IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 409/95

Date of Decision:

Shri Keshav Balkrishna Mistri — Applicant.

Shri D.V.Gangal. — Advocate for Applicant.

Versus

Union of India and others. — Respondent(s)

Shri V.S Masurkar. — Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Baweja, Member (A)

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

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

(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD,MUMBAI:1

Original Application No. 409/95

the 30th day of June 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha,Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

Keshav Balkrishna Mistri
Residing at
Adarsha Nagar, 979,
Lokhandwala Complex
Oshivara, Bombay. ... Applicant.

By Advocate Shri D.V.Gangal,

V/s.

1. Union of India through
The Flag Officer,
Commanding-in-Chief,
Western Naval Command
Fort, Bombay.

2. The Admiral Superintendent
Naval Dock Yard,
Lion Gate, Bombay. ... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

(Per Shri Justice R.G.Vaidyanatha,Vice Chairman)

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply opposing the application. We have heard counsels appearing on both sides.

2. The applicant was working as Carpenter in the Naval Dock Yard at Bombay at the relevant time. In respect of mob riot in the premises of the Naval Dock Yard, a charge-sheet was issued against the applicant on 5.12.1987. The applicant denied the allegations and an Inquiry Officer was appointed. After regular enquiry the Inquiry Officer has submitted a report dated 19.5.1988, holding that the charges are proved. Accepting this report the Disciplinary Authority had passed an order dated 13.3.1989 and removed the applicant from service.

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The applicant had preferred an appeal which came to be dismissed. Then the applicant filed an O.A. 610/89 challenging those orders in this Tribunal. This Tribunal by order dated 13.2.1992 allowed that application on the short ground namely that the enquiry report was not furnished to the applicant and the matter was remitted to the Disciplinary Authority to proceed from the stage after giving copy of the enquiry report to the applicant. In pursuance of that order, copy of enquiry report was furnished to the applicant. The applicant gave representation. Then the Disciplinary Authority passed the impugned order dated 25.8.1992. An appeal was preferred against that order which came to be dismissed. Hence the applicant has filed this O.A. challenging the orders of the respective authorities. On merits the applicant's contention is that administration was factually implicated the applicant in mob rioting due to his Union Activities. Then it is urged that there was violation of Principles of Natural justice, since the applicant's request for adjournment was refused and he had not given an opportunity to cross examine the witnesses and to aduce his defence evidence. That there was violation of CCS(CCA) Rules in conducting the enquiry. That there was no evidence to connect the applicant with rioting. The photographs on which reliance was placed was not produced during the enquiry. The identity of the applicant's participation in riot cannot be accepted. It is therefore stated that the impugned orders are not sustainable in law. Hence it is prayed that the orders be quashed and the applicant be re-instated with all consequential benefits.

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3. The respondents in their reply have justified the action taken by the respondents. It is stated that the application is barred by limitation. Then it is stated that the enquiry was done as per CCS(CCA) Rules. It is also stated that the applicant was one of the persons actively participated in the mob riot and the charges were proved against the applicant and the punishment imposed is proper. The applicant deliberately wanted to delay the enquiry proceedings and hence adjournment was refused by the Enquiry Officer. The applicant did not co-operate with the Enquiry Officer in completing the enquiry. That no grounds are made out for interfering with the impugned orders. The applicant had sufficient opportunity to defend himself in the enquiry. Hence it is prayed that no case is made out for interference and the application has to be dismissed.

4. At the time of arguments, the learned counsel for the applicant only urged two submissions. The first submission is that the enquiry is vitiated due to violation of principle of natural justice and violation of enquiry rules and refusal of adjournment by the Enquiry Officer. The next submission on merits is that there was no case about the involvement of the applicant in the incident in question and hence the penalty imposed on him is liable to be set aside. The learned counsel for the respondents refuted both the contentions.

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5. The learned counsel for the respondents has placed before us the enquiry file which shows that on 1.3.1988 the applicant's plea was recorded where he pleaded not guilty. On that day the case was adjourned to 12.3.1988 for regular enquiry which means recording of evidence.

On 12.3.1988 the prosecution witness P.W.1 Shri Madho Singh was examined. Then he was cross examined on behalf of the applicant and his Defence Assistant. Then the case was adjourned to 22.3.1988. It appears on request of the applicant and his Defence Assistant, the case was adjourned to 30.3.1988. Summons was sent to the witnesses, but on 30.3.1988 the applicant prayed for an adjournment. Though the Enquiry Officer was not willing to adjourn the case finally agreed to adjourn the proceedings to 6.4.1988 as last chance.

