CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

(7)

ORIGINAL APPLICATION NO: 274/95

DATE OF DECISION: 19-1-2000

Shri Nilkumar P. Walawalkar ____ Applicant.

Shri P.C. Deogirikar ____ Advocate for Applicant.

Versus

Union of India & Another ____ Respondents.

Shri V.S. Masurkar ____ Advocate for 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? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library. Yes.

(B.N. BAHADUR)
MEMBER (A).

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

(8)

ORIGINAL APPLICATION NO.: 274 of 1995.

Dated this Wednesday the 19th day of January, 2000.

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

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

Shri Nilkumar P. Walawalkar,
Quest Co.operative Housing
Society Limited,
`Indraprakash' Building,
3rd floor, Block No. 15,
Chembur Govandi Road,
Chembur, Bombay - 400 071. ... Applicant.

(By Advocate Shri C. P. Deogirikar).

VERSUS

1. Union of India through
The Flag Officer,
Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.

2. The General Manager,
Naval Armament Depot,
Trombay,
Bombay - 400 088. ... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri N.P. Walawalkar seeking reliefs, in substance, for the quashing of the order of punishment against him, as also the order of appellate authority confirming the order of punishment and alied reliefs. The facts of the case brought out by applicant are, in brief, as follows:-

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2. The applicant who was a Fireman in Naval Armament Depot, Trombay, under respondents, was apprehended and arrested by Bombay Police on 20.7.1990, and detained and charged under TADA 1987; he was, thereafter, constantly in jail and not allowed to communicate with anyone outside except family members who called on him. Applicant contends that he had told these members to inform respondents about his arrest.

3. Applicant goes on to say that he was acquitted in the special case of 42/91, and thereafter he went to resume duty. However, he was informed that he had been removed from service, for long unauthorised absence. Applicant then alleges that the enquiry on which basis he was punished with removal of service, was done behind his back, and hence he was denied natural justice. The appellate authority had rejected his appeal and hence he is before this Tribunal seeking relief as mentioned above. The applicant then goes on to give details regarding the enquiry [conducted and alleges weaknesses in the evidence recorded and makes some other points on merits, besides reiterating the main contention that the enquiry was held behind his back, and thus was bad in law.

4. The respondents have filed a detailed statement of reply where the main allegations are denied while admitting certain factual points including, broadly the dates etc. It is stated that although the applicant was in jail, he was not prevented

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from sending letters to his family members or to meet his friends Thus, he could easily have kept respondents informed of the reasons of his long absence. The applicant, it is alleged came to the Armament Depot about 21st December, 1993, after two months of his release.

5. The respondents strongly make the point that the enquiry was not conducted behind the back of the aplicant, and give details of the efforts made by them to contact and serve notices on the applicant, at his known permanent and local addresses. These were returned by postal authorities, with appropriate remarks. Finally, a notice was publsihed in marathi news paper on 12.4.1992. It was after the postal notices that enquiry was conducted and hence the enquiry, having beeen done after following due procedure of notice, was fully legal. There was no violation on the part of the respondents, of the principle of natural justice. Other details had been given by the respondents in their written statements.

6. We have heard learned counsel. Both counsel argued their case in detail, taking us over the facts of the case and the written documents. The M.P. filed by the applicant for taking on record the judgment in the TADA case was allowed. All documents were perused. The arguments made by counsel on both sides are reproduced in gist below :

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7. The counsel for the applicant made the following points:-

(a) It was the duty of the Police/State Government to inform the respondents about the arrest and detention of the applicant and they had failed in this regard.

(b) There was no service of any chargesheet etc. and as described in the O.A.; the enquiry is fully vitiated as it is violative of the principles of natural justice, having been done behind the back of the applicant.

(c) The applicant is fully exonerated in the criminal case and stands innocent of any charge.

(d) The applicant has never been found on any unauthorised absence in his long career.

(e) Other points were argued, where the learned counsel expounded the points made in O.A. It was also stated that the punishment was very harsh, even assuming that the charge was proved.

8. Learned counsel for the respondents took us over the facts of the case, the main contentions in the written statement etc. and explained the rules regarding service of notice in the

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(12)

departmental enquiries, etc. He asserted that full precautions were taken to attempt service according to the letter and spirit of the relevant rules. Thus, notices were served on both the local and permanent addresses of the applicant. When all these were returned,notice was served in the local news paper. In fact, he contended that notice was served at 3 addresses including his father's home, not once but twice.

9. Counsel for respondents stated, the fact that applicant was acquitted in criminal charge was accepted but this was not relevant since the charge on which the punishment is based is one of unauthorised absence and no where refers to the criminal charge. Counsel for respondents was at pains to state that the Depot where the applicant worked was a part of very high security organisation, and that no indiscipline like long absence for such periods could be tolerated, and any lienancy would be highly detrimental to public interest. Counsel for respondent also stated that a detailed order has been made while deciding the appeal of the applicant.

10. The learned counsel for applicant reargued his case on a few short points referring to exhibits No.R-6 and R-7 as also the letter dtd. 19.7.94, referred to in para 5 of the order dtd. 12.8.94 (para 20). He also cited a case in his favour viz. 1993 II CLR 116.

