

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.607/1998.

DATED : 15-4-05

Mahendra Premji Rathod.

...Applicant

Shri G.S.Walia

...Advocate for
Applicant.

v.

Union of India and Ors.

...Respondents.

Shri R.R.Shetty

...Advocate for
Respondents

Coram : Hon'ble Shri A.K.Agarwal, Vice-Chairman (A)
Hon'ble Shri S.G.Deshmukh, Member (J).

(i) To be referred to the Reporter or not?

(ii) Whether it needs to be circulated to other
Benches of the Tribunal?

(iii) Library?


(A.K.AGARWAL)
VICE-CHAIRMAN (A)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.607/1998.

Friday , this the 15th day of April 2005.

Hon'ble Shri A.K.Agarwal, Vice-Chairman (A),
Hon'ble Shri S.G.Deshmukh, Member (J).

Mahendra Premji Rathod,
C/o. G.S.Walia,
Advocate, High Court,
Opp. Maha. State Co-Op Bank,
Nagindas Master Road, Fort,
Mumbai - 400 023.
(By Advocate Shri G.S.Walia)

...Applicant.

v.

1. Union of India, through
Inspector General/Commander,
Coast Guard, Region (W),
Gulfa Temple Road,
Near Worli Village,
Prabhadevi,
Mumbai - 400 025.

2. Dy. Inspector General,
Coast Guard Region (W),
Gulfa Temple Road,
Near Worli Village,
Prabhadevi,
Mumbai - 400 025.
(By Advocate Shri R.R.Shetty)

...Respondents.

: O R D E R :

{A.K.Agarwal, Vice-Chairman (A)}

This OA has been filed by the applicant under section 19 of the
Administrative Tribunals Act for quashing and setting aside the order of the

...2.



Disciplinary Authority (DA) dt. 31.5.1995 removing the applicant from service and also order dt. 9.4.1996 of the Appellate Authority rejecting his appeal.

2. The facts of the case, in brief, are as follows. The applicant was given a charge sheet on 3.1.1994 while working as MT Driver Gr.II in Coast Guard Air Station Daman, alleging that he smuggled out 858 bottles of contraband liquor. The applicant has stated that in the departmental enquiry he was found guilty merely on the ground that he admitted being driver of the vehicle and asked for mercy. The applicant has further submitted that he is an illiterate person and was pressurised to give certain statements in the inquiry. The applicant had filed an appeal against his removal order dt. 31.5.1995 denying that he had pleaded guilty, but the Appellate Authority rejected the appeal without going into the merits of the points made by him.

3. The OA filed by the applicant was dismissed by the Tribunal vide order dt. 3.12.2002 on the ground that the appellate order passed on 9.4.1996 was not brought on the record. Against this order, the applicant had filed a writ petition in the High Court of Judicature at Bombay. The High Court vide its order dt. 9.8.2004 remanded back the case for deciding it on merits.

4. The learned counsel for applicant submitted that the signature of the applicant were obtained on a statement recorded in English, the language which applicant does not know. The learned counsel for applicant further mentioned that the applicant was not furnished a copy of enquiry report before the DA passed

the order removing the applicant from service. He contended that as per law laid down by the Apex Court in Union of India v. Mohd. Ramzan Khan {(1991) 1 SCC 588}, a copy of Enquiry Officer's report has to be furnished to the delinquent before the DA passes the order. This verdict was given in November, 1990, while the DA has given the order on 31.5.1995. The same ratio has been reiterated by the Apex Court in Managing Director, ECIL and Ors. v. B.Karunakar and Ors.{1993 SCC (L&S) 1184}.

5. The learned counsel for applicant contended that non-furnishing of the Enquiry Officer's report before the final order of the DA is a major procedural lapse and the impugned order deserves to be set aside on this ground alone. He submitted that the respondents in the written statement have stated that the DA had passed the orders on 31.5.1995 before necessary amendment to the Rules in this regard was made on 29.7.1995. In view of this there was no such requirement of giving a copy of the enquiry report to the delinquent before the final order of the DA. The learned counsel vehemently contended that such reply is not legally sustainable. Firstly, law laid down by the Apex Court has to be followed right from that date and one cannot delay the matter on the ground of amendment to the rules. Moreover, under Rule 15 of CCS (CCA) Rules instructions have been issued by DOP & T vide O.M. dt. 26.6.1989 that the DA before making a final order will furnish a copy of the Enquiry Officer's report to the delinquent. The learned counsel for applicant submitted that if the enquiry report was made

available to the applicant as required as per ratio laid down by the Apex Court, as well as, by the OM issued by DOP & T then he could have clarified that he had never admitted of the charges levied against him.

