangade)

.. Respondents

ORDER  
(Per M.R. Kolhatkar, Member (A))

The applicant was working as an unskilled labourer at Ordnance Factory, Ambajhari, Nagpur. A chargesheet was served on him on 24-10-1991, Annexure-1. The charge against the applicant was that on 3-10-1991 he tried to take out 37 pieces of copper discs weighing approximately 8.325 kgs. through Gate No.3 unauthorisedly and thus committed gross misconduct. In substance the charge was that of attempted theft of government property. The applicant denied the charges. The enquiry report dt. 2-6-1992 is to be seen at page 92 to 98. The Inquiry Officer concluded that there was no direct evidence of attempted theft but the circumstances

clearly indicated that the charges as alleged were established. The disciplinary authority agreed with the enquiry report and by his order dt. 11-9-1992 at page 35 to 39 imposed the penalty of dismissal. The applicant appealed against the penalty. The O.A. was filed on 13-9-93 and although the applicant has neither produced the appellate order nor challenged it, during the course of hearing counsel for the respondents was allowed to bring the same on record. The appellate order dt. 11-8-1993 has dismissed the appeal. The relief sought by the applicant is to set aside the chargeshee and the punishment order and in the light of what is stated above, also to set aside the appellate order and to reinstate the applicant with all consequential benefits.

2. The contention of the applicant is that the punishment order which accepted the finding of the Inquiry Officer cannot be sustained as it is entirely based on circumstantial evidence. Secondly it is contended that prosecution witness Shri M.V. Anthony was not mentioned in the list of witnesses supplied to the applicant but he was examined. Moreover he did not support the case of prosecution. The findings are merely based on suspicion and conjecture. Inspection report of the sealed material was not listed in the list of documents but still it was relied upon by the Inquiry Officer. There are several contradictions in the statements of <sup>and</sup> prosecution witness<sup>es</sup> ~~es~~ for all these reasons the Inquiry report was liable to be rejected but instead the disciplinary authority has chosen to accept it <sup>the</sup> and punish the applicant with ~~extreme~~ penalty of dismissal.

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3. We have heard the counsel for the respondents who has opposed the O.A. and denied the allegations made by the applicant. Regarding the list of sealed material not being made part of the list of documents it is contended that the description of the material and the papers used for wrapping the same are indicated in adequate details under Annexure-II of the Chargesheet and the sealed matter were opened for inspection on 25-3-1992 in the presence of Inquiry Officer, applicant, his defence assistant, Presenting Officer and other witnesses. The relevant extract from the memorandum of chargesheet is given as below :

"A rigorous search of Shri G.B.Meshram in presence of Sr.Orderly Officer was carried out and during the search some pieces of Factory Orders were found around his waist. These papers appeared to be similar to the papers in which the copper discs were wrapped. The papers were found near his navel beneath the pant and shirt near his under clothing."

4. Regarding the evidence being circumstantial the circumstances which are held by the Inquiry Officer to establish the guilt of the officer are as below:

The applicant entered the factory through Gate No.3 on 3-10-91 morning and also attempted to go out through Gate No.3 in the same morning between 7-10 & 7-30 AM.

The circumstances leading to the presumption that the applicant gathered the copper discs and carried them on his body and attempted to hurry through the gate while the process of "mustering in" was going on are as below:

The applicant has stated that he went

straight to the token board where he remembered that he was detailed in night shift and he immediately returned in his cycle to Gate No.3. That he did not remember about night shift is improbable because as per duty chart which was displayed from 27-9-91 he was detailed in night shift from 30-9-91 to 5-10-91. Moreover going out of gate requires a proper gate pass which rule was known to the applicant but he deliberately avoided taking a pass so as to attempt to hurry through the gate to avoid being detected. Thus the applicant had no reason to come inside the factory on 3-10-91 unless he had planned some other activity such as attempted theft. That there was something on his body when the Durban checked while going out is on record. It would have been open to the applicant to expose himself voluntarily to demonstrate that there was nothing on his body which he did not do. Though Shri Antony, P.W.4 said that he did not see the applicant going to the toilet, he also admitted that he was not mindful. The only other person Shri D.R. Dawale who entered the toilet between this period happened to be coming into factory and not going out of factory and this simply ruled out the possibility that he could have planted the material in the toilet. Further, on rigorous search, the pieces of paper found on the body contained pieces of share application forms for Reliance Industries and the copper pieces found were also wrapped with Reliance Industry share forms along with other papers. That both contained Reliance Industry paper is remarkable and cannot be a coincidence.

5. The disciplinary authority by following the principle of preponderance of probability accepted the Inquiry Officer's report. The disciplinary authority has passed a speaking order dealing with each of the

contentions raised by the applicant in connection with the Inquiry report. The appellate order is also a speaking one and deals with all the grounds taken in the appeal. The various grounds taken by the applicant in the O.A. as to the weakness of the case against him do not carry conviction. There are no illegalities in the enquiry which would vitiate the proceedings. It is now well settled vide U.O.I. vs. Parma Nanda, AIR 1989 SC 1185 that the jurisdiction of the Tribunal to interfere with disciplinary matter or punishment cannot be equated with appellate jurisdiction. The Tribunal cannot interfere <sup>with</sup> the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. 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 irrelevant or extraneous to the matter. Considering the nature of the allegations which are established viz. attempted theft of Govt. property from defence establishment the penalty imposed also cannot be said to be harsh. Even otherwise proportionality of the penalty is also not a ground for the judicial review.

6. We are, therefore, of the view that no case has been made out in the O.A. for interference with the orders by the departmental authorities, and has no merit and is O.A. is therefore dismissed with no order as to costs.

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
Member(A)

B.S.Hegde  
(B.S.HEGDE)  
Member(J#)