

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 569 of 1998.

Dated this 07th, the day of February, 2003.

Shri Thomas Peter, Applicant.

Shri S. P. Saxena, Advocate for Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for Respondents.

CORAM : Hon'ble Shri D. C. Verma, Vice-Chairman.

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

- (i) To be referred to the Reporter or not? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal? No
- (iii) Library. No


(B. N. BAHADUR)
MEMBER (A)

OS*

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Thomas Peter,
Assistant Store Holder,
Stock Verification Group,
Ammunition Factory,
Khadki, Pune 411 003.

... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India through
The Secretary,
Ministry of Defence,
DHO PO, New Delhi 110 011.
2. The Chairman,
Ordnance Factory Board,
10-A, Shaheed Khudiram
Bose Marg,
Calcutta - 700 001.
3. The Deputy Director General,
Ordnance Factories,
6, Esplane East,
Calcutta - 700 001.
4. The General Manager,
Ammunition Factory,
Khadki,
Pune - 411 003.

... Respondents.

(By Advocate Shri R. K. Shetty)

O R D E R

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

The Applicant in this case, Shri Thomas Peter, who was Assistant Store Holder (ASH) in the Stock Verification Group, Ammunition Factory, Kirkee, was proceeded against in a departmental enquiry, consequent upon issue of charge-sheet dated

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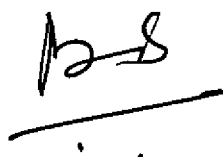
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21.04.1995 (Annexure A-4). Basically, he was charged for wilful neglect of duty/negligence of duty, while issuing scrap metal against tender contract to a private party on 30.07.1992. His conduct described in the Article of Charges was alleged to be unbecoming of a Government servant and violative of Rule 3 of C.C.S. (Conduct) Rules. Consequent upon the proceedings, the Applicant was imposed with a penalty vide order dated 10.07.1997 (Annexure A-2). The penalty was by way of reduction of pay by three stages in time scale of pay (Rs. 1600-2660/-) without cumulative effect, for a period of one year. Also that no increments would be earned during the period of reduction but the reduction would not have the effect of postponing future increments of pay. This order went up in appeal by Applicant to the Appellate Authority which rejected the appeal (Exhibit A-1).

2.0. The Applicant comes up challenging the two impugned orders (Annexure A-1 and A-2). The case made out by the Applicant in his written pleadings, and through the arguments made at length by his Learned Counsel, Shri S.P. Saxena, are recapitulated as below :

2.1 First the procedure of issue of scrap in such cases is described in detail, since, as Shri Saxena pointed out, it would be relevant to assess the charges and help in the analysis of the case. In the hierarchy of the Applicant, he has below him a Chargeman, a Supervisor and Assistant Store Keeper (ASK) in that order. His superior officers are Store Holder (SH), Assistant Manager and Works Manager in the (rising) order of seniority. It is pointed out on behalf of Applicant that his is a supervisory

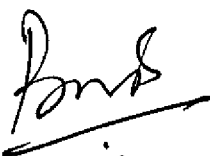
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role and that in the non ferrous metal in dispute, the visual differences are very minor, if any, and that it is only possible to be discerned by Metal Inspectors, whose representatives were present at the time that the scrap lot in question was being issued to the private party. Thus it is asserted that an independent technical section exists to check whether the right material is being loaded. The point was also made on behalf of Applicant that security personnel have to be present throughout, and that, it is the Assistant Store Keeper (ASK) who receives the scrap stores. Thus, the role of the Assistant Store Keeper, the Metal Inspectors and the Security Personnel is vital in preventing/detecting the kind of irregularity that occurred.

2.2 In this context, Learned Counsel, Shri Saxena, took us over the relevant portions of the O.A. and made the point that the role of the Applicant i.e. Assistant Store Holder (ASH) is one of supervisory nature. He is not present constantly at one spot but moves about from godown to godown where operations are going on. He was, indeed, present on a number of such occasions/rounds at the issue spot but not constantly; the argument taken is that the responsibility and liability of the Applicant is thus only vicarious. Learned Counsel stated that it was the Applicant who wanted an enquiry so that his name should be cleared of any misdemeanour. Shri Saxena argued that in the peculiar manner in which operations are carried out, it was the others (who indeed were punished also) who were really responsible for what happened. In fact earlier the Applicant was not to be proceeded against but has been implicated by these three persons. It must be stated here that Shri Saxena took us

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over the documents/evidence of the enquiry filed by him to make this point. At the start of the enquiry we were provided with the original file relating to the enquiry and therefore, have had the benefit of going through the original papers. Shri Saxena took us over the statements of the other persons, who he said, was really responsible, specially Shri Nikalje, Store Keeper. He referred to page 40 of the Paper Book pointing out the name of Shri Lakka and Shri Prithviraj also. Shri Saxena sought to take us over some of the evidence to make his point.