11. An analysis into the facts and circumstances of the case first shows that the departmental enquiry against the applicant has been conducted solely on the ground of the applicant remaining absent from duty without prior permission / intimation with effect from 20.7.1990. The charge-sheet was issued in November, 1990 which means that at that time the absence was of the approximate period of 4 months. Ultimately, ofcourse, the applicant only appeared around December 19, 1993, after his release from jail. The main grievance made is that the enquiry was conducted behind applicant's back.

12. The applicant was arrested on 20.7.90 as per averment in the O.A., and was in custody of jail authorities till 27.9.93, while as per respondent the applicant was arrested on 28.7.90 and released from jail on 21.10.93. There appears to be a dispute about the date of arrest and the date of release from jail. As per the judgment of TADA Court the applicant was arrested on 20.7.90, the judgment was pronounced on 27.9.93, till then he was in jail.

13. Before we proceed to deal with the matter, it is necessary to mention Rule 14(4) of CCS Rules which is as under:-

> "14(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or

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misbehaviour and a list of documents and witness by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person".

14. A perusal of the rule makes it clear that the disciplinary authority is duty-bound to deliver, or cause to be delivered to the Government servant, a copy of the articles of charge and the statement of the imputations by which each article of or charges is proposed to be sustained. On perusal of the file of the disciplinary proceedings produced before us, we find the order dated, 10.12.90 which is as under:-

" Memorandum No.TA/0102 dated 14 Nov.90 sent to both Pmt. & local addresses of Shri N.P. Walawalkar, F/M-II by Registered AD have been returned by the postal authorities with the remarks that 'Not known' and 'Not claimed' respectively are placed opposite in the file for further instructions please".

The comment of the Disciplinary Authority in respect of appeal were as under:-

"2. With reference to para 3 of the application, it is confirmed that no information has been

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received in this office regarding the arrest and TADA case against Shri N.P. Walawalkar, Fireman Gr.II.

3(a) No family members of Shri N.P. Walawalkar conveyed any information regarding his arrest and detention in jail.

(b) Necessary letters were sent from this office to the given addresses of the individual which have returned by postal authorities with remarks 'NOT KNOWN'/NOT CLAIMED'.

(c) No police report or any other information was received in this office.

(d) The question of putting him under suspension does not arise when the whereabouts of the individual was unknown to this office".

Thus there is an endorsement of postal authorities 'Not Known' and 'Not claimed'. Regarding 'Not claimed' it is suffice to state that the applicant was in jail during the said period, hence it cannot be treated that the applicant knowningly avoided the service or refused to accept the said letter. Regarding 'Not Known', it is suffice to state that postal authorities were not able to serve for want of complete address or inspite of their best effort to trace the addressee. Thus there was no proper service of the Article of Charge, the statement of imputation of misconduct or misbehaviour and a list of documents and witnesses.

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15. We agree with the contention of the Learned Counsel for the Respondents that it was the duty of the applicant to intimate the Respondents for his absence and arrest also, which the applicant failed to intimate. Not to intimate about absence results in unauthorised absence, but it does not mean that the Respondents can proceed with the enquiry by non-complying Rule 14(4) CCS Rules. In the similar way, if the applicant fails to intimate about his arrest, it may be a misconduct, but by omission to do so, his right to have charge sheets, etc. is in no way suspended or affected and Respondents are not relieved of the responsibility from serving the charge sheet etc. on the applicant. Failure to comply Rule 14(4) vitiates the proceedings abinitio.

16. On the same anology, it is of no relevance that applicant was meeting with his family members, lawyer or having meals from his home.

17. Regarding notice sent after receipt of the enquiry report vide despatch dated 8.5.91, there is endorsement of postal authorities 'Not claimed' 'Refer to sender', 'Refused, insufficient address - Refer to sender'. As the applicant was in jail, he was not competent to refuse. Hence presumption stands rebutted and such refusal is of no consequence.

18. When the matter was published in Newspapers regarding arrest, which the respondent claims, a further duty was cast on

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the respondent to ascertain the fact of arrest and not to leave the matter in midway after half heartedly pursuing the matter by letter No.TA/P-52 dated 15.11.90 and reminder dated 3.1.91.

19. As the applicant was not served with the charge sheet, hence penalty order and appellate order are quashed and set aside, case remitted back to the Disciplinary Authority to proceed further after serving the charge sheet in accordance with law. Thus the Respondent after following the procedure beyond this stage are competent to take a decision on merits. Respondents will be competent to take a decision as to how the period from the date of dismissal to the date of decision again by Competent Authority is to be treated. Meanwhile it is not intended that the applicant would be reinstated.

20. We have taken judicial notice of a recent judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Dinanath Karekar & Ors. [AIR 1998 SC 2722].
The Apex Court has held here that the actual service of charge sheet is essential and theory of communication cannot be involved. The ratio of this case is applicable to the case before us.

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21. In view of the above discussions above, we hereby order as follows.

The order of punishment dated 8.5.1991 and the order of the appellate authority dated 12.8.1994 are both quashed and set aside. The case is remitted back to the disciplinary authority to serve charge sheet etc. and conduct the enquiry beyond that stage and take a decision on merits and in accordance with law and rules. It is not intended that the applicant would be reinstated meanwhile.

22. No orders as to costs.

19.1.2000

(S. L. JAIN)
MEMBER(J).

19/01/2000.

(B. N. BAHADUR)
MEMBER(A)

H.