IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 468/93

Date of Decision: 16.10.1997

D.N.Bhosale — Applicant.

Shri R.C.Ravlani — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri R.K.Shetty — Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. M.R.Kolhatkar, 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

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 468/93

Thursday this the 16th day of October,1997.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha,Vice Chairman
Hon'ble Shri M.R.Kolhatkar, Member (A)

D.N.Bhosale
Ex.Labour (SK),L-1/376
Ammunition Factory,Khadki,
Pune-411 003.
R/o 2263, New Modikhana,
Pune-411 001.

By Advocate Shri R.C.Ravlani ... Applicant

V/S.

Union of India through

1. The Secretary,
Ministry of Defence,
South Block,New Delhi.

2. The Chairman,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. The General Manager,
Ammunition Factory,
Khadki, Pune-400 003.

By Advocate Shri R.K.Shetty ... Respondents
C.G.S.C.

O R D E R

(Per: Shri Justice R.G.Vaidyanatha,VC)

This is an application filed under Section 19 of the A.T.Act challenging the punishment imposed in the disciplinary proceedings. Respondents have filed reply. We have heard the learned counsel for the applicant and learned counsel for the respondents and also perused the material on record and enquiry file made available to us by the learned counsel for the respondents.

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2. The applicant was working as a semi-skilled labourer in the Ammunition Factory, Khadki, Pune. It appears on 9.6.1990 when the applicant entered the factory premises, he tried to take his cycle inside the factory premises and when objected by the Security Officer he tried to bribe him. He also did not put his coin in the late-box though he came late.

It is also seen that on the same day when applicant was searched, he was found in possession of Matka slips and other materials and similar things were found in the locker and therefore it is alleged that he was involved in Matka Gambling. The applicant appears to have given two statements making admission of both the charges. First,the applicant was suspended, then a charge-sheet was issued. The applicant filed written statement denying the allegations. The enquiry officer recorded evidence of 5 witnesses and recorded the statement of applicant. He did not produce any evidence in his defence, then the enquiry officer gave a report that both the charges are proved. The enquiry report was sent to the applicant. He did not send any reply.

The disciplinary authority accepted the findings of the enquiry officer and held that both the charges are proved and then passed the order dated 24.4.1991 imposing a penalty of compulsory retirement from service.

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Then, applicant preferred an appeal before the appellate authority. The appellate authority by order dated 3.9.1991 agreed with the disciplinary authority that the charges are proved and held that the penalty imposed is adequate and justified and dismissed the applicant.

3. Being aggrieved by the orders of the enquiry authority and the orders of disciplinary authority and appellate authority, the applicant has approached this Tribunal. His case is that the charges framed against him are not proved. It is also alleged that there are violation of principles of natural justice. There is also an attack on the quantum of punishment. It is asserted that the punishment imposed is grossly disproportionate to the alleged misconduct. It is, therefore, prayed that the order passed by the disciplinary authority and confirmed by the appellate authority may be set aside with all consequential benefits.

4. The respondents have filed the reply mentioning the details of the two charges against the applicant and the nature of evidence produced during the enquiry and they have supported the orders passed by the enquiry authority, the disciplinary authority and the appellate authority.

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5. The learned counsel for the applicant has questioned the correctness and legality of the orders passed by the respective authorities. It is argued that there is no evidence before the competent authority to prove the charges against the applicant and there are number of discrepencies in evidence which are not considered by the authority concerned. Then it is submitted that there is violation of principles of natural justice. Then it is also argued that there was non application of mind by both the disciplinary authority and the appellate authority in not passing a detailed considered order refering to the evidence on record. It is also submitted that the alleged admissions of the applicant were not real admissions but he was made to sign statement prepared by the Security Officer. Then the last argument is that the punishment imposed is grossly disproportionate to the alleged misconduct and requires modification by this Tribunal.

6. As far as the merits of the case are concerned, the charges against the applicant are very serious. In the first charge one allegation is about taking the cycle unauthorisedly inside the factory premises. It is no doubt a minor misconduct. But the second charge is that when objected by the security official, the applicant attempted to bribe him by giving one rupee coin. As far as second charge is concerned, the applicant was in possession of Matka slips both in his possession and also in his locker.

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7. Five witnesses N.V.Gaikwad, Digambar, P.S.Yadav, S.S.Gujjar and A.L.More were examined before the enquiry authority. The applicant did not adduce any evidence but he was examined by the enquiry authority. After enquiry, the enquiry authority had given a finding that the charges are proved.

8. Once the enquiry authority has considered the evidence and recorded a finding of fact , it is well settled that this Tribunal cannot act as an appellate authority and re-examine and re-appreciate the evidence and take a different view, such a course is not permissible in law. The scope of judicial review is not as that of an appellate court. If there is some evidence on record and which has been considered by the enquiry authority and the disciplinary authority and the finding of fact is recorded, then this Tribunal cannot enter into the realm of appreciation of evidence. It may be in a given case if there is or a perverse finding is given by ignoring the evidence the Tribunal may have to interfere;but we have considered that the order of enquiry authority which has considered evidence of each witness and enquiry authority has applied his mind and has recorded finding of fact that the charges are proved. In our view, this finding which is based on appreciation of evidence is not open to challenge.

