Ori. in OA 1330/93

OA 66/94

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1330/93 AND 66/94.

Dated this Wednesday, the 17th day of June, 1998.

CORAM :

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

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Shri Bhallu Behera,
residing at -
Indira Sahakar Nagar,
Janata Mitra Mandal,
Nehru Road, Mulund (W),
Bombay - 400 080. .. Applicant in O.A. No. 1330/93.

Shri N. R. Chaudhari,
residing at -
Room No. 27, Ismail Chawl,
Hariyali Village,
Vikhroli (East),
Bombay - 400 083. .. Applicant in O.A. No. 66/94.

(By Advocate Shri L.M. Nerlekar)

VERSUS

Vice-Admiral,
Chief of Naval Staff (Personnel),
Naval Head Quarters,
New Delhi - 110 011. .. Respondents in both the O.As.

(By Advocate Shri V.S. Masurkar)

: OPEN COURT ORDER :

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

These are two applications filed by the respective applicants challenging the order of termination. Since identical question of law arises for consideration in both the cases, they are disposed of by this common order. Respondents have filed

reply in both these cases. We have heard the Learned Counsels appearing on both sides.

2. The applicants in both theses cases, were working in the Naval Dockyard at Bombay. Earlier the Disciplinary Authority passed an order in both the cases with-holding increments for a period of three years. Subsequently, the Disciplinary Authority by an order dated 05.04.1988 enhanced the punishment to one of removal from service in both these cases. Both the applicants challenged the said order by filing two previous O.As. No. 154/89 and 155/89. Both the O.As. came to be allowed by this Tribunal by an order dated 20.07.1992. This Tribunal quashed both the orders on the ground that the Authority who passed the order of revision, had no jurisdiction to pass that order and, therefore, both the orders in respect of the two applicants came to be quashed.

Subsequently, the Disciplinary Authority issued a fresh show cause notice to the applicants and after getting their reply, passed the two impugned orders dated 19.02.1993 under which again the punishment is enhanced to one of removal from service. The applicants have filed these two O.As. challenging the order of 19.02.1993 mainly on the ground of want of jurisdiction.

3. The respondents in their reply have stated that the applicants have not exhausted the statutory

remedy of appeal and, therefore, the O.As. are not maintainable. That the Disciplinary Authority has taken a fresh action and enhanced the punishment as provided in the C.C.A. Rules. The Disciplinary Authority has heard the applicants and then passed the orders as per rules. It is, therefore, stated that there is no merit in the applications and both the applications were dismissed.

4. The main attack by the Learned Counsel for the applicant on the two impugned orders is on the ground of want of jurisdiction. It was argued that the order passed by the Disciplinary Authority enhancing the punishment, is without jurisdiction since no such power is conferred on the Disciplinary Authority under the C.C.A. Rules. While supporting the impugned orders on merits, the Learned Counsel for the respondents contended that the O.A. is not maintainable for non-joinder of parties, for not filing a proper O.A. as per the prescribed format and the applicants have not exhausted the statutory remedy of appeals.

5. As far as merits are concerned, the applicants are challenging on the ground that the Disciplinary Authority is not given power of review or revision over his own order. It is not disputed that Admiral Superintendent of the Naval Dockyard is the Disciplinary Authority. The original order and the impugned orders are passed by the Admiral Superintendent. It is brought to our notice that the ranks of the

officers holding that post may change like Rear-Admiral, Vice-Admiral, etc. but there is no dispute that the Admiral Superintendent of the Naval Dockyard is the Disciplinary Authority. Even in the written statement in many paras it is admitted that the impugned order is passed by the Disciplinary Authority. In more than one place it is admitted in the reply that the impugned orders are passed by the Disciplinary Authority. We have perused the C.C.A. C.C.S. Rules but we do not find any provision giving a power of review or revision to the Disciplinary Authority regarding enhancement of punishment. Rule 29 provides for revision and the revising authority is given powers to confirm, modify or set aside an order, or to reduce or enhance the penalty. Rule 29(1) provides certain authorities who are competent to pass orders in revision, which includes the Appellate Authority. But no power is given to the Disciplinary Authority to review his own order for the purpose of enhancing the punishment. Rule 29(1)(vi) no doubt provides that any authority specified in this behalf by the President may also exercise the said power of revision. There is nothing produced before us to show that the President has authorised the Disciplinary Authority to review his own order for the purpose of enhancing the punishment. We may also notice that though the Appellate Authority is also given power of revision, it is restricted to a period of six months from the date of original order of punishment. That means, the Appellate Authority can exercise the power

