CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 99 OF 1994.

Date of Decision : 6.11.1998

H. P. Nanak, Petitioner.

Shri S. P. Saxena, Advocate for the Petitioner.

VERSUS

Union Of India & 2 Others, Respondents.

Shri R. K. Shetty, Advocate for the Respondents.

CORAM :

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

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

(i) To be referred to the Reporter or not ? No

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? No

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os*

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

Original Application No. 99/94

Pronounced the 6th day of November 1998.

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

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

H.P. Nanak
Tkt. No. W- 149
Welder 'B' Gr.
Yeshwant Nagar
S.No. 106, Katharwadi
Yerawada. Pune. ... Applicant.

By Advocate Shri S.P. Saxena.

V/s.

Union of India through
The Secretary,
Ministry of Defence,
South Block, DHQ Post Office
New Delhi.

The Director General
Ordnance Factory Board,
10 A, Auckland Road,
Calcutta.

The General Manager
High Explosive Factory
Kirkee, Pune. ... Respondents.

By Advocate Shri R.K. Shetty.

O R D E R

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

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard Shri S.P. Saxena, counsel for the applicant and Shri R.K. Shetty, counsel for the respondents.

2. The applicant was working as Welder 'B' Grade in the High Explosive Factory, Kirkee, Pune. A charge-sheet was issued to him alleging that on 25.10.1980 he assaulted a co-worker Shri Jamdade and further it was alleged that the applicant was lending money on high interest to

...2...

to the factory employees inside the factory premises and there by the applicant has committed mis-conduct. The applicant has filed reply denying the allegations. An Enquiry Officer was appointed. The applicant was represented by a defence assistant. During the enquiry seven witnesses were examined and some documents were marked on behalf of prosecution. The applicant examined one defence witness and the presenting officer and the applicant submitted their written briefs. Then the Enquiry Officer gave a report dated 17.4.80 holding that both the charges were proved. On the basis of the enquiry report the Disciplinary Authority passed an order dated 3.6.1982 by imposing a penalty of removal from service. The applicant has filed an appeal before the Appellate Authority which came to be dismissed. Then he filed a wirt petition in the High Court of Bombay in 1984 which came to be transfered to this Tribunal and re-numbered as TA 483/87. The said application came to be allowed by this Tribunal on the sole ground that the ~~enquiry~~ order being vitiated for not supplying a copy of the enquiry report to the applicant. However liberty were reserved ~~with~~ to the respondents to proceed with the case from the stage of furnishing a copy of the enquiry report to the applicant.

Then it is stated that the Disciplinary Authority ~~has~~ furnished a copy of the enquiry report to the applicant who gave a representation in reply to the same. Then the Disciplinary Authority passed a fresh order dated 23.10.91 again holding that the charges are proved and imposing the penalty of removal from service. The applicant preferred an appeal before the Appellate Authority who dismissed the appeal by order dated 18.12.92. Being aggrieved

...3...

by these order the applicant has approached this Tribunal.

The applicant has taken number of grounds for challenging the enquiry proceedings, enquiry report and orders of the Disciplinary Authority and the Appellate Authority .

3. The respondents have filed the reply justifying the action taken by them. It is stated that the enquiry has been held as per rules. There is overwhelming evidence to prove both the charges. The respective authorities nemely the Enquiry Officer, Disciplinary Authority and the Appellate Authority have applied their minds and passed the respective order holding that the charges are duly proved. It is therefore stated that this Tribunal cannot act as an appellate Court and cannot interfere with the findings or to the penalty imposed by the Competent Authority.

4. The learned counsel for the applicant Shri S.P.Saxena has taken us through the relevant documents, relevant evidence and materials on record and contended that the orders of the respective authorities are perverse. The findings are based on no evidence. It is also argued that the enquiry has not been done as per rules and there is violation of principles of natural justice and the Enquiry Officer was biased. There was non-application of mind by the Appellate Authority to the facts of the case. He therefore submitted that the orders of the respective authorities are not sustainable in law and are liable to be quashed. Alternatively he submitted that the penalty imposed is disproportionate to the alleged mis-conduct.

