IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1319 OF 1994.

Date of Decision: 09-04-99

G. M. Majhi, ..... Applicant.

Shri D. V. Gangal, ..... Advocate for Applicant.

Versus

Union Of India & Another, ..... Respondent(s)

Shri V. S. Masurkar, ..... 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? No

(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. 1319/94.

Pronounced this the 9th day of APRIL, 1999.

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

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

G.M. Majhi
residing at C/o
Manaco Medical Stores,
Near Bhudha Vihar
Govandi.
Bombay. ... Applicant.

By Advocate Shri D.V.Gangal.

V/s.

1. Union of India
through the Flag Officer
Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Marg.,
Fort, Bombay.

2. Commodore,
Chief Staff Officer (P&A)
Western Naval Command
Shahid Bhagat Singh Marg.,
Bombay. ... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

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

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard the learned counsel for both sides.

2. The applicant was working as Unskilled Labour in Western Naval Command since many years. It appears on 15.3.1993 an inicident took place in the office of Shri S.B. Shanbag, Assistant Naval Supply Officer. It appears that applicant went and questioned Shri Shanbag at about 9.00 A.M. about his over time work. It appears that there

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was some exchange of words between the applicant and Shri Shanbag. According to the applicant Shri Shanbag assaulted the applicant. Then he has made allegations as to what incident tool place on that day. Then he has been issued a charge- Sheet alleging mis-conduct on 15.3.1993 that the applicant has assaulted Shri Shanbag and there by committed grave mis-conduct and there by charge-sheet dated 2.4.1993 was issued against the applicant. The applicant denied the allegations. He had engaged a defence assistant to assist him in the enquiry. His case is that the enquiry was conducted by violating the provisions of CCS(CCA) rules in particular he alleges that Rules 14(15), 14(16) and 14(18) have been violated. Though Shri Shanbag was not cited as witness he was examined as witness on 30.6.1993 in spite of protest by the applicant. It is further alleged that Shri Shanbag's complaint and his medical certificate were taken on record on 30.6.1993 in spite of being objected by the applicant. Therefore the applicant boycotted the enquiry. Then the enquiry was conducted ex-parte. It is alleged that even ex-parte enquiry had not been conducted as per rules. The witnesses have been examined without any cross examination. The applicant had not been given opportunity to aduce defence evidence. Mandatory provisions of CCS(CCA) Rules have been violated. The applicant had produced medical certificate and other material to show that it was he who was assaulted by Shri Shanbag and not vice versa. The applicant has been falsely implicated in the enquiry to oblige Shri Shanbag. The enquiry is done contrary to principles of natural justice; that the charge-sheet issued against the applicant was malafide.

It appears that after the enquiry, the Enquiry Officer submitted the report to the effect that the charge is proved. Accepting the enquiry report the Disciplinary Authority passed the inpugned order dated 26.2.1994 holding the applicant as guilty of charge and dismissed him from service. Then the applicant preferred an appeal before the Appellate Authority. The Appellate Authority by order dated 23.9.1994 dismissed the appeal and confirmed the order of the Disiciplinary Authority. Being aggrieved by these orders the applicant has approached this Tribunal. The applicant has prayed that the order of Disciplinary Authority and Appellate Authority be quashed and he may be re-instated in service with full backwages and consequential reliefs.

3. The respondents in their reply have stated that on 15.3.1993 at 10.45 A.M. the applicant entered the cabin of Shri Shanbag and left the cabin and then again entered the cabin and argued with Shri Shanbag and then became aggressive and assaulted Shri Shanbag with his chappal repeatedly. Some othe officers entered the cabin and took him out of the cabin and Shri Shanbag was taken for medical treatment. The Officer who intervened Shri P.B. Dharyawan and two others gave report about the incident. Then the applicant was issued a major penalty charge-sheet dated 2.4.1993. While admitting that the applicant objected to the statement and medical report of Shri Shanbag being taken on record, it is stated that Enquiry Officer over ruled the objections. Subsequently the applicant did not participate in the enquiry in spite of number of opportunities.

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The allegations of the applicant that he himself was assaulted by Shri Shanbag was denied. It is stated that several opportunities was given to the applicant but he did not participate in the enquiry. He did not choose to cross examine the prosecution witnesses. He did not produce any defence witness. That enquiry has been done as per rules that there are no irregularities or illegality in conducting the enquiry. It is therefore stated that there is no merit in the application and it may be dismissed.

