

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 881.94

DATE OF DECISION: 27th Dec, 99

Shri Surinder Singh Applicant.

Applicant in person Advocate for
Applicant.

Versus

The Under Secretary to Respondents.
Govt. of India and others.

Shri V.D.Vadhavkar for Advocate for
Shri M.I. Sethna Respondent(s)

CORAM

Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? No.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No.
- (3) Library.

S.L.Jain
(S.L.Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:881/94

the 7th day of December 1999.

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member (J)

Surinder Singh
Resident of
4, Shilp Lekha Society
Aundh Gaon,
Pune.

...Applicant

Applicant in person.

V/s

1. The Under Secretary to
Govt. of India,
Ministry of Defence
South Block, New Delhi.
 2. The Director General
of Quality Assurance
Govt. of India,
Ministry of Defence
South Block, New Delhi.
 3. The Controller
Controllorate of
Quality Assurance
(Military Explosives)
Kirkee, Pune.
 4. The Quality Assurance Officer
Quality Assurance Establishment
(Military Explosives)
Dehu Road.
- ...Respondents.

By Advocate Shri V.D.Vadhavkar for Shri M.I.Sehtna.

O R D E R

(Per Shri S.L.Jain, Member(J))

This is an application under Section 19 of the
Administrative Tribunals Act 1985, seeking the relief of quashing
the Appellate Authority's order No: A/97401/194/DQA (Vig Cell)

Signature

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dated 6.5.1994 (Annexure A1) rejecting the appeal dated 9.12.1993(A-2) issued by respondent No.3, Charge sheet Memorandum No. CQA(ME)/8024/CON/SS dated 9.6.1993 (A-3) issued by respondent No.3, the departmental inquiry report dated 27.10.1993 (A-19) conducted by respondent No.3, alongwith costs of the petition.

2. The applicant who was working as Junior Scientific Assistant Grade II with effect from 1.4.1988 was served with charge sheet dated 9.6.1993 in respect of incident on 16.4.1993 at 17.45 hrs. for which a complaint dated 17.4.1993 was lodged by Shri B.B.Patil. Prior to this respondent No.3 asked the explanation of the applicant in respect of the incident dated 16.4.1993 at 17.45 hrs. and applicant submitted an explanation on 27.4.1993 (Annexure A-6). Disciplinary enquiry was held by Shri N.K.Biswas and report dated 17.5.1993 (Annexure A-7) was submitted. Thereafter charge sheet dated 9.6.1993 was served on the applicant. After submission of the enquiry report the applicant was penalised by the Disciplinary Authority on 9.12.1993 with the penalty of reduction of pay for one stage for a period of one year, appeal against the same was filed, which was rejected on 6.5.1994.

3. The applicant has challenged the penalty order and order of the Appellate Authority rejecting the appeal on the ground that there is a hidden Sweet revenge and biased attitude towards a Minority. Charge sheet was served on the applicant without documents as listed in Annexure 3. The applicant sought clarification on 16.6.1993 raising two question which was rejected vide Annexure A9, he requested for supply of security

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procedure vide letter dated 12.7.1993 which was one of the ^{relief} documents mentioned in the charge sheet. His request was rejected saying that it is available in the library. Preliminary enquiry report and the statement recorded during the course of preliminary investigation were not supplied to the applicant. During the disciplinary proceedings written brief was obtained from the presenting officer on 26.7.1993 which is against the provision of Rule 14(19) of CCS (CCA) Rules 1965. The applicant was examined first at the commencement of the enquiry. The Enquiry officer and Presenting Officer cross examined the applicant which is contrary to Rule 14(19) of CCS (CCA) rules. The witnesses were summoned on 8.10.1993, the finding of the Enquiry Officer is based on no evidence, Disciplinary Authority accepted the same without application of mind, Appellate Authority decided the appeal without application of mind. The evidence recorded is not sufficient to hold the applicant guilty. Hence this OA for the above said relief.

4. The respondents had resisted the claim of the applicant by denying the said allegation and alleged that the disciplinary enquiry was conducted as per rules, calling for explanation was as per procedure prescribed. The explanation was not found convincing. Hence charge sheet was issued and enquiry was conducted in accordance with the procedure as per law. The enquiry leads to conclusion that the applicant is guilty of the charges levelled against him. The penalty as stated above was imposed after due application of mind. Appeal against the same was rejected. Hence prayed for dismissal of the OA alongwith costs.

Signature

5. On perusal of the charge sheet we find that annexure 3 mentions the list of documents relied upon. The said documents have not been supplied to the applicant even after demand which is made out by order sheet dated 26.7.1993 A-15. Security procedure was said to have been violated. The applicant vide letter dated 8.7.1993 asked for security procedure which is rejected saying that it is available in the library. Non supply of the relied documents certainly prejudiced the defence of the charge^r officer.

6. After serving the charge sheet the applicant raised two question before submitting the defence statement. In our considered opinion, the questions^r which were raised by the applicant may be relevant while cross examining the prosecution witnesses, during the course of disciplinary proceedings but not at this stage. The applicant was free to put the questions to the witnesses during the course of enquiry. Hence said question asked for on 11.6.1993 rejected on 16.6.1993 does not prejudice the applicant's defence in any way.

7.....The Enquiry Officer obtained the written brief from the Presenting Officer on 26.7.1993. The procedure adopted by the Enquiry Officer is in violation of procedure prescribed under Rule 14 of CCS (CCA) Rules. The written statement to be obtained only after the evidence of both sides is over.

