

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 709/93

Date of Decision 6.3.97

Ashok Narayanrao Bhopalkar. Petitioner

Shri G.K.Masand.

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri R.K.Shetty.

Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member(J),

The Hon'ble Mr. M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

B.S.Hegde
(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 709 / 1993

11, this the Friday day of March 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Ashok Narayanrao Bhopalkar,
Dani Building,
Near Akashdeep,
22-C, Rest Camp Road,
In front of Banat Chawli,
Deolali Camp,
Deolali.
(By Advocate Shri G.K.Masand)
V/s.

... Applicant.

1. The Union of India,
through the Secretary,
Ministry of Defence, South
Block,
New Delhi.

2. The Chief Engineer,
Military Engineer Service,
Dakshin Mukhyalaya Engineer Shakha,
Headquarters, Southern Command,
Pune - 411 011.

3. The Engineer-in-Chief,
Military Engineer Service,
Army Head Quarters,
Kashmir House, Rajaji Marg,
DHQ PO,
New Delhi - 110 011.

... Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

(Per Shri B.S.Hegde, Member(J))

By this O.A. the applicant is challenging the impugned dismissal order dt. 20.12.1991 by the Disciplinary Authority which has been upheld by the Appellate Authority vide order dt. 17.3.1993 and seek for reinstatement in service immediately.

2. At the time of dismissal from service the applicant was working as a Store Keeper Gr.I in the Respondents Office Military Engineer Service at Deolali. He has

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...2.

put in 25 years of service and his service record is clean and he could not be promoted further pending disciplinary inquiry. Against the dismissal order he preferred an appeal which was rejected by the Appellate Authority vide order dt. 17.3.1993.

3. The applicant was transferred to Pune vide order dt. 10.2.1986. The movement order was passed on 31.3.1986. Since this transfer was to a tenure station and he was relieved on 12.4.1986, thereafter he made a representation to cancel the said posting order. The Chief Engineer, Pune vide order dt. 15.5.1986 cancelled his transfer to the Pune as the applicant was not due for another transfer to a tenure station. The said cancellation order was received by the applicant on 8.7.1986. In the meanwhile, he had requested the Garrison Engineer to defer the handing/taking over of charge till the decision was received from CE, SC Pune. However, the said request was not accepted and he was asked to hand over the charge on 7.5.1986 on 25.4.1986. He applied for half a day's Casual Leave/ to attend to an urgent domestic work and had deposited the store keys with B.S.O. On his resuming his duties on 8.7.1986, he noticed that 117 Nos. of GM Glove valves were missing from the Store, which was reported to B.S.O. and G.E. Thereafter, the applicant was suspended by order dt. 22.7.1986 against which he preferred an appeal, not but he has/received any reply.

4. The respondents lodged a police complaint, the police registered a case under Sec. 409 of the I.P.C. against the applicant. The Chief Judicial Magistrate vide order dt. 8.7.1988 acquitted the applicant on the ground stating that the accused himself informed about missing of the articles and when he was on leave on a day before the incident, then it cannot be said

that the accused committed the criminal breach of trust in respect of the property of the Garrison Engineer. Therefore, he held that the prosecution failed to prove that the accused committed criminal breach of trust in respect of the property of worth Rs.39,376.36 paise. Accordingly, the applicant was acquitted under section 248(1) of the Cr.P.C. for the offence which he has been charged. After the acquittal by the Criminal Court, the applicant's suspension was revoked and reinstated vide order dt. 31.8.1988, but ~~states~~, has not been paid salary due to him from the date of suspension till the date of reinstatement. Thereafter, the applicant was issued with a charge sheet on the very same date on which he was acquitted i.e. 8.7.1988 alleging failure to ensure proper custody and accounting of Store and misappropriation of stores resulting in loss of stores worth Rs.44,606/- . He denied the charges and submitted that since he was honourably acquitted by the Criminal Court on the very same charge/allegation they cannot initiate departmental inquiry. The memo of charges is based on the recommendation of the staff court of inquiry and the copy of the same has been served on the applicant. The statement of witnesses were recorded behind his back and though he sought aid of a Lawyer, the same was not acceded. The Enquiry Officer submitted his Report to the Disciplinary Authority on 12.10.1988 and the Disciplinary Authority inflicted the penalty of dismissal vide order dt. 20.12.1991.

