CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1171/94

Date of Decision : 8-6-2000

M.K.Wagdari _____ Applicant.

Shri Suresh Kumar _____ Advocate for the Applicant.

VERSUS

Union of India & Others, _____ Respondents.

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

CORAM :

The Hon'ble Shri L.Hmingliana, Member (A)

The Hon'ble Shri Rafiquddin, Member (J)

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

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

(iii) Library Yes

(RAFIQUDDIN)
MEMBER (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1171/94

Dated this the 8 th day of June 2000.

CORAM : Hon'ble Shri L. Hmingliana, Member (A)

Hon'ble Shri Rafiquddin, Member (J)

Mahadeo Kalanna Wagdari,
Watchman, Central Complex,
Bhaba Atomic Research Centre,
Trombay, Bombay-400 085. ... Applicant

By Advocate Shri Suresh Kumar

V/S.

Union of India through
Bhaba Atomic Research Centre,
Central Complex, Trombay,
Bombay-400 085. ... Respondent

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

O R D E R

{Per : Shri Rafiquddin, Member (J)}

The applicant seeks quashing of the orders dated 26.5.1992, 24.8.1992, 3.9.1992 and 13.10.1993 and also seeks a direction to be issued to the respondents to pay 100% pay and allowances from 4.11.1982 till 17.3.1992.

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2. The facts of the case as set out in the OA. are that the applicant was appointed as Watchman on Temporary basis w.e.f. 26.5.1980 at Bhaba Atomic Research Centre (BARC), Trombay. He was chargesheeted for contravention of Rule 3 of CCS (Conduct) Rules, 1964 vide chargesheet dated 3.5.1982. It was alleged that the applicantremoved the keys of the Department Jeep No. MMY 1424 from the Key Board at the Central Air Conditioning Plant on 13.9.1981 and drove the vehicle unauthorisedly and dashed it against a lamp post causing damage worth Rs.32/- to the respondents. The enquiry was completed and the enquiry officer held the charge proved against the applicant. The disciplinary authority on the basis of the findings of the enquiry officer removed the applicant from service vide order dated 3.11.1982. The appeal filed by the applicant against the aforesaid punishment order was also dismissed by the appellate authority vide order dated 4.3.1983. The applicant approached the Tribunal by filing OA.NO.36/88 and challenged his dismissal order. This Tribunal vide order dated 7.2.1992 allowed the OA. and quashed the dismissal order of the applicant and also directed the respondents that the applicant will be deemed to be continuing in service. It was, however, made clear that the respondents are not precluded from going ahead with the enquiry proceedings after giving the enquiry officer's report to the applicant and give him reasonable time to file objections against the same.

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3. In compliance of the order of the Tribunal, the respondents revoked the order of dismissal of the applicant, put him under suspension w.e.f. 30.3.1992 by order dated 18.3.1992. However, by subsequent order dated 7.5.1992, the order of suspension was revoked and the applicant was allowed to report for the duty. Besides, the applicant was also provided with a copy of enquiry report as directed by this Tribunal and the applicant was asked to make further submissions. The applicant submitted his representation dated 7.4.1992 against the enquiry report which has been annexed at Exhibit 'B' to this OA. However, the respondents vide order dated 26.5.1992 holding the charges against the applicant proved and also proposed the penalty of with-holding of one increment of pay for a period of one year. The applicant thereafter filed an appeal against the aforesaid order on 26.5.1992 which was dismissed by the appellate authority vide order dated 24.8.1992. It is further stated that the respondents treated the absence from 4.11.1982 to 17.3.1992 as period under suspension and paid him 50% of allowances. The applicant then moved the respondents for enhancement of amount of pay and allowances during the suspension period vide order dated 30.6.1993 which was allowed and pay and allowances during the period of suspension was enhanced to 75% by order dated 13.10.1993.

