CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 136/93

DATE OF DECISION: 12-8-1999

Shri Manik Sahadu Borshe Applicant.

Shri L.M.Nerlekar Advocate for Applicant.

Versus

Divisional Commercial Superintendent(I) Bombay and anr. Respondents.

Shri S.C.Dhawan. Advocate for Respondent(s)

CORAM

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH,MUMBAI.

ORIGINAL APPLICATION NO:136.93

the 12th day of AUGUST 1999.

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

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

Manik Sahadu Borshe
Ex.Head Booking Clerk
Titvala
C/o Shivshakti Colony
O.T.Section
Ulhasnagar. ...Applicant.

By Advocate Shri L.M.Nerlekar.

V/s.

1. Divisional Commercial
Superintendent,(I)
DRM's Office(C)
Central Railway,
Bombay V.T.

2. Sr. Divisional Commercial
Superintendent'
Central Railway
Divisional Officer
Commercial Branch,
Bombay. ...Respondents

By Advocate Shri S.C.Dhawan.

ORDER

{Per Shri Justice R.G.Vaidyanatha,Vice Chairman}

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. Respondents have filed reply. The learned counsel for the respondents has produced the enquiry file before us. We have heard counsel for both sides.

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2. The applicant was working as Head Booking Clerk at Titwala Railway Station,Central Railway. It appears that during the period from 1.9.1989 to 10.9.1989 there was short remittence of Rs. 61,532/-. The applicant was kept under suspension on 14.9.1989. A charge sheet was issued on 20.11.1989. The allegation in the charge sheet is that the applicant did not deposit the amount as required by the rules and thereby the short remittence of the said amount and it is further alleged that he has committed mis-appropriation of the said amount.

An Enquiry Officer was appointed. Regular enquiry was conducted. Seven witnesses came to be examined and there were two earlier statements of the applicant dated 11.9.1989 and 16.9.1989. The applicant was also questioned by the Enquiry Officer and the statement was recorded and on the basis of that the charges was proved. Copy of the enquiry was sent to the Disciplinary Authority who gave report. The Disciplinary Authority by order dated 8.1.1991, agreeing with the enquiry report held that the charges were proved and imposed the penalty of dismissal from service. The applicant preferred an appeal before the Appellate Authority who by ordser dated 3/4-4-1991 dismissed the appeal and confirmed the order of the Disciplinary Authority. Being agrieved by these orders the applicant has approached this Tribunal with the present application. He has taken number of grounds for challenging the orders of the respective authorities including the enquiry report. We will only mention the grounds which were pressed at the time of arguments.

3. The respondents in their reply have contended that the enquiry has been done as per rules,about short remittence and consequential mis-appropriation; the grounds alleged by the applicant are not sustainable under the law. Hence it is prayed that the application be dismissed with costs.

4. The applicant has filed rejoinder to the written statement of the respondsents. While again reiterating the grounds taken in the application it is further stated that the applicant has since been acquitted by the criminal Court by order dated 4.9.1993 in C.C. 62/92 and therefore the present order of dismissal from service is liable to be set aside.

5. At the time of arguments the learned counsel for the applicant contended that seven witnesses were examined during the enquiry though their names has not been furnished in the charge-sheet and applicant had no opportunity to prepare his defence. It was submitted that these witnesses who were not cited in the charge sheet couls or lacunabeen examined by the Enquiry Officer to fill up the gaps or lacuna in the prosecution case. Then it was submitted that in view of the acquittal of the applicant in the criminal case he cannot be found guilty in the disciplinary enquiry on the identical charge and therefore the order of dismissal is liable to be quashed. The third and last point is that this is a case of no evidence and the order of the Enquiry Officer is a perverse report and therefore the order of penalty has to be quashed.

On the other hand the learned counsel for the respondents states that there is no merit in these contentions and no case is made out for interfering with the order of penalty.

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6. The first contention is that the names of witnesses are not in the charge sheet but still these witness were examined by the Enquiry Officer. We have examined the Rules which clearly gives discretion to the Enquiry Officer to examine the additional witnesses. One submission made by the applicant is that the applicant should have given sufficient time to prepare his defence and to cross examine the witnesses. But no particulars have been furnished by the applicant in the OA or at the time of argument, as to on which date name of witnesses were furnished and on which day they were examined etc. Hence on the available materials on record it is not possible to say whether the applicant was not given sufficient time to cross examine the witnesses.