within a period of six months from the date of original order of punishment. But in the present case, for one thing, the Disciplinary Authority is not conferred with revisional powers at all and on the other, he has not exercised that power within a period of six months. Therefore, on the face of it, we find that the order passed by the Disciplinary Authority reviewing his earlier order and enhancing the punishment is without jurisdiction. Infact, on the same ground this Bench had earlier set aside the order passed by the Disciplinary Authority but still the Disciplinary Authority has again passed a similar order.

6. The Learned Counsel for the applicant also brought to our notice an unreported judgement of a Division Bench of this Tribunal dated 10.12.1997 in O.A. No. 1091/92 to which one of us was a party (Justice R. G. Vaidyanatha, Vice-Chairman), where an identical question arose in a similar case. That was also a case where one of the employee had been given minor punishment earlier and latter the punishment was enhanced and this Tribunal by an order dated 13.02.1992 in O.A. No. 941/89 had set aside that order on the ground that the Disciplinary Authority was not competent to revise or review his own order. Then after the order was quashed, the Disciplinary Authority again issued a fresh show cause notice for enhancing the punishment. The said show cause notice was challenged before this Tribunal in O.A. No. 1091/92. This Tribunal by an order dated 10.12.1997 held that the Disciplinary

Authority had become functus-officio after passing the original order of penalty and he cannot review or revise his own order and, therefore, the show cause notice issued by him was liable to be quashed and accordingly quashed. However, liberty was given to the competent authority under Rule 29 to take fresh action, if necessary, according to law.

Similarly, even in the present case, a show cause notice was issued and final impugned order passed by the Disciplinary Authority but he has no power of review or revision under the Rules. Hence, in our view, the impugned order is liable to be set aside on this legal ground.

7. Now coming to some of the objections raised by the Learned Counsel for the respondents, we say that none of them merit consideration, particularly at this belated stage.

As far as the argument that the format is not proper since all the grounds are not taken in para 5 as required by the rules, does not appeal to us. Though in para 5 under the heading 'Grounds' no grounds are really mentioned, we find in other paras the applicants have challenged the impugned order on the ground of want of jurisdiction (vide para 4.8 and 4.9 of the O.A.) It is well settled that all rules are to aid the final relief to be granted by the Tribunal. After six years we cannot dismiss this

O.A. for want of proper format. Certain objections should have been pressed into service at the time of admission and if the Tribunal was persuaded to accept that argument, the Tribunal could have directed the applicants either to amend the O.A. or to file a fresh O.A.

Similarly, the argument regarding not exhausting statutory remedy is concerned, we only say that what Section 20 of the Administrative Tribunals Act states is that - the Tribunal shall not ordinarily admit an application unless the applicant has exhausted all other remedies. It is only an enabling provision. There is no blanket bar that the Tribunal has no jurisdiction to entertain an application unless other remedies are exhausted and in a given case, the Tribunal may admit an application even if statutory remedy is not exhausted. In this particular case, we find that the applicants did file an appeal dated 12.04.1993 but the respondents' contention is that the appeal is addressed to a wrong authority and not to an appropriate authority and not through proper channel. We notice that the impugned order is per se without jurisdiction and therefore, after a lapse of six years we cannot now direct the applicants to present an appeal before the competent authority and take their chance.

