

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 668 of 1997.

Dated this Thursday, the 20th day of December, 2001.

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

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

Chandragupt D. Shirole,
Chowkidar CH/261,
35/6, Followers Quarters N.D.A.,
Khadakwasala, Pune - 411 023.

Applicant.

(By Advocate Shri S. V. Marne)

VERSUS

1. Shri J. S. Rai,
Air Marshal Commandant,
National Defence Academy H.Q.,
P.O. N.D.A., Khadakwasala,
Pune - 411 023.

2. Shri K. Madhyan,
(Inquiry Officer),
Geography Department,
National Defence Academy,
Khadakwasala, Pune 411 023.

3. Miss M. V. Bade,
(Presenting Officer),
Foreign Language Department,
National Defence Academy,
Pune.

4. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.

Respondents.

(By Advocate Shri R. K. Shetty)



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ORDER (ORAL)

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

This is an application made by Shri Chandrakant D. Shirole, seeking the relief from this Tribunal for the quashing and setting aside of the impugned order dated 19.02.1997 through which the Applicant's service as Chowkidar has been terminated (the relief sought vide para 8 (b) is clarified by Learned Counsel, Shri S. V. Marne, to have been an interim order request and hence not pressed).

2. The facts of the case, as brought forth by the Applicant in his application, and by the Learned Counsel on his behalf during arguments are that the Applicant was a Chowkidar at the National Defence Academy (N.D.A.), Pune. On the night of 17/18th August, 1996, while he was on duty with S. K. Washikar, another Chowkidar, he stopped some four Mess Waiters/Bearers and found them smuggling out ration items. The allegation against the Applicant is that he, alongwith the other Chowkidar, stopped the Mess Waiters/Bearers and checked them but allowed them to go scot free, and also pocketed the goods like sugar, milk, oil, bread, etc. between him and the other Chowkidar. It was alleged that they allowed the Mess Waiters to go home and made no report of the matter to their superiors. The Applicant was charged after an enquiry in the matter, have been awarded the penalty of removal from service.

3. Thus, challenging the order of removal, and with the grievance, as listed in the application and brought out in

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arguments, the Applicant is before us in this O.A. Learned Counsel for the Applicant made the following four arguments, expounding them with reference to the material on record. The first one was that all the Witnesses depended upon were indeed people who were themselves involved in the act of misdemeanour i.e. Bearers and that no enquiry has been conducted against these Bearers. The second point made was that the evidence was not recorded in the correct format i.e. question and answer format and it was in the statement type format. The third argument raised by the Learned Counsel for Applicant was with reference to the findings at page 36 and with special reference to the sentence contained therein to the effect that it was a matter of conjecture as to whether the remaining items were actually shared by the second Chowkidar. Thus, he contends that punishments are being made and conclusions are being drawn on the basis of conjecture rather than facts. The fourth argument made was with reference to the evidence at page 22 of the paper book, namely - statement of one witness, Mr. M.A. Ali, Mess Waiter, where the point sought to be made by the Learned Counsel for Applicant was that it was not possible to put some 1.1/2 kg. of used oil in two empty quarter bottles. The insinuation was that the evidence cannot be believed. Winding up the argument, the Learned Counsel for Applicant stated that, in any case, the penalty meted out to the Applicant was far too harsh and indeed disproportionate to the misdemeanour, even if considered proved.

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4. Respondents have filed a Written Statement in reply, where the entire episode is described in great detail and it is stated that the Applicant had not even filed an appeal and had approached the Tribunal directly through this O.A. It is stated that a regular enquiry has been conducted, and there is over-whelming evidence on record, and hence the conclusions drawn and the penalty awarded has been sought to be justified in the Written Statement. Further details are provided in the Written Statement where an attempt is made to deal with the averments in the O.A. parawise. Learned Counsel for the Respondents, Shri R. K. Shetty, depended on the Written Statement and also sought to meet the points raised in argument by the Learned Counsel for Applicant stating that the evidence was over-whelming and that the points made did not carry weight. He also relied on the ratio of the Hon'ble Supreme Court while attempting to meet the contention that the penalty was over-whelmingly harsh.

5. At the first instance, we note that we do not find any procedural or other irregularity in the enquiry. The fact that all the witnesses involved were indeed people who were themselves part of the incident, namely Mess Waiters/Bearers, cannot *ifsofacto* lead to the conclusion that the enquiry would stand vitiated. It would depend on the facts of the case. Indeed, we find no reason to come to the conclusion that the evidence is bad in law. We would, of course, not go into details to

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re-appreciate the evidence or to take a independent view as if we were an Appellate Authority. We are aware of the settled law in this regard. The point made about the evidence being not in correct format does not appeal to us at all. We have gone through the manner in which the evidence is recorded and find nothing wrong in legal terms in the manner of recording of evidence. In fact, we note that the Applicant, when provided an opportunity for cross examination, chose not to avail of this opportunity.

6. Similarly, we are not impressed about the argument which seeks to draw support from one sentence about the conjecture of sharing of materials by two Chowkidars. The findings have to be read as a whole, as available on page 36 and 37 and this one sentence on which Learned Counsel for Applicant seeks reliance cannot be used in isolation or out of context. We are similarly not impressed by the aspect of details about whether 1.1/2 kg. of oil could be put in two quarter bottles. Again this is an isolated aspect of evidence being brought out and cannot be looked at in that manner. These discussions will show that there is no perversity in the decision taken. In regard to the argument taken by the Learned Counsel for Applicant that the penalty is disproportionately heavy, we need to note the fact that the person concerned is a Chowkidar, who is charged with



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the duty of guarding the interest of the Academy in physical terms. He has not only allowed some persons who were trying to illegally take away mess materials, but has also shared the booty with his fellow colleague. We also note that the Academy in question is an important Institution of the Government. We are not persuaded to take the view that the penalty is disproportionately high.

7. In view of the above discussions, this O.A. is hereby dismissed with no orders as to costs.

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

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dl-20/12/01
to *....., J.S.C. (S)*
on *29/11/01*

No

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