~~witnesses~~.

Even otherwise, after perusal of the satatements of witnesses,we find that nothing turns upon the statements of those witnesses. Those witnesses simply say the nature of work done by the applicant, which is not disputed at all. We can safely ignore the statements of these witnesses since it has no bearing on the mis-conduct of the applicant in making short remittence.

Enquiry Officer has pointed out that the applicant has admitted the guilt in two earlier statements and also during his questioning by the Enquiry Officer.In view of the admission of the applicant, which we will point out later, no prejudice is caused to the applicant due to examination of the witnesses not named in the charge sheet. Even if we ignore the entire evidence of the witnesses the admissions of the applicant are themselves sufficient to sustain the findings of mis-conduct. Hence we find no merit in the first contention.

8. The next submission is that in view of the acquittal in the criminal case the findings of mis-conduct in the disciplinary enquiry should be quashed. We cannot accept this extreme position.The question whether by virtue of acquittal in criminal case the findings of mis-conduct in the disciplinary case should be quashed or not depends upon many factors. We must keep in mind that the degree of proof required in criminal case and the degree of proof required indisciplinary case are different. The charges in the two cases must be identical and the evidence must be common in both the cases. We will point out that the materials placaed before the Enquiry Officer in this case and before the criminal case are not identical at all.

~~case are not identical at all~~.

9. In the judgement of criminal case, the criminal court was concerned with charge of mis-appropriation of the amount and the Learned Megistrate ~~dismissed~~ discharged the evidence and came to the conclusion that the prosecution case is not proved.

In the inquiry case, the evidesnce before the Enquiry Officer was evidence of some witnesses and admissions of the applicant in his two letters dated 11.9.1989 and 16.9.1989 and further there was an admission of the applicant when he was questioned by the Enquiry Officer. This admission of the applicantin the form of his letters and in the form of answer to the question to the Enquiry Officer was not available before the Megistrate. In other words it is not a case of same and identical case before ~~crimiation uct~~ criminal court and before the Disciplinary Authority. In such a situation acquital in criminal case will have no bearing on the findings recorded by the Disciplinary Authority.

10. Though there are many decisions on the question as to what is the effect of judgement in the criminal case in disciplinary case, it is not necessary to refer to them in view of the latest judgement of the Supreme Court on the point which was also relied on by the learned counsel for the applicant. The said decision of the Supreme Court is Paul Anthony's case reported in 1999(1)SC SLJ 429. The Supreme Court has clearly pointed out that there is no bar for parallel proceedings in criminal case and disciplinary enquiry case. In that case the allegation against the delinquent was that the stolen property was recovered from his house. The Supreme Court pointed out that on the same charge and same evidence the accused has been acquitted, then he cannot be found guilty in the disciplinary case.

11. In the present case it may be that witnesses were common to both disciplinary case and criminal case and if that was the only material, ~~the~~ we could have followed Paul Anthony's case and would have held that in view of acquittal in the criminal case the applicant cannot be punished in the disciplinary case. Here there is additional evidence in the form of admissions of the applicant in the disciplinary case which were not available to the Criminal Court. Even if we ignore the oral evidence of all the witnesses examined in the case, the applicant can be punished only on the admissions made in the two letters and admission made in answering the question put by the Enquiry Officer. Therefore this is not a case where on the same evidence, which was before the Megistrate,the applicant found lguilty in the disciplinary

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the applicant found guilty in the disciplinary enquiry case. Here in the disciplinary case the applicant was found guilty in view of his admissions. Hence in the facts and circumstances of the case the acquittal of the applicant in criminal case does not come in the way of applicant being punished in the disciplinary case since the evidence is not identical in this case. We may also make reference to latest decision of the Supreme Court in AIR 1999 SC 1514 (Senior Supdt. of Post Offices, Pathananthitta and others V/s A.Gopalan) wherein the Supreme Court has clearly ruled that acquittal of delinquent by Criminal Court will not conclude departmental proceedings in respect of same charage.

