CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 239/93

Date of Decision: 4/5/99

Shri Pundalik Kashinath Kulkarni Petitioner/s

Shri D.V.Gangal Advocate for the Petitioner/s.

V/s.

Union of India and others. Respondent/s

Shri S.C.Dhawan R1 to 3 Advocate for the 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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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.239/1993.

DATED THE 4th DAY OF ~~APRIL~~ MAY, 1999.

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

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

Shri Pundalik Kashinath Kulkarni,
Ex-Inspector of Works,
Central Railway, Panvel. ... Applicant.

By Advocate Shri D.V.Gangal.

v/s.

1. The Union of India through,
The General Manager, Central Railway,
Bombay V.T., Bombay-400 001.

2. The Additional Divisional Railway Manager,
(G) Central Railway,
Bombay V.T.

3. The Senior Divisional Engineer,
(Co-ordinating)Central Railway
Bombay V.T.

4. Shri R.K.Ahuja,
The Divisional Engineer(South),
Central Railway,
Bombay V.T.
now working as a Deputy Chief Engineer,
of Concrete Slippers.

5. Shri S.S.R.Parpalliwar,
Assistant Engineer,
Central Railway Varora,
Dist.Chandrapur.

6. Shri R.S.Goyal, Enquiry Officer,
Central Vigilance Commissioner for
Departmental Enquiries,
Block No.10, Wing No.8,
Jamnagar House, Akbar Road,
New Delhi-110 011.

7. Shri R.S.Gupta,
Deputy Chief Engineer,
Track Modernisation,
Chief Engineer's Office, Bombay V.T.
Bombay - 400 001. ... Respondents.

By Advocate Shri S.C.Dhawan, R-1 to 3 only.

O R D E R

Per Shri R.G.Vaidyanatha, Vice Chairman

This is an application filed under section-19 of Administrative Tribunals Act. Respondent Nos.1 to 3, the

official respondents, have filed reply. Respondent Nos. 4 to 7 are private respondents but they are not served and it appears they have retired from service. We have heard the learned counsel for the applicant and the learned counsel for the official respondent Nos.1 to 3.

2. At the relevant time, the applicant was working as Inspector of Works at Panvel Central Railway. A contract was given to a private contractor to manufacture and supply treeguards. The steel was supplied by Railways. It appears there is some irregularity in the manufacture and supply of treeguards. There was defect in the quality of the product supplied. The allegation is that the applicant did not do proper supervision. A charge sheet was issued against the applicant for alleged misconduct pertaining to this contract work. The applicant denied the allegations. After holding enquiry, the enquiry officer held the charge as proved. On that basis the disciplinary authority has imposed a penalty of removal from service by order dated 23/9/91. The applicant preferred an appeal which came to be dismissed by the Appellate Authority as per order dated 28/11/91. Being aggrieved by these orders, the applicant has approached this Tribunal challenging the same on many grounds. According to him, private respondents, respondent Nos.4 to 7, were responsible for sanctioning and supervising the contract in question. His case is that he has simply obeyed the orders of higher officers. The applicant is in no way responsible about supply of steel or defect in the quality of the product. That the applicant was not given additional documents inspite of his request by letter dated 3/4/90. The applicant has not committed any misconduct. The applicant has not been informed about the details of the quality of the product namely treeguards to be supplied by the Contractor. The measurement book was not produced during the enquiry inspite

of the request of applicant. The applicant is not responsible for any alleged loss of the Railways. Therefore, the applicant has approached this Tribunal for quashing the impugned order and for reinstatement and other consequential benefits.

3. The official respondents have filed a reply justifying action taken against the applicant. It is stated that the application is barred by limitation. It is the responsibility of the applicant to look after the execution of the contract and to monitor the supply of the product. It is the applicant's duty to take measurements of the products supplied and to record the same in the measurement book. The applicant has committed misconduct in not following the rules and in not performing his duties properly. That enquiry has been done as per rules. There is sufficient material to support the misconduct of the applicant. Hence, there are no grounds to interfere with the penalty imposed on the applicant.

