

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

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ORIGINAL APPLICATION NO:34/95

DATE OF DECISION: 27.11.2000

Shri M.R.Anthony, since deceased by his L.Rs.

Smt. Eliakutty Anthony Applicant.

Shri Linto Anthony

Shri D.V. Gangal Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Shri V.S. Masurkar Advocate for
Respondents

CORAM

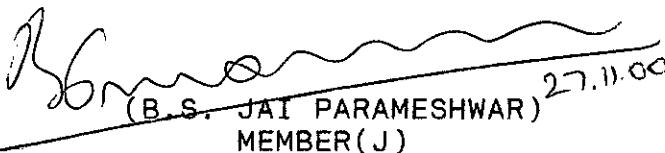
Hon'ble Shri B.S. Jai Parameshwar, Member(J)

Hon'ble Smt. Shanta Shastry, Member(A)

(1) To be referred to the Reporter or not? X

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.


(B.S. JAI PARAMESHWAR) 27.11.00
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:34/95

MONDAY the 27th day of NOVEMBER 2000

CORAM: Hon'ble Shri B.S. Jai Parameshwar, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

M.R. Anthony since deceased by
his LRs.

1. Smt. Eliakutty Anthony

2. Shri Lindo Anthony

Residing at Q.No. 5/18,
NCH Colony, Powari,
Mumbai.

...Applicant.

By Advocate Shri D.V. Gangal.

V/s

1. Union of India through
The Chief of Naval Staff,
Naval Head Quarters,
South Block, New Delhi.

2. The Flag Officer
Commanding in Chief
Western Naval Command
Bombay.

3. The Admiral Superintendant
Naval Dockyard,
Lion Gate, Bombay.

4. The Estate Officer and
Admiral Superintendant
Naval Dockyard, Bombay.

...Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

{Per Shri B.S. Jai Parameshwar, Member(J)}

The applicant herein was a former Civilian Employee
Ticket No. C/39/27222 under respondent No.3. The applicant is
challenging the punishment of removal imposed on him by the

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Disciplinary Authority, namely, the respondent No. 3 in its order dated 3.9.1992 which order came to be confirmed by the Appellate Authority in its order dated 18.6.1993.

2. By the interim order dated 28.3.1995 it was directed that the applicant shall not be evicted from the quarter provided he pays normal rent, till the disposal of the OA.

3. The facts of the case are as under:

(a). On 29.9.1987 certain workers gathered in front of the office of the respondent No.3 ~~were~~ shouted slogans, committed Arson and sabotaged the Government property etc.

(b). In connection with the incident, a FIR ~~ent~~ was registered against the employees in FIR 710/87 (Annexure A -8 page 45 of the paper book) for the offences under Sections 143, 144, 145, 147, 148, 149, 324, 427, ^{and} 435 read with Section 34 of the I.P.C by the Colaba Police Bombay. The Police authorities after investigation submitted 2 charge sheets - C.C. 561/P/88 and supplementary charge sheet C.C. 1121/P/88 before the Court of Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay against 28 persons including the applicant herein. After the Trial the Court by its judgement dated 28.10.1993 acquitted the applicant and all others.

4. The applicant was placed under suspension with effect from 15.10.1987 to 7.3.1988 (Annexure A-6)

5. The Deputy General Manager(PR) of the respondent No.3 issued a charge memo dated 26.11.1987 (Annexure A -7 page 41 & 42). The mis-conduct alleged against the applicant reads as follows:

ARTICLE - I Shri M.R. Anthony, T.No. 27222, C No.39 committed an act of unbecoming of a Govt. servant in that he was found shouting and inciting the workers from 1000 hrs to 1155 hrs on 29 Sep. 87 in front of ASD's office.

ARTICLE - II Shri M.R. Anthony, T.No.27222, C.No.39 committed gross misconduct in that he attempted to sabotage Govt. property viz. stationary, furnitures and set fire on Store Gate Pass Section of the Security Office, Naval Dockyard, Bombay at about 1200 hrs. to 1300 hrs on 29 Sep. 87.

6. After a detailed enquiry into the mis-conduct the Enquiry officer submitted his report dated 20.5.1988.

The Disciplinary Authority by its order dated 27.9.1988 imposed the penalty of removal of the applicant from service. However the said punishment came to be set aside by this Tribunal in OA 100/89 decided on 23.9.1991. In that OA it was directed that the respondents to furnish a copy of the report of the Enquiry Officer and then proceeded further. Accordingly, the applicant was treated as under deemed suspension.