8. Another argument about non-joinder of parties also does not appeal to us. It is true that

the Disciplinary Authority and the Union Of India are not made parties to this O.A. but the Chief of Naval Staff represented by the Vice-Admiral has been made a party, who is the head of the Institution. The Court could give direction to the applicants to amend the O.A. by adding necessary parties, to give effect to the orders of this Tribunal. ~~In~~ An effect, if order could be passed and therefore, the O.A. cannot be rejected on the ground of non-joinder of necessary parties. However, if this objection had been taken at an earlier stage and the Tribunal had been persuaded to accept it at the time of admission, the Tribunal would have rejected the O.A. or would have given liberty to the applicants to amend the O.A. to include proper parties.

9. In the view we have taken that the impugned order is not sustainable in law, and the natural corollary is that the respondents should be directed to reinstate the applicant forthwith. The Learned Counsel for the respondents brought to our notice that many employees, on the same allegations of getting employment by producing bogus school leaving certificate, were dismissed except 3 to 4 employees like the present applicants, who were given only minor punishment. The Learned Counsel for the respondents submitted that in view of the serious allegations against the applicants, this Tribunal should not order reinstatement. But since the impugned order of removal from service is

without jurisdiction, the applicants will have to be reinstated forthwith. Since the applicants are successful on a technical ground and since they have already admitted their guilt and were punished for producing bogus school leaving certificate and taking into consideration that many of the employees who were on the same footings as the applicants, were dismissed from service, we are not inclined to grant any backwages to the applicants. Then remains the question, whether opportunity should be given to the respondents to take action according to law? Having regard to the circumstances of the case, we leave the question open and it is open to the competent authority, if so advised, to take whatever action deemed fit within the four corners of law.

10. In the result, the O.A.s are allowed. The impugned orders of removal from service dated 19.02.1993 are hereby quashed on the ground that the Disciplinary Authority has no jurisdiction to pass such an order. The applicants shall be reinstated in service within one month from the date of receipt of this order. It is made clear that the applicants are not entitled to any backwages prior to the date of reinstatement. In the circumstances of the case there will be no order as to costs.

MEMBER (A). VICE-CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD,MUMBAI:1

C.P. 51/98 and C.P. 52/98 in
Original Application No. 1330/93 and 66/94.

Monday the 31st day of May 1999.

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

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

Bhallu Behera ... Applicant in OA 1330/93

N.R. Chaudhari ... Applicant in OA 66/94

By Advocate Shri L.M. Nerlekar.

V/s.

Shri Manjit Singh and Another. ... Respondents.

By Advocate Shri V.S.Masurkar.

ORDER (ORAL)

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

Contempt Petition No. 51/98 and 52/98 have been filed by the applicants alleging that the respondents have not complied with the order of the Tribunal dated 17.6.1998 in O.A. 1330/93 and 66/94. The respondents have filed the reply. We have heard both the counsel.

2. Though there is some delay in complying with the order of the Tribunal dated 17.6.1998, the respondents have given some explanation for the delay in complying with the order of the Tribunal. It is now seen that the respondents have re-instated the applicants in service by order dated 10.12.1998. Since the respondents have given some explanation for the delay in complying with the order dated 17.6.1998, we find that it is not a fit case to take any action for the delay.

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3. The learned counsel for the applicants states that the respondents have not paid the applicants the monetory benefit which are due to them on account of re-instatement. As far as the delay is concerned the respondents have explained the delay vide order dated 15.1.1999 (Exhibit R-3) It is clearly stated that the applicants are entitled to wages from 24.7.1998 till the date of re-instatement. Though the order dated 15.1.1999 shows that the applicants were re-instated with retrispective effect i.e. from 24.7.1998 the applicants were actually reinstated from 10.12.1998. Therefore the applicants are entitled to full wages for the period from 24.7.1998 to 10.12.1998 or till the date of actual re-instatement. There is no material on either side to show that the payment has been made to the applicants for the said period or not. Therefore a direction be given to the respondents to comply with the order of the Tribunal and pay the monetary benefits to the applicants.

4. In the result the C.Ps are disposed of with a direction to the respondents to pay full backwages to the applicants for the period from 24.7.98 to 10.12.1998 or till the date of actual re-instatement, within a period of four weeks from the date of receipt of this order. In case of any further delay on the part of the respondents in complying with the order, liberty is given to the applicant to approach this Tribunal again according to law.

Copy of the order be furnished to the parties.