4. The learned counsel for the applicant contended that the whole enquiry is vitiated and is contracry to rules and in violation of principles of natural justice. He commented on examination of Shri Shanbag who was not cited as witness in the charge- sheet. He commented on taking Shanbag's complaint and medical certificate on 30.6.1993 which were not and which could not be part of the charge-sheet. He commented violation of Rules 14(15), 14(16) and 14(18) of CCS(CCA) Rules. He also argued that even ex-parte enquiry has not been done as per rules. It is argued that the applicant was seriously prejudiced by this violation of rules and violation of principles of natural justice. According to him it was applicant who was assaulted by Shri Shanbag and not a case of applicant assaulting Shri Shanbag. It is therefore argued that the report of the enquiry officer, order of the Disciplinary Authoirity and the order of the Appellate Authority are not sustainable in law and may be quashed. On the other hand the learned counsel for the respondents supported the action taken by the administration.

He argued that theenquiry has been done as per rules. That no prejudice has been caused to the applicant. That the applicant has boycotted the enquiry and not participated in the enquiry and he cannot now turn round and say that he was prevented from cross-examination of witnesses. He, therefore, submitted that there is no merit in the application.

5. The only point to be considered is, whether the applicant has made any case for our interference and for quashing of the enquiry report, order of the Disciplinary Authority and the Appellate Authority ?

6. The first ground of attack by the Learned Counsel for the applicant is that Mr. Shanbag could not have been examined as a witness when he was not cited as a witness in the charge-sheet. It is true that as a normal rule, persons who are cited in the charge-sheet as witnesses could only be examined. But this general rule has an exception. The exception is provided in the statutory rules itself. C.C.S(C.C.A.) Rules, 1965 provides for detailed procedure about departmental enquiries. In particular, Rule 14 provides the procedure to be observed by the Disciplinary Authority and the Inquiring Authority while conducting the enquiry. Rule 14(15) clearly provides that before the close of the case on behalf of the Disciplinary Authority and if it appears necessary, the Inquiring Authority may in his discretion allow the Presenting Officer to produce the evidence which is not included in the charge-sheet. Then the Enquiry Authority is also given suo motto power to call for any new evidence which may be necessary.

Therefore, the rules itself give discretion to the Inquiring Authority to admit additional evidence which was not included in the charge-sheet. Therefore, if in the facts and circumstances of the case, the Inquiring Authority allows Mr. Shanbag to be examined as a Witness, there is nothing irregular or illegal and on the other hand, it is provided under the rules. Further, it is not a case of any surprise being caused to the applicant by examining a altogether a new witness who is unconnected with the incident or whose name is not disclosed in the enquiry papers. On the other hand, the very charge against the applicant is, that he assaulted Mr. Shanbag on 15.03.1993. Therefore, the applicant knows what case he has to meet, namely - the allegation that he assaulted Mr. Shanbag on 15.03.1993 in his office room. If Mr. Shanbag is examined as a witness, the applicant is not taken by surprise. It is not a new case that is sought to be introduced during the enquiry. The very foundation of the charge-sheet is, that the applicant assaulted Mr. Shanbag. Since Mr. Shanbag is a victim of assault, the Disciplinary Authority might have felt that he has to be examined as a victim and not as a Witness. May be by oversight or by mistake Mr. Shanbag's name is not shown as a Witness in the charge-sheet. Since the applicant is not taken by surprise since he knows what case he has to meet, namely - assault on Mr. Shanbag, no prejudice is caused to him by examining Mr. Shanbag. The Inquiring Authority has full powers to examine additional witnesses under Rule 14(15) of the C.C.S(C.C.A) Rules, 1965 before the closure of the case. It is not the applicant's case that Mr. Shanbag was examined after the prosecution closed his case and after the defence evidence, etc. The argument that Mr. Shanbag should have been examined as a last witness on behalf of the Disciplinary Authority

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and not as a first witness is a hyper-technical argument which cannot be accepted. Whether he is examined as a first witness, fourth witness or last witness is immaterial so long as he is examined before the Disciplinary Authority closes its case and so long as the Inquiry Authority has powers to examine additional witnesses, who are not cited in the charge-sheet. The witnesses have been tendered for cross-examination and therefore, the applicant could have cross-examined the witnesses. Therefore, we do not find any merit in the applicant's contention about any alleged illegality or irregularity in the examination of Mr. Shanbag as a Witness.