4. The learned counsel for the applicant first submitted that the enquiry is vitiated, since the applicant was not supplied with the documents asked for by him. The next submission is that on merits there is no evidence to prove the mis-conduct of the applicant. The argument is that the applicant had no duty and responsibility in connection with the impugned contract. Therefore there is no liability on the part of the applicant and he has done whatever he could do on the direction of the official superior. The third and last submission is that the imposition of penalty of removal from service is very harsh and further there is discrimination in awarding such harsh penalty to the applicant whereas for Shri Parpalliwar

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4. The learned counsel for the applicant first submitted that the enquiry is vitiated since the applicant was not supplied with the documents asked for by him. The next submission is that on merits there is no evidence to prove the mis-conduct of the applicant. The argument is that the applicant had no duty and responsibility in connection with the impugned contract. Therefore there is no liability on the part of the applicant and he has done whatever he could do on the direction of the official superior. The third and last submission is that the imposition of penalty of removal from service is very harsh and further there is discrimination in awarding such harsh penalty to the applicant whereas for Shri Purushottam

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respondent No.5. on similar allegation of same contract has been let off with a minor penalty. He has therefore submitted that the order of pubishment be set aside and the applicant be reinstated and grant all consequential benefits. An alternate submission is that at least the Tribunal may interfere with the quantum of penalty which is very harsh and substituted to any minor penalty. On the other hand the learned counsel for the respondents contended that the enquiry has been done as per rules and there is sufficient evidence to prove the mis-conduct of the applicant. He has further submitted that this Tribunal cannot go into the merits of the case including appreciation of the evidence, in view of the law declared by the Supreme Court. As far as the punishment is concerned his submission is that the scope of judicial interference is very limited and he further submitted that the case of the applicant stands on a different footing than the case against Shri Parpalliwar.

5. Taking the first point for consideration, no doubt the applicant had made a representation on 3.4.1990 for production of measurement book. No doubt the measurement book has not been produced. Bur as could be seen from the charge sheet, relevant pages of the mearurement book have been furnished to the applicant. There is a list of 66 documents annexed to the charge sheet of which the last one namely item No.66 is only the Rules book. Therefore the charge-sheet contains a list of 65 documents and it is admitted by the applicant that he has received all the 65 documents. At page 159 of the paper book the applicant himself has produced a copy of his

letter dated 3.4.1990, wherein he has admitted that he has received copies of all 65 documents mentioned in the charge-sheet.

In the 65 documents, we find item No.65 is measurment book consisting relevant pages namely page 193-151, 193-152 and 193.153. Therefore, even relevant pages of the measurment book have been received by the applicant.

Agreeing for a moment the applicant wanted the entire measurement book and it was not supplied, by itself the disciplinary enquiry is not vitiated. Whenever there is violation of procedure namely non-supply of documents, the disciplinary proceedings are not vitiated automatically. The Question is whether the documents are relevant or not. Further the question is whether any prejudice is caused to the applicant due to non production of documents.

Neither in the pleadings nor in the arguments it was demonstrated that particular document was necessary to prove a particular point and non-production has prejudiced the cause of the applicant. Mere allegation of non-production of documents is no sufficient ground. It must be alleged and proved that the document was relevant for particular purpose and due to non-production the applicant was prejudiced in a particular manner On this point there is nothing in the pleading. On this point the learned counsel for the applicant has not pointed out as to how this documents are relevant and how the non-production has prejudiced the applicant in any particular manner.

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Therefore on the facts and circumstances of the case we do not find any merit in the contention of the applicant that the enquiry is vitiated for non-production of documents.

6. Major part of the argument was addressed about the merits of the case. The learned counsel for the applicant gook us through the allegations in the O.A. and Number of earlier statements of the applicant and number of documents which are filed alongwith the application.

There was a contract between the Railway and Private contractor for supply of tree guards of certain specification and measurements. The materials on record show that the applicant had supplied or got supplied the M.S. bars to the contractor. But during the vigilance check it was found that Tree guards were prepared by using hollow pipes and not M.S. bars. Then there are serious allegations that the applicant did not supervise the quantum or quality of the tree guards and thereby he has committed mis-conduct. As many as eight charges are framed against the applicant which read as follows.

Article I

To favour the contractor, Shri Kulkarni, instead of manufacturing tree guards on Rly premises, allowed Rly. MS bars to be taken away outside Rly. premises by contractor.

Article II:

Shri Kulkarni with malafide intention did not accounted for the materials received, used and issued, for contractor's work and thus put Rly. into loss of Rs. 66,000/-

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Article III

To favour the contractor Shri Kulkarni issued Rly. material to contractor even after completion period expired and extended neither applied nor granted till these issues.

Article IV

Shri Kulmarni committed fraud by entering false measurments in MB and did not gave required certificate in MB for accountal of tree guards supplied by contractor.

Article V

Shri Kulkarni entered false measurements in MB as he did not carry out 100% check on quality and accepted tree guards made out of hollow pipes and MS flats whereas Rly. issued MS bars for this work.

Article VI:

Shri Kulkarni committed a graud by giving false and misleading information to Vigilance and certificate in MB regarding weight of Rly. material used for tree guards.

Article VII

Shri Kulkarni entered the false measurments in MB before supply received of tree guards.

