IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 437/93

Date of Decision: 22/3/99

Shri B.N. Sabu — Applicant.

Shri S.P. Kulkarni — Advocate for Applicant.

Versus

Union of India and others. — Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan. — 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? Yes

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

(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 437/93

Pronounced this the 22nd day of March 1999.

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

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

R.N. Sahu
residing at
P.M. Gomes Chawl,
Room No.4, Lal Bahadur
Shastri Marg.,
Nawpada. Bombay. ... Applicant.

By Advocate Shri S.P. Kulkarni

V/s.

Union of India through
The Senior Manager,
Mail Motor Service,
Sundam Kala,
Ahira Marg., Worli
Bombay.

The Director of Postal
Services, Bombay Region-
General Post Office,
Bombay. ... Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

We may mention that this is the third round of litigation. In the first instance when the applicant was imposed a penalty of removal from service, he challenged the same before the Tribunal, who set aside the order and remanded the case to the Disciplinary Authority to furnish copy of the enquiry report to the applicant and proceed further according to law. It appears on the second occasion similar penalty was imposed and the applicant challenged that order before this Tribunal without exhausting the remedy of statutory appeal. That O.A. was disposed of at the admission stage with a direction to the applicant to exhaust the statutory

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remedy. The applicant preferred an appeal before the Appellate Authority. Since the appeal was not disposed of for long time, the applicant has filed the present application challenging only the order of the Disciplinary Authority. But during the pendency of the application the appeal came to be dismissed by order dated 17.2.1993. The applicant has amended the application challenging the order of the Appellate Authority also.

2. We have heard the learned counsel for both sides.

3. The applicant was appointed as Blacksmith in the Mail Motor service of Postal Department, Bombay. The incident took place on 28.8.1986 which became the subject matter of disciplinary enquiry against the applicant. It appears on 28.8.1986, the applicant had gone to the store room and when he came out he was questioned and checked by Shri P.M. Pednekar, the stores officer. The applicant was caught red handed being in possession of article of store room namely LSC Coil. Then it appears that the applicant was questioned and was asked to open his locker, which he opened. The locker contained many articles of the Postal Department which has been removed from the stores. Therefore the applicant was issued charge-sheet on 15.6.1987. The defence of the applicant was one of denial. An Enquiry Officer was appointed and conducted the disciplinary enquiry. 10 witnesses were examined on behalf of prosecution. The applicant has produced three defence witnesses. Then the Enquiry Officer submitted a report to the Disciplinary Authority holding that charge No.1 was durly proved. He gave benefit of doubt to the

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applicant, in so far as the second charge is concerned; after receiving the enquiry report the Disciplinary Authority accepted the findings of the Enquiry Officer regarding charge No.1 and dis-agreed with the findings of the Enquiry Officer regarding charge No.2 and held that even charge No.2 is also proved. Then by the first order dated 31.8.1989, the Disciplinary Authority imposed penalty of removal from service. The applicant filed an appeal which came to be dismissed. Then he approached this Tribunal who by order dated 22.2.1990 remanded the matter to the Disciplinary Authority for furnishing copy of the enquiry report to the applicant and proceeded with the enquiry. Then the Disciplinary Authority furnished copy of the enquiry report to the applicant, who made representation against the report. Then the Disciplinary Authority passed the second order dated 25.8.1992 again holding both the charges are proved and imposed the penalty of removal from service. The applicant preferred an appeal before the Appellate Authority. The same has been disposed of by an ofder dated 17.3.1993. The applicant has filed the present application challenging the orders of Disciplinary Authority and the Appellate Authority.

The applicant has taken number of grounds in challenging the orders of respective authorities. We would only mention those grounds which were pressed by the learned counsel for the applicant during the time of argument.

4. The respondents in their reply have justified the action taken by them. It is stated that as far as charge No.1 is concerned, the applicant was caught red handed and stores article was found in his possession. In so far as the

second charge is concerned, the applicant himself opened the locker which contained articles, which were removed from the stores room, were found. It is stated that enquiry has been done as per rules and the orders of Disciplinary Authority and the Appellate Authority are fully justified and do not call for any interference by this Tribunal.