On the other hand, Shri R. K. Shetty, the Learned Counsel for the respondents, supported the orders of the respective authorities. He further submitted by relying on decisions of the Supreme Court that this Tribunal cannot sit in appeal over the orders of the competent authority either regarding factual findings or regarding the imposition of penalty. He submitted that the enquiry has been held as per rules and no case is made out for interference by this Tribunal.

5. It was argued by the Learned Counsel for the applicant that the documents relied on in the charge-sheet were not supplied alongwith the charge-sheet. In our view, there is no necessity to supply the documents alongwith the charge-sheet. What Rule 14 (4) of the C.C.S(C.C.A) Rules provides is that, the charge-sheet alongwith the statement of imputations, list of documents and list of witnesses should be supplied to the delinquent official. What that means, only the list has to be sent and not the actual documents. In this case, the annexure to the charge-sheet shows the list of documents on which the prosecution wants to rely. Infact, the rules itself provides for production of documents at a later stage and on the request of the delinquent. Infact, Rule 14(11)(i) clearly provides that the documents mentioned in the charge-sheet may be permitted to be inspected by the delinquent by the Inquiring Officer. Therefore, the delinquent has a right to inspect the documents mentioned in the charge-sheet before the starting of the enquiry. Then, Rule 14(11)(ii) gives a right to the delinquent official to ask for production of documents.

...5

Therefore, we hold that there is no provision in the rules, making it a mandatory duty on the part of the Disciplinary Authority to furnish the documents alongwith the charge-sheet. The requirement is only to furnish the list of documents.

Even otherwise, in our view, this argument is purely academic. It is not disputed that on 23.02.1981 the applicant made a request for furnishing the documents mentioned in the charge-sheet. Then on 26.02.1981, these documents were furnished to the applicant. This is borne out from the record and admitted by the applicant. When the applicant has received these documents well before the start of the enquiry, it is immaterial whether they were furnished alongwith the charge-sheet or not. Hence, we find no merit in the submission of the applicant's Counsel on this point.

6. It was argued that only two witnesses are cited in the charge-sheet but five additional witnesses were examined during the inquiry. It is true that only two witnesses are mentioned in the charge-sheet but seven witnesses were examined during the enquiry.

Rule 14 of the C.C.S. (C.C.A) Rules provides detailed procedure for holding an enquiry. Rule 14(15) clearly provides that before the close of the prosecution case, the Inquiring Authority may permit the Presenting Officer to produce additional evidence not included in the charge-sheet. Therefore, there is a clear provision in the rules giving powers

...6

to the Inquiry Officer to permit the Presenting Officer to examine additional or new witnesses. It also provides safeguard to the delinquent official by providing reasonable time to him to cross examine the new or additional witnesses.

7. In the present case, the additional witnesses have been examined and duly cross examined by the applicant's Defence Assistant. He has not objected to the examination of the new witnesses,except for one witness. When the applicant has participated in the enquiry and cross-examined the witnesses, it is too late in the day to ~~contempt~~ contend that the procedure adopted was wrong. The Learned Counsel for the respondents has placed before us the entire enquiry file which contains the written brief submitted by the Presenting Office and also the Defence Assistant. There is no objection taken in the brief of the Defence Assistant about the examination of the additional witnesses.

Further, we find from the enquiry report at page 44 of the Paper Book, para 4.2, where he has mentioned the names of seven witnesses examined during the enquiry. Then in page 45 in para 4.5 he has mentioned that four more witnesses were cited but they were not examined for different reasons. For our present purpose, reference is necessary to only one witness, P.W.-8 Shri M.G. Gauli, mentioned in para 4.5 of the enquiry report, where the Inquiry Officer has mentioned that this witness was not examined since it was objected by the delinquent on the ground that he was not a factory employee. Therefore, we find that

...7

regarding
the new witness sought to be examined by the Presenting Officer, the applicant has objected to only one witness, Shri M.G. Gauli and the ~~objected~~ objection was sustained by the Inquiry Officer and there was no objection for examination of all other witnesses. They have been duly cross-examined on behalf of the applicant. The rules provide for examination of the additional witnesses at the discretion of the Inquiry Officer. Hence, we do not find any illegality or irregularity in the examination of the additional witnesses.

