

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1088/98

Date of Decision: 9.6.1999.

Shri S.M. Subani. —————— Applicant.

Shri M.S. Ramamurthy. —————— Advocate for
Applicant.

Versus

Union of India and others. —————— Respondent(s)

Shri R.R. Shetty. —————— Advocate for
Respondent(s)

CORAM:

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

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

(1) To be referred to the Reporter or not? *Yes*

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

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESOT ROAD, MUMBAI: 1.

Original Application No. 1088/98.

Wednesday the 9th day of June 1999.

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

S.M. Subani
Residing at
Flat No.C/2/2-2/4
Sector 2, Vashi
Opp. Abhot Hotel
Navi Mumbai.

... Applicant.

By Advocate Shri M.S. Ramamurthy.

V/s.

Union of India through
The Secretary,
Department of Atomic Energy
Anushakti Bhavan, CSM Marg.,
Near Gateway of India,
Mumbai.

The Director
Directorate of Construction
Services & Estate Management
Department of Atomic Energy
Vikram Sarabhai Bhavan,
Anushakti Nagar, Trombay,
Mumbai.

Shri C.G.Sukumaran,
Director (Personnel &
Administration)
Heavy Water Board,
Department of Atomic Energy
4th floor, Vikram Sarabhai
Bhavan, Anushakti Nagar,
Mumbai.

... Respondents.

By Advocate Shri R.R.Shetty.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

In this application the applicant is challenging the order of the Disciplinary Authority dated 26.11.1998 on number of grounds. The respondents have filed reply opposing the application. Interim relief has been granted that no further enquiry should be held pursuant to the impugned order. After hearing both sides, since the point involved is short,

we are disposing of the O.A. at the admission stage.

2. The respondents have issued a charge-sheet against the applicant who is working in BARC as Engineer for alleged mis-conduct of taking construction activity while in service.

The applicant filed the reply denying the allegation. Enquiry was held. Some witnesses were examined. Then the Enquiry Officer submitted his report dated 17.12.1997 holding that the charges are not proved against the applicant, which report was submitted to the Disciplinary Authority.

The Disciplinary Authority, after perusing the enquiry report, passed the impugned order dated 26.11.1998, mentioning the facts of the case and about his getting additional evidence in the form of report of Hand writting expert and on that basis he purported to pass the order under Rule 15(2) of CCS(CCA) Rules and remitted back the matter to the Enquiry Officer, to conduct further enquiry on the basis of the fresh evidence received in the form of opinion of the Hand Writting expert and then give an opportunity to the applicant to defend himself in the light of the fresh evidence and then to submit the report after completing the enquiry. A copy of the order alongwith enquiry report was sent to the applicant.

Being aggrieved by the order of the Disciplinary Authority the applicant has approached this Tribunal.

The applicant has taken number of grounds in challenging the impugned order.

3. The respondents in their reply have justified the action taken and it is stated that the Disciplinary Authority after getting a fresh evidence has found it necessary to remand the matter for further enquiry and he has full powers under the Rules for passing the said order.'

4. At the time of arguments the learned counsel for the applicant has raised number of contentions. The first submission is that the impugned order is bad being in violation of Principles of Natural Justice, since the applicant has not been heard when the Disciplinary Authority intended to dis-agree with the inquiry report and remitted the matter and has further taken additional evidence without informing the applicant. The next submission is that the Disciplinary Authority has no such power or to remand the matter with regard to additional evidence which were not included in the charge-sheet and in the annexure to the charge-sheet. It is further submitted that by relying on AIR 1977 SC 1091 (Magan Bihari Lal V/s. State of Punjab). That opinion of Hand writing expert is not conclusive. It is therefore submitted that the impugned order is liable to be quashed. On the other hand the learned counsel for the respondents submitted that since it is an order of remand under Rule 15(1) of the CCS(CCA) Rules, there is no necessity to hear the applicant nor to issue of Show cause notice and therefore the order of remand is perfectly done. It is further submitted that by virtue of the power confired under Rule 15(1)

of Disciplinary Authority can give direction including the direction for taking additional evidence. As far as the Hand writing expert's opinion is concerned it was argued by placing reliance on some decisions that in disciplinary enquiry strict Rules of evidence are not applicable like in a criminal case and the case can be decided on the basis of probabilities.

5. After hearing both sides and on perusal of the record, we feel that the application should succeed on the first ground. We are not expressing any opinion on the other rival contentions.

6. The Disciplinary Authority himself passed the impugned order under Rule 15(2) of CCS(CCA) Rules which provides that the Disciplinary Authority, if he dis-agrees with the findings of the Enquiry Officer, then he can pass an order by giving his own findings. But the impugned order may not be strictly under Rule 15(2) only because the order does not end by dis-agreeing with the report of the Enquiry Officer and holding the applicant guilty. The order purports to be a remand order. Therefore, in the facts and circumstances of the case, we can treat the impugned order as a composite order under Rule 15(1) and (2) of CCS(CCA) Rules.

