

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI
ORIGINAL APPLICATION NO.701/97

4 the day of MARCH 2002

CORAM: Hon'ble Shri M.P. Singh, Member(A)

Hon'ble Shri J.K. Kaushik, Member(J)

T.M. Lavantra
Residing at
Samata Nagar, Singh Estate,
Nav Jagriti Hsg. Society,
Plot No.71/76, Kandivali East,
Mumbai.

...Applicant.

By Advocate Ms. Mistry for Ms. N.V. Masurkar

V/s.

1. Union of India through
The Secretary,
Department of Atomic Energy,
BARC, Trombay, Mumbai.
2. The Head Personnel Division
BARC, Trombay, Mumbai.
3. Controller and Appellate Authority
BARC, Trombay, Mumbai.

...Respondents.

By Advocate Shri R.R. Shetty.

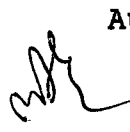
O R D E R

(Per M.P. Singh, Member(A))

In this O.A. the applicant has prayed that the charge sheet dated 17.10.1994, the order of removal dated 22.1.1996 passed by respondent No.2 and order of the Appellate Authority's dated 6-13.5.1996 be quashed and set aside and the respondents be directed to reinstate the applicant with backwages and other consequential benefits.

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2. The facts as stated by the applicant are that he was appointed as Cosmetic Helper i.e. Sweeper on 30.1.1987. Subsequently he was regularised in the post with effect from 20.2.1989. Due to certain family circumstances he could not attend duty from 3.8.1994 to 19.12.1994. An enquiry was conducted by the Disciplinary Authority. It is stated by the applicant that on an earlier occasion he was asked to plead guilty so that he could be retained in service with minor penalty of withholding of increment. He was given the same understanding that he would save his employment if he had pleaded guilty and hence applicant pleaded guilty under the same impression. The Enquiry Officer completed the enquiry and submitted his report on 17.1.1995. The Disciplinary Authority did not accept the findings of the Enquiry Officer and ordered denovo enquiry and appointed another Enquiry Officer on 17.11.1995. All the time applicant was assured by the Enquiry Officer that only minor penalty would be imposed on him, therefore, the applicant did not submit any representation to the Disciplinary Authority. The Enquiry Officer completed the enquiry and submitted his report. The Disciplinary Authority thereafter imposed a penalty of removal from service on the applicant by order dated 22.1.1996. He submitted an appeal against the order of the Disciplinary Authority. The Appellate Authority rejected his appeal and confirmed the order of the Disciplinary Authority. Hence he filed the O.A. for the aforesaid relief.



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3. The respondents in their reply have stated that the applicant has shown lack of devotion to duty and had acted in a manner unbecoming of a Government servant thereby contravening the provision of Sub-Rule (i) (ii) (iii) of Rule 3 of CCS (Conduct) Rules 1964. Enquiry was conducted against the applicant because of the mis-conduct. The Enquiry Officer completed the enquiry and submitted his report. A copy of the enquiry report was forwarded to the applicant for making representation, if any. However, the applicant did not make any representation against the said enquiry report. The Disciplinary Authority passed the order dated 22.1.1996 imposing the penalty of removal from service on the applicant which was further confirmed by Appellate Authority by order dated 6-13.5.1996. According to the respondents the applicant was in the habit of remaining absent from duty unauthorisedly. He was punished with the penalty of withholding of increments for remaining absent, unauthorisedly for two occasions. The applicant had admitted the charge of unauthorised absence. Therefore the applicant does not have a case to plead before the Tribunal and the present application deserves to be dismissed.

4. Heard the learned counsel for the rival contesting parties and perused the records.

5. During the course of the argument the learned counsel for the applicant has submitted that the applicant was charge sheeted for remaining absent from duty for the period from 3.8.1994 to 19.12.1994. The applicant was a low paid Grade 'D' employee.

It was because of his family circumstances that he could not report for duty during this period. For this, the maximum penalty of removal from service has been imposed upon the applicant by the respondents which has resulted in his economic death. He has further submitted that the penalty imposed by the respondents is dis-proportionate to the charges levelled against the applicant. On the other hand the learned counsel for the respondents stated that the applicant was in the habit of remaining absent from duty and was also punished for this mis-conduct on earlier occasions.

6. After hearing both the parties we find force in the contention of the learned counsel for the applicant that the penalty imposed on the applicant is not commensurate to the charge levelled against him. We are aware of the well settled legal position that the Tribunal cannot re-appreciate the evidence and also cannot interfere with the quantum of penalty imposed by the Disciplinary Authority except in the case where it shocks the conscience of the Court or Tribunal. The Hon'ble Supreme Court in the case of of B.C. Chaturvedi V/s Union of India JT 1995 (8) SC 65 has held that the High Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief either directing the disciplinary/appeallate authority to consider the penalty imposed or to shorten the litigation, it

may itself, in exceptional and rare cases, impose appropriate punishment with cogent resources in support thereof. In the case of Shamsher Bahadur Singh V/s State of Uttar Pradesh and ors. 1993 (2) SLJ 16 Allahabad High Court has held that ordinarily the maximum penalty resulting in an economic death of an employee could be awarded only in cases of grave charges where lesser punishment would be inadequate and may not have any curative effect. The same view is held by the Hon'ble High Court of Punjab & Haryana in the case of Ex-constable Balwant Singh V/s State of Haryana in CWP 12406 of 1995 decided on 7.12.98 (1994(2)ATJ 113).

7. In view of the facts and legal position stated above, we are of the considered opinion that the penalty of removal from service imposed by the Disciplinary Authority upon the applicant is dis-proportionate and we therefore quash and set aside the order dated 22.1.1996 passed by the Disciplinary Authority and order dated 6-13.5.1996 passed by the Appellate Authority and remand the case back to the Disciplinary Authority to re-consider the matter and impose any penalty other than the penalty of removal, dismissal or compulsory retirement upon the applicant. The respondents are directed to reinstate the applicant immediately. We, however, make it clear that the applicant will not be entitled for the payment of backwages. No order as to costs.

J.K. Kaushik
(J.K. Kaushik)
Member (J)

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M.P. Singh
(M.P. Singh)
Member (A)

dt 4/3/02
~~Forwarded to the respondent (s)~~
on 27/3/02

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