8. It was argued that one letter of N. B. Kamble is marked as exhibit P-7 without his examination and without furnishing a copy of the same to the delinquent and further, the said document was not relied on in the charge-sheet.

It
At appears, Shri N. B. Kamble, was sought to be examined as one of the additional witnesses. As could be seen from the record of the enquiry file, Mr. Kamble came to give evidence but due to threat of the applicant he did not want to give oral evidence, he therefore wrote a letter to the Inquiry Officer and went away. That letter is marked as exhibit P-7. The Learned Counsel for the applicant is correct that exhibit P-7 cannot be taken into consideration as legal evidence, since the author was not offered for cross examination. In our view, this exhibit P-7 has not been taken into consideration by the Inquiry Officer while discussing the case against the applicant.

Further, this exhibit P-7 does not throw any light on the misconduct alleged against the applicant, either regarding the charge of assault or about lending money. This exhibit P-7 only mentions about the dispute between the witness and about the threat given by the applicant. It has no bearing and wholly irrelevant to decide the two charges framed against the applicant. As rightly argued by the Learned Counsel for the respondents, this exhibit P-7 is irrelevant and even if it is ignored, the other evidence on record is more than sufficient to sustain the charges against the applicant.

Therefore, we hold that exhibit P-7 is not admissible in ~~the~~ evidences due to non-examination of the author but however, it makes no difference since exhibit P-7 is not relied on by the Inquiring Officer while discussing the evidences and further, exhibit P-7 does not throw any light on the two charges framed against the applicant and even if we ignore it, it makes no difference ~~in~~ to the prosecution case. Hence, no prejudice is caused to the applicant due to taking of exhibit P-7 on record by the Inquiring Officer.

9. Another comment by the Learned Counsel for the applicant is that the enquiry officer was biased against the applicant which could be gathered from the reasonings given in the enquiry report. At no stage the applicant made an allegation before the Inquiry Officer or before the Disciplinary Authority that the enquiry officer is prejudiced against him. Prejudice or bias cannot be inferred or gathered from the reasoning given

in the enquiry report. The Inquiring Authority has discussed the evidences and found that the case is proved against the applicant. That cannot be a ground to say that the Inquiring Officer was prejudiced against the applicant. It is neither alleged nor proved that there was any personal enemity or hostility between the Inquiry Officer and the applicant. Hence, we find no merit in this contention of the applicant's counsel.

10. We are also not impressed by the argument about non-application of mind by the Appellate Authority to the facts of the case. We find that the Appellate Authority has written a well reasoned and considered order. He has noticed all the legal and factual contentions taken by the applicant. He has given him personal hearing. He has permitted the applicant through his Defence Assistant to file one more written representation. Then after considering the facts of the case and the contentions of the applicant, he found that the case is proved and confirmed the order of the Appellate Authority and dismissed the appeal. He has written a speaking order considering all the points.

11. In the original application, there is an allegation that personal hearing was not given to the applicant, which is not correct. The applicant himself has produced his written submission to the Appellate Authority which is at page 36 of the Paper Book wherein in para (1) he has thanked the Appellate Authority for

...10

giving personal hearing to his Defence Assistant on 07.09.1992. Therefore, we find that the applicant had full liberty of presenting his case before the Inquiry Officer, before the Disciplinary Authority and again before the Appellate Authority.

12. One grievance is made in the original application that the copy of the brief of the Presenting Officer was not given or shown to the applicant. But this submission in the original application, was not argued before us by the Learned Counsel for the applicant. However, that since such an allegation is made in the application, we have perused the records and find that there is no merit even in that contention. In the Inquiry file we find that day to day order sheets are maintained. In the order sheet dated 15.04.1982 of the inquiry file we find that both the Presenting Officer and the applicant's assisting officer filed their briefs by 5.00 p.m. on that day. Then the applicant was told that he can go through the brief of the Presenting Officer by tomorrow. Then again, both the applicant and his Assisting Officer came to the factory at about 9.00 p.m. and went through the brief of the Presenting Officer and when questioned by the Inquiry Officer whether applicant's assisting officer would like to make any changes in his brief, he declined to make any further changes. Therefore, this also shows that applicant's Defence Assistant has gone through the brief of the Presenting Officer and did not want to say anything more on this point. In our view, none of the legal contentions urged by the Learned Counsel for the applicant, have any merit. Now the remaining point for consideration is about the merits of the case.

