

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 51/93
Transfer Application No.

Date of Decision : 27.7.95

B.S. Gawali

Petitioner

Shri G.S. Walia

Advocate for the
Petitioners

Versus

Union of India and others

Respondents

Shri M.I. Sethna with
Shri Suresh Kumar

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman
The Hon'ble Shri P.P. Srivastava, 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.S. Deshpande)
Vice Chairman

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 51/93

B.A. Gawali

... Applicant

V/s.

Union of India through
Secretary
Ministry of Finance
(North Block)
(Central Excise and Customs)
New Delhi.

Collector of Customs
& Central Excise, PMC
Commercial Building,
Hira Bang, Tilak Road,
Pune.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman
Hon'ble Shri P.P. Srivastava, Member (A)

Appearance:

Shri G.S. Walia, counsel
for the applicant.

Shri M.I. Sethna with
Shri Suresh Kumar, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 27.7.95

¶ Per Shri M.S. Deshpande, Vice Chairman ¶

The applicant who was charge-sheeted in respect of 4 charges, was ultimately found guilty in respect of part 1 and 5 of charge No.1 and the entire charge No.3 and imposed penalty of compulsory retirement. The final order also provides that the period of suspension shall be treated as period spent on duty for all purposes. However, the pay and allowances payable in respect of this period shall be restricted to the amount already paid as subsistence allowance. But for the punishment of compulsory retirement which was imposed on the applicant, he would have retired on superannuation on 26.6.91 but this was advanced in view of the punishment to 4.2.91.

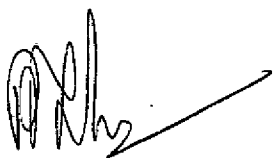
2. We were taken through the record. The main submission of the learned counsel for the applicant was that the Enquiry Officer relied on the statements of witnesses which were recorded at the preliminary enquiry and they were not re-called for cross examination at the final hearing. The applicant objected to this only at the stage when the applicant was examined, generally with regard to circumstances appearing in evidence against him and stated before the Enquiry Officer that he was not allowed to cross examine. It is apparent that the Enquiry Officer has referred to the material statements which were recorded in the preliminary enquiry. No effort was made on behalf of the applicant to seek the presence of the witnesses whose statement were recorded, for cross-examination. In respect of 1st charge there is a reference to the certificate of Sarpanch, Gram Panchayat on his official letter head. In view of the Supreme Court decision in State of Haryana and Another V/s. Rattan Singh 1977 SCC (L & S) 298, the Enquiry Officer could have taken into consideration this evidence as the provisions of the Eviction Act do not apply to departmental proceedings.

3. We, therefore, see no merit in the contention that the witnesses were not called for cross examination. The applicant could have made the grievance earlier but waited until he was questioned by the authority concerned. The learned counsel for the applicant did not go beyond making the submissions which have summarised above while assailing the proceedings. We, therefore, see no ground in interfering with the findings of the Enquiry Officer and the order imposing the punishment on the applicant, considering that the charge was

in respect of irregularities committed in the process of regularisation of Powerlooms.

4. The second contention before us was that the applicant should not have been deprived of his pay for the period of suspension. It is true that the Disciplinary authority had discretion of making an appropriate order with regard to the manner in which the period of suspension should be treated. Having, however, treated the period of suspension as period spent on duty for all purposes it is difficult to see why the pay and allowances payable in respect of this period should be restricted to the amount already paid as subsistence allowance. Having regard to the facts and circumstances of the case we see no justification in this direction.

5. In the result we see no merit in the challenge to the order holding the applicant guilty and imposing the punishment of compulsory retirement. We only direct that the period of suspension shall be treated as period spent on duty for all purposes including the pay and allowances and the difference shall be paid to the applicant within two months from the date of receipt of this order.


(P.P. Srivastava)
Member (A)


(M.S. Deshpande)
Vice Chairman