IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1260/93

Date of Decision: 22/1/99

B.K.Chawan .. Applicant

Shri B.L.Chhajid .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri R.K.Shetty. .. 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 ? No

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1260/93.

Pronounced, this the 22nd day of JANUARY 1999.

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

B.K.Chawan,
431, Bhavani Peth,
Pune-2. ... Applicant.
(By Advocate Shri B.L.Chhajid)

Vs.

1. Union of India represented
by Secretary to the Ministry
of Defence, South Block,
New Delhi-110 011.
2. Brig. Commander (Jagatsing)
Pune Sub Area Head Officer,
Pune-1.
3. Commandin Officer,
Station Head Quarter,
Kirkee, Aundh,
Pune-3.
4. General Officer Commanding ,
Maharashtra Gujarat Area,
Colaba,
Bombay. ...Respondents.
(By Advocate Shri R.K.Shetty).

: 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. The applicant has also filed M.P.938/93 for condonation of delay, which is also opposed by the Respondents. We have heard the learned counsels appearing on both sides.

2. The applicant was working as a Safaiwala in the office of Quarter Master's Branch, CME, Pune. It appears that the applicant was absent for some time, though accordin to the applicant he could not attend the office only for two days viz. 16th and 17th August, 1979 and thereafter gave a Medical Certificate to show that his absence was due to illness, but the respondents

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did not allow him to join duty. But, according to the respondents, the applicant was absent for nearly four years. Then a Charge Sheet was issued against the applicant on 8.10.1982 alleging unauthorised absence for nearly four years. Then some enquiry is said to have been held and then an order was passed imposing a penalty of removal from service on the applicant with effecct from 1.9.1983. The applicant made number of representations to many Officers complaining about this order. Subsequently, the first order of termination came to be set aside and the applicant was taken on duty on 4.4.1988. Then the respondents issued a second charge sheet dt.10.8.1988. The applicant gave a written statement denying the allegations. Then an enquiry was held and an order of penalty was passed on 29.11.1990. Then the applicant prefered an appeal which came to be dismissed. He also sent a Revision Petition which has not yet been disposed of. Hence, the applicant has filed the present OA challenging the order of the Disciplinary Authority removing him from service and the order of the Appellate Authority confirming the said order. His case is that no enquiry was held. That issuance of second charge sheet in respect of the same absence which was the subject matter of the first charge sheet is not maintainable in law. That the enquiry has not been done as per rules. That the applicant was never absent except for two days, but he was not allowed to join duties by the concerned Officer. That the applicant was not allowed to engage a defence Assistant to assist him in the Disciplinary Enquiry. That the order of the Disciplinary Authority is illegal and liable to be set aside. Therefore, the applicant has approached this Tribunal for quashing the order of the Disciplinary Authority

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and for a direction to the respondents to reinstate him in service with full back wages.

3. The respondents in their reply have stated that after the first penalty order was issued, on appeal by the applicant, the appellate authority set aside the first order of termination since there were some defects and directed issuance of fresh charge sheet and for holding fresh departmental enquiry as per rules. Accordingly, fresh enquiry was held, the applicant participated in the enquiry, then the Disciplinary Authority has passed an order removing the applicant from service. That the enquiry has been done as per rules. It is therefore, stated that the applicant has no case.

4. The short point for consideration is whether the applicant has made out any case for interfering with the order dt. 29.11.1990 of the Disciplinary Authority imposing a penalty of removal from service on the applicant.

5. No doubt, there is some delay in filing the application. The applicant has given some reasons as to why there was a delay. He has filed petition appeal before the appropriate appellate authority, then he sent a petition for revision which was pending. After waiting for some time the applicant has approached this Tribunal. The applicant is a Class-IV employee and working as a Safaiwala, he would not be knowing the legal consequences of delay having regard to his status and the circumstances of the case and his sending a petition for revision which had not yet been disposed of, we feel that the delay in filing the application has been properly explained and therefore, the delay should be condoned.

6. Now, coming to the merits of the case, the learned counsel for the applicant's argument is that the issuance of second charge sheet was illegal when the first charge sheet had been issued against the applicant for the same

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mis-conduct and applicant had been reinstated in service. In our view, this argument has no merit. Though there was an earlier enquiry and an order by the Disciplinary Authority, the same has been set aside by the Appellate Authority with a specific direction that fresh charge sheet should be issued and fresh enquiry should be held as per rules. The respondents have produced the first order of the Appellate Authority which is marked as Ex.R-1 and it is at page 52 of the paper book. This order of the Appellate Authority is dt.20.11.1987 and it has set aside the earlier order of the Disciplinary Authority which has a specific direction that fresh Disciplinary Enquiry may be instituted according to rules.