The two charges framed against the applicant as could be seen from the charge-sheet, are as follows :-

"ARTICLES-I

That the said Shri H.P. Nanak while functioning as Welder 'B' Gr. during the period on 25.10.1980 at about 11.15 A.M. has assaulted Shri H.S. Jamadade T. No. N-132 Lab 'B' Gr. of MM Section by the help of Shri Kalbhor T. No. Z-28 of SFI Section which tentamounts to gross misconduct.

ARTICLES-II

That during the aforesaid period and while functioning in the above said office the said Shri H. P. Nanak, W-149 was lending money on high interest inside the factory amongst factory employees which tentamounts to gross misconduct."

In support of the charges, seven witnesses were examined by the Presenting Officer, who are -

1. P.W.1 .. Shri H.S. Jamdade, Lab B.
2. P.W.3 .. Shri C.B. Maratkar, K-49, Turner A.
3. P.W.4 .. Shri N.P. Sharma, Labour Officer.
4. P.W.6 .. Shri G.G. Bhat, Z-31, Compr. Attendant.
5. P.W.7 .. Shri M.B. Kalambe, U-35, Compr. Attendant.
6. P.W.10.. Shri D.G. Joshi, AF/Security.
7. P.W.11.. Shri A.N. Joshi, Supr 'B' Gel Section.

Then on behalf of the applicant, one defence witness is examined, namely - A.B. Karkhanis.

On behalf of the Presenting Officer, seven documents were marked which are exhibits P-1 to P-7. We have already pointed out how the applicant's counsel has taken serious objection for marking P-7 as an exhibit, since the author was not examined. We have already

pointed out that exhibit P-7 has no bearing on the two charges and hence it is wholly irrelevant for the purpose of this case. Then the Inquiry Officer, while discussing the evidences in para 4.8.1 and 4.8.2, has not referred to this exhibit P-7 at all (vide enquiry report which is at page 43 of the paper book).

The Inquiry Officer has taken notice of some discrepancy in the evidences. He has taken into consideration the defence of the applicant. After writing a lengthy speaking order considering the evidences of the witnesses, he has come to the conclusion that both the charges are proved.

The Disciplinary Authority has agreed with the enquiry report and accepted his findings and imposed the penalty of removal from service.

The Appellate Authority, by a reasoned speaking order and by noticing of the objections of the applicant, has re-appreciated the evidences and he has concurred with the findings of the Inquiry Officer and the Disciplinary Authority. In other words, there are ~~concurring~~ concurrent findings of all the three authorities, namely - the Enquiry Officer, the Disciplinary Authority and the Appellate Authority and all of them agree that both the charges are fully proved.

13. We have already seen that enquiry has been done as per rules. Principles of natural justice have been observed. The applicant had full opportunity for defending himself and he was assisted by a Defence

...13

Assistant. All the witnesses have been cross examined at length. He also produced one defence witness. If inspite of this, the domestic Tribunal has held that the charges are duly proved, this Tribunal while exercising judicial review cannot go into the question of sufficiency of the evidence. We are not impressed by the argument of the Learned Counsel for the applicant that the orders of the respective authorities are perverse. It is not a case of there being no evidence at all. As far as the assault is concerned, there is a specific evidence of the victim of the assault, namely - H.S. Jamadade, who was examined as P.W.-1 in the enquiry. It is clearly stated that, on that day he was assaulted by the applicant. The presence of the applicant at or near the place of incident and at or about the time of incident, is not in dispute. Then there is also corroboration to his evidence from the statement of an eye-witness, C. B. Maratkar, examined as P.W.-3. He has seen the incident from the Plumber Section of the factory. He has actually seen the applicant giving two three blows to H.S. Jamdade. Then we find that the Labour Officer, N.P. Sharma, examined as P.W.-4 partly corroborated the version of the applicant. It may be that he is not an eye-witness. It may be that he does not speak about the actual assault. But his evidence shows that the victim, H.S. Jamdade, was found in an agitated mood and complained about the applicant.