6. The learned counsel for the applicant has relied upon on a verdict given by the Jaipur Bench of the CAT while disposing of OA No.363/1996 in the case of Mam Chand Bajoria v. Union of India and Ors. holding therein that the admission of guilt by a government servant can be used only to corroborate independent evidence led to prove the charge against the delinquent. He contended that in the absence of any independent evidence, the applicant cannot be given punishment of removal only on the basis of his statement even if it was made, in his full knowledge. In this case, the signature of the applicant were taken on a statement written in English a language which he does not know.

7. The learned counsel for the applicant concluding his submissions contended that in view of the points made above the impugned order should be set aside and the applicant be reinstated in service.

8. The learned counsel for the respondents submitted that the Enquiry Officer held the charge as proved based on the admissions made by the applicant. There is no denial to the fact that the applicant had smuggled 858 bottles of contraband liquor illegally in contravention of prohibition policy of the State of Gujarat. The learned counsel for respondents submitted that non-supply of the Enquiry Officer's report has not caused any prejudice to the applicant in view of the facts of this

case. He contended that as per the ratio laid down by the Apex Court the case of Managing Director, ECIL (supra) a delinquent has to show that he has been prejudiced by non-supply of the Enquiry Officer's report. The learned counsel for respondents mentioned that there was another Driver in that very truck who was also removed from service and the OA filed by that Driver viz. O.A. No.1010/1996 was dismissed by the Tribunal vide order dt. 18.10.2001. The learned counsel in the course of arguments submitted a copy of the order dt. 18.10.2001.

9. We have heard both the counsel and gone through the material placed on record. This OA was earlier filed before the Tribunal and by order dt. 3.12.2002 was dismissed on the ground of limitation and non-availability of the Appellate Order dt. 9.4.1996. The case has now been remanded by the Hon'ble High Court of Bombay holding as follows :

"We are of the further opinion that the petitioner has made out the case for condonation of delay in view of the fact that if there was no service of the appellate order on him, the period of limitation does not commence."

10. The applicant has amended the OA by filing MP No.881/2004 and a copy of the appellate order dt. 9.4.1996 has been attached as Exhibit - 'D' to the M.P. We observe that the order dt. 9.4.1996 whereby the applicant was informed about rejection of his appeal has been issued by an officer subordinate to the appellate authority. It merely states that :

"The Competent Authority has considered your appeal and found no merit
...6.



in the appeal especially keeping in view the nature of the offence leading to the charges. Accordingly your appeal has been rejected by the competent authority. This is for your information."

11. The learned counsel for the respondents submitted a copy of the order dt. 18.10.2001 given by CAT Bombay Bench while disposing of OA No.1010/1996 dismissing the application filed by Shashi A.Thakur. It was stated by the learned counsel that this statement was also a Driver travelling in the truck which allegedly engaged liquor smuggling. The Tribunal had held that there are no grounds for interference with the order of the Disciplinary Authority or Appellate Authority. The learned counsel further stated that the writ petition filed by the applicant in the High Court against this order was also dismissed vide order dt. 9.9.2002. The operative portion of the High Court order is set out below :

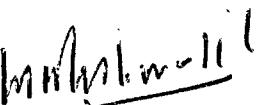
" The petitioner was chargesheeted along with some other employees for smuggling contraband liquor. It is seen from the record that the petitioner who was working as a driver had admitted his guilt. His only defence was that he acted as per the order of his superiors. This is totally unacceptable as a Govt. Servant is required to follow only lawful directions issued by the superiors. There is no infirmity in the order of dismissal."

12. A perusal of order dt. 18.10.2001 indicates that it was argued that the appellate authority's order dt. 9.4.1996 is not a reasoned order and therefore the case may be remitted back to the appellate authority for passing a reasoned and speaking order. However, the Tribunal had dismissed the OA vide its order dated 18.10.2001 which was also upheld by the Hon'ble High Court vide order dt. 9.9.2002 mentioned in the above para.

13. The facts of the present case are substantially similar to the O.A. 1010/96.

We have therefore no reason to take a different view in the present O.A.

14. In view of the discussions hereinabove, this OA deserves to be dismissed and is dismissed accordingly. No costs.



(S.G.DESHMUKH)

MEMBER (J)



(A.K.AGARWAL)

VICE-CHAIRMAN(A)

B.