7. The next argument is about taking Mr. Shanbag's written statement or written complaint prepared on the date of deposition as a evidence on record alongwith medical certificate of Mr. Shanbag dated 17.06.1993. There appears to be some justification in this contention. The Inquiring Authority should not have taken any written complaint or written statement of Mr. Shanbag prepared on 30.06.1993. As far as the medical certificate is concerned, though issued on 17.06.1993, it contains the findings of the Medical Officer when he examined Mr. Shanbag on 15.03.1993. Sometime medical certificates are issued after a month or two or three, but if the certificate shows a record of previous finding, it can be admitted in evidence. Infact, the Appellate Authority has sent for the Medical Register and satisfied himself that Mr. Shanbag was examined by the doctor on 15.03.1993 and entries have been made in the medical register, though a formal certificate came to be issued on 17.06.1993.

Now let us for a moment accept the contention of the applicant's counsel that both, the written complaint of Mr. Shanbag and the medical certificate dated 17.06.1993 should not be taken on record, then the question is as to what should be done. If some inadmissible evidence has come on record, it can be ignored and then find out whether the remaining evidence on record is sufficient to sustain the charge or not. Even if we agree for a moment that the order of the Disciplinary Authority is vitiated since inadmissible evidence has been taken on record, this Tribunal can set aside the order of the Disciplinary Authority and remand the matter to the Disciplinary Authority to give a finding excluding these two documents from consideration. The whole enquiry is not vitiated if one or two documents are found to be inadmissible in evidence. Therefore, even if we accept the contention of the applicant's counsel, the least we can do is to exclude those two documents from consideration. There is no necessity of remanding matter to the disciplinary authority if on the available materials on record, the finding of the Disciplinary Authority could be justified. If the Disciplinary Authority has based its conclusion entirely on these two documents and if there is no other evidence produced, then probably the enquiry stands vitiated if inadmissible evidence is excluded from consideration, there is no other material to support the finding of guilt. Therefore, in all such cases, the question is one of test of prejudice. What prejudice has been caused to the applicant in taking these two inadmissible material on record.

8. The Learned Counsel for the respondents has placed before us the entire enquiry file. We have perused the enquiry report. The enquiry office has rested his conclusion mainly on the oral evidence of the witnesses examined before him. He has not discussed about the written complaint or written statement of Mr. Shanbag dated 30.06.1993 and the medical certificate dated 17.06.1993 produced by him. Therefore, no prejudice is caused to the applicant because the Inquiring Authority has based his findings not on the basis of the two inadmissible documents but he has given a finding that the charge is proved only on the basis of oral evidence of Mr. Shanbag and other witnesses. As far as the Disciplinary Authority is concerned, he has not made any independent assessment of evidence at all and he simply accepted the report of the Inquiry Officer and held that the charge is proved and passed the order of punishment. Therefore, there is nothing to show that either the Inquiry Officer or the Disciplinary Authority based their conclusion on the basis of the two inadmissible document. Therefore, it would be an empty formality now to set aside the order of the Disciplinary Authority and to remand the matter to the Disciplinary Authority for excluding the two inadmissible documents and to pass a fresh order. When both the Inquiring Authority and the Disciplinary Authority have not discussed or referred to or based their conclusion on the basis of the two inadmissible documents, it would be an exercise in futility to remand the matter to them and to give a finding excluding the two documents from consideration. Though these two documents should not have been taken on record, no prejudice is caused to the applicant, since the Inquiring Authority or the Disciplinary Authority have not based their finding on the basis of these

two documents. On this point we are fortified by the decision of the Apex Court reported in AIR 1991 SC 677 (Kuldeep Singh V/s. Commissioner of Police) wherein the Supreme Court has noticed in para 39 of the judgement that some documents had not been relied on in the charge/sheet but produced later in evidence. The Supreme Court pointed out that those documents should not have been taken on record and should be excluded from consideration and then examined the evidence excluding those documents and found that there was no other evidence to support the charges. But in the present case, we find that even if we exclude those two documents, there is abundant unchallenged evidences of the victim and the three eye witnesses who prove the charge.

The Learned Counsel for the applicant relied on 1988(6) ATC 176 (K. Venkataraman V/s. Union Of India & Others) but on perusal of the reported judgement we do not find that it has any bearing on the point under consideration.