5. At the time of arguments, the learned counsel for the applicant has questioned the correctness and legality of enquiry report, the orders of the Disciplinary Authority and the Appellate Authority. He has submitted that the enquiry has not been done according to law. He pressed certain grounds in support of his argument. On the other hand the learned counsel for the respondents while refutting all the grounds, urged that the enquiry has been done according to law and there is no ground for interference with the same.

6. The learned counsel for the applicant contended that the enquiry is vitiated and the order of penalty is liable to be quashed on the following grounds.

1. Bias on the part of the Enquiry Officer.
2. Seized LSC coil is not produced.
3. Documents demanded by the applicant not produced.
4. No show cause notice to the applicant when the Disciplinary Authority wanted to differ from the Enquiry Officer regarding charge No.2.
5. Relying on alleged admission of applicant.

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6. On merits the charges are not proved against the applicant.

7. The penalty order is passed by the Senior Manager, MMS who was not competant to pass that order, in view of appointment of adhoc disciplinary authority.'

7. Ground No.1

At a belated stage of the disciplinary enquiry a request was made by the applicant for change of the Enquiry Officer and it came to be rejected by the Disciplinary Authority. We have perused the original enquiry file produced by the learned counsel for the respondents. Even the applicant has produced the copies of the proceedings of each day furnished to him by the Enquiry Officer. The applicant and his defence assistance have participated in the departmental enquiry and they were given sufficient and full opportunity to cross examine every witnesses. The only point that is made out by the applicant can be gathered from what transpired on 9.9.1988. A copy of the proceeding sheet of that day is at running page 52(A) of the paper book. On that day witness No.7 A.M. Sawant was examined by the Presenting Officer. When he was offered for cross examination, the defence assistant of the applicant, S.S.Sarankar, gave a report to the Enquiry officer that since he is not supplied the documents demanded by the applicant he is making a request for change of Enquiry Officer and therefore the case was adjourned.

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The only grievance made out is that the Enquiry Officer did not supply the required documents to the applicant. In fact the documents are to be supplied by the Disciplinary Authority. Even agreeing for a moment the Enquiry Officer did not supply the documents asked for by the applicant, it is not a ground of bias so as to change the Enquiry Officer. Even the learned counsel for the applicant did not press this ground seriously.

We find that in the final enquiry the Enquiry Officer has exonorated the applicant regarding charge No.2. After going through the materials on record, we find that the Enquiry Officer have given full opportunity to the applicant and his defence assistant to cross examine the witnesses and to place whatever they want to say without any hinderance. Therefore, we find that the ground of bias on the part of Enquiry Officer has not been made out. Ground No.1 is answered in negative.

8. Ground No.2

It may be recalled that according to the prosecution case when the applicant was coming out from the store room, the Stores Officer asked him what he has kept in the pocket. L.S. Coil was found in his pocket which came to be seized. Unfortunately this coil was not produced during the enquiry. The argument of the learned counsel for the applicant is that charge No.2 cannot be proved without producing the seized coil.

In our view there is no merit in the submission. The coil should have been produced during the enquiry, but non production of the same will not vitiate the enquiry or will not exonerate the applicant.

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As could be seen from the materials on record we notice that number of witnesses who were present when the coil was taken out from the pocket of the applicant and then it was seized. The witnesses are from the same office. There is no hostility between the applicant and those witnesses. Then Shri Pednekar, Stores Keeper gave a report that the coil has been seized from the applicant.

In addition to this, the applicant had admitted the fact in two statements made on 28.8.1996 and 8.9.1986. In view of the admission of the applicant and the evidence of witnesses who speak about the applicant being in position of L.S. Coil, which is a property of the Postal Department, the applicant cannot escape his liability only on the ground that the coil was not produced as exhibit during the enquiry. Hence we find no force in ground No.2 urged before us.

