IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 335

Date of Decision: 7.8.1998

Katamain Ankaya .. Applicant

Shri D.V.Gangal .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri V.S.Masurkar. .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not ? NO

(2) Whether it needs to be circulated to other Benches of the Tribunal ? NO

(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.335 /1998.

Friday, this the 7th day of August, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha,Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Katamain Ankaya,
B.M.C. Room No.482,
K.N.Nagar, Dharavi X Road,
Mumbai - 400 017. ... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India
through the Flag Officer
Commanding-in-Chief,
Western Naval Command,
Mumbai.

2. The Admiral Superintendent
Naval Dockyard
Mumbai - 400 001.

3. Chief of Personnel
Naval Headquarters,
New Delhi - 110 011. ... Respondents.

(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri Justice R.G.Vaidyanatha,Vice-Chairman)

In this application, the applicant is challenging the show cause notice dt. 26.2.1998 which has been issued by the Competent Authority calling upon the applicant to show cause as to why the penalty should not be enhanced to one of removal from service. The applicant has already given reply to the show cause notice. The applicant is now challenging the legality and correctness of the show cause notice in this O.A. The respondents have filed their reply opposing the application. We have heard both the counsels regarding admission and interim relief.

2. The applicant was working in the Naval Dockyard was chargesheeted for producing false certificate to get appointment. The Disciplinary Authority imposed a punishment of withholding increment for three years. The

...2.

applicant did not challenge the order of punishment. However, the higher officer took the view that the punishment is inadequate and issued a show cause notice as to why the penalty should not be enhanced. After hearing the applicant, the Appellate Authority passed an order of punishment of removal from service. The applicant challenged the same in this Tribunal by filing O.A.941/89. That order of the authority came to be set aside by this Tribunal by an order dt. 13.2.1992 and the O.A. came to be allowed on a short ground viz. that the authority who passed the order did not have suo moto power of revision regarding enhancement of punishment. However, in the operative portion of the order, the Tribunal observed that it does not want to give any direction, but it is for the concerned authority to decide whether any fresh action can be taken according to law.

Then, the Disciplinary Authority issued a show cause notice to the applicant regarding enhancement of punishment. The same was challenged before this Tribunal in O.A. 1091/92. The matter was heard by a Division Bench to which one of us was a party (R.G.Vaidyanatha,Vice-Chairman) and by order dt. 10.12.1997 the said show cause notice issued by the Disciplinary Authority came to be quashed on the ground that the Disciplinary Authority has become functous officio and he has no jurisdiction to revise his own order regarding punishment. However, in the operative part of the order, the Tribunal observed that it is for the Competent Authority under Rule 29 to decide as to what action if necessary to be taken according to law.

3. Now the Competent Authority viz. Chief of Personnel at the Army Headquarters has issued the impugned show

...3.

cause notice dt. 26.2.1998. The applicant is challenging the legality of the same in this O.A.

4. At the time of arguments, the learned counsel for the applicant questioned the legality of the order on some grounds including merits of the case. Since we are at the stage of admission, we do not want to go into the merits of the show cause notice. We are only concerned with the question whether the order was legal and the authority had jurisdiction so as to call for interference by the Tribunal. Normally this Tribunal does not interfere at the stage of show cause notice, since the applicant will have an opportunity of giving a reply to the notice and then the Competent Authority has to pass appropriate order according to law and it can be even challenged before the proper Appellate Authority. Therefore, we confine our scrutiny only to the question of legality and jurisdiction in issuing the impugned show cause notice.

5. The argument of the learned counsel for the applicant that the impugned show cause notice does not mention as to which order it sought to revise has no merit since the notice clearly says that he wants to enhance the penalty,whatever penalty that has already been given is mentioned in the show cause notice and now the authority wants to enhance it. The question whether the applicant has already undergone the punishment is also not relevant for the Competent Authority to take a decision regarding the enhancement of punishment.

Rule 29 of the CCS(CCA) Rules clearly provides that the revisional power can be exercised at any time.

...4.

It is true that there is a delay of few years from the date of original order of punishment and the issuance of show cause notice. But it is an admitted fact that right from 1989 till 1997 there has been litigation initiated by the applicant himself. Any how, this is a matter the Competent Authority has to take into consideration at the time of passing final orders on the basis of the show cause notice. The argument of the learned counsel for the applicant that in many cases Courts or Tribunals have held that the orders shall be passed within a reasonable time as per Rule 29 and should not extend for long time is a matter which does not concern us at this stage. That is a matter which the applicant has to press before the Competent Authority and if any adverse order is passed, he is at liberty to challenge the same.

We are also not impressed by the argument of the learned counsel for the applicant that no ~~opportunity~~ liberty was given to ~~the applicant by~~ the authorities ~~before~~ for passing fresh orders. If law gives a right to the authority to pass an order, even if no liberty is given, he can certainly pass an order unless the right to initiate fresh order again is barred by Court. There are many cases where the Tribunals, High Courts and Supreme Court while disposing of Disciplinary Enquiry matters have observed that no further action should be initiated in view of delay etc. Unless there is such a ban or bar emanated from the order of the Tribunal, even if no liberty is given, the authority can pass any

...5.

fresh orders according to law. But in the present case we find that in both the orders descretion is given to the authorities to take action according to law.

6. In the present case the Competent Authority went to exercise a power by virtue of delegation of powers issued by a Presidential order dt. 1.12.1992, what is the scope of the powers and whether the authority can pass orders regarding previous case etc. are all questions which do not arise for consideration at this stage. The argument that no reasons are given in the show cause notice for enhancement of penalty also does not appeal to us. It is only a show cause notice and after the applicant gives his reply it is for the authority to say for what reason and what extent the penalty has to be imposed.

In our view, the present application is premature as rightly contended on behalf of the respondents. The applicant has to exhaust statutory remedies as provided in Sec. 20 of the Administrative Tribunals Act, 1985. We are not inclined to consider number of other contentions urged on behalf of the applicant on merits since we are at the stage of admission and we cannot consider all these contentions at this stage particularly when we have reached the conclusion that the application is premature.

7. In the result, the application is rejected at the admission stage. The ex-parte interim order granted in this case is hereby vacated. However, all contentions of the applicant urged on merits are left open which he can successfully ~~allege~~ urge before the Competent Authority. If any adverse order is passed, he can again urge these contentions before the appropriate forum. In view of the fact that the O.A. is rejected at the admission stage, M.P. 477/98 does not survive for consideration and accordingly the same is rejected. No costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

B.