We are not impressed by the argument of the Learned Counsel for the applicant that there is violation of Rule 14(15), (16) and (18) or about violation of principles of natural justice. The applicant, for reasons best known to him, boycotted the disciplinary enquiry and refused to cross-examine the witnesses inspite of he being given two, three opportunities by the Enquiry Officer to avail the cross-examination of the witnesses. It is not a simple case of ex-parte enquiry when a delinquent official refused to appear before the Inquiry Officer after the service of notice. Here is a case where the

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applicant alongwith the Defence Assistant appeared before the Inquiry Officer and participated in the enquiry on two three hearing dates and subsequently deliberately boycotted the enquiry inspite of more than one opportunity given by the Enquiry Officer and now he cannot turn round and say that there is violation of principles of natural justice or that he was not given an opportunity to give defence evidence, etc. When he himself deliberately and consciously boycotted the enquiry by giving a written protest note, he has no right to say that there is violation of principles of natural justice or that he was not given opportunity to produce defence evidence. The applicant having taken such a stand consciously and deliberately to boycott the enquiry, he must accept if any adverse order is passed against him. It is too late in the day now to canvass before the Tribunal in 1999 that he must be given an opportunity of cross examining the witnesses or adducing defence evidence in an enquiry which was concluded in 1993. If the applicant was so serious, he could have still cross examined Mr. Shanbag under protest and he could not have objection to cross-examine other witnesses who are cited in the charge-sheet. Not having availed the opportunity given to him for cross-examining the witnesses, it is not open to him to canvass before this Tribunal that there was no proper enquiry or there was violation of principles of natural justice. We have perused from the enquiry file that inspite of the protest note given by the applicant, the enquiry officer has given two three hearing dates and issued notice to him to appear on the next date and cross-examine the witnesses. The applicant had even engaged Mr. B. I. Mistry, as a Defence Assistant to assist him. We find from the order sheet in the enquiry file that on 22.06.1993 on the request of the

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Applicant's Defence Assistant, xerox copies of all the documents were furnished to him. On 30.06.1993 Mr. Shanbag was examined by the Presenting Officer. Then on the request of the applicant's Defence Assistant, the case was adjourned to 06.07.1993 but on that date the applicant was present but his Defence Assistant was not present. Then it was adjourned to 07.07.1993. But on that date the applicant and his Defence Assistant remained absent. But he had sent a written note of protest and then deliberately boycotted the enquiry. Still the Enquiring Authority adjourned the case to 13.07.1993 and issued a notice to the applicant to appear on that day and cross-examine the witnesses. On 13.07.1993 again both the applicant and his Defence Assistant were absent. It is on record that the Defence Assistant made a telephone call to the Inquiring Authority asking for an adjournment since he was on casual leave. Then the case was adjourned to 16.07.1993. Both, the applicant and his Defence Assistant were present. Witness - Mr. Shanbag was offered for cross-examination. Then the applicant gave a letter of protest and submitted that he does not want to participate and withdrew from the enquiry. Then the case was adjourned to 21.07.1993. Both, the applicant and his Defence Assistant were absent. Then the Inquiring Authority felt that one more opportunity should be given and accordingly adjourned the case to 03.08.1993 with one more notice to the applicant to appear on that day and to cross-examine the witnesses. But on 03.08.1993 again the applicant and his Defence Assistant remained absent. Then the Inquiring Authority had no option and, therefore, recorded the evidences of three more witnesses and adjourned the case to 13.08.1993. On that day one more witness was examined. On the basis of the statement of witnesses, the Inquiring Authority submitted the report.

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9. Therefore, we find that the applicant had more than sufficient opportunity to cross-examine the witnesses and to present his case. He consciously and deliberately boycotted and did not participate in the enquiry either for cross examining the prosecuting witnesses or producing his defence evidence. He cannot now complain about violation of rules or principles of natural justice. We are satisfied from the perusal of the record that applicant had been given more than sufficient opportunity to participate in the enquiry and to cross-examine the witnesses, etc.

10. The Learned Counsel for the applicant placed reliance on a note below Rule 14(15) which says that new evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. But it clearly provides that such evidence may be called for only when there is a inherent lacuna or defect in the evidence which has been produced originally.

