

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.662/1997

Dated this 15th , the th Day of June, 2001.

Shri J.A.Javar Applicant

(Applicant by Shri Suresh Kumar, Advocate)

Versus

VOI & Ors. ... Respondents

(Respondents by Shri R.R.Shetty, for Shri R.K.Shetty, Adv.)

CORAM

HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, 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?

(3) Library.

S. Raju
(Shanker Raju)

Member (J)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.662/97

Dated this, the 15th the Day of June, 2001

CORAM: HON'BLE SMT. SHANTA SHAstry, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1) Shri J.A. Javar (UDC)
395 Patil Gally,
Bhingar,
Ahmednagar, Maharashtra,
Pin 414002. Applicant
(Applicant by Shri Suresh Kumar, Advocate)

vs.

1) Union of India through
Secretary, Min. of Defence
South Block, New Delhi,
Pin. 110 011.

2) The Director General of Quality
Assurance, Department of Defence
Production, Ministry of Defence,
Govt. of India, Defence Head Quarter,
New Delhi Pin: 110 011.

3) The Controller,
Controllerate of Quality Assurance
(Vehicles) Post Box No-2,
Aurangabad Road,
Ahmednagar, Maharashtra
Pin 414 001. Respondents

(Shri R.R.Shetty for Shri R.K.Shetty, Advocate)

O R D E R

[PER: SHANKER RAJU, MEMBER (J)]

The Applicant a UDC has assailed an Order dated 26.6.1996 whereby after holding disciplinary proceedings he was awarded major penalty of Compulsory retirement. The appeal preferred by the Applicant against the penalty order has not been disposed of by the Respondents and after waiting for more than six months the Applicant has come to this Tribunal for redressal of his grievance.

2. To resolve the controversy in the present case, the brief relevant facts are that the Applicant on 1.7.1994 had written a letter to the District Collector *inter alia* complaining about threat of beating/murder at the hands of certain employees viz. N.S. Berud, I.A. Vaid and B.V. Buravakar. This complaint was on the next day i.e. on 2.7.1994 withdrawn by the Applicant vide his letter dated 2.7.1994 stating that the matter has been amicably settled between the parties. Subsequently, the Respondents, after a Board of Enquiry issued a Memorandum of Charge Sheet for major penalty under CCA (CCS) 1965 for making serious allegations against his colleagues and withdrawing it later on as well as depositing Rs.20,000/- without intimation to the Office and also purchase of certain shares without any intimation to the competent authority. In the Enquiry the person against whom the complaint was made had not supported the case of respondents and through Enquiry Report dated 21.11.1995 Articles of Charge 3 and 4, have not been proved against the Applicant but the charge of making false complaint and its withdrawal later on stood established against the applicant. The Disciplinary Authority on the basis of the report of the Enquiry Officer imposed the penalty of compulsory retirement against which an Appeal was preferred but is yet to be disposed of.

3. The Applicant in his O.A. though challenged the impugned orders by taking various legal contentions but mainly confines to the fact that the allegation levelled against him could have at best attracted minor penalty proceedings and the punishment awarded to him is arbitrary and highly disproportionate and incommensurate with the charges levelled against him. It is

contended that the Disciplinary authority has not at all gone into his contention of proportionate punishment nor the appellate authority by disposing of his appeal within a reasonable period.

4. On the other hand the Respondents rebutting the contentions of the Applicant, defended their stand by stating that this Tribunal has no jurisdiction to interfere in the matter of disciplinary proceedings as well as the punishment when the Enquiry had been conducted properly and the charges alleged misconduct committed is a serious one. It is contended that as the Applicant on completion of 30 years of service has already been accorded full pension and benefits which has not prejudiced him on the proportionality of the punishment. It is stated that the charge and misconduct levelled against the applicant of making serious and frivolous allegationns itself was to be dealt with ^{heavy} hands but a lenient view has been taken by the Disciplinary Authority by compulsorily retiring the applicant without affecting the retiral benefits.

5. We have carefully considered the rival contentions of the parties and perused the material on record. We find that the applicant assailed the order of penalty in an appeal filed on 16.3.1996 praying for personal hearing and also alleging that the punishment is disproportionate to the charge. The O.A. was filed on 4.7.1997 after waiting for more than one year, but no order has been passed by the appellate authority. It is also transpired from the record of the Respondents that the appeal is yet to be disposed of by the respondents. The Appellate authority has withheld the appeal of the applicant and has not

passed any orders without any justifiable explanation and reasons.

6. As regards the contention of the Applicant regarding proportionality of punishment is concerned, and also keeping in view the ratio of the Hon'ble Apex Court in *B.C.Chaturvedi JT 1995 Vol 8 SC 65* the Tribunal in a judicial review cannot normally substitute its own conclusion of penalty but in cases where the penalty imposed by the Disciplinary Authority shocks the conscience of the Court the matter can be remanded back to concerned authorities to reconsider the penalty imposed. Having regard to the ratio (supra) we find that charges No.3 and 4 levelled against the applicant regarding not informing about the shares and deposition of Rs.20,000/- the same was not proved by the Inquiry Officer and thereafter the disciplinary authority hasnot disagreed with the same to award punishment to the applicant. The Disciplinary authority has imposed the punishment of Compulsory Retirement only on the charges 1 and 2 which inter alia are of the alleged misconduct of applicant making a complaint against the fellow employees regarding threat of beating and murder and also requesting the authorities not to take any action on it and withdrawing it on the basis of amicable settlement between the parties. It is stated that the aforesaid allegations have been made due to some confusion when the Applicant was not in perfect state of mind. We also find that the Respondents had yet to take any action on the complaint when it was withdrawn on 2.7.1994. To our mind a mere act of the Applicant by making an allegation and withdrawing the same on the

next day would not show any malafide on its part and shows the justification that the same was made under the heat when he was not in right state of mind. The subsequent withdrawal also states the repenting of the applicant. The Respondents have also alleged gross misconduct against the applicant in their chargesheet for the aforesaid act. The Disciplinary Authority while imposing the penalty for compulsory retirement has also not recorded a specific finding of grave misconduct against the applicant and in our considered view also the act of applicant is not falling under the category of misconduct of grevious nature rendering him unfit for Govt. Service further. The punishment imposed has been passed without application of mind and on extraneous considerations for the purpose of setting an example to others which cannot be sustained as it is vitiated by extraneous considerations. The Disciplinary Authority has also not considered this aspect and imposed the penalty of compulsory retirement whereas the Applicant has six more years service to his credit and would have served for the period nonetheless accorded pension of his retiral benefits. The aforesaid action of the respondent has prejudiced the applicant in the matter of his further promotion to be accrued and alsohe has been deprived of the salary for the peirod till his date of superannuation. In this conspectus and having regard to the observation made above we are of the confirmed view that the penalty imposed is absolutely arbitrary and is disproportionate to the charge levelled against the applicant and is also not commensurate with the charges and shocks our conscience. The applicant would have

been let off with a Warning or Minor Penalty for this minor lapse.

7. Having regard to the discussion made above and reasons recorded we dispose of this O.A. by remanding this matter to the Disciplinary Authority to reconsider the penalty imposed upon the applicant keeping in view the observations made in the O.A. and to pass a fresh detailed and speaking order also dealing with the intervening period from the date of Compulsory retirement within a period of 2 months from the date of receipt of copy of this order.

8. No orders as to costs.

S. Raju
(Shanker Raju)

Member (J)

Shanta S
(Smt. Shanta Shastray)
Member (A)