IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1136/94

Date of Decision: 12.3.98

Shri Vijay Ganesh Joshi — Applicant.

Shri L.M. Nerlekar. — Advocate for Applicant.

Versus

Union of India and others. — Respondent(s)

Shri V.S.Masurkar. — 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

(R.G.VAIDYANATHA)
VICE CHAIRMAN.

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1136/94.

Dated this Thursday, the 12th day of March, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Vijay Ganesh Joshi,
Projectionist,
Z.T.C. Bhusawal,
Central Railway.

Residing at -
R.B./III/781/A
ZTC Bhusawal,
Pin Code - 425 203. ... Applicant

(By Advocate Shri L.M. Nerlekar)

VERSUS

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

2. The Principal,
Zonal Training Centre,
Bhusawal - 425 203. ... Respondents.

(By Advocate Shri V.S. Masurkar)

: OPEN COURT ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing the application. We have heard the Learned Counsels appearing on both sides.

2. At the relevant time, the applicant was working as a Projectionist in the Zonal Training Centre at

...2

Bhusawal of Central Railway. A disciplinary enquiry was instituted against the applicant for his carelessness and negligence, due to which some moveable articles like V.C.R., one remote control and one cassette were found mising due to theft during the period from 04.12.1993 to 06.12.1993. It is alleged that the key of the room was with the applicant and he had not taken necessary precautions in keeping these articles in the cupboard under lock and key and due to this, some miscreants had committed theft of the articles, which resulted in loss of Rs. 18,000/- to the Railways. On this basis, a charge-sheet was issued to the applicant and the applicant filed a defence denying the allegations. Then, a enquiry was conducted. One Mr. Sayyed was examined on behalf of the prosecution and two witnesses were examined in defence. Then the Inquiry Officer submitted a report dated 29.05.1994 holding that the charge of negligence and carelessness against the applicant was proved. The Disciplinary Authority accepted the report of the Inquiry Authority and passed an order on 09.06.1994 holding that the charge is proved and imposed the penalty against the applicant of dismissal from service with effect from the date of the order.

Aggreieved by the order of the Disciplinary Authority, the applicant preferred an appeal before the Appellate Authority. After giving personal hearing to the applicant, the Appellate Authority by an order

...3

dated 29.09.1994, dismissed the appeal and confirmed the penalty imposed on the applicant.

3. Being aggrieved by the orders of the Disciplinary Authority and the Appellate Authority, the applicant has approached this Tribunal by way of this original application. His case is that, he is not responsible in any way for the loss of the moveable articles from the concerned room. Though a police case was instituted, the police submitted a report that no case is made out. He has also alleged that the enquiry was not conducted properly and the findings of the Inquiry Authority and other authorities are vitiated. That there is no evidence on record to prove the charge against the applicant. That the findings of the respective authorities are perverse and not sustainable in law. It is also alleged that the allegations in the charge-sheet are vague. That there are no connections between the alleged theft and the duties of the applicant. That there is no application of mind both by the Disciplinary Authority and the Appellate Authority. Hence, the applicant has prayed that the orders of the Disciplinary Authority and the Appellate Authority may be set aside and the applicant be reinstated in service with full back wages.

4. The respondents have filed a written statement denying the allegations in the application. They have supported the findings of the Inquiry Authority, Disciplinary Authority and the Appellate

...4

Authority. It is alleged that the theft took place due to the carelessness and negligence on the part of the applicant. That no case is made out for interference with the impugned orders.

5. At the time of argument, the Learned Counsel for the applicant contended that the charge-sheet is vague and does not contain necessary particulars. Then, on merits, he submitted that the findings of the respective authorities are not sustainable in law and there is no legal evidence to connect the applicant with the missing of articles. Then, as far as the punishment order is concerned, he contended that the penalty of dismissal from service is disproportionate to the alleged misconduct and requests for interference of the Tribunal. On the other hand, the Learned Counsel for the respondents refuted all these contentions and contended that the scope of judicial review is limited both regarding merits and punishment and that no case is made out for any interference by this Tribunal.

6. As far as the question of vagueness of the charge-sheet or allegations in the charge-sheet are concerned, we are not impressed by the arguments of the Learned Counsel for the applicant. It is a case of simple charge that during the period in question, the applicant had the key of the particular room and he had not taken necessary precautions to keep the moveable articles in the cupboard under lock and key and due to this, the articles were stolen. The

applicant knew what case he has to meet in defence, therefore, we are satisfied that there is no vagueness in the charge-sheet so as to call for interference by this Tribunal.

As far as the merits are concerned, the Inquiry Authority had framed 5 issued in the case and he has written a very detailed order in which he has considered all the relevant points. Though on issue nos. 1 and 2 he has held in favour of the applicant, on issue nos. 3 to 5, he has held on appreciation of evidence that there was negligence and carelessness on the part of the applicant, since he had not take precautions to keep the V.C.R. and other moveables in the cupboard and then lock the same.

It may be that, if we examine the evidence independently, there will be a possiblity for us to take a different view, but the question is, whether this Tribunal can re-appreciate the evidence and take a different view on merits. The recent trend of decisions rendered by the Supreme Court is that the scope of judicial review is very limited and this Tribunal cannot re-appreciate the evidence on record and take a different view, even if another view is possible (~~decisions in~~ vide 1998 (1) SC SLJ 74 ‖ Union Of India & Others V/s. B. K. Srivastava‖ and in 1998 (1) SC SLJ 78 ‖ Union Of India & Others V/s. A. Nagamalleshwar Rao ‖.