7. The only comment of the learned counsel for the applicant is that the applicant had not prefered any appeal and this Ex.R-1 is a fabricated document. In our view, there is no merit in this submission. The applicant has himself admitted that against the first order he had sent number of petitions to higher authorities. The respondents counsel pointed out that one petition had been sent to the Defence Minister, who forwarded it to the Competent Authority and on the basis of that appeal petition sent to the Defence Minister the Appellate Authority passed the order dt. 20.11.1987 by setting aside the first punishment order and directing the authorities to hold a fresh enquiry according to law. There was no necesity for the department to fabricate and issue this order dt. 20.11.1987. If the order dt. 20.11.1987 is taken away, then the applicant can have no legal right to claim any reliefs in the O.A. He had been removed as back as 1.9.1983 and he could not have challenged the same in the present O.A. filed in 1993. It is because of the first order of the Appellate Authority a fresh charge sheet had been issued and the applicant has participated in the enquiry and he has been heard in the

matter and then the second order of penalty is issued. Therefore, the first order of the Appellate Authority is very much in favour of the applicant since the entire earlier Disciplinary Enquiry Proceedings have been quashed and the applicant was ordered to be reinstated and then fresh enquiry is held. The first order of the Appellate Authority is passed by a High Ranking Official like Major General in the Army Headquarters, New Delhi. There is no reason for such a High Ranking Officer to falsely pass an order and that too concerning a Class-IV official.

8. The other legal ground raised is that applicant was not allowed to engage a defence assistant and therefore, this has prejudiced him in the second enquiry.

Even on this point, we do not find that the applicant has any case. We have perused the enquiry file furnished by the respondents counsel. The learned counsel for the respondents has also produced number of documents which are on record regarding departmental enquiry. The document at page 90 of the paper book shows that it is a letter dt. 19.12.1988 issued by the Enquiry Officer to applicant's defence assistant H.V.Kuber to appear on 2.1.89 since he is cited by the applicant as his defence assistant. Therefore, the Enquiry Officer has himself issued a notice to the Disciplinary Authority to appear on 2.1.1989 and conduct the case on behalf of the applicant.

Admittedly, the applicant's defence assistant did not appear at the time of departmental enquiry. The respondents have produced the proceedings of the enquiry at page 53 of the paper book and marked as Ex.R-2. On 10.2.1988 on a specific question, the applicant has replied that he has requested H.V.Kuber to appear on his behalf. We have already seen how the Enquiry Officer has issued a notice to H.V.Kuber to come on 2.1.1989.

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Page 54 of the paper book shows proceedings of the enquiry on 2.1.89. The applicant was questioned by the Enquiry Officer as to where is his defence assistant. The applicant submitted that he has not yet come and he might come. On the same day the enquiry is completed.

Therefore, applicant's defence assistant had been given notice and he did not appear on 2.1.1989. Therefore, this is not a case where there was a refusal by the Enquiry Officer to the applicant to engage in any defence assistant. Hence, there is no merit in the contention of the applicant's counsel that applicant was not permitted to engage defence assistant.

9. Now coming to the merits of the case, no oral evidence has been adduced by either side. The department relied upon the documentary evidence viz. pay bills which showed that the applicant was absent during the relevant period. As per record the absence is admitted. But the applicant's version is that after two days he went to attend the office, but he was not permitted to join.

Except the self-serving assertion of the applicant there is no oral or documentary evidence to show that the applicant was attending the office every day and he was not taken on duty. According to the administration and according to the record the applicant was absent throughout. The applicant has not examined himself nor did he adduce any evidence to show that he was coming to office, but he was prevented from joining duties.

10. The learned counsel for the applicant placed reliance on applicant's complaint before the Labour Enforcement Officer. A letter of the said officer is placed on record at page 41, this only shows the version of the applicant given to the Labour Enforcement Officer. The said officer has not conducted any enquiry and given any finding. He has simply stated that he had received the representation of the applicant making allegation that he was not allowed

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to join duty and he has requested the administration to re-consider his case. According to the administration, the applicant never attended the office during the relevant period.

11. The fact that the applicant had remained absent during the relevant period recorded by the Enquiry Officer and accepted by the Disciplinary Authority is a finding of fact based on the materials on record. This Tribunal while exercising judicial review cannot sit in appeal over the findings of the domestic Tribunal. This Tribunal cannot re-appreciate the evidence and take another view, even if another view is possible, that is not the scope of judicial review though such a course is open only to a Appellate Authority. (Vide 1998(1) SC SLJ 74) Union of India & Ors. Vs. B.K.Srivastava, 1998(1) SC SLJ 78 (Union of India & Ors. V/s. A.Nagamalleshwar Rao).

In our view, the finding of the domestic Tribunal is based on documentary evidence and no ground made out to interfere with the finding of fact about the absence recorded by the Enquiry Officer and accepted by the Disciplinary Authority.

12. There is also no merit in the contention that the charge sheet is not issued by the Disciplinary Authority. We find the impugned order dt.10.12.1990 is passed by the Brigadier. Even the second charge sheet dt.10th August, 1988 is issued by the Brigadier (vide page 34). Therefore, we find that the charge sheet has been issued by the Competent Authority.

After going through the materials on record and having heard both the counsels, we find no merit in the application.

13. In the result, the application is dismissed. In the circumstances of the case, there will be no orders as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA) 22-1-99
VICE-CHAIRMAN

B.