9. Ground No.3

At the time of argument the only submission made on behalf of the applicant is that the applicant demanded the production of locker register but it was not produced by the administration and this has prejudiced the case of the applicant so far as charge No.2 is concerned. It is true that the applicant had made a request for production of locker register and it is rejected on the ground that it is not relevant.

The prosecution case is that the applicant was questioned and then he was asked to open his personal locker. Then the applicant himself had opened the locker by his key, where number of

postal articles were found, which were 13 in number. All these 13 items have been produced during the enquiry and have been marked as exhibits. Seizure of all these items are from the applicant's locker. It is evident from the panchanama and it is proved by examination of some witnesses.

Merely because the locker register is not produced will not vitiate the enquiry proceedings since no prejudice is caused to the applicant. As per the Rule laid down by the Apex Court in the recent judgement in the case of Bank of Patiala V/s. S.K. Sherma 1996(1) SC SLJ 440, enquiry is not vitiated for non-production of document unless prejudice is proved.

The applicant himself has opened the locker and certain postal articles were found in the locker and they have been seized by Pednekar at the same time and it is proved by some witnesses. Then there is applicant's own admission in two statements recorded on 28.8.1986 and 8.9.1986. In the circumstances non-production of locker register is not fatal to prosecution case. Hence ground No.3 is answered in the negative.

10. Ground No.4

The learned counsel for the applicant contended that as far as charge No.2 is concerned, the Enquiry Officer has held that it is not proved, but the Disciplinary Authority has held that it is proved without giving any show cause notice to the applicant about his intention to dis-agree with the findings of the Enquiry Officer. In support of his/

submission, he strongly placed reliance on the recent judgement of the Supreme Court reported in 1998(2) SCSLJ 117 (Punjab National Bank and Others V/s. Kunj Behari Misra) where no-doubt the Supreme Court has held that whenever the Disciplinary Authority wants to dis-agree with the view of the Enquiry Officer, he must form a tentative opinion and give a show cause notice to the delinquent officer and then after receiving his representation he may pass any order either agreeing or dis-agreeing with the report of Enquiry Officer. In view of the latest authority of the Supreme Court there is no difficulty to hold that if the Disciplinary Authority dis-agrees with the findings of the Enquiry Officer without giving show cause notice, then his findings are liable to be set aside.

In our view, for more than one reason, there is no necessity to set aside the findings of the Disciplinary Authority on charge No.2.

The first reason is that when the Disciplinary Authority passed the first order dated 31.8.1989 (vide page 125 of the paper book) the Disciplinary Authority had dis-agreed with the findings of the Enquiry Officer regarding charge No.2. The applicant has received copy of the speaking order of the Disciplinary Authority, wherein he had given reasons as to why he is not accepting the findings of the Enquiry Officer regarding charge No.2. After disposal of the appeal against that order, the applicant has approached this Tribunal in the first round of litigation. This Tribunal set aside the orders of both the

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Appellate Authority and the Disciplinary Authority on the ground that enquiry report had not been furnished to the applicant. Thereafter the Disciplinary Authority furnished a copy of the enquiry report to the applicant. Then the applicant made a representation. In that representation he has stated that both the charges are not proved against him and he may be exonorated. Therefore the applicant had an opportunity of making representation regarding both the charges, after receiving the enquiry report. By that time the applicant knew that both the charges were held proved against him by the Disciplinary Authority but the order was set aside on technical ground. Therefore while giving reply to the enquiry report he has pleaded all the relevant facts and wanted to be exonorated regarding both the charges.

In the facts and circumstances of the case we find that before the Disciplinary Authority passed the impugned second order dated 25.8.1992, applicant had made representation by mentioning all the facts in respect of both the charges, since he knew that in the earlier order the Disciplinary Authority had held that both the charges are proved against him. Therefore in the circumstances of the case no prejudice is caused to the applicant in not issuing show cause notice about the intention of the Disciplinary Authority in dis-agreeing with the enquiry report regarding second charge.