7. The Enquiry Officer has exonerated the applicant. The Disciplinary Authority does not say, on the available records, that the charges are proved against the applicant. Therefore indirectly the Disciplinary Authority is ^{not} accepting the enquiry report. This is a case where the Disciplinary Authority is not prepared to accept the enquiry report and therefore he wants to remand the matter

for further enquiry in which case it means dis-agreeing with the report or not accepting the report under Rule 2 and then remand under Rule 15(1) of CCS(CCA) Rules.

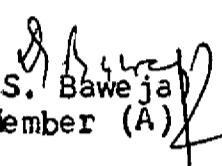
8. In the latest judgement of the Supreme Court reported in 1998 SCC (L&S) 1783 Punjab National Bank and others V/s. Kunj Behari Misra, the Supreme Court held that whenever the Disciplinary Authority dis-agrees with the report of the Enquiry Officer, he must issue show cause notice to the delinquent officer and then after considering the reply of the delinquent officer, he can pass appropriate order according to Rules. In fact, the Supreme Court referred to Rules of the Punjab National Bank, which are identical with Rule 15(1) and (2) of CCS(CCA)Rules. The Supreme Court observed that by virtue of Principles of Natural Justice, issue of show cause notice to delinquent officer must be read into the rules. Though above decision was in respect of Disciplinary Authority giving punishment to the delinquent officer after dis-agreeing with the Enquiry Officer, ^{here he} has remanded the case to the Enquiry Officer. There was an order in favour of the applicant exonerating the charges. Therefore the order of the Disciplinary Authority in not accepting it and remanding the matter is prejudicial to the interests of the applicant. The applicant should have been issued a show cause notice about the intention of the Disciplinary Authority to dis-agree with the Enquiry Officer's report or about the intention to take additional evidence and then after hearing the applicant or getting his reply he should pass appropriate order as permissible under the Rules. This is not a case where one or two

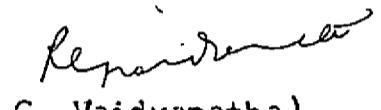
witnesses were not examined by the Enquiry Officer and therefore the Disciplinary Authority had to remand the matter. Now the Disciplinary Authority, by the impugned order, virtually rejected the inquiry report and wants further enquiry with a direction to record fresh evidence and then to submit a fresh report and in such circumstances principles of natural justice required that the applicant should have been heard in the matter by issue of show cause notice.

9. Since we are interfering with the impugned order on this short ground, we do not want to go into the question whether the Disciplinary Authority has such power to take additional evidence and that too behind the back of delinquent officer and whether the remand order can be passed to record such evidence. We leave these matters open. After the applicant replies to the show cause notice then the Disciplinary Authority should apply his mind and take whatever decision as he deems fit as per Rules. Hence all those questions urged by both sides on merits are left open.

10. In the result, the O.A. is allowed. The impugned order dated 26.11.1998 is hereby set aside. Liberty to the Disciplinary Authority to apply his mind to the enquiry report and then take a decision whether to accept it or not? If he accepts the enquiry report then he can drop the disciplinary proceedings and nothing more need to be done. However, if the Disciplinary Authority, is of the opinion that the enquiry report as it stands cannot be accepted and he feels additional

evidence is necessary, then he must issue show cause notice by giving tentative reasons for tentative opinion in the light of the judgement of the Supreme Court in the case of Punjab National Bank mentioned above and then after reply or representation of the applicant to the show cause notice, the Disciplinary Authority can pass appropriate order according to Rules. All other contentions urged before us are left open. No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
CONTEMPT PETITION NO.53/1999
IN
ORIGINAL APPLICATION NO.1088/1998.

this the 21st day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

S.M.Subani,
Department of Atomic Energy,
Anushakti Nagar,
Trombay,
Mumbai.
(By Advocate Shri M.S.Ramamurthy) ...Applicant.

Vs.

1. Union of India,
through the Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Near Gateway of India,
Mumbai - 400 001.
2. The Director,
Directorate of Construction Services
& Estate Management,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushakti Nagar,
Trombay,
Mumbai - 400 094.
3. Shri C.G.Sukumaran,
Director (Personnel & Administration),
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
4th Floor, Anushakti Nagar,
Mumbai - 400 094.

AND

1. R.Chidambaran,
Secretary,
Government of India,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg,
Apollo Bunder,
Mumbai - 400 001.
2. Smt. Sudha Bhave,
Joint Secretary,
Government of India,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Apollo Bunder,
Mumbai - 400 001.

...2.

3. B.D.Mishra,
Deputy Secretary (A),
Government of India,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Apollo Bunder,
Mumbai - 400 001.Contemnners.
(By Advocate Shri R.R.Shetty)

: ORDER ON CONTEMPT PETITION :

{Per Shri D.S.Baweja, Member (A)}

This Contempt Application has been filed by the applicant alleging deleberate violation of the direction of the Tribunal in order dt. 9.6.1999 in OA 1088/98.

