

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH

ORIGINAL APPLICATION NUMBER 438 OF 1994.

MONDAY, THIS THE 28TH DAY OF JUNE, 1999.

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

Vishwanath Jagannath Murudkar,
Aged about 50 years,
presently working as Goldsmith Grade-I
in the Government Mint, Ballard Pier,
Fort, Bombay-400 038 and residing
at Room No.1, Khatate Chawl, Kaju Pada,
Borivali (E), Bombay-400 092. .. Applicant.

(By Advocate Shri S.R.Atre)

v.

1. The Union of India
through the Secretary,
Ministry of Fiance, Department
of Economic Affairs, (C & C Dvn.),
North Block.

2. The General Manager,
India Government Mint,
Shahid Bhagat Singh Marg,
Ballard Pier, Fort,
Bombay-400 038.

.. Respondents.

(By Advocate Shri V.G. Rege & Shri V.D. Vadhavkar for
Shri M.I. Sethna, Standing Counsel).

O R D E R

Justice S.Venkataraman, Vice-Chairman:-

The applicant who was working as Assistant Mistry in Mint, Bombay was issued a memorandum of charges on 12-1-1985. 5 charges have been framed against him. The first charge was that while functioning as Assistant Mastry he instructed the workmen to manufacture buttons by melting t~~he~~ scrapping and filing of QA and Meritorious Medal and to press the buttons as blanks in the

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Friction Press and the buttons were then pressed and formed to the nearest size of QA 100-RE blanks. The second charge was that he instructed his subordinates to make packets containing 32 to 33 gms. approximate of QA cut pieces for melting individual buttons to form blanks for striking QA 100-RE coins. The third charge was that he instructed his subordinates to press pure silver blanks of Meritorious Service medals to the nearest size of QA 100-RE blanks. The fourth charge was that he carried out the operation of manufacture of blanks through his subordinates with a view to make good the shortage of QA 100-RE blanks. The last charge was that while functioning as Assistant Mastry, he did not report to the superiors about the illegal activity being carried out in the department. The applicant having denied the charge, an inquiry was held. The Inquiry Officer submitted a report dated 30-3-1986. The Disciplinary Authority after accepting the findings and issuing a show cause notice levied penalty of reversion to Tradesman Grade-I. The applicant had challenged the penalty in O.A.No.325 of 1988 and this Tribunal quashed the penalty order on the ground^{that} the copy of the inquiry report had not been furnished to the applicant before the Disciplinary Authority recorded his findings. After that order, the respondents have supplied copy of the inquiry report to the applicant and issued a show cause notice to him. The applicant gave a representation against accepting the inquiry report. The Disciplinary Authority again passed an order imposing the penalty of reversion of the applicant with effect from 16-5-1986. The appeal preferred by the applicant was not disposed of and as such the applicant has again approached this Tribunal.

2. The learned counsel for the applicant has contended that the report of the inquiry^{officer} is perverse inasmuch as the Inquiry Officer has totally misread some answers given by DW-1 and the

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applicant and ^{has held} ~~as such~~ three charges proved on the basis of those answers without considering the evidence adduced in the case or the defence which had been taken by the applicant. He next contended that the Disciplinary Authority even before furnishing the copy of the inquiry report has again concluded that the applicant was guilty and he issued a notice requiring the applicant to show cause as to why the penalty should not be levied. According to him, the Disciplinary Authority had made up his mind to hold the applicant guilty even before the applicant had an opportunity to give his representation. Thirdly, he contended that the imposition of penalty from a retrospective date of 26-5-1986 which was the date when the earlier order of reversion was passed was illegal inasmuch as the earlier order had been quashed by this Tribunal.

3. We have gone through the report of the Inquiry Officer which is the basis on which the Disciplinary Authority has passed the order imposing penalty. The criticism that the Inquiry Officer has not at all assessed the evidence and that he has misread the answers given by the applicant is well founded. In his report, the Inquiry Officer has referred to the answer given by the defence witness Sri C.S.Pandit to question No.112 to prove charge No.1 against the applicant. It is seen that DW-1 has in his evidence stated that Sri Ravindran and Sri Kajale had directed the applicant to prepare the blanks from QA filings and rejection. In answer to Question No.103 he had admitted that in the presence of Sri Dhotre, Sri Ravindran, Senior Engineer, P.V.Lotlikar and Sri Kajale he had instructed him to undertake the job of preparation of blanks. In the cross-examination in answer to question No.108, he had stated that he was physically present when the instructions were given. Thereafter question No.112 had been put requiring him as to whether the work was allotted in his presence. He has stated that he