Even if we accept the applicant's case that the findings of the Disciplinary Authority regarding charge No.2 is not sustainable and liable to be set aside for want of show cause notice as observed by the Supreme Court in the latest

decision mentioned above, question is whether the entire punishment order should be quashed on this ground or not.

As far as charge No.1 is concerned, it is held proved against the applicant both by the Enquiry Officer and the Disciplinary Authority. Let us say that the findings of the Disciplinary Authority regarding charge No.2 should be set aside, whether the order of penalty can be sustained on the basis of concurrent finding of both the Enquiry Officer and the Disciplinary Authority on charge No.1? Then there is no necessity to remand the matter to Disciplinary Authority that he should record the findings after issue of show cause notice to the applicant as mentioned above. The learned counsel contended that punishment is given on the basis of totality of the findings on all the charges and one cannot say as to what would have been the punishment if only one charge has been proved. Though this argument has some force, in the facts and circumstances of the case, such a argument is not tenable, since the Disciplinary Authority has clearly observed that charge No.1 is grave and sufficient for determent puhishment

11. In the impugned order dated 25.8.1992 after agreeing with the findings of the Enquiry Officer that charge No.1 is proved the Disciplinary Authority observed as follows:

> " The Enquiry Officer has hold that article of charge No.I has proved beyond doubt and I agree with the findings of the Enquiry Officer in respect of article of charge No.I.

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This alone proved charge not only in the enquiry but also by admission of Shri R.N. Sahu in Stores Section without any job card for L.S.E. coil pocketing a L.S.E. coil unauthorisedly which has no relation to his trade that involves questionable integrity of the official and will justify deterrant punishment considering gravity of the offence. (underlinging is ours)

Then the Disciplinary Authority considered charge No.2 and held that it is also proved. Even if the finding regarding second charge is set aside, the observation of the Disciplinary Authority as mentioned above regarding charge No.1 says that he has come to a definite conclusion that charge No.1 is grave mis-conduct involving questionable integrity and it justifies deterrant punishment. Therefore the deterrant punishment of removal from service can be sustained on the basis of charge No.1 particularly in view of the categorical statement made by the Disciplinary Authority that charge No.1 is alone is sufficient for giving deterrant punishment. In view of this conclusion, our view is that there is no necessity for further exercise of remanding the matter to the Disciplinary Authority regarding second charge with a direction to give show cause notice to the applicant and then after his reply record the findings on charge No.2. In the facts and circumstances of the case, our view is that this is purely accademic exercise. Since the imposition of penalty of removal from service can be sustained on charge No.1, there is no necessity for setting aside the finding of charge No.2 and remit the matter again to the

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Disciplinary Authority. Hence taking in view of the matter we hold that the order of punishment is not vitiated. Though the finding of the Disciplinary Authority on second charge cannot be sustained in view of the latest judgement of the Supreme Court mentioned above the charge of penalty of removal from service can be sustained on the basis of concurrent finding of both the Enquiry Officer and the Disciplinary Authority on charge No.1. Ground No.4 is answered accordingly.

12. Ground No.5

The learned counsel for the applicant contended that the authorities should not have placed any reliance on the admission of the applicant. We do not find any merit in this submission. Statement of the applicant has been recorded on the date of incidence. Then he has given further statement on 8.9.1986. Subsequently the applicant has retracted from his confession statement that they were taken by force and pressure of the authorities. This contention of the applicant that admissions of the applicant were taken by force etc. is not proved. His admission are corroborated by witnesses examined during the enquiry. It is not as if the whole case is rested on the admission of the applicant. In addition to the applicant's admission there is sufficient documentary evidence and oral evidence to prove the charges against the applicant. In our view there is nothing wrong or illegal on the part of the authority in relying on the admission of the applicant. Hence we find no merit in this submission.

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13. Ground No.6

It was argued that even on merits the case is not proved.