We have already pointed out that in the present case though the witnesses may be common in criminal case and in disciplinary case there is additional conclusive material against the applicant in both his admissions in two letters and the admission before the Enquiry Officer and therefore the acquittal in the criminal case will not help the applicant in the disciplinary case.

12. The last submission of the learned counsel for the applicant is on merits;on relying on some of the decisions, he contended that this is a case of no evidence and the report of the Enquiry Officer is purverse and therefore the orders are liable to be quashed. It is well settled by number of recent decisions of the Apex Court that while exercising the judicial review the Tribunal cannot sit in appeal over the finding of

fact recorded by the Domestic Tribunal (vide AIR 1999 SC 625 (Apparal Export Promotion Committee V/s B.K.Chopra) The scope of judical review is very limitted. We have to see only the legality of the procedure ~~adops of Natural Justice.~~ in the disciplinary case and about the violation of Principles of Natural Justice. It is true that in case of no evidence or if the order of the authori,A is perverse, the Tribunal can step in ~~fo, washing~~ and decide the order, After going through the materials on record. We cannot accept the argument of the learned counsel for the applicant that this is a case of no evidence or order is perverse so as to call for interference by this Tribunal.

The fact that the applicant was working as Head Booking Clerk is not in dispute. The period in dispute is 1.9.1989 to 10.9.1989. It was the duty of the applicant to issue tickets and collect the cash and credit the amount with the concerned authority. In this case during the period 1.9.1989 to 10.9.1989 there was short remittence of Rs.61532/-. We have seen the original DTC Register made available to us by the learned counsel for the respondents, where the applicant has made entry and had not credited the amount. Let us go to the admissions made by the applicant in the two letters and the oral admission made before 13e Enquiry Officer.

12. In the enquiry file produced by the learned counsel for the respondents the applicant,s letter dated 11.9.1989 is at page 6, Which is a letter written by the applicant in his own handwriting and signed by him and it is in response to the memo

received from the higher officer. The contents of the letter dated 11.9.1989 is as follows:

> "I have received your memo about the short remittence in the cash. I am in guilty but please give me the time upto 20.10.1989 for arranging the money, definately I will clear the full amount before 20.10.1989. I am bounded for my words."

This letter clearly shows that the applicant had admitted the short rmittence during the period and undertakes to make arrangement to deposit the amount and want time till 20.10.1989. Then we have another letter of the applicant dated 16.9.1989 which is at page 13 of the enquiry file, Which is a letter written by the applicant in his own handwriting and signed by him, which is an explanation given by the applicant to the memo dated 16.9.1989 which reads as follows:

> "R/Sir,
>
> Sub: Explanation vide memo dated 10.9.1989 as regards the short accounted Rs.61496/-.
>
> I agreed to accept that the said amount was short accounted during the periods from 1.9.1989 to 10.9.1989. while working on season ticket counter during 6/14 hours duty, due to unavoidable circumstances.

I also assure that the above amount shown outstanding against me will be cleared upto 20.10.1989.

I may be excused

Thanking you in anticipation.

Yours faithfully,

Sd/-

(M.S.Borse)

The above two letters clearly shows the admission of the applicant that he is responsible and it was due to unavoidable circumstances and wanted time to make good the amount.

14. In our view the above two letters is sufficient proof of admission by applicant. In addition to this, during the oral questioning by the Enquiry Officer, the applicant made oral admission and admitted the lapses on his part of short remittence.

In our view the two documents by itself is sufficient to prove the mis-conduct of the applicant. Hence even if we ignore the oral admission the above material itself is sufficient to prove the mis-conduct of the applicant. Admittedly the above material namely admission of the applicant in these two letters was not placed before the Criminal Court and this evidence was not available to the Criminal Court.

Therefore we find that the finding of mis-conduct is substantiated by the admissions of the applicant. Hence it is not a case of no evidence as argued by the learned counsel for the applicant.

15. In view of the above discussion we hold that the contentions urged by the lerned counsel for the applicant cannot be accepted. We find no merit in the OA. In the result OA is dismissed. No order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN.

12/8/99

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