CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 872/93

Transfer Application No.

Date of Decision 29.10.1997

A.G.B.NAIK — Petitioner/s

Shri E.R.Naik — Advocate for the Petitioners

Versus

Union of India & Ors. — Respondent/s

Shri R.K.Shetty — Advocate for the Respondents

CORAM :

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

Hon'ble Shri. P.P.Srivastava, 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

(P.P.SRIVASTAVA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 872/93

Wednesday this the 29th day of October, 1997

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

A.G.B. Naik
Supervisor Canteen O.F.A.,
residing at H-91/6
Ordinance Factory Estate,
Ambarnath, Dist. Thane.

By Advocate Shri E.R.Naik ... Applicant

V/S.

Union of India through
General Manager,
Ordinance Factory,
Ambarnath, Dist. Thane.

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 challenging the order of dismissal dated 23.1.1992 passed by the disciplinary authority and order of appellate authority dated 15.6.1993. Respondents have filed reply. We have heard the learned counsels appearing on both the sides and perused the pleadings and material on record.

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2. At the relevant time, the applicant was working as Supervisor in the Canteen run in the Ordnance Factory, Ambernath, Dist.Thane. One Mr.D.V.Ramsharma, Chairman and P.K.Nair were incharge of the canteen at the relevant time. It appears that when the applicant was working as Supervisor, Canteen, it is found that he had mis-appropriated the fund to the extent of Rs.52,000/-. Then preliminary enquiry was held and then a chargesheet was issued to the applicant. The applicant filed a reply denying the allegations. Then an enquiry officer was appointed who perused the pass-book, cash-book etc. and gave a report dated 10.5.1991 holding that the charges were proved against the applicant. On that basis the disciplinary authority passed an order dated 23.1.1992 holding that the enquiry report is justified and the charges are duly proved and accordingly held the applicant guilty of the charges and imposed punishment of dismissal from service. Against this order the applicant went in appeal before the competent authority who by a detailed order dated 21.5.1993 dismissed the appeal. Aggrieved by these orders, the applicant has approached this Tribunal.

3. Learned counsel for the applicant contended that the findings of the competent authority during the enquiry proceedings are not justified and the alleged mis-appropriation is not proved. He asked for the documents relied on by the prosecution but they were not furnished along with the charge-sheet or during the

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enquiry, that the applicant was not given right to cross-examine the important prosecution witness D.V. Ram Sharma and it is further submitted that the written admission made by the applicant was taken forcibally and it should not be taken on record. Then, it is further argued that the whole enquiry proceedings are null and void since he is working in the defence establishment and CCS (CCA) Rules do not apply to him. Then an alternative submission was made that the punishment imposed is on the higher side and the court should award lenient punishment.

4. As far as merits of the case is concerned, we are satisfied with the findings of the enquiry authority, disciplinary authority and appellate authority. It is well settled that the judicial review either by the High Court or by this Tribunal to the orders passed by the competent authority is very limited. We must keep in mind that this is not an appellate court. The judicial review is always restricted to find out whether the enquiry is held by observing the principles of natural justice and whether any illegality which goes into the root has been committed by the authority during the disciplinary proceedings. It is now well settled that the Tribunal cannot sit as an appellate court and re-appreciate the findings and take a different view whether the finding of the guilt is justified or not. If any authority is needed for this proposition, it may be found in 1997(1) S.C.SLJ 461 (Rai Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh & ors.) wherein it has been clearly held that the judicial review is not like that of an appellate court. Therefore, we are not prepared to accept the contention of the

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learned counsel for the applicant that the finding recorded by the enquiry officer on merits is not justified or it calls for interference by this Tribunal. The fact finding authority by a very lengthy order has considered the entire evidence and has come to the conclusion that charge of mis-appropriation is proved against the applicant. Then the appellate authority again by a reasoned judgement has considered all the aspects and has recorded the finding of fact against the applicant. Even the appellate authority has considered the entire evidence and by a speaking order confirmed the finding of the disciplinary authority. We do not find any illegality or irregularity in the reasoning or findings of the three authorities. As far as merits, we do not find any reason to disturb the findings of fact recorded by all the three authorities. Even otherwise, we have considered the serious allegations which is supported by the evidence on record and documents produced on record. Hence, on merits we do not find that the applicant has any case.

5. It is argued that the copies of cash-book and pass-book were not furnished to the applicant either along with the chargesheet or during the enquiry. At one stage, the learned counsel for the applicant went to the extent of stating that these documents were not even produced during the enquiry. The learned counsel for

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the respondents brought to our notice that in the proceedings these documents were produced before the enquiry authority and he has considered them and on that basis finding is recorded. No rule or law is brought to our notice that along with the chargesheet the extract of cash-book should have been furnished to the applicant. It is brought to our notice that during the enquiry the applicant was given inspection of the cash-book and other documents and he had the service of defence assistant to cross-examine the witnesses and advanced arguments before the enquiry authority. Hence, we do not find any illegality either in the issuing of charge-sheet or in the enquiry conducted by the concerned authority.