During the enquiry 10 witnesses were examined on behalf of prosecution. Some of them are eye witnesses who found that the applicant had L.S.E. coil in his pocket. Then there is a report of stores officer Shri Pednekar as to what happened on that day. Unfortunately Shri Pednekar could not be examined since he died prior to the enquiry. As far as charge No.2 is concerned there are number of witnesses sho speak about involvement of the applicant and that he was caught red handed when he came out of Stores room and he was having L.S.E. coil in his pocket for which he had no explanation. This was also admitted by him in his statement recorded on that day and also in the further statement of 8.9.1986.

As far as charge No.1 is concerned there were concurrent findings of Enquiry Officer,Disciplinary Authority and the Appellate Authority.

It is well settled that while exercising judicial review this Tribunal cannot act as an Appellate Court and re-appreciate the evidence and take another view, even if another view is possible. This Tribunal has no right to re-appreciate the evidence while exercising the power of judicial review. We have to only see whether the enquiry has been done according to rules, whether principles of natural justice have been observed and whether enquiry is not vitiated due to any infirmities (vide (i) 1998(1) SC SLJ 74 (Union of India and Others V/s. B.K. Srivastava. (ii) 1998(1) SC SLJ 78 (Union of India and Other V/s. A Nagamalleshwar Rao. (iii) 1996 SCC L&S 1280 (State of Tamil Nadu V/s. Thiru K.V. Perumal and others.).

After going through the materials on record we are satisfied that on merits prosecution has successfully proved its case and hence no merit in ground No.6.

14. Ground No.7

The learned counsel for the applicant contended that Senior Manager cannot pass an order of punishment when an adhoc Disciplinary Authority had been appointed by a presidential order unless and until the said order is set aside.

There is no dispute that Senior Manager MMS, ~~who~~ is the appointing authority of the applicant. Therefore Senior Manager being the appointing authority has every right and power to pass the order of penalty. It is true that during 1986-87 the post of Senior Manager, Postal service, Bombay was vacant. Therefore a presidential order was issued on 24.2.1987, a copy of which was produced by the learned counsel for the applicant at the time of arguments. This order dated 24.2.1987 clearly mentions that since the post of Senior Manager is vacant since 1986, Senior Superintendent of Post Offices, Sorting Division, was empowered to function as Disciplinary Authority. Therefore on the face of it, an adhoc appointment of Disciplinary Authority was made because the post of regular appointing authority namely Senior Manager was lying vacant since 1986. Once the post of appointing authority is filled, there is no legal obstacles for him to take over the disciplinary cases and pass orders as per rules. The learned counsel for the respondents placed before us original enquiry file, where the Postmaster General has given a direction that since regular Senior Manager has

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reported for duty, the disciplinary case is transferred from the file of Senior Superintendent of Post Offices, Sorting Division to the Senior Manager, MMS.

Therefore we have two things to see. One is that regular Senior Manager has taken over charge and being appointing authority he is competant to pass any order of penalty. Further a higher officer, Postmaster General, has transferred the disciplinary case from Senior Superintendent of Post offices to Senior Manager. In these circumstances a Senior Manager who admittedly and undisputedly is the appointing authority of the applicant has passed the punishment order, it cannot be said that he has no power to pass such an order. The adhoc arrangement comes to an end when a regular incumbent is posted to the vacant post. There need not be a specific order cancelling the order of adhoc appointment. Adhoc appointment was done because the post of Senior Manager was vacant. Once it is filled up the Senior Manager being appointing authority has every right to pass the order of penalty. In addition to this the order of Postmaster General who has transferred the case from Senior Superintendent of Post Offices, Sorting division to Senior Manager.

Hence taking any view of the matter we hold that Senior Manager MMS who has passed the penalty order, was competant to pass the order of penalty. Ground No.7 is answered accordingly.

In our view none of the grounds urged by the learned counsel for the applicant have any merit. No other grounds were urged before us. Therefore the application has to fail.

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15. In the result the O.A. is dismissed.

No order as to costs.

(D.S. Baweja)
Member (A)

(R.G. Vaidyanatha)
Vice Chairman

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