Article VIII

Shri Kulkarni violated and disregarded IRWW Mannual para 3226(b) by not carrying out the stock verification periodically which was mandatory for him.

Then detailed statement of allegation are appended to the charge-sheet in respect of each article of charges.

7. During the enquiry both sides did not produce any oral evidence. Prosecution relied on 65 documents. The applicant relied on 3 documents. Then the applicant was questioned about the charges framed against him.

On the basis of materials on record, the Enquiry officer submitted the report on 27.2.1991 (which is at page 190). The Enquiry officer was passed a very detailed speaking order regarding the articles of charges framed against the applicant and the evidence produced in the form of number of documents and then came to the conclusion that the articles of charge I to VIII are duly proved.

The applicant has received a copy of the enquiry report and submitted a representation. Then the Disciplinary Authority passed the impugned order dated 23.9.1991. Agrieved by the findings of the Disciplinary authority and imposition of punishment of removal from service, the applicant preferred an appeal which came to be dismissed by the Appellate Authority by order dated 28.11.1991.

8. Now it is well settled by number of recent decisions of the Apex Court that the Tribunal or Court cannot sit in appeal over findings of facts recorded by the Disciplinary Authority. The Tribunal cannot and should not re-appreciate the evidence and take a different view, even if another view is possible. It is not necessary to refer all the recent decisions

since many of the recent decisions have been considered in the latest judgement of the Supreme Court reported in AIR 1999 SC 625 Apparel Export Promotion Counsel V/s. A.K. Chopra.

Therefo re in our view this Tribunal cannot now re-appreciate the evidence atall. The scope of judicial review is very limited.

After going threugh the materials on record we find that the enquiry efficer had considered the entire evidence and taken a view that the charges are proved and then findings are confirmed by the Disiciplinary Authority and the Appellate Authority. It is not open to the applicant to contend before us that the findings require/ re-consideration. Therefore on merits we find that applicant has not made out any case. In view of the latest decision of the Supreme Court, we only say that this is not simply permissible;

The learned counsel for the respondents submitted that regarding some of the charges the applicant had made admissions in his previsous statement.

9. One of the charges of the applicant is that he has given false information to the vigilance who had come to check. In page 21 of the O.A. itself the applicant admits that he did gave some wrong information to the vigilance, since he was forced to give the information. He has stated that there was loss to the administration , but it has now become Nil, due to supply of article by the Contractor. This could be gathered from the

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applicant's reply to the charge-sheet which is at page 159 of the paper book, where he says that the monetary loss to the administration has now become nil since the contractor has supplied the materials. The Learned Counsel for the applicant relied on AIR (1986) 995 Sawai Singh V/s. State of Rajasthan and AIR (1971) SC 752 (Surath Chandra Chakravarty V/s. the State of West Bengal) but these decisions have no bearing on the facts of this case.

After going through the materials on record we are satisfied that no cas has been made out to call for interference with the impugnedorders against the applicant.

10. The next and last point for consideration is about the applicant's grievance about the quantum of punishment. The allegation against the applicant, as could be seen from the articles of charges, are that he did not properly supervise the quality and quantity of the material supplied by the Contractor and there was loss to the Railway administration. It is also the applicant's case that the loss has become nil since the contractor supplied the remaining tree guards. The Counsel for the respondents is right in his submission that the scope of judicial review regarding the quantum of penalty is very very limited. He also relied on a decision of the Apex Court in the case of Raja Ratnam V/s. State of Tamil Nadu (1997 (1) SLJ SC 10). It is observed that though the Court is empowered to go into the question of nature of punishment it has to be

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considered in the peculiar facts and circumstances of each case. In Supreme Court judgement mentioned above, namely - AIR (1999) SC 625, while reiterating that the judicial review is limited, the Supreme Court has relied on earlier judgement of Chaturevedi's case para 21 and extracted the relevant portion, where it is mentioned that normally the Court or Tribunal cannot substitute its own conclusion of penalty and impose some other penalty, unless the penalty imposed shocks the conscience of the Court.

In view of the law declared by the Apex Court in the above decision, we should see whether in the peculiar facts and circumstances of the case any interference is called for? The first point to be taken into consideration is that the applicant was, on the date of punishment at the fag end of his career; the impugned order of punishment is dated 23.9.1991 and the applicant's normal date of superannuation was 30.11.1991. That means, the order of punishment is passed just about two months and a week prior to the date of normal age of superannuation.

It is on record that the service of the applicant prior to the incident was blemishless.