7. A copy of the report of the Enquiry Officer was furnished to the applicant. The applicant submitted his representation against the finding recorded by the Enquiry Officer. The

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Disciplinary Authority after considering the representation of the applicant by proceedings No. DYP/SD/C.No.39/27222 dated 3.9.1992 (Annexure A -3 page 28 to 34) imposed the punishment of removal from service.

8. Against the said punishment order the applicant submitted an appeal dated 16.10.1992. The respondent No.2 is the Appellate Authority. The respondent No.2 by its proceedings No. CS(D)/V/A/20 dated 18.6.1993 (Annexure A -2 page 25 to 28 considered the appeal and rejected the same.

9. The applicant has filed this OA challenging the order dated 3.9.1992 and the order dated 18.1.1993 passed by the respondents authorities, on various grounds, inter alia, the applicant has been treated discriminately in imposing the punishment. The punishment imposed is too harsh and the misconduct No.2 in the charge memo is not sustainable in view of judgement in the Criminal case.

10. The respondents have filed the reply. They submitted that the enquiry was conducted in accordance with the rules. The applicant had earlier challenged the punishment in OA 100/89 and that the applicant had not agitated the various grounds and purely on a technical ground of non - furnishing the report of the Enquiry Officer, the punishment was set aside and that the respondents authorities after complying with the directions contained in the OA have passed the impugned orders. The impugned orders are perfectly valid and legal. There are no grounds to interfere with the same.

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11. During the pendency of the OA the applicant died. His wife and son have come on record to prosecute this application.

12. During the course of arguments, the learned counsel for the applicant mainly contended that for the mis-conduct alleged under item No.I the punishment of removal is harsh and that in view of the acquittal recorded by the competent Court, item No.II is not sustainable. Further he submitted that as a result of that incident about 20 employees of the respondent No.3 were proceeded with departmentally. The applicant submits that only four of the employees including himself were imposed with severe punishment of removal, whereas others have been let off with minor punishment, even though misconduct alleged against them too were similar and identical.

13. In order to substantiate the said contention that the applicant has been discriminated in the matter of punishment, he has relied upon Annexure A - 18 page 181. The learned counsel for the applicant brought to our notice the cases of Shri S.J.Shetty, Sr. Charge man and Shri G.V. Mahadik, T.No.53554 who have been exonerated of the charges. Further on perusal of Annexure A - 18 it is seen that 20 officials were proceeded with and they were imposed the penalty of reduction of pay and some others were exonerated. Relying upon this document the learned counsel for the applicant submitted that the applicant has been discriminated only on the ground that he then happened to be an office bearer of the union. Further, he submitted that at the

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time of accident the applicant was not present at the scene of occurrence. Thus the learned counsel said that the applicant has been removed from service out of vengeance. He submitted that the authorities have not properly appreciated his defence.

14. As regards the punishment imposed on the applicant we feel it proper to direct the Appellate Authority to look afresh into the matter taking into consideration the punishment imposed on the other employees who were charged with the similar misconduct as levelled against the applicant and take an impartial decision. Furter some of the employees who were proceeded against similar charges have been exonerated. Further as regards the mis-conduct alleged against the applicant in item No.2 of the charge memo the learned counsel for the applicant submits that Appellate Authority should take a proper decision in the light of the acquittal recorded by the Criminal Court.

15. We find some force in these submissions, that the punishment imposed on the applicant is severe and harsh.

16. Hence we feel it proper to direct ^{that} the Appellate Authority shall re-consider the appeal in the light of the acquittal recorded by the Criminal Court against the applicant and also the fact that lesser punishment has been imposed on the other employees for similar misconduct.

17. The Appellate Authority may consider judiciously and take a proper decision in the appeal dated 16.10.1992 of the applicant.

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18. Hence we issue the following directions.

(a) The order dated 18.1.193 passed by the Appellate Authority is hereby set aside.

(b) The Appellate Authority shall consider the appeal dated 16.10.1992 of the applicant in accordance with the rules, taking due note of the observations made by us during the course of this order.

(c) The Appellate Authority shall dispose of the appeal as expeditiously as possible preferably within three months.

19. Accordingly, the OA is allowed in part. No order as to costs.

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(Ms. Shanta Shastry)
Member(A)

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(B.S. Jai Parameshwar)

Member(J)

27.11.2000