As already stated, it is not a case of Mr. Shanbag being introduced as a witness for the first time on 30.06.1993. The very allegation of the charge-sheet is that the applicant assaulted Mr. Shanbaug. Therefore, Mr. Shanbag being a victim, is a competent witness but by mistake or by oversight, his name has not been shown in the list of witnesses in the charge-sheet. It is not a new case made out to bring a new witness to speak about the assault. We have already pointed out that Mr. Shanbag being the victim of assault, is a competent witness to be examined in this case and it is not a new case sought to be introduced or made out by examining Mr. Shanbag.

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Therefore, we do not find any merit in the contention of the applicant about new evidence being produced to fill up some lacuna or gap in the prosecution case.

11. Now coming to the merits of the case, the allegation about the applicant is that he went on 15.03.1993 and asked Mr. Shanbag as to why he was not given overtime work. Then Mr. Shanbag told him to enquire from a particular officer. Then the applicant went outside and again entered the cabin and quarrelled with Mr. Shanbag on the ground of not giving him overtime and assaulted him with chappal. We have direct evidence of Mr. Shanbag who speaks about assault on him by the applicant. Even granting for a moment we should exclude the evidence of Mr. Shanbag, we have a direct evidence of P.W. 2 - Shri P. B. Dhairyawan, P.W.3 - Shri N. J. Kahar, P.W. 4 - Mrs. S. D. Kale, who are all eye witnesses to the incident. They clearly say that the applicant assaulted Mr. Shanbag with a chappal. Therefore, even if we ignore the evidence of Mr. Shanbag on the ground that his name has not been cited in the charge-sheet, as contended by the applicant's counsel, the direct evidence of P.W.2, P.W.3 and P.W.4 is sufficient to prove the misconduct of the official in assaulting the officer during office hours in the office room. Then we have the evidence of P.W.-5, H. Y. Ranojia, who is from the Security Office, who speaks about the first incident when the applicant quarrelled with Mr. Shanbag and threatened him and went away. We have already seen that the second incident took place sometime later when the applicant again entered the room and assaulted Mr. Shanbag.

Then further, P.W.-5, Mr. Ranojia has stated in the evidence that after the first instance, he went to his Security Office and after an hour later, he got a phone message about the assault on Mr. Shanbag and then he went there. The evidence also shows that the applicant was caught red handed and later taken to Security Office. Infact, we have one document on record which is the applicant's representation dated 08.04.1993 and which he has annexed to his appeal memo when he presented the appeal to the Appellate Authority. What is interesting to notice is,that in his representation dated 08.04.1993 the applicant admits that he did assault Mr. Shanbaug on that day but says that he did it after he was assaulted by Mr. Shanbag. In other words, he was first assaulted by Mr. Shanbag and then in retaliation, he also assaulted Mr. Shanbag. In a way he admits that he did assault Mr. Shanbag. As far as his version that he was assaulted by Mr. Shanbag is concerned, he has not examined any witness to prove the same. As already stated, he boycotted the enquiry and did not adduce any evidence to prove that Mr. Shanbag assaulted him. As far as the applicant assaulted Shanbag is concerned, we have the direct evidence of Mr. Shanbag and three eye-witnesses and in addition to applicant's admission that he did assault Mr. Shanbag on that day.

12. Now it is clearly well settled by the recent decisions of the Apex Court that Court or Tribunal cannot sit in appeal over the findings of the domestic tribunal. The Court or Tribunal is only concerned with the legality of the decision making process and not about its actual decision itself. This Tribunal has no power to re-appreciate the evidence and take a different view even if another

view is possible. Though there are number of decisions on this point, it is sufficient to refer to the latest decision of the Apex Court reported in A.I.R. 1999 SC 625 (Apparel Export Promotion Council V/s. A. K. Chopra). In this case the Supreme Court has considered many earlier decisions and has reiterated the view that the Tribunal or Court cannot and should not act as a Appellate Forum and re-appreciate the evidence.

The Appellate Authority has given personal hearing to the applicant and has written a very well reasoned order meeting all the contentions of the applicant and dismissed the appeal on merits. After going through the entire materials on record, we are satisfied that no case is made out for interferring with the order of punishment passed in the disciplinary enquiry.

13. In the result, the O.A. fails and is hereby dismissed with no order as to costs.

(D. S. BAWEJA)
MEMBER (A)

9.4.99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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