CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.755/1994

Dated this Wednesday, the 14 th Day of February, 2001.

Shri G.S. Gaonkar ... Applicant

(Applicant by Shri S.Natarajan, Advocate)

Versus

Union of India & 2 Ors. ..... Respondents

(Respondents by Shri B.Ranganathan,for Shri J.P.Deodhar, Adv.)

CORAM

Hon'ble Shri B.N.Bahadur, Member (A)
Hon'ble Shri S.K.I.Naqvi, Member (J)

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

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

(3) Library. X

BnB

(B.N.Bahadur)
Member (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.755/94

DATE OF DECISION: 14.02.2001

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.K.I. NAQVI, MEMBER (J)

Shri G.S. Gaonkar,
Shift Supervisor,
Dhruva,
BARC
r/a
L/15, BARC Quarters
Postal Colony Road
Chembur, Mumbai.400 071. .... Applicant
(Applicant by Shri S. Natarajan, Advocate)

vs.

1. Union of India through
Secretary, Department of Atomic
Engery, CSM Marg, Bombay 400 039.

2. The Controller
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Bombay 400 085.

3. The Head Personnel Division
Bhabha Atomic Research Centre
Central Complex, Trombay,
Mumbai 400 085. ... Respondents.

(Respondents by Shri B. Ranganathan, Advocate for Shri J.P. Deodhar, Advocte.)

[O R D E R (ORAL)]

[Per: B.N.Bahadur, Member (A)]

The Applicant in this case, Shri G.S. Gaonkar, Shift Supervisor, BARC, comes up to this Tribunal with the grievance, against the impugned order dated 14.12.1992 (Exh. A.1) through which a penalty has been imposed on him. The Applicant prays that this order, and the order of the Appellate Authority confirming the order of penalty, be quashed and set aside.

2. We have seen the papers in the case and have heard the learned Counsel for Applicant, Shri Natarajan, and learned Counsel

BnB

Shri B. Ranganathan, for Shri J.P. Deodher for the Respondents. We have also had the benefit of perusal of a file produced by the Respondents, today, during arguments, viz. File no.7/107/92/(Vig) on which the case of the applicant was considered. The learned Counsel for the Applicant has raised the contention of two broad aspects. The first one being that a specific request was made for a regular Departmental Enquiry and this was rejected by the Respondents without givng any reasons thereof.

3. Learned Counsel Shri Natarajan drew our attention to the relevant paragraph in the impugned order, and argued that this was a mere bold statement of rejectiion of the requests for holding a regular Enquiry and inasmuch as it did not contain the detailed submissions, it suffered from the infirmity of lack of application of mind.

4. Learned Counsel for the Applicant sought to draw support from a judgement of the Madras Bench of this Tribunal in the case of *I. Jebaraj vs. UOI and Ors. [(1998) 37 ATC 38]* wherein he contends it has been specifically held that Disciplinary Authority have failed to apply its mind to the question of holding of an enquiry being necessary or otherwise, and had thus held the penalty to be vitiated.

5. The Learned Counsel for the Respondents dealt with this point both in regard to the factual position, and more by submitting by drawing our attention to the notes page 3 and 4 of the aforesaid file of the Respondents.

6. We have gone through the notes on these pages and find that this issue was considered at more than one level in the Respondent's organisation, and the prayer for holding a full regular enquiry has been rejected after considering the requests.

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Thus, it cannot be said that there is no application of mind on this issue by the Respondents, as was the case in the facts and circumstances before the Madras Bench of this Tribunal. On this count, therefore, we do not consider that the Applicant has a case.

7. The second point raised by Learned Counsel for the Applicant related to a document filed by the Applicant with us at page 48 of the Paper Book which is a copy of signed statement by Shri A.D. D'Souza dated 29.6.1992. The point made by Shri Natarajan was that this statement by Shri D'Souza is strictly contrary to the one filed by the Respondents with their statement dated 2.1.2000, enclosure being at last page, of the Paper Book. Thus, in the face of a contrary statement, on a material point by the same person, the Applicant was prejudiced inasmuch as he had no opportunity for cross-examining the said Shri D'Souza. The defence of the Respondents on this count is that the second statement dated 12.8.1992 is the correct statement and they have no statement dated 29.6.1992 on their record. In fact Shri Ranganathan made more than a hint to say that the document produced is a bogus one and should not be given any credence. Be that as it may, we find that there indeed no statement on record dated 29.6.1992 and we are not convinced that there is enough reason to constitute any prejudice against the Applicant by virtue of the fact that no regular departmental enquiry was conducted.

8. Apart from this aspect another major aspect referred to by the Learned Counsel for the Applicant related to the penalty *per se* as imposed on Applicant vide the impugned order. In the penultimate paragraph of the impugned order, the main objection vis-a-vis CCS (CCA) Rules was to the clause "*will not earn increments of pay during the period of reduction.....*" On a

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perusal of the Rules brought to our notice especially to the portion under "major penalties" it does not require any detailed reasoning to determine that this part of the penalty ordered is clearly major in nature and should not have been imposed, in a minor penalty proceeding. Admittedly, other part of the penalty is well within the corners of the law. Now the contention of the Respondents' Learned Counsel was that this clause was a mistake but in fact it has not been implemented in the sense that there has been withdrawal of no permanent nature of increment and all increments have been subsequently released. The learned Counsel for the Applicant had argued that this clause itself showed that the order was bad in law and would necessitate quashing of the very order. While being convinced that this part of the penalty cannot be imposed in minor penalty proceedings and also taking note of the total circumstances and actual implementation, we are not convinced that this is enough reason for setting aside the entire order. Certainly, however, this part of the order has to be notified. If it is not implemented so far, so good, otherwise, in any case, we feel full justification in ordering as below.

9. It is, therefore, ordered that the aforesaid clause "*will not earn increments of pay during the period of reduction....*" shall not be given effect. Subject ot the above direction, this O.A. is hereby disposed of. No orders as to costs.

(S.K.I.Naqvi)
Member (J)

(B.N.Bahadur)
Member (A)

sj*