

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 15/94

Date of Decision: 5.7.1999

Shri A. Vasu.

Applicant.

Shri S.P. Saxena.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri R.R. Shetty for
Shri R.K. Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice S. Venkataraman, Vice Chairman

Hon'ble Shri. S.K. Ghosal, Member (A)

(1) To be referred to the Reporter or not? *(M)*

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

S. Venkataraman
Vice Chairman

NS

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

Original Application No. 15/94

Monday the 5th day of July 1999.

CORAM: Hon'ble Shri Justice S.Venkataraman, Vice Chairman.

Hon'ble Shri S.K. Ghosal, Member (A)

A. Vasu
Flat No. 9,
Pratik Apts.
16, Rajpat,
Kothrud, Pune.

... Applicant.

By Advocate Shri S.P. Saxena.

V/s.

1. The Director General of
Ordnance Factories
10-A Auckland Road,
Calcutta.

2. The General Manager
Ammunition Factory
Kirkee, Pune.

3. The Union of India through
Secretary, Ministry of
Defence, DHQ.P.O.,
South Block, New Delhi.

... Respondents.

By Advocate Shri R.R. Shetty for Shri R.K. Shetty.

O R D E R (ORAL)

(Per Shri Justice S.Venkataraman, Vice Chairman)

The applicant who was working as U.D.C.

in Stores Section was nominated to work in the unit
as Salesman by respondent 2. He was given an
Honorarium of Rs. 120/- p.m. A charge sheet was issued
to him in respect of two charges. The first charge
was that he has committed irregularities resulting
in loss to the Unit run CSD (I) Canteen of Ammunition

Factory Kirkee - an act unbecoming of a Government

servant. The second charge was that he helped Shri M. Gopalan Who was also working as UDC in the same Canteen in defalcation of stores, which is ~~an~~ ^{fact} unbecoming of a government servant.

2. In the statement of imputation it was stated that the applicant had not maintained the stock register, that he had discontinued the preparation of daily sales ^{sheet} ~~sheet~~ from 1.10.1982 and that he had issued cash memos without showing the full details of the customers. The particulars of various cash memos prepared ~~has~~ been given in the statement of imputation.

3. An enquiry was held by the Enquiry officer and after completing the enquiry, ^{he} held that the charge about the applicant committed irregularities resulting in loss to the unit had been proved and that the charge that he had assisted Shri Gopalan in mis-appropriation of the stores had not been proved. The Disciplinary Authority by order dated 6.6.1988 imposed penalty of removal from service. On appeal the Appellate Authority while confirming the order of the Disciplinary Authority that the charges ~~are~~ ^{was} proved, modified the penalty to compulsory retirement. In O.A. 426/89 the Tribunal by order dated 8.8.1991 set aside the order of punishment on the ground that the enquiry report ^{had} not been furnished to the applicant. Subsequently a copy of the enquiry report was furnished to the applicant and after he filed

his representation the Disciplinary Authority passed the impugned order dated 17.11.1992 imposing the penalty of compulsory retirement. The appeal prepared by the applicant was rejected by order dated 7.9.1993. In this application the applicant is challenging both the orders.

4. The first ground that was urged by the learned counsel for the applicant is that though the Disciplinary Authority for the applicant was General Manager, the order of ~~compulsory retirement~~ ^{for holding common proceeding} had been passed by Dy. General Manager and that the Dy. General Manager was not competent to pass the order and the proceedings are ^{therefore} vitiated. It is not disputed that the penalty order has been passed by the Disciplinary Authority. Now the Supreme Court in two decisions, ^{has} held that though the charge sheet is issued by an authority subordinate to the Disciplinary Authority, if the penalty order is passed by the Disciplinary Authority the proceedings would not be vitiated. As such the contention of the learned counsel for the applicant cannot be accepted.

5. In the application another ground has been urged that as the canteen was not a part of the department, and the allegation of irregularities committed by the applicant cannot be a subject matter of disciplinary proceedings in the department. Now it is well settled ^{in respect of a} that even ~~the~~ misconduct outside the purview of the duty which act is un-becoming of a government servant, the disciplinary proceedings can be initiated against him.

6. The learned counsel for the respondents contended that though the charge was that the applicant had not given full particulars of the purchase in various cash memos, none of those cash memos has been produced during the enquiry and that though the applicant sought for production of cash memos the same were not produced and that the findings of the enquiry officer is based on no evidence.

7. Among irregularities mentioned in the charge memo one is that the applicant had not maintained the stock register. The applicant himself has admitted that stock register had not been maintained and that such a stock register had not been maintained even earlier. Maintenance of stock register is an essential factor in any stores or office and the fact that earlier, a stock register had not been maintained cannot be a reason for the applicant not performing his duty.

8. With regard to the contention that cash memos in which the full particulars had not been given were not produced in evidence the same is not tenable because we find from the disciplinary proceedings record that the relevant cash memos have been confronted to the applicant and he has admitted that full particulars had not been given. The applicant had not disputed the fact that full particulars of the purchase had not been mentioned in the cash memos. He had tried to explain the same by pleading that

as sales tax would have to be paid in respect of sales made to Civilians, the Sales Tax Consultant had supported that they may not indicate the particulars of those Civilian in cash momos. The Enquiry Officer has not accepted this plea and we do not think that the Enquiry Officer has done anything irregular in not accepting the explanation given by the applicant for his failure to give the full particulars of purchaser in the cash memos.

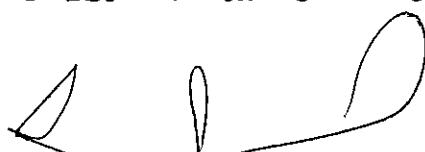
9. With regard to non preparation of Sales abstracts the applicant states that he has prepared the sales abstract only upto 30.9.1982 and from 1.10.1982 another employee prepared the same. The Enquiry Officer has not accepted this plea also. It is mostly on the basis of un-disputed fact the Enquiry officer has held that there are irregularities in the maintainence of cash memos and other relevant registers. The fact that there was loss in the canteen is also not disputed, though the applicant has tried to make out that the loss which occurred during his period is comparatively less than the loss which occurred during the period when the other person was in charge. The conclusion of the Enquiry Officer that the irregularities committed by the applicant have lead to loss cannot be said to be based on no evidence.

10. With regard to the quantum of punishment, considering the nature of irregularities and the fact that ^{the} canteen suffered considerable loss, the pleanity cannot be said to be so dis-proportionate as to call for interference by us.

11. Lastly the learned counsel for the applicant contended that the Appellate order is passed by an in-competent authority. He contended that the order is passed by Joint Director Vigilence, who is not the Appellate Authority. The respondents in their reply have pointed out that the Appellate Authority has passed the order and the same has been communicated to the applicant. We also find from the order that the Joint Director has not purported to pass that order on his own. In fact he has signed it "By order and in the name of the Appellate Authority". We cannot say that the order is passed by an in-competent authority.

12. We see no other ground to interfere with the impugned orders.

13. For the above reasons this application fails and the same is dismissed. No costs.



(S.K. Ghosal)
Member(A)



(S. Venkataraman)
Vice Chairman

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