We are not dealing with a criminal case. We are dealing with a departmental enquiry. Strict

...14

rules of evidence are not applicable in a departmental enquiry. The evidence of H.S. Jamdade and Maratkar, is sufficient to ~~proof~~ prove the actual assault. Then the evidence of other witnesses in the case shows that the applicant was in the habit of lending money to the employees on interest. Even the Defence ~~Assistant~~ witness, A.B. Karkhanis, admits having taken loan from the applicant but he says that it was not on interest.

The applicant is not a philanthropy or a person who could give money by way of charity to other employees. The applicant is an official of lower rank, of the rank of a welder getting a meagre pay and that too in the year 1980 with which we are concerned. He could not afford to pay money as gratis to the employees for mere asking. Therefore, we find that this is a case where there is some evidence, if believed, is sufficient to proof charges 1 and 2. We cannot go into the question of sufficiency of evidence while exercising judicial review.

14. We are also not impressed by the argument of the Learned Counsel for the applicant about discrepancies in evidence, etc. Now it is fairly well settled ~~in~~ by catena of recent decisions of the Supreme Court that the scope of judicial review is very limited. The judicial review is, to see whether the enquiry has been done as per rules and by observing the principles of natural justice. The Tribunal cannot sit in appeal over the ~~evidence~~ findings of domestic Tribunal. The Tribunal cannot re-appreciate the evidence and take its own view, even if another view is possible from the evidence on

...15

record. The Tribunal cannot, by re-appreciating evidence, interefere with the findings of facts recorded by the Disciplinary Authority. Infact, the Supreme Court has gone to the extent of observing that Courts and Tribunal have no jurisdiction to re-appreciate the evidences while exercising judicial review. ~~vide :~~

[Vide (i) 1996 SCC (L&S) 1280 .. State of Tamil Nadu V/s. Thiru K.V. Perumal & Others.

(ii) 1997 SCC (L&S) 689 .. Government of Tamil Nadu V/s. S. Vel Raj.

(iii) 1997 SCC (L&S) 1749 .. Government of Tamil Nadu V/s. K. N. Ramamurthy.

(iv) 1998 (1) SC (SLJ) 74 .. Union Of India & Others V/s. B. K. Srivastava.

(v) 1998 (1) SC (SLJ) 78 . Union Of India & Others V/s. A. Nagamalleshwar Rao.]

In order to satisfy our judicial ~~concious~~ conscience we have gone through the enquiry report and evidences recorded during the enquiry and we are satisfied that the findings of the Inquiry Officer, the Disciplinary Authority and the Appellate Authority are based on evidence adduced during enquiry. There is sufficient evidence to prove the two misconducts alleged against the applicant. Hence, we do not find any merit in the applicant's challenge to the impugned orders.

15. We also do not find any merit in the contention of the Learned Counsel for the applicant about the quantum of penalty. An assault of a co-worker cannot be said to be a minor incident. Then the applicant is involved in lending money on interest to co-workers and

that too in the factory premises, which is contrary to the rules. Having regard to the gravity and seriousness of the two charges, we do not find that there is any merit about the quantum of penalty. Even here also, the recent trend of the judgements of the Supreme Court is that the Court or Tribunal should not interfere with the quantum of penalty imposed by the domestic tribunal unless ofcourse it is grossly disproportionate to the misconduct and shocks the ~~concious~~ conscience of the Court. But in this case, we do not find that any case is made out to show that the penalty is disproportionate to the misconduct proved against the applicant.

16. In the result, the application fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

(D. S. BAWEJA)
MEMBER (A).

(R. G. VAIDYANATHA) 9.11.98
VICE-CHAIRMAN.

os*