On 6.4.1988 second witness P.W. 2 Shri S.S.Rana was examined. The request for adjournment was refused after waiting for some time for the arrival of the Defence Assistant and since he did not come the witness was examined and he was offered to be cross examined by the applicant. But the applidant did not cross examine the witness on the ground that his Defence Assistant has not come.

The Enquiry Officer questioned the applicant about his Defence witnesses. Though he agreed to examine them, he later declined to examine the witnesses; the Enquiry Officer closed the enquiry and subsequently submitted his report.

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6. In this case the applicant had cross examined P.W.1. He did not cross examine P.W.2 on the ground that his Defence Assistant had not come. Convenient date had been given in consultation with applicant and his Defence Assistant. Since the applicant was present and his Defence Assistant had not come, the Enquiry Officer proceeded to examine P.W.2. What is more, he even gave another option to the applicant, whether he wants to engage any other Defence Assistant. The Applicant declined. In those circumstances the Enquiry Officer was forced to close the proceedings.

When the applicant had taken sufficient time and the request for adjournment was refused, the applicant could have corss examined P.W.2 or at least he could have accepted the offer of the Enquiry Officer for engaging another Defence Assistant and probably his case would have been adjourned in view of engaging a fresh Defence Assistant. In these circumstances we do not find any illegality or irregularity on the part of the Enquiry Officer in declining the request for further adjournment.

It is true that one more adjournment could have been given. But the question is whteher in the facts and circumstances of the case action of the Enquiry Officer can be justified or not? It is a case of 1988, if we accept the arguments of the learned counsel for the applicant, the case will have to be remanded to the Enquiry Officer and the applicant will have to be re-instated in service giving backwages for the last 11 years. Therefore we have to take into consideration the facts and circumstances

of each case to find out whether it is a fit case for remanding the matter after a lapse of 11 years. The applicant had sufficient and fair opportunity to defend himself. But he did not avail this opportunity for cross examining the witness by himself of by bringing his Defence Assistant to cross examine the witnesses. He also did not produce any defence witnesses on his behalf.

Both P.W. 1 and 2 have given evidence about participation of applicant in rioting. They have stated that the applicant participated in riot on that day. Even after ignoring the evidence of P.W.2 on the ground that he was not cross examined, the evidence of P.W. 1 shows that the applicant took part in the riot and set fire to vehicle. The Enquiry Officer first accepted the evidence of P.W.1 and then accepted the evidence of P.W.2. Even if the evidence of P.W.2 is ignored, the evidence of P.W.1 is sufficient to prove the case against the applicant. Hence no useful purpose will be served if we remand the matter for cross examination of P.W.2. Even if P.W.2's evidence is ignored evidence of P.W.1 is sufficient to fix the liability on the part of the applicant. Hence no prejudice is caused to the applicant even if we accept his contention that he could not cross examine P.W.2, when P.W.1 has been cross examined and the evidence of P.W.1 is sufficient to prove the case against the applicant.

7. The argument was advanced to show that the applicant was not examined after examination of P.Ws 1 and 2 as provided under Rule 14(18) of CCS(CCA) rules. Reliance was placed on some authorities.

The learned counsel for the applicant first relied on the case of Ministry of Finance V/s. S.B. Ramesh and in particular placed reliance on para 13 of the judgement. In our view the observations shown in the inverted coma in para 13 are not the reasons of the Supreme Court but they have extracted the observations of the Tribunal which has observed that Rule 14(18) is mandatory. It is not the observations of the Supreme Court at all. After quoting the observations of the Tribunal in extenso in paras 13 and 14 of the reported judgement, the Supreme Court observed that it is not a fit case for interference, particularly in the absence of full materials and documents. Therefore the Supreme Court has not expressed the view that Rule 14(18) is mandatory and what has been reporduced are the observations of the Tribunal, which no doubt says that Rule 14(18) is mandatory.

Then reliance was placed on the case of B. Sundaram V/s. Union of India and others 1987(4) (CAT) 453 where no doubt the Madras Bench of this Tribunal has observed that Rule 14(18) is mandatory. Similar view is expressed by the Chandigarh Bench of this Tribunal in the case of Ram Singh V/s. Union of India and others 1988(4)(CAT) 209.

In our view, views of the benches of this Tribunal mentioned above to the fact that Rule 14(18) of CCS(CCA) Rule is mandatory cannot be accepted in view of the observations of the Supreme Court in another case.

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We have come acrose the decision of the Supreme Court in the case of Sunil Kumar Banerjee V/s. State of West Bengal and others, 1980 SCC(L&S)369, wherein with an identical provision in All India Services (Discipline and Appeal) Rules 1969 the Supreme Court has held that this is not a mandatory rule and violation of this rule will not vitiate the enquiry unless prejudice is established by the delinquent.