4. The applicant now assails the legality of the punishment order as well as the order of allowing 75% during the period he

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was deemed under suspension. It is claimed that there was no material on record before the disciplinary authority to enable him to reach any finding of misbehaviour. The respondents have also not complied with the procedure prescribed under Rule 15 of the CCS (CCA) Rules and the applicant has been denied the right of defence in violation of principles of natural justice. It is further stated that since the penalty of with-holding increment is a minor penalty whereas he was placed under suspension for holding disciplinary authority for major punishment, the applicant is entitled to receive full pay and allowances during that period.

5. The respondents in their counter reply have contested the claim of the applicant that the applicant himself admitted the charge vide his statement recorded in the defence by the enquiry officer and pleaded guilty, the present OA. is not maintainable. The Tribunal also has no jurisdiction to regulate the quantum of punishment imposed on the applicant.

6. We have heard the learned counsel for both the sides.

7. It has been contended on behalf of the applicant that there was no proof of misconduct or material on record before the disciplinary authority to warrant the conclusion that the applicant indulged in any misconduct. It is also pleaded that the applicant was not given full opportunity to defend himself

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during the disciplinary authority and as such there is violation of principles of natural justice. We, however, find that proper disciplinary enquiry has been held in the present case and there is no infirmity or irregularity to justify the quashing of the order passed by the competent authority against the applicant. It is on the record that during the enquiry proceedings the applicant himself admitted the allegations made against him in the charges. The enquiry officer asked the applicant to nominate Defence Assistant. However, the applicant himself vide his letter dated 26.7.1982 stated before the enquiry officer that he had no one as his Defence Assistant and also clearly admitted the charge on 3.8.1982. The applicant has merely made general allegations of irregularities during the enquiry and has not specifically mentioned any irregularities during the proceedings. It is even not denied that applicant himself admitted the charge before the enquiry officer. We, therefore, hold that the disciplinary enquiry was conducted properly against the applicant and the conclusions drawn by the enquiry officer are based on the material on record. Consequently, we do not find justification to quash the punishment order passed against the applicant.

8. It has, however, been urged by the learned counsel for the applicant that the order passed by the respondents by which he has been allowed payment of pay and allowances to the extent of 75% only for the period the applicant remained under suspension is against law. The learned counsel has referred to

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Government of India instructions contained in O.M. dated 3.12.1985 which have been printed at page 234 of Swamy's Compilation of F.R.S.R. Part - I General Rules, 1999 Edition which inter alia provides :-

> " ..... where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B....."

The learned counsel for the respondents, on the other hand, has pointed out that the respondents have passed the order under FR 54-A which inter alia provides that :-

> " Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection."

It has been contended that since the applicant has been reinstated on the direction of this Tribunal issued in the earlier OA. being OA.NO.36/88 which was allowed on technical

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grounds, namely the copy of enquiry report having not been furnished to the applicant and without going into the merit of the case, the respondents are justified in allowing the payment of pay and allowances to the extent of 75% only.

9. It is not correct that the applicant was reinstated on the basis of direction issued by this Tribunal in OA.No.36/88 which was allowed only on technical ground but it is also a fact that the respondents completed the disciplinary proceedings from the stage the applicant was provided a copy of enquiry officer's report and passed punishment order through which his next increment of pay was with-held for a period of one year with cumulative effect. Therefore, it cannot be said that the punishment order is passed merely on the direction of this Tribunal or any other Court who held the punishment order illegal only on the basis of technical ground.

10. We find that in the present case the applicant has not been under suspension during the period in question. The applicant was actually removed from service and remained without job during that period on the basis of earlier order of removal. The impugned order has been passed by the respondents under FR 54 whereas the learned counsel for the applicant has relied on Government instructions. However, in the Government instructions mentioned above, reference has been made only for the period an employee was under suspension. Considering the peculiar facts of

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the present case, we do not consider it justified to grant the benefit of the instructions in the case of the applicant.

11. In view of what has been discussed above, we do not find any merit in the OA. Accordingly, the OA. is dismissed with no order as to costs.

(RAFIQUDDIN)
MEMBER (J)

(L.HMINGLIANA)
MEMBER (A)

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