

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 564/95

Date of Decision: 9.12.1998.

Shri B.A. Navaghare Petitioner/s

Shri R.C. Ravalani. Advocate for the
Petitioner/s.

v/s.

Union of India and others. Respondent/s

Shri R.K. Shetty. Advocate for the
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 NO
other Benches of the Tribunal?

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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

Original Application No. 564/95

Wednesday the 9th day of December 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

B.A. Navaghare
Residing at 4/34
Balamal Chawl,
Subhash Nagar,
River Road,
Pimpri, Pune.

... Applicant.

By Advocate Shri R.C.Ravalani.

V/s.

Union of India through
The Secretary
Ministry of Defence
South Block,
New Delhi.

The Engineer-in-Chief
Army Head Quarters
DHQ, P.O. New Delhi.

The Chief Engineer,
Southern Command
Head Quarters,
Engineers Branch
Pune.

The Garrison Engineer
Air Force
Lohogaon, Pune.

... Respondents.

By Advocate Shri R.K. Shetty.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant challenging the order of penalty imposed by the Disciplinary Authority and confirmed by the Appellate Authority. The respondents have filed reply opposing the application. We have heard the learned counsel for both sides.

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2. The applicant was working as Stenographer at the relevant time in the office of Garrison Engineer, Lohagaon, Pune. He remained absent for nearly a month and odd without applying for leave from 2.3.1987 to 11.4.1987. Then the administration has issued a charge sheet on 27.4.1988 under which 5 articles of charges were framed against the applicant.

Then an Enquiry Officer was appointed to conduct enquiry. The administration did not adduce any evidence except production of some documents. The applicant appears to have admitted all the charges with explanation that since he was not well due to mental depression he has committed mistake. On the basis of the enquiry the Enquiry Officer submitted a report holding that the charges are proved. It is also added that delinquent was suffering from mental depression and he has also given medical certificate which are on record. The enquiry report is dated 18.6.1988. It appears on the basis of the enquiry report the Disciplinary Authority passed an order on 8.11.1988 holding that the charges are proved and imposed the penalty of compulsory retirement. The applicant challenged the same before the Appellate Authority, who dismissed the appeal. Then the applicant filed previous O.A. 395/90 in this Tribunal challenging the said two orders of the Disciplinary Authority and Appellate Authority. This Tribunal by judgement dated 21.8.1991 quashed the said two orders on technical ground namely that the copy of the enquiry report had not been furnished to the



applicant and therefore a direction was given for proceeding with the matter from the stage of furnishing a copy of the enquiry report to the applicant.

Accordingly the respondents furnished copy of the enquiry report to the applicant, who in turn submitted a representation. Then the Disciplinary Authority passed a fresh impugned order dated 17.2.1992 again holding that the charges are proved and imposed the same penalty of compulsionary retirement from service. The said order has been confirmed by the Appellate Authority by order dated 12.4.1994. Being aggrieved by these two orders, the applicant has approached this Tribunal, taking number of grounds. According to him the enquiry is vitiated due to non observation of rules and also violation of principles of natural justice.

3. The respondents have filed reply justifying the action taken against the applicant. They have also stated that the enquiry has been done as per rules and observing the principles of natural justice. It is their case that no case is made out for interfering with the impugned orders.

4. At the time of argument, the learned counsel for the applicant has questioned the correctness and legality of the procedure adopted by the Enquiry Officer. He has also stated that the enquiry was not done as per rules and further the enquiry is vitiated for non observance of principles of natural justice. Alternatively he has submitted that the punishment imposed by Competent Authority is very harsh and dis-proportionate



to the gravity of mis-conduct. On the other hand the learned counsel for the respondents supported the action taken by the administration both on merits and also regarding the quantum of penalty.

5. The learned counsel for the applicant raised many legal points and contended that the enquiry was not held as per rules. We do not find any merit in any of the legal submissions. It was argued that no evidence was placed before the enquiry officer. It is then argued that the officer who issued the charge sheet was himself personally interested in one of the mis-conducts and therefore he was incompetant to issue the charge sheet. Then it was argued that provisions of rule 14 are not complied with. The Enquiry Officer has not given a proper report as required by rule 14(23) by mentioning facts like mentioning the case of the prosecution and defence etc. Then it is argued that the Enquiry Officer and the Presenting Officer have cross examined the applicant which is bad in law.

6. After going through the record and perusal of the materials, we find that there is no merit. It is well settled by catena of decisions of the Supreme Court that an inquiry is not vitiated even if there are some violations of rules of Procedure. The Supreme Court in a recent judgement in 1996(1) SC SLJ 440 (State Bank of Patiala & Ors V/s. S.K. Sharke) held that violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. If we apply test of prejudice and if no prejudice is caused to the applicant by the procedure

following by the Enquiry Officer, then inquiry is not vitiated.

7. As far as the question of cross examination of the applicant is concerned, we find from the record that the applicant was questioned as to what he has to say regarding each of the charges. The applicant has replied and admitted each charge and added he was suffering from mental depression.

Similarly question of preparing regular report as required by Rule 14(23) does not arise in the peculiar facts and circumstances of the case, when the facts are admitted.

8. The first charge against the applicant is that he remained absent unauthorisedly for 40 days without applying for leave. It is admitted that the applicant was suffering from mental depression. The charge of mis-conduct is alleged and the fact is admitted with explanation that due to mental depression the applicant could not work. This charge does not survive since absence is regularised by granting leave as pointed out by the Appellate Authority.