8. On the commencement of the enquiry on 17.8.1993, the applicant was cross examined by the Enquiry Officer. Thereafter the Presenting officer also cross examined the applicant. As per Rule 14(19) of CCS (CCA) Rules only after the evidence is over to

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explain the circumstances appearing against him, the charged officer is examined. ^{No n} doubt the Enquiry Officer is at liberty to examine the applicants at any stage but the examination is not with a view to get the charges proved without examining the prosecution witnesses, The procedure adopted which prejudiced the case of the applicant. In this respect the learned counsel for the applicant relied on (1991) 16 ATC 822 Bangalore Bench of this Tribunal in the case of M.K. Varadarajan V/s Senior Deputy Director General AMSE wing, Geological Survey of India, Bangalore and others. The learned counsel for the applicant relied on 1990(2) ATJ 1 Mukesh Kumar V/s. Union of India and others which lays down that examination of the applicant first and then examination of the prosecution witness is not permissible.

9. To examine and cross examine the applicant is not permissible in view of the judgement reported in 1990(2) ATJ 313 Lacchman Das Garg V/s Union of India which is relied on by the learned counsel for the applicant and also the judgement M.K. Varadarajan V/s Senior Deputy Director General, Bangalore and another (1991)16 ATC 822

10. The learned counsel for the applicant relied on 1992(2) ATJ 41 Smt.Suraj V/s Union of India which lays down the proposition that conducting enquiry casts the duty of establishing the charges squarely upon the prosecution. If the Enquiry Officer violates the laid down procedure and commencing the enquiry by questioning the delinquent, the questioning often taking shape of cross examination, the said enquiry cannot be viewed as just and fair. The said authority is based on

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principle laid down in 1990(2) ATJ 1 Mukesh Kumar V/s Union of India based on the Apex Court judgement in Associated Cement Co. V/s Workmen reported in 1962(2) LLJ 396. On the same principle of law the judgement reported in 1992(1)SLJ (CAT) 151 K Thirupathy Venkatachalapahty V/s Divisional Safety Officer exists.

11. In the present case preliminary enquiry was held and during the preliminary enquiry statement of witnesses were recorded but copies of these statements were not furnished to the applicant at the time of disciplinary enquiry and even the request of the applicant was turned down. In the circumstances there is no escape except to hold that the applicant was not afforded reasonable opportunity to defend himself in the enquiry and his defence is prejudiced for the reason that the case was based only on oral testimony.

12. On perusal of the charge sheet, as stated above the annexure attached to it were not supplied. Hence it cannot be said that it was vague and indefinite charge.

13. During the course of enquiry Shri S.L.Jadhav , Shri S.M. Gaikwad, Shri Karnel Singh and B.B.Patil were examined. The enquiry report is at page 60. The Enquiry officer has recorded the findings that it is not possible to conclude whether Shri S.M. Gaikwad was present or not at the time of incident.

14. This is true that in judicial review appreciation of evidence is not permissible but if the applicant alleges that his case is of no evidence, certainly the Tribunal has to look into the matter, and examine whether the finding is based on no

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evidence. The Apex Court of the land has held as under in case of Kuldipsingh V/s Commissioner of Police and others reported in 1999 ILLJ 170 para 10.

15. As per report dated 17.4.1993 JSA I was asked to stop with vehicle for search by Shri S.M. Jadhava+ Chowkidar but Shri Surindersingh JSA I did not stop for search inspite of the efforts by Shri S.M.Jadhava Chowkidar and he left office premises with out security search.

16. During disciplinary proceedings Shri S.M. Jadhava stated that when Shri Surindersingh brought the scooter pushed and parked on stand near the barrier, when he placed his hand on dicky and requested for opening the same, Shri Surindersingh started the scooter and went out, contrary to it as per sepoy Karnelsingh, Surindersingh came to gate while scooter was running.

17. The theory of ⁿshouting is ~~not~~ mentioned in the report dated 17.4.1993 but made out during the course of disciplinary proceedings by Shri S.M.Jadhava and Sepoy Karnelsingh which is not corroborated by Shri B.B.Patil who was standing near the gate office and saw S.M. Jadhava speaking with Shri Surindersingh after which Surindersingh started scooter and went out.

18. Sepoy Karnelsingh stated that he told S.M.Jadhava to check the scooter, while he was checking another scooter. He further stated that when Shri Ssurindersingh was going out he asked Shri S.M.Jadhava whether the scooter is checked, Shri S.M.Jadhava told him 'No' after which both shouted to stop[✓] Shri Surindersingh who did not stop. The conduct of Shri S.M.Jadhava in answering sepoy Karnelsingh 'No' clearly suggests that either he

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was not attentive to listen the direction to check the scooter or he allowed the applicant to go, otherwise the answer must have been he did not allow him to check or suo moto he must have shouted to stop the applicant.

19. On the above evidence no reasonable person would act upon it. Hence the order recording applicant guilty can be said to be perverse.

20. In view of the aforesaid discussion, we hold that the applicant was deprived of reasonable opportunity to defend himself by not supplying the copy of the relied documents, the P.O. submitted the written brief at the commencement of the enquiry, ^{applicant's} cross examined by P.O. and enquiry officer with a view to get rid of establishing the guilt by the prosecuting agency, the finding of guilt is perverse one.

21. There is no necessity to quash the charge sheet which is not vague one, when the appellate order is to be quashed it is not necessary to quash the order of the disciplinary authority because the order of the disciplinary authority merges in the order of the appellate authority.

22. In the result OA is allowed, The appellate order No.A/97401/194/DGQA(Vig.Cell) dated 6.5.1994 issued by respondent No.3 rejecting the appeal dated 9.12.1993 is quashed. No order as to costs.

S.L. Jain
(S.L. JAIN)
Member (J)

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B.N. Bahadur
7/12/99
(B.N. BAHADUR)
Member (A)