3.0 The defence of the Respondents is contained in their Written Statement available at pages 69 to 100. It was also argued by their Learned Counsel, Shri R. K. Shetty. The gist of the written and oral stand/arguments is as below, in brief :

3.1 It is stated that the procedure of enquiry and appeal have been followed as per rules and that it is not denied that the incident, as described, has taken place. The security officers have caught the Contractor carrying the unspecified materials while being taken out of the gate and 49 bags were partly filled at the bottom with costly material (fuse bodies) which were unspecified material and was being attempted to be smuggled out, causing public loss. It was pointed out by Shri Shetty that all four persons were following a modus operandi of smuggling of valuable scrap through a well devised modus operandi, and that, the Applicant also had clear responsibility in this, apart from the above mentioned S/Shri Nikalje, Lakka and Prithviraj. Descriptions of the process and the role of concerned persons, including Applicant, were discussed by Shri

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Shetty. He took us over the Enquiry Officer's report, first making the point that there was no infirmity in the enquiry and that assessment of evidence has been correctly done and that the Enquiry Officer had clearly arrived at a conclusion that the charge against the Applicant was duly proved.

3.2 Shri Shetty also took us through the various portions of the records, including those in original file. He made the point that what the Applicant's Learned Counsel was really arguing for amounted to reassessment ^{of} evidence, which was not expected to be done by Tribunals, as per settled law. Suffice to say, he argued that this was not even a case of no evidence and that there was clear collusion of a person who says that he made some surprise visits. The gate pass was made by him; Shri Burman, the Store Holder, had clearly given statements which incriminated the Applicant.

3.3 We have gone through the papers in the case, and the original file produced and have carefully considered the arguments made by Learned Counsel on both sides, as recounted above in some detail. In the first place, let us recall that there is no dispute or denial of the fact that the entire incident had taken place, and that, valuable unspecified material was loaded up in a contrived manner with clear intention of being smuggled out. The attempt was obviously to benefit the private contractor at the cost of the Government, by attempting to smuggle of valuable ordinance material. Four persons had been charged and all persons including the Applicant, have been imposed with penalties.



4. Now while this is established, the defence of the Applicant really centres around the following points :

The first is that he was only supervising generally by random visits to the loading spot and this was the role expected of him. The second and related issue is that it is difficult to detect as between specified and unspecified materials visually and that independent agency existed for this purpose. Basical, this position will be difficult to accept merely on a clinical basis, as it would then mean that really speaking an Assistant Store Holder, like the applicant, has really no responsibility in the entire process if such kind of smuggling events take place. True, but it cannot be that he is a totally helpless process. In that case, his very existence would be redundant. He has incidentally gone through the lower hierarchy of A.S.R. which is the cutting edge.

5. We have also carefully considered the arguments raised by counsel for Applicant to establish that Applicant is really not guilty and that the others are. But we have examined this evidence, within the well known law settled i.e. to check and analyse if the conclusion of Enquiry Officer and other authorities are perverse vis-a-vis evidence or whether the case smacks of malice or indeed, whether it is a case of no evidence.

6. Going through the detailed statements of evidence and other records, it is clear that it cannot for a moment be called a case of no evidence. This is very clear and we need not go

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into the evidences already described. Also, the logical sequence of events, the statements on record and the analysis of role of Applicant as made above, cannot lead us to the conclusion that the conclusions in enquiry report or the decisions of penalty are in any way perverse. Once we arrive at such a conclusion, we must indeed agree that the settled law in this regard does not permit us to go into further analysis of assessment of evidence if we were an Appellate Authority. The Hon'ble Supreme Court has clearly held in several judgements that Tribunals should not reassess evidence as if it was a Appellate Authority.

7. In view of the above discussions, we are not convinced that any case has been made out for our interference in the matter before us. This O.A. is, therefore, dismissed. There will be no orders as to costs.



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



(D. C. VERMA)
VICE-CHAIRMAN.

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28/5/Feb

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VICE-CHAIRMAN

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