2. The applicant had filed OA No. 1088/98 challenging the order of the Disciplinary Authority dt. 26.11.1998, wherein he had directed the Enquiry Officer to conduct further enquiry on the basis of the fresh evidence received by him in the form of opinion of hand-writing expert. The Bench had found that the order of the Disciplinary Authority was illegal and therefore quashed the impugned order dt. 26.11.1998. After quashing the order, it has been further provided in para 10 as under:

"In the result, the O.A. is allowed. The impugned order dt: 26.11.1998 is hereby set side. Liberty to the Disciplinary Authority to apply his mind to the enquiry report and then take a decision whether to accept it or not? If he accepts the enquiry report then he can drop the disciplinary proceedings and nothing more need to be done. However, if the Disciplinary Authority, is of the opinion that the enquiry report as it stands cannot be accepted and he feels additional evidence is necessary, then he must issue show cause notice by giving tentative reasons for tentative opinion in the light of the judgment of the Supreme Court in the case of Punjab National Bank mentioned above and then after reply or representation of the applicant to the show cause notice, the Disciplinary Authority can pass appropriate order according Rules. All other contentions urged before us are left open. No order as to costs."

...3.

In pursuance of this direction of the Tribunal, the Disciplinary Authority has issued a show cause notice dt. 30.8.1999 which was conveyed to the applicant by the Administrative Officer as per letter dt. 9.9.1999. The applicant is aggrieved by this order on the plea that the Secretary to the Government of India, Department of Atomic Energy (DAE) is not the competent disciplinary authority to take any disciplinary action against the applicant as he is a Group 'A' Officer. The Respondents have therefore not acted as per the directions of the Tribunal and are deliberately trying to harass and victimize the applicant. He, therefore, pleads that the respondents be restrained from taking any further steps in pursuance of the show cause notice dt. 30.8.1999 and also punish the respondents for committing Contempt of Court.

3. The respondents have filed written statement through Shri Bhagwat Das Mishra, Deputy Secretary in the DAE, Government of India. The respondents contend that as per the direction of the Tribunal in order dt. 9.6.1999, after quashing of the impugned order of the Disciplinary Authority, the disciplinary proceedings stand at the stage of issue of show cause notice to the applicant after recording of dis-agreement by the Disciplinary Authority ~~hence~~ earlier order dt. 26.11.1998 had been quashed. It is further stated that only after the completion of enquiry proceedings, the Disciplinary Authority i.e. Secretary, DAE will decide whether minor or major penalty is called for. In case if he comes to a conclusion *prima facie* that a major penalty is called for, then he will have to remit the file to the Prime Minister for further necessary action as per extant rules. The respondents, therefore, submit that there is no infirmity in

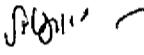
issue of show cause notice by the Disciplinary Authority i.e. the Secretary, DAE. The Respondents therefore stated that no Contempt of Court has been committed and the Contempt Application deserves to be dismissed.

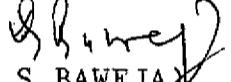
4. The applicant has filed Rejoinder reply reiterating his submissions in the Contempt Application while rebutting the respondent's submissions. We have heard the arguments of Shri M.S.Ramamurthy and Shri R.R.Shetty for Shri R.K.Shetty, counsel for the applicant and respondents respectively.

5. After careful consideration of the rival submissions, we are of the considered opinion that the contention made by the applicant that contempt of court has been committed cannot be accepted. As per the order dt. 9.6.1999, the order dt. 26.11.1998 directing ~~the disciplinary authority ordering~~ ^{the enquiry officer to conduct} further enquiry was quashed but liberty was granted to the Disciplinary Authority to apply his mind to the Enquiry Report and then pass an order and issue show cause notice to the applicant as per Rules. The respondents have taken action accordingly by issuing show cause notice dt. 30.8.1999 by the same authority i.e. Secretary to Department of Atomic Energy. The applicant has sought to make out a case in the Contempt Application that the Respondent No.1 in the Contempt Application i.e. the Secretary, DAE is not the competent Disciplinary Authority for the applicant being Group 'A' Officer. We find this was not the issue in the earlier O.A. The applicant had not challenged the competence of the Disciplinary Authority who had passed the impugned order while challenging the same. It is not scope of Contempt Application to go into the merits of the compliance order passed by the respondents and then record findings. If the applicant is

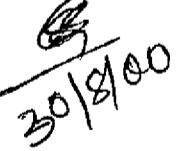
aggrieved that Secretary, DAE is not the Disciplinary Authority for the applicant, then he can challenge the same separately, but cannot seek a decision on the same through Contempt Application. We find that respondents have acted as per the direction of the Tribunal and there is no Contempt of Court committed by them. In this connection, we refer to the Judgment of the Hon'ble Supreme Court in J.S.Parihar Vs. Ganpat Duggar and Ors. {1996 SCC (L&S) 1422} cited by the counsel for the respondents, wherein, the Hon'ble Supreme Court has held that merits of compliance of Court Orders cannot be examined in the Contempt Proceedings.

6. In the result of the above, we do not find any merit in the Contempt Application and the same is dismissed accordingly. No order as to costs. Contempt Notices are discharged.


(S.L.JAIN)
MEMBER(J)


(D.S. BAWEJA)
MEMBER (A)

B.

dt 21/8/00
Order/Judgment Certified
to Applicant/Respondent(s)
dt 25/8/00

30/8/00