After dismissal of the appeal, the applicant filed a revision petition before the General Manager, Central Railway. In para 24 of the reply it is clearly mentioned that revision authority has disposed of the revision petition by granting pension by order dated 25.6.1993 (Annexure R-1 to the reply). On perusal of the record we find that R1 is not available in the 'A' file. However, it is available in the 'B' file at page 242.

The order on the revision petition by the General Manager reads as follows :

> "I have gone carefully through your representation against the orders of "Removal from Service" imposed upon you on 24.09.1991 by Sr. DRM (CO) Bombay, the Disciplinary Authority and on further appeal confirmed by ADRM(G) BB the Appellate Authority.
>
> Considering that you have to support your family and your satisfactory service record before your removal from service, I have decided to award you 2/3rd of Pensionary benefits as admissible, confirming the orders passed by the Disciplinary Authority and the Appellate Authority imposing on you the punishment of "Removal from service."
>
> sd/-
> (K.R. VIJ)
> GENERAL MANAGER."

From the above we find that taking into consideration that the applicant has to support his family and had a satisfactory record of service before the impugned order, he has been granted 2/3rd pensionary benefit as per Rules, while confirming the order of the Appellate Authority.

Therefore, the applicant has been granted 2/3rd pension by the General Manager himself, Revisional Authority, taking into consideration the applicant's satisfactory service and the fact that he has to support his family.

11. Then we go to another important circumstance, namely - that the applicant was working as Inspector of Works under Assistant Engineer Shri Parpalliwar, who is Respondent No. 5 in the O.A., in respect of the same contract regarding supply of tree guards, Disciplinary enquiry was initiated against R-5 also. He denied the charges. The enquiry was held. The Railway Board is the Disciplinary

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Authority for him. The Railway Board passed an order which appears to be dated 29.12.1998. The date is not clearly legible. Agreeing with the Inquiry Officer and holding that the charges 1 to 3 and 5 to 8 are proved and than imposed a penalty of reduction of pay by one stage from Rs. 3500/- to Rs. 3400/- for a period of one year. It is the penalty imposed by the Railway Board on Shri Parpalliwar, who is the immediate boss of the applicant and in respect of the same contract of supply of tree-guards. On the face of it, penalty is very nominal, Rs. 100/- p.m. for one year, which comes to Rs. 1,200/- as against the penalty imposed against the applicant is removal from service. Though there may be some difference between the charges framed against the applicant and the charges framed against Shri Parpalliwar, it cannot be said that that charges against Shri Parpalliwar were minor in nature. On perusal of the 8 charges framed against Shri Parpalliwar, shows that he had failed in his duty in supervising in respect of the contract in question and he failed to check the entries in the measurement books, he failed to test check the supply of tree-guards and he failed to excercise check over the issue of materials resulting loss to the Government to the extent of Rs. 66,000/- which is also one of the identical charges against the applicant. Anyhow, on perusal of the charges framed against Shri Parpalliwar, though there is some difference between the charges framed against shri Parpalliwar and the charges framed against the applicant, it is not so disproportionate so as to impose a minor penalty of reduction of pay for one year on the one side and penalty of removal from

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service on the other hand. On the face of it, punishment imposed against the applicant is grossly disproportionate to the penalty imposed against Shri Parpalliwar pertaining to same contract in question. The quantum of punishment should not be grossly disproportionate on two officials for the same contract in question; when we are considering the question from equitable angle, applicant's grievance that he has been given a very harsh punishment and disproportionate punishment it cannot be said to be unjustified, that is why the General Manager has awarded 2/3rd of the pensionary benefits to the applicant. We have already seen that the punishment order was passed about two months prior to the superannuation of the applicant.

Having gone through the materials on record and taking into consideration that the applicant has blemishless service prior to the particular contract and the fact that he has to support the family and taking into consideration the General Manager himself awarded 2/3rd pension inspite of removal from service and then taking into consideration that the higher officer has been let off with a minor penalty, we feel in the circumstances of the case, the punishment of removal from service of the applicant is grossly disproportionate and requires modification. There is no question of awarding of minor penalty and order of reinstatement since the applicant has already attained the age of superannuation. In these circumstances, we feel that the order of removal from service with effect from 23.9.1991 should be substituted by an order of compulsory retirement from the same date.

12. In the result, the application is partly allowed. While confirming the findings of Disciplinary Authority and higher Authority regarding misconduct of the applicant, the quantum of penalty is modified and the order of removal from service with effect from 23.9.1991 is substituted with order of compulsory retirement with effect from 23.9.1991 and the applicant is entitled to all the retirement benefits, permissible as per Rules, less whatever amount is received by him. In the circumstances of the case there will be no order as to costs.

(D.S. Bawej)
Member(A)

4/5/99
(R.G. Vaidyanatha)
Vice Chairman

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