

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 598 of 1997.

Dated this Wenesday, the 23rd day of January, 2002.

Nanik Vitthal Kadam, Applicant.

Shri Uday Warunjikar, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

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

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?
- (iii) Library. X

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

OS*

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ORIGINAL APPLICATION NO.: 598 of 1997.

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

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

Nanik Vitthal Kadam,
44/1/A, Kharadi,
Chandan Nagar,
Pune-Nagar Road,
Pune - 411 014.

... Applicant.

(By Advocate Shri Uday Warunjikar)

VERSUS

1. The Commandant,
512, Army Base Workshop,
Khadki, Pune - 411 003.
2. The Applicate Authority
at Headquarter, Technical
Group, EME Delhi,
Cantonment 110 011.

... Respondents.

(By Advocate Shri R. K. Shetty)

O R D E R (ORAL)

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

The Applicant in this case comes up to the Tribunal challenging the orders of penalty imposed on him after a departmental enquiry as also the decision of the Appellate Authority confirming the aforesaid decisions in appeal. The facts of the case, in gist, are that the Applicant who was working as Blacksmith in the Army Base Workshop, Khadki, Pune was charged & sheeted for an act of gross misconduct for enrolling employees of his workshop as members of one Panchratna Lucky Draw Scheme, Hadapsar, Pune. Details are provided regarding collections made and the inference is that he has cheated

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employees to the tune of Rs. 76,850/-. (Unfortunately, the copy of Articles of Charge is not filed by either side in O.A.). However, we have seen the original file shown by Shri R. K. Shetty and find that the reproduction of Articles of Charge made by the Enquiry Officer in his report as on record at page 76 of the Paper Book is correct and true.

2. The Respondents in the case have filed a Written Statement, resisting the claims and allegations made in the O.A. They state that there is no infirmity in the enquiry which has been conducted. Also, that it is only after full fledged enquiry and the establishment of serious charge that the penalty has been awarded. Further, that this punishment is in no way grossly disproportionate to the misdemeanour. This is a broad stand of the Respondents. Other averments, as made in the O.A. by the Applicant, and the stand and arguments taken by the Respondents were argued in great detail by the respective Learned Counsel on both sides, namely - Shri Uday Warunjikar appearing for the Applicant and Shri R. K. Shetty appearing for the Respondents.

3. Arguing the case for the Applicant, his Learned Counsel took four broad points of arguments. The first one was that the decision was perverse and that, this was really a case of no evidence. The second point was that the misdemeanour alleged did not amount to misconduct at all. The third point made was procedural, in that, it was alleged that illegible copies of some documents were provided to the Applicant. The final argument taken by the Applicant was that the penalty imposed was grossly disproportionate to the misdemeanour.

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4. Amplifying these point of argument, the Learned Counsel first took us over the details of evidence on record. We have gone through this with his assistance during argument, especially, the various statements for examination/cross examination of witnesses brought in by both sides. It was the point made with reference to this evidence by Learned Counsel that the evidence was grossly inadequate and contrary to conclusion drawn and no reasonable person would take a view passed on this evidence that the decision arrived at was just. It was a perverse decision according to the Learned Counsel.

5. Another important point made was that the misdemeanour alleged did not form a part of misconduct. In fact, Learned Counsel sought to take recourse to sub-clause (a) to Rule 15(2) of C.O.S.(Conduct) Rules to state that the Applicant was, in fact, engaged in work of a honorary, social and charitable nature and that all he was doing was collecting some money on behalf of Chit Fund where his brother was one of the Organisers. Learned Counsel stressed the point that even though the Applicant had collected subscription, this could not be led to conclude that he was guilty of cheating. He stressed the word "cheating" used in the Articles of charge. A short point was also made by Learned Counsel on the aspect of illegible copies supplied and finally the point regarding gross disproportionate was argued.

6. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri R. K. Shetty, described the details of the fact as covered in the Written Statement and also brought before us the original file of the Department. It was pointed



out that a serious complaint was lodged by some employees of the Workshop where details were provided in regard to the acts of collection of money and subscription for the chit fund by the Applicant and allegation made that the promised prizes were not provided. Also the promise regarding provision of a minimum prize of Black & White Television was not kept. Learned Counsel showed a number of original receipts which admittedly were passed by the Applicant for collection of subscription.

7. Shri Shetty took us over the enquiry report in some detail to make the point that evidence was correctly appreciated and that this was certainly not a case of no evidence, as sufficient evidence was available. Learned Counsel dwelt at some length on the aspect of use of word 'Cheating' and stated that it was used in the connotation of the allegations made.