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Therefore, the argument of learned counsel for the applicant about discrepency in evidence or about want of sufficient evidence does not merit any scrutiny. Even otherwise, we are satisfied that the enquiry authority has considered the evidence from proper perspective and has recorded a correct finding of fact.

9. The argument about violation of principles of natural justice is founded on the fact that the written brief given by the presenting officer was not furnished to the applicant before hand to enable him to file a reply to the same. The fact that delinquent official received the written brief is not disputed. Even the proceeding-sheet maintained by the enquiry authority shows that written brief of presenting officer was furnished to the delinquent official. A copy of the proceeding-sheet dated 27.2.1991 is at page 73 of the Paper-book. It records that "a copy of the proceedings & prosecution witness are given to the accused as requested by him for submitting written brief." It also mentions that "a copy of written brief of PO is also given to the accused". Then, it is also recorded that "written brief dated 4.2.91 was submitted by PO. Written brief dt. 14.2.91 was submitted by Defence assistant which have been taken on record". It may also be pointed out that there is no indication that the written brief was handed over to delinquent on the very same day. It only records "a copy of written brief of PO is also given to the accused".

Even accepting that it was given the same day, nothing prevented the delinquent official to take an adjournment to file a reply to that written brief. If such a request was made and that was refused, then probably the delinquent could say that he was denied an opportunity to file a reply to written brief of PO and consequentially there was failure of principles of natural justice.

10. The learned counsel for the applicant invited our attention to a decision in (1988) 6 ATC 176 (K.Venkataraman vs. Union of India & 4 Ors.); no doubt in Para 17 of the reported judgement it is mentioned that the applicant was forced to file a written brief without seeing a copy of the written brief of PO. But the earlier portion in that para indicates that applicant had demanded a copy of the written brief filed by the PO so as to enable him to file his written brief, that was not allowed and further a request for adjournment for filing written brief was also not granted. Further, in that case there were many other irregularities and therefore the Tribunal found that the enquiry is vitiated.

11. In the present case, one thing is quite clear that written brief of PO was given to the delinquent official even assuming on the same day, the applicant should have made a request for time to file his written brief after filing of PO's written brief. No such attempt is made. Further, it is not shown that fact of written brief of PO being not given

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earlier has prejudiced the case of the applicant. No material is placed before us. Even the enquiry authority has not made any special reference to the written brief of the PO. We have perused the written brief of PO. It does not contain anything except a short repetition of evidence which was already on record. In our view, there is no question of violation of principles of natural justice in the facts and circumstances of this case.

12. The argument about non application of mind by the disciplinary authority or the appellate authority also does not merit consideration in the facts and circumstances of this case. Whenever a higher authority agrees with an order of a lower authority, there is no necessity for writing a detailed speaking order. But the order must show that he has considered the material on record. Both the disciplinary authority and the appellate authority have indicated in their order that they have considered the entire material on record and have agreed with the findings of enquiry authority. It says the undersigned has applied his mind thereto and agrees with the findings of the EO and the compulsory retirement order is passed. It is not necessary to write a lengthy speaking order.

13. The last submission is about quantum of punishment. Now, in this case the disciplinary authority and the appellate authority had reached the conclusion that compulsory retirement is just and adequate punishment.

.. 9/-

As rightly argued on behalf of the respondents, scope of judicial review regarding quantum of punishment is very limited. Since this Tribunal is not exercising appellate power, this Tribunal is not expected to consider the question of adequacy of the punishment imposed by the competent authority. It is for the competent authority to decide as to what is adequate punishment. In our view, this Tribunal cannot consider the question of adequacy of punishment. But it may be where the punishment is grossly disproportionate to the misconduct and shocks the conscience of the court , then this Tribunal may interfere with the quantum of punishment by directly quashing the punishment or remitting the matter to the disciplinary authority to pass appropriate punishment according to law.

14. The first charge in this case is attempting to bribe and the second charge is indulging in Matka Gambling inside the defence premises. The misconduct cannot be said to be a minor misconduct. Matka Gambling is a serious matter which cannot be rightly brushed aside.

15. The learned counsel for the applicant invited out attention to a factory Circular dated 15.7.1981 where some guidelines were given about imposing penalties.

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He invited our attention to Item No. 5 where it is mentioned that in case of Gambling inside the Factory : 1st offence : the punishment should be reduction of pay by 2 stages for a period of one year and for 2nd offence the punishment is removal from service.

We are told that the Circular is issued by the Director General of Ordnance Factories which has been circulated by local officer-in-charge of the workshop. It cannot have a statutory force. It only amounts to guidelines.

Indulging in Matka operation is not mere gambling as contended by the learned counsel for the applicant. Matka operation is a serious operation which involves many factory employees and not merely playing cards where 4-5 persons can sit and play. Therefore, the Circular in question may not apply in the case of Matka operation. Having regard to the gravity of two charges, one about attempting to bribe while other of Matka gambling, it cannot be said that the punishment of compulsory retirement is grossly disproportionate so as to shock the conscience of the court. Therefore, we feel that this is not a fit case where the Tribunal can go into the question of adequacy of punishment and interfere with the same.

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16. After considering the arguments and material on record, we find that there is no merit in the OA. and we also find that in the first statement the applicant has admitted both the charges though after the charge-sheet he has denied the charges. In our view,no case is made out to interefere with the impugned order passed.

17. In the result, the application is dismissed. No costs.

(M.R.KOLHATKAR)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.