...6

7. It may be in a case where there is no evidence at all or where the findings are perverse, the Tribunal may examine the case on merits. But here, there are some evidence produced by the Inquiry Authority about the conduct of the applicant. It is purely a question of appreciation of evidence where there was carelessness and negligence on the part of the applicant. As rightly argued on behalf of the respondents, we cannot re-appreciate the evidence and take a different view. Therefore, on merits, we are not inclined to interfere with the findings of the Inquiry Authority, though another view is possible.

8. As far as the question of penalty is concerned, we find that on the face of it, the punishment or penalty appears to be disproportionate to the alleged misconduct. It is nobody's case that the applicant has removed these articles. The allegation is that, there was some carelessness or negligence or want of precautions on the part of the applicant. There is not even a whisper anywhere in the materials on record that the applicant had removed the articles in question. On the other hand, the admitted materials on record shows that the lock and seal of the room was in tact. Glass panels had been broken. Then from outside itself one could see that the V.C.R. kept on the television was missing. Therefore, it is nobody's case that the applicant had committed theft or he had removed the articles or

...7

even a suggestion that he was directly responsible for the missing goods. The charge is that the applicant did not take necessary precautions and due to his negligence, the articles were lost.

9. It is a case of financial loss to the Government due to the negligence of the applicant. The normal procedure would be to recover the amount from the official for his negligence. It is possible to levy some other penalty for the negligence of the official, as provided in Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. The rule provides for imposing minor penalties or major penalties but on a mere allegation or even proof of some carelessness on the part of the official the imposition of penalty of dismissal from service shocks the concious of the Court. We are concious of the fact that even regarding penalty, the Tribunal cannot sit as an Appellate Authority and interfere with the penalty imposed by the Appellate Authority as pointed out by the Apex Court in 1997 SCC (L&S) 1209 (Punjab State Civil Supplies Corporation Ltd., Chandigarh & Others V/s. Narinder Singh Nirdosh) on which the Learned Counsel for the respondents placed reliance. Infact, the Supreme Court has observed in para 4 that the High Court is unjustified in interfering with the punishment of reversion, as most lenient view was taken by the Government.

In the present case, the punishment given is an extreme penalty permissible in law, namely - dismissal from service and not in respect of deliberate act of theft but in a case of negligence or carelessness.

...8

The Supreme Court has observed in a recent judgement in B.C. Chaturvedi V/s. Union Of India & Others (1996 SCC (L&S) 80) that the Court or Tribunal can interfere with the penalty imposed by the Disciplinary Authority if it shocks the concious of the Court.

10. At one stage, the Learned Counsel for the respondents invited our attention to some previous punishments imposed on the applicant based on carelessness and negligence and therefore, he submitted that the penalty imposed in this case does not require interference. But there is nothing on record to show that either the Disciplinary Authority or the Appellate Authority had taken into consideration the previous penalties before imposing the penalty in question. The previous penalties should have been brought to the notice of the applicant and then he should have been heard in the matter on the question of imposing a higher penalty in view of the previous penalties imposed on him. Even otherwise, we find that merely because on few occasions earlier there was some minor penalties imposed on the applicant, this itself is not sufficient in the facts and circumstances of this case to impose the extreme penalty of dismissal from service on a charge of carelessness or negligence.

11. The recent trend of the Supreme Court is, even in a case where the Court or Tribunal wants to interfere with the penalty, normally, the Court or Tribunal should not directly substitute the penalty but should remit the matter to the competent authority

to take a decision and impose reasonable penalty as per rules. Therefore, we do not want to directly interfere with the penalty. We only say that the present imposition of penalty of dismissal from service should be set aside and the matter should be remitted to the appellate authority to pass final order regarding penalty after considering the facts and circumstances of the case.

12. As already stated, in case of loss of money, one of the mode of punishment would be to recover the loss of money from the concerned official. Then there are number of minor penalties and major penalties provided under Rule 6. We feel that short of extreme penalty of dismissal or removal from service, the appellate authority may impose appropriate punishment according to rules after taking into consideration the nature of allegations against the applicant, the extent of loss of Government money and other proved facts in this case. We therefore, leave this question entirely to the discretion of the Appellate Authority. In case the appellate authority imposes the penalty of retirement, nothing needs to be said, since retirement comes into effect from the date of earlier order of dismissal from service. However, if the appellate authority imposes any other minor or major penalty or recovery of money etc. then he will decide as to how the period from the date of previous order of dismissal till the date of new order be treated and pass appropriate order as per rules. Since this is an old matter of 1993,

...10

we feel that some-time limit should be given to the appellate authority to pass final orders in this matter.

13. In the result, the application is partly allowed. While not interfering with the finding of guilt recorded by the Disciplinary Authority and Appellate Authority, we only set aside the confirmation of penalty of dismissal from service by the appellate authority. The matter is remitted to the Appellate Authority to decide afresh about the proper penalty to be levied on the applicant in the facts and circumstances of the case and in the light of the observations made in this order. We give liberty to the applicant to make a representation to the appellate authority within four weeks from today, explaining the circumstances only regarding the question of penalty. We direct the appellate authority to pass final orders on this matter within a period of four months from the date of receipt of this order. In the circumstances of the case, there will be no order as to costs.

(M.R.KOLHATKAR)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

os*