8. Learned Counsel for the Applicant, Shri Uday Warunjikar, in a brief reargument, drew our attention to the decision of the Hon'ble Supreme Court in the matter of Bank of India & Another V/s. Degala Suryanarayana (AIR 1999 SC 2407) to make the point that this Tribunal could indeed go into the evidence to ascertain the point as to whether the decision was perverse.

9. We have carefully considered all papers on record and the arguments made at length before us by the respective Learned Counsel. In regard to the point about the evidence in disciplinary enquiry, its appreciation, etc. we did go through the evidence on record mainly the statement of Witnesses, cross examination, etc. Our going through of this evidence was made

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within the restriction of the settled law in mind, namely - to ascertain whether there was any aspect of malice or whether the decision could be termed as perverse, etc. Mainly, we went through this to ascertain if this could indeed be a case of no evidence. It is seen that Applicant has admittedly collected money as described in the case. Also, that it was not a case of one or two receipts or a stray example of money collected which could have been ignored as a stray incident. He has systematically propagated the chit fund, the fact of his brother being a organiser is certainly relevant and he has passed receipts after receipts over a period of time. In this connection, the charge made is specific giving details although the word 'Cheating' is being used. The specific point made is that Rule 15 and 16 of the C.C.S. (Conduct) Rules has been infringed. On careful consideration, we cannot come to a conclusion that this is a case of no evidence. Although some stray depositions do go to create some doubts regarding applicant pocketing money collected, but there is plenty of evidence in the Written Statement/s themselves to show that the Applicant was taking a active, and more than active, role in the collection of money for a Chit Fund which was organised by persons including his own brother, admittedly. The argument that the decision is perverse cannot be sustained in the face of evidence which can be certainly taken to be sizeable and clearly against the Applicant.

10. We now come to the ground taken by the Learned Counsel for Applicant that the misdemeanour alleged was not a misconduct at all. In this connection, as referred to above, we have gone

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through aforesaid Rule 15 of the C.C.S. (Conduct) Rules. The entire rules prohibit such kind of activity as could be seen from a total reading of the Rule. The only part of the rule on which the Applicant depends is as contained in Rule 15(2)(a) where it is stated that a Government servant may without, previous sanction of Government, "undertake honorary work of a social or charitable nature."

11. We have carefully gone through the facts of the case and are now convinced that the work done by him was of a honorary, social or charitable nature. He was promoting an activity which was certainly not social despite the occasional display in its advertising about fund being used for reconstruction of a temple. The basic rules prohibit his engaging in such activity and this factor cannot be forgotten. We also cannot forget that although he may not be highly placed in the hierarchy of the organisation he works, for he is the responsible worker in the Army Base Workshop and his engaging in this kind of activity and leading to unrest among his colleagues adds to misdemeanour, which is clearly a misconduct in terms of rules, in the first place.

12. On the technical point emphasized by the Learned Counsel, Shri Uday Warunjikar, that no cheating could be proved or that it could not be proved that he had defalcated the amount, it has to be stated that the Articles of charge itself clearly mentions the collection of stipulated sums of money for 19 months from 21 individuals and the word "cheating" has to be construed in the context of preceding description. The Enquiry Officer,

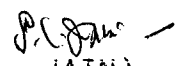
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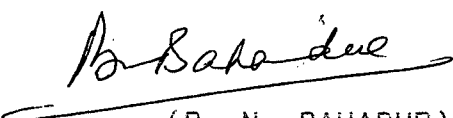


as repeatedly pointed out by Shri Shetty, comes to the conclusion in respect of Rs. 43,000/-. Be that as it may, this is not a case under the I.P.C. in a criminal court, where it has to be established whether the meaning of word 'cheating' will have to be taken with reference to the Indian Penal Code. Here the meaning of the word will have to be taken in the context of the charge against the Applicant, as made out in the Articles of Charge. Certainly, it could be taken that the conduct is unbecoming of the Government servant and there is violation of the rule cited, as indeed charged. We do not consider it necessary to give any importance to the aspect of legible copies not provided as at the very time of appeal also it is stated vaguely that copies of "some documents" were not provided correctly.

13. However, we now come to the aspect of disproportionate nature of punishment, as argued by the Learned Counsel. It must be remembered by us at this time that the penalty imposed by the competent authority on an employee can only be interfered within a very exceptional circumstances where it is so very disproportionate that it stands out as a clear act of injustice. In fact, in one judgement it has also been settled that it should be such that it shocks the conscious of the Court. Be that as it may, we are not convinced that there is a case for interfering in this regard.

14. In view of the above discussions, the O.A. is hereby dismissed with no order as to costs.


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


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