6. Then a statement was made that the witness of Ram Sharma was not allowed to cross-examined by the defence assistant. In our view, on the face of it, his argument is contrary to the materials placed on record and has no basis. The respondents have produced the copies of the entire enquiry proceedings. The copies of deposition of Ram Sharma are at pages 92 to 94 in the paper-book where we find examination of Ram Sharma and cross-examination by the defence assistant. Therefore, the delinquent official, namely, the applicant was given full opportunity to cross-examine Ram Sharma and he has availed that opportunity and therefore the argument that cross-examination was declined has no merit and is accrodingly rejected.

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7. It is also on record that the applicant has given written admission about the mistake committed by him and even deposited a sum of Rs.15,000 in two instalments. The fact that he has deposited the sum and gave admission is not disputed. But the contention is this written admission was taken by force; except bald explanation in this regard, there is no other material on record to substantiate this allegation. The fact finding authority and appellate authority haveaccepted this admission as voluntary and genuine. We do not find any reason to take a different view.

8. The only legal point which merit consideration is about the argument that since the applicant was working in a defence establishment, the enquiry rules CCS(CCA) Rules are not applicable and therefore it was argued that the entire enquiry is vitiated and consequentially the punishment imposed is null and void. Reliance was placed on an unreported decision of Division Bench of the Principal Bench dated 22.3.1993 in OA.NO.1530/90 (Jit Singh vs. Union of India & Ors.). No doubt the said decision supports the argument of the learned counsel for the applicant. Relying on an earlier decision of the Supreme Court in Union of India & Anr. vs. K.S.Subramanian's case (AIR 1989 SC 662), the said Division Bench has held that no enquiry is necessary in the case of a defence employee and the whole proceedings are vitiated and the punishment imposed is also illegal.

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In the usual course, we would have either followed this decision or would have made a reference to the Hon'ble Chairman to refer the point for a decision to Full Bench or Larger Bench. In our view, such a course is not necessary since the matter is covered by a decision of Full Bench of this Tribunal and also subsequent decision by the Supreme Court in the case K.L.Gulati vs. Union of India & Ors. (1994-1996 CAT Full Bench Judgements 353), an identical question arose where it has been held that the defence employee is not covered by CCS(CCA) Rules, still the order of termination passed under those rules are not illegal in as much as the delinquent employee is given extra benefits under the rules. They are nothing but principles of natural justice codified under the rules.

9. Then we come to the another judgement of the Supreme Court in the case of Director General of Ordnance Services & Ors. vs. P.N.Malhotra reported in (1995) 30 ATC 630. In this case also the delinquent official was a civilian employee in the defence service. A disciplinary enquiry was held and on that basis he was dismissed from service. Same argument which is advanced by the learned counsel for the applicant before us and the same argument which found favour with a Division Bench before Principal Bench in OA.NO.1530/90 which is referred to above, were pressed into service before the Apex Court. The argument was that the CCS(CCA) Rules

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1965 are not applicable to a defence employee and therefore the entire enquiry was vitiated. The Supreme Court rejected this argument and held that no prejudice is caused to the delinquent for following the procedure of enquiry under the 1965 Rules. It is, therefore, held that both the enquiry and the punishment imposed are not void. The appeal filed by the Government was allowed and the order of the Tribunal was set aside.

10. In our view, the argument of the learned counsel for the applicant that the whole proceeding is void has no merit and is liable to be rejected. The respondents have conducted the enquiry under the 1965 rules which are nothing but codified principles of natural justice. No prejudice is caused to the applicant. On the other hand, after having lost before all the three authorities, the applicant cannot now say that no enquiry should be held against him. As pointed out no other rule is brought to our notice under which an enquiry can be held. If the doctrine of prejudice is not there, then if the enquiry is held and principles of natural justice are followed, the applicant cannot have any grievance. Therefore, in our view, the argument is liable to be rejected.

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11. The last submission on behalf of the applicant is that the punishment of dismissal from service is too harsh and the court must take a lenient view. In our view, the scope of judicial review is very limited. Imposition of penalty is in the sound discretion of the disciplinary authority. Since we are not sitting in appeal we cannot normally interfere with the penalty imposed by the disciplinary authority. It may be in extreme cases where the punishment is disproportionate to the misconduct which shocks the conscious of the Court, the Tribunal may interfere either directly modifying the order of punishment or remitting the matter back to the disciplinary authority to reconsider and impose appropriate penalty. But in our view, having regard to the facts and circumstances of the case, there is no question of this being a case of punishment shocking the conscious of the court.

12. Here is a case, where the applicant was incharge of the cash of canteen and was found to have misappropriated the funds to the extent of Rs.52,000/-. In a case of mis-appropriation of funds removal from service is not so harsh or gross to call for interference by the Tribunal. Hence, we do not find any merit regarding the quantum of punishment.

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13. In our view, none of the arguments of the applicant merit acceptance. In our view, the orders passed by the authorities are justified and do not call for interference by the Tribunal.

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

At this stage, the learned counsel for the applicant seeks protection from vacation of the quarter which is in his possession for four weeks to enable the applicant to approach higher court. Learned counsel for the respondents opposes. The applicant is granted protection from vacation for a period till the end of November,1997 subject to the condition that the applicant must give a written undertaking that he will vacate the quarters on or before 30.11.1997 unless he gets an order of stay from higher court. The undertaking should be filed on or before 4.11.1997. It is made clear that if no such undertaking is filed, the order granting protection from eviction ceases to operate after that date.

(P.P.SRIVASTAVA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.