knows the work was allotted to Sri Pisad, Sri Malankar and Sri Dhotre in his presence. If the evidence is read, it will be seen that that witness had stated that Sri Ravindran and Kajale had given instructions to the applicant to get the work done and that in his presence the applicant allotted the work to 3 others. The Inquiry Officer without referring to the other evidence given by DW-1 has, only on the basis of the answer to question No.112 has held that the 1st charge was proved. He also referred to questions Nos.112, 114 and 123. In answer to those questions, the witness has stated that the operation was an illegal operation and that the applicant had carried out the Superintendent's instructions by clandestinely making good the loss. The sum and substance of the evidence of DW-1 is to the effect that the official superior of the applicant had directed the applicant to carry out the work in question and that accordingly the applicant had got the work done which according to the witness was illegal.

4. The Inquiry Officer has then referred to the answers given by the applicant to questions 158 to 160 and has stated that the applicant has confessed that he was responsible for all these clandestine operations and that charge No.2 was, therefore, proved. It is seen that during the cross-examination of PW-6 by the applicant, the Inquiry Officer has put some questions to the applicant. One of ~~the~~ ^{realises} ~~question~~ ^{replied} was whether he realised that he was acting as a direct party to the irregular operations. The applicant has stated that although he was feeling that the work which he was expected to get from the workmen is a clandestine operation, as an Assistant Mastry, he had carried the orders given to him by his sectional superiors. Again in answer to question No.160 as to what was the actual role played by him, the applicant has replied that when the shortage of

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140 QA blanks was noticed the Senior Superintendent instructed him to take action for making good this loss and he has also instructed him that blanks may be got manufactured from the scrapping and filings etc. In none of these answers the applicant has purported to confess that he was guilty of the charges framed against him. His defence throughout had been that he was directed by the official superiors to carry out the work in question and that in accordance with the ^{superiors'} ~~prior~~ directions he got the work done through others. The Inquiry Officer while referring to the answers given to some questions and holding that charge No.1, 2, and 5 were proved, he has not referred to any material on record to state as to why charges Nos.3 and 4 also have been held to be proved. He has not even considered the plea put forth by the applicant in regard to the circumstances under which the work was got done. He has not assessed any evidence which had been adduced in the case as he was required to do under the CCS (CCA) Rules. In the circumstances, this report is not a valid report on which the Disciplinary Authority could have acted upon. The Disciplinary Authority himself has not independently considered the evidence to record his findings. As such, if the inquiry report cannot be sustained the order of the Disciplinary Authority will also get vitiated.

5. The Disciplinary Authority has again committed a serious mistake in coming to a conclusion that the applicant was guilty of the charges and thereafter supplying the copy of the report and asking him to show cause only with regard to the penalty to be imposed against him. The object of supplying the copy of the report ^{was} ~~is~~ to enable the applicant to give a representation against the report and the Disciplinary Authority ^{was} ~~is~~ required to consider such representation and then decide whether the findings recorded by the Inquiry Officer should be accepted

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or not. If the Disciplinary Authority first accepts the findings and then issues a notice along with the inquiry report, the very object of giving the ^{copy of the} report is defeated.

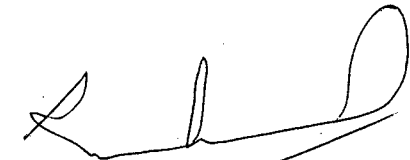
6. Even when the applicant gave a representation he was trying to point out as to how the inquiry report cannot be accepted. The Disciplinary Authority has cryptically brushed aside that representation on the ground that no new grounds had been made out. There has been no proper application of mind by the Disciplinary Authority to the representation submitted by the applicant. On this ground also, the order of the Disciplinary Authority cannot be sustained.

7. The last point that requires to be considered is whether after quashing the inquiry report and the order of the Disciplinary Authority, we have to give liberty to the respondents to again continue the proceedings from the stage at which the illegality occurred. This is a case where the misconduct is alleged to have taken place in 1985. More than 14 years have elapsed. Though the earlier order was quashed and a direction was given to the respondents to give a copy of the inquiry report and then pass appropriate order, the Disciplinary Authority has again committed the same illegality as pointed out above. ~~After~~ If at this distance of time the inquiry is allowed to be continued, it would unnecessarily cause serious prejudice to the applicant and it will be a sort of harassment to the applicant. This is a case where on account of the inordinate delay in not properly completing the inquiry, we ^{do not} feel that liberty to again pass fresh order after getting a separate report from the Inquiry Officer should be given.


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8. For the above reasons this application is allowed and the impugned order as well as the inquiry report are quashed.

No costs.



(S.K. GHOSAL)
MEMBER (A)



(S. VENKATARAMAN)
VICE CHAIRMAN.

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