5. The applicant has questioned the inquiry on more than one grounds and submitted that the inquiry was not in accordance with the Rules and the same is required to be quashed. Firstly, the learned counsel for the applicant urged that both orders of the Disciplinary Authori

as well as the Appellate Authority is illegal and is liable to be quashed. Secondly, the initiation of the departmental inquiry after he was honourably acquitted by the Criminal Court on the very same allegation is not warranted. The Departmental Enquiry was vitiated for non-compliance of Rules of natural justice. Since the Enquiry Officer has not examined any witnesses before the applicant and the witnesses were not produced for cross-examination and the Enquiry Officer only used the proceedings of the 'Staff Court of Enquiry' without furnishing a copy of the same to the applicant and the said inquiry is not in accordance with the Rules. The contention of the applicant is that missing of the stores was reported in April itself and no action has been taken by the Respondent Department. It is true that when he was on half a day's Casual Leave, though handing over and taking over procedure was not adopted when he resumed duties he noticed the deficiency in the stores and reported to the competent authority on time. It is an undisputed fact that the Enquiry Officer only used the proceedings of 'Staff Court of Enquiry' in the inquiry without a copy being supplied to the applicant and witnesses were not examined before the applicant, neither they were allowed to be cross-examined by the applicant. Therefore, the whole proceedings of the inquiry was sham and bogus in violation of Rules of natural justice, and further his salary for the period of suspension till the revocation of suspension is withheld and not paid. The Appellate Authority did not give any personal hearing though asked vide letter

dated 28.7.1987 and he acted mechanically without any application of mind in coming to the conclusion and agreed with the findings of the Disciplinary Authority. The appellate authority relied upon some extraneous matters which is not the subject matter of the charge sheet and was given undue importance for the delay in handing over charge immediately. Since the prosecution witnessess were not examined there was no question of cross-examining the witnessess and he relied upon the materials behind his back without giving him an opportunity to explain the materials.

6. On the other hand, the Respondents submitted that after the acquittal of the applicant he was reinstated in service with full back wages and continuity in service. He further contended that the charges levelled against the applicant are entirely different from those levelled against the applicant in the departmental inquiry. The criminal case is a criminal breach of trust, whereas the applicant was issued with memorandum of charges for failure to maintain absolute integrity and devotion to duty. It is conceded that no witnessess were examined and during the inquiry/the entire case was dealt with by Presenting Officer based on documentary evidence, that there is no provisions to give copies of 'Staff Court of Enquiry' to the applicant. The proceedings initiated against the applicant is against the loss of Stores, therefore, there is nothing wrong in initiating the Disciplinary Proceedings against the applicant after the acquittal by the criminal court.

7. Heard Shri G.K.Masand, counsel for the applicant and Shri R.K.Shetty, counsel for the Respondents and perused the documents.

8. The learned counsel for the applicant Shri Masand

draws our attention to the decision of the Supreme Court in Corporation of the City of Nagpur, Civil Lines Nagpur and Another V/s. Ramchandra G. Modak and Ors. (A.I.R. 1984 SC 636) wherein the Apex Court has held as follows :

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal cases is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However, merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor its discretion in any way fettered."

Therefore, he contends that in the instant case, as the applicant has been honourably acquitted by the Criminal Court, it is not open to the Respondents to initiate a departmental inquiry on the very same charge immediately after the acquittal by the Criminal Court. The contention of the Respondents is that the charges levelled against the applicant in the Criminal court are entirely different from those levelled against the applicant in the departmental inquiry. However, on a minute perusal of the charges in both the cases we do not find any such distinction except stating in the departmental inquiry that the failure to maintain absolute integrity and devotion to duty under the Conduct Rules. The Supreme Court in Union of India V/s. J. Ahmed (AIR 1979 SC 1022) has held that mis-conduct arising from ill motive, acts of negligence, errors of judgment or innocent mistakes do not constitute mis-conduct. The allegations would not themselves constitute mis-conduct. According to the Supreme Court, negligence in performing the duty and a lapse in performance of duty or error of Judgment in evaluating the situation may be negligence in discharge of duty but would not constitute mis-conduct

unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

9. In the case before us all that is alleged in the charge sheet is that the applicant was negligent and careless in proper discharge of his duties as a Store Keeper. Therefore, from the averment in the charge sheet, the degree of culpability as observed by the Apex Court cannot be assessed, in the absence of material evidence therefore, we are constrained to hold that the allegation made against the applicant would not constitute mis-conduct or lacks integrity so as to initiate a disciplinary inquiry against the applicant especially after acquittal by the Criminal Court on the same charge. It is true in a domestic enquiry standard of proof is only preponderance of probability, Court cannot act as a fact finding forum, if there is some evidence on record the decision of the Disciplinary Authority cannot be faulted and Court cannot interfere with the quantum of penalty. It is equally true that there is no allegation of mis-conduct against the officer during his entire career. However, the point for determination is whether the proceedings conducted by the Enquiry Officer are vitiated and that the orders of the Disciplinary Authority, as well as, the Appellate Authority suffers from legal infirmity and one in violation of principles of natural justice. Admittedly, the Enquiry Officer came to his conclusion on the basis of the findings of the "Staff Court of Enquiry" and the copy of the said Enquiry has not been furnished. The Enquiry Officer neither examined any prosecution witness nor any defence witness and no opportunity was given to the applicant to cross-examine.

the prosecution witness. The Enquiry Officer only used the proceedings of "Staff Court of Enquiry" in the Enquiry without being furnished a copy of the same even in the "Staff Court of Enquiry", witnesses were not examined by the applicant. Therefore, the whole proceedings of the enquiry was sham and in violation of Rules of natural justice. Since the findings of both the Disciplinary Authority, as well as, the Appellate Authority is based on the findings of the Enquiry Officer, ~~the same is based on the findings of the Enquiry Officer~~, the same suffered from legal infirmity and in violation of Rules of natural justice. In our opinion, both the Disciplinary Authority, as well as, the Appellate Authority have not applied their mind to the facts of the case and arrived at their conclusion on the basis of the findings of the Enquiry Officer and overlooked the fact whether the Enquiry Officer has examined the prosecution witness and defence witnesses which is required to be done under the Rules. Therefore, we hold that the charge sheet and the orders of the Disciplinary Authority and Appellate Authority against the applicant cannot be allowed to stand. It can be said that on the plain reading of the charges, it does not make any imputation of any personal monetary gains or benefits or any corrupt practices. The only allegation is failure to ~~ensure~~ proper safe custody of accounts of Stores resulting in loss worth Rs.44,000/-. In accordance with the Rules of natural justice, as well as, under the CCS(CCA) Rules, 1965, sufficient opportunity ~~should~~ have been given to the applicant to disprove the charge by allowing him to cross-examine the prosecution witnesses and the Enquiry Officer ought not to have used the "Staff Court of Enquiry" material behind the back of

of the applicant and come to his conclusion as the charges are proved against the applicant. Therefore, the charges and the findings of the Disciplinary Authority, as well as, the Appellate Authority cannot be allowed to stand.

10. The learned counsel for the Respondents Shri R.K.Shetty relied on the following decisions in support of his contention stating that the Courts/Tribunals cannot interfere with the findings of the Competent Authority. All the citations relied upon by the Respondents counsel, wherein the principles of law laid down are undisputed, but are ~~not~~ applicable to the facts of the instant case, but are of no assistance to the Respondents in this case.

11. The Apex Court in State of Punjab V/s. K.R.Serry (A.I.R. 1973 SC 834) has observed that :

"With the proliferation of administrative decisions in the welfare State it is now further recognised by Courts both in England and in this country, that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interests and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the evidence in support thereof..... If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity in eye of law, that is a basic concept of the rule of law. Even in an administrative order which involves civil consequences, must be made consistently with the rules of natural justice. etc. ".

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11. In the light of what is discussed above, while allowing the O.A., we quash and set aside the impugned orders of disciplinary authority dt. 20.12.1991 as well as the appellate authority dt. 17.3.1993 dismissing the services of the applicant as the manner in which the enquiry was conducted and the findings of the competent authorities are contrary to statutory Rules, and direct the respondents to reinstate the applicant in service within a period of one month from the date of receipt of this order and regarding salary if not paid, be paid from the date of suspension till reinstatement in accordance with the relevant Rules within a period of two months, but no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.S.Hegde

(B.S.HEGDE)
MEMBER(J).

B.