8. In the present case there is no allegation in the O.A. as to what prejudice is caused to the applicant due to non observance of Rule 14(18). Even at the time of argument it was not demonstrated as to what prejudice is caused to the applicant. Merely violation of particular Rule will not vitiate the enquiry unless prejudice is pleaded and demonstrated; even if the evidence of P.W.1 and 2 had been put to the applicant under Rule 14(18), applicant would have stated that the evidence is false. It is therefore not shown as to what prejudice has been caused to the applicant due to non observance of Rule 14(18).

9. In the facts and circumstances of the case we find that violation of the said procedure has not resulted in any prejudice to the applicant.

10. The applicant was asked to produce his witnesses but he declined. We have already seen that the Enquiry Officer had given two or three adjournments and then on 6.4.1988 he closed the case and proceeded to submit his report.

After going through the enquiry file and considering the argument of the learned counsel for the applicant we find that no case is made out for interference with the impugned order on the ground of violation of procedural rules. As far as violation of principles of natural justice is concerned, the applicant was given sufficient opportunity to defend himself, which he did not avail. Hence there is no question of enquiry being vitiated due to violation of Principles of natural justice.

11. The learned counsel for the applicant invited our attention to the case reported in (1987) 4 ATC 554 (Hari Prasad Billor V/s. Union of India and others.) in support of his contention about violation of procedural rules. That was a case where exparte enquiry was held and in that connection the Bench has observed that as per the particular rule of the Railway Servant (Discipline and Appeal) Rules 1968, the Enquiry Officer should have adjourned the matter by on month. In our view the said decision is distinguishable on facts and circumstances. Hence cannot be applied to the facts of the present case.

Another case relied was Dewan Ram V/s. Delhi Administration and Another (1991) 17 ATC 596 where it is pointed out that sufficient time was not given for engaging Defence Assistant and violation of Rule 14(18). In view of the decision of the Supreme Court which clearly states that procedure for examining the delinquent after examination of prosecution witnesses is not mandatory and mere violation of rules will not vitiate the enquiry, unless prejudice is proved. As far as not giving sufficient time for bringing Defence Assistant, who did not come inspite of opportunities to cross examine the witness and the

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applicant refused the offer of the Enquiry Officer to engage another Defence Assistant.

For the above reasons we find that the present enquiry against the applicant has not been vitiated due to violation of procedural Rules.

12. Now the next and only argument is that on merits the case of the applicant is not proved. The charge against the applicant is that he participated in riot alongwith other workers in the Factory premises and the applicant had set fire to the vehicles.

We have already seen the evidence of two witnesses regarding the participation of the applicant in the riot. Even if we ignore the evidence of P.W.2 on the ground that he was not cross examined, the evidence of P.W.1 is sufficient to speak about the participation of the applicant in the riot. Evidence of P.W.1 has been seperately discussed by the Enquiry Officer and evidence of P.W.2 is also accepted by the Enquiry Officer and held that charges are proved.

The Disciplinary Authority has agreed with the findings of the Enquiry Officer and holds that the charges are proved. The Disciplinary Authority has written a speaking order and holds that the charges are proved and imposed the penalty of removal from service.

The Appellate Authority again by a speaking order refers to the contentions of the applicant and rejects them and confirms the findings of the Disciplinary Authority both regarding mis-conduct and the quantum of penalty.

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13. In the very nature of things, the scope of judicial review is very very limited. This Tribunal cannot be expected to discuss the evidence and re-appreciate the evidence and take another view, even if another view is possible. The judicial review is meant to find out the legal defects in the decision making process and not in the actual decision. The Tribunal cannot act as an Appellate Court in a matter like this. The findings of facts recorded by the domestic Tribunal cannot be interfered with by the Tribunal unless there is violation of Principles of Natural Justice, violation of procedural rules resulting any prejudice to the applicant or in case there is no evidence against delinquent official. The matter is covered by number of decisions of the Apex Court. On this point we only refer to the latest decision of the Supreme Court in AIR 1999 SC 625 Apparel Export Promotion Council V/s. A.K. Chopra, where after refering to number of decisions on the point the Supreme Court has pointed out the limited scope of judicial review in matters like this.

In our view this is not a case of no evidence. This is a case where there is some evidence sufficient to prove the case against the applicant.

After going through the enquiry file and materials on record, we hold that the applicant has not made out any case for interfering with the findings of the mis-conduct against him.

14. In the result the O.A. fails and accordingly dismissed. No costs.

(D.S. Baweja)
Member(A)

30/6/99
(R.G. Vaidyanatha)
Vice Chairman

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