9. The learned counsel for the applicant contended that the penalty is one of compulsory retirement, but the applicant had not put in required service to get maximum pension. He had hardly put in 12/13 years.

As already stated charge No.1 does not survive.



In charge No.2, it is alleged that the applicant did not carry out certain work from September 1982 to April 1987, the details of the particular charge are not given. Even otherwise no action has been taken by the administration at the relevant time to take action against the applicant in respect of mis-conduct covering the period of 5 years. It is simply stated that the applicant did not carry out certain work entrusted to him during that period. This shows that the administration has condoned whatever lapses were thereon the part of the applicant so far as this charge is concerned.

As far as charge No.3 is concerned, the applicant did not deposit the amount collected by him from the officers with the Secretary MES Officers club. The practice followed is that the applicant was given this duty to collect the payment from the officers concerned and pay to the MES Officers club. Though there was some delay, the applicant has got this amount deposited in the club. Strictly speaking it was not a government work.

As far as charge No.4 is concerned the applicant did not dispatch certain ACRs and some ACRs found missing. The applicant gave the explanation that due to mental depression the same could not be dispatched.

As far as last charge namely charge No.5 is concerned the applicant did not reply to the letters issued by the administration.

From perusal of charges, charges II and IV, we find that there is no serious mis-conduct on the part of the applicant. The Disciplinary Authority

or the Appellate Authority has to decide the quantum of penalty. The Supreme Court in a recent decision reported in 1996 SCC L&S 80 i B.C. Chaturvedi V/s. Union of India and others held that the Court or Tribunal has no power to interfere with the findings of disciplinary/appellate authority by reappreciating the evidence.

Having gone through the record and in the facts and circumstances of the case we feel that the penalty of compulsory retirement when the applicant could not get the maximum pension since he was not having required number of service appears to be very harsh and disproportionate to the mis-conduct. Therefore we feel that it is a fit case that the matter should be remitted back to the Appellate Authority to decide the matter in the light of the direction given in the judgement.

10. The authorities have accepted that the applicant was suffering from mental depression. This could be gathered even from the earlier letter of the competent authority, which is on record at page 28 of the written statement, produced by the respondents themselves and marked as R-8. This letter is dated 10.9.1983. The Major under whom the applicant was working addressed ^{letter} to Lt. Col. Commandar Works Engineer stating that the applicant is not suitable for the post of Stenographer due to mental depression. He has given some instances of mental depression of the applicant noticed by him. Therefore the fact that the applicant is suffering from mental depression cannot be disputed at all.

The learned counsel for the respondents submitted that the applicant's mental depression is not suitable for Government employment and the applicant is not suitable to be kept in government service. Though we cannot force the administration to take him on duty, this matter has to be decided after proper expert gives his opinion.

11. Today, the applicant, who is before us, was questioned by us and he gave cogent answers. Therefore the Appellate Authority has to decide, after consulting the experts whether applicant can be reinstated in service. When we questioned the applicant, we find that he has wife and three young children.

One of the Fundamental Principle is that justice must be tempered with mercy. The penalty should always be proportionate to the mis-conduct. ~~Here~~ Hence except some inaction or delay in work due to his sickness, there are no serious allegations touching the integrity and honesty of the applicant. These things are to be taken into consideration when deciding quantum of penalty.

Since we are remitting the matter to the Appellate Authority only for the limited purpose regarding the quantum of penalty, we direct the Appellate Authority to constitute a Medical Board which should include Additional Director CGHS Pune and a Psychiatrist. The appellate Authority while deciding the quantum of penalty should consider the condition of the applicant's mental depression, nature of mis-conduct etc. and opinion of Medical Board.

12. If the Medical Board opines that the applicant is suitable for Government job, then the Appellate Authority shall order reinstatement of the applicant after awarding some minor penalty as per rules. If the applicant cannot be entrusted with the work of Stenographer but can be entrusted with clerical work as per opinion of Medical Board, then the Appellate Authority can impose penalty of reduction in rank to that of UDC or LDC and reinstate him in that lower post as per rules.

If the Medical Board opines that the applicant cannot be entrusted with any such work and not fit for Government job, then the Appellate Authority may award the penalty of compulsory retirement or any other penalty permissible under rules, except removal from service or dismissal from service.

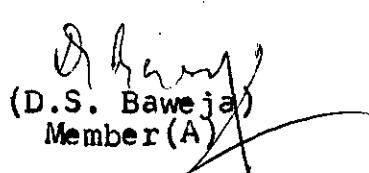
In case the Appellate Authority decides to reinstate the applicant with minor penalty as mentioned above, then the Appellate Authority to decide as per law how the intervening period should be decided and ^{as} regarding the back wages.

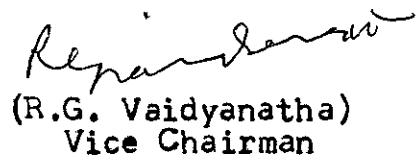
13. In the result, the application is allowed, partly; While confirming the order of the Appellate Authority and Disciplinary Authority on merits, the matter is remitted to the Appellate Authority only on the question of quantum of penalty. The Appellate Authority shall act as per directions given above and after getting Medical Board opinion and after giving personal hearing to

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applicant, pass appropriate order according to the rules and in the light of the directions given in the order. Since it is an old matter of 1987, the Appellate Authority is required to expedite the matter and pass appropriate final order within four months from the date of receipt of this order.

In the circumstances of the case there will be no order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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