

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.72/2014

Dated this Monday the 18th day of March, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Shri Krishna Kumar M. Beedlam
Ex Safaiwala, INS, Shivaji, Lonavala.
C/o. Chandrakant Gaikwad,
Age - 47, At Post Karla,
Gaikwad Colony,
Tal. Maval, Dist. Pune - 410 405. ... **Applicant**
(**By Advocate Shri Vicky Nagrani**)

VERSUS

1. The Union of India through
The Secretary,
Ministry of Defence,
104, South Block,
New Delhi - 110 001.
2. The Vice Admiral,
Chief of Personnel,
Integrated HD of MOD (Navy)
C Wing Sena Bhawan,
New Delhi - 110 011.
3. The Vice Admiral
Flag Officer Commanding in
Chief, Head Quarters at Western
Naval Command,
Sahahid Bhagat Singh Road,
Mumbai - 400 001.
4. The Commodore
Commanding Officer,
INS Shivaji, Lonavala,
Head Quarters at
Western Naval Command,
Sahahid Bhagat Singh Road,
Mumbai - 400 001. ... **Respondents**
(**By Advocate Shri V.B. Joshi alongwith Shri P. Khosla**)

ORDER**PER: RAVINDER KAUR, MEMBER (J)**

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

"8(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same, quash and set aside the impugned orders dated 14.01.2009, 29.04.2009 and 18.01.2011 with all consequential benefits.

(b) This Hon'ble Tribunal may further be pleased to direct the respondents to reinstate the applicant in service w.e.f. 14.01.2009 with all consequential benefits including back wages.

(c) Costs of the application be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. As per the OA, the applicant was appointed as Safaiwala of Cadets Training Department, INS Shivaji on 09.09.1988. On 10.12.2007, he was detained by Naval Police for causing grievous hurt to sailor of INS Shivaji and was handed over to Civil Police, Lonavala on 10.12.2007 itself. Thereafter, he remained in judicial custody. He was placed under deemed suspension by respondent No.4 w.e.f. 10.12.2007 (Annexure A-4) vide order dated 28.12.2007. The applicant was released on bail on 05.01.2008 and

came to know about his deemed suspension. After this incident, the applicant was not allowed to enter the premises of INS Shivaji without obtaining prior permission from the Competent Authority. He requested the Guards at the main gate to allow him to meet the officers so that he could submit his application for the grievances but he was not allowed. The applicant was thus left with no other option except to wait for further orders. Since he was not paid the subsistence allowance, he moved application dated 28.04.2008 (Annex A-5) for grant of subsistence allowance and vide order dated 14.06.2008 (Annex A-6) he was sanctioned subsistence allowance. It is submitted that in this application he had mentioned that he was not allowed to enter the premises of INS Shivaji and that even his I-card was also taken away by the Master Chief.

2.1 On 14.06.2008 the applicant was issued major penalty chargesheet (Annex A-7) under Rule 14 of CCS(CCA) Rules, 1965 with the following charges:-

"ARTICLE-I

Shri KM Beedlam, employed as Safaiwala at INS Shivaji committed a gross misconduct in that he suppressed

the fact that he was detained in Police/judicial custody from 10 Dec 07 to 04 Jan 08 for a period exceeding 48 hours and hence did not maintain devotion to duty and thereby acted in manner which is unbecoming of a Government servant and thereby violated Rule 3(I)(ii) & (iii) of CCS(Conduct) Rules, 1964.

ARTICLE-II

Shri KM Beedlam, employed as Safaiwala at INS Shivaji committed a gross misconduct in that he failed to intimate to the administration that he was released on bail on 05 Jan 08 from Yerwada Central Jail, Pune and hence acted in manner which is unbecoming of a Government servant and thereby violated Rule 3(I)(iii) of CCS(Conduct) Rules, 1964.

ARTICLE-III

Shri KM Beedlam, employed as Safaiwala at INS Shivaji committed a gross misconduct in that he was missing from his Headquarters with effect from 07 Jan 08 to 27 Apr 08 without prior approval of administration and hence acted in manner which is unbecoming of a Government servant and thereby violated Rule 3(I)(iii) of CCS(Conduct) Rules, 1964.

ARTICLE-IV

Shri KM Beedlam, employed as Safaiwala at INS Shivaji committed a gross misconduct in that in the evening on 09 Dec 07, he had unauthorisedly damaged/broken public property i.e. the security fencing opposite Gurudwara, at Ashiana Road of INS Shivaji and hence acted in manner which is unbecoming of a Government servant and thereby violated Rule 3(I)(iii) of CCS (Conduct) Rules, 1964."

2.2 After conducting inquiry, the Inquiry Officer submitted his report vide letter dated 22.08.2008 (Annex A-10) holding that the first three charges were proved against the applicant and that the 4th charge was not proved. It is stated by the applicant that on receipt of report of the Inquiry Officer, he gave his reply dated 30.09.2008 (Annex A-11). The Disciplinary Authority - Respondent No.4 without issuing disagreement note in respect of 4th charge which was held to be not proved as per the Inquiry Officer, passed order dated 14.01.2009 holding that the Inquiry Officer has held the applicant guilty of all the charges and consequently imposed the penalty of removal from service. The appeal preferred by the applicant dated 26.02.2009 (Annex A-12) was rejected by the respondent No.3 vide order dated 29.04.2009 (Annex A-2).

2.3 Further that in the criminal case, the applicant was acquitted vide judgment dated 22.03.2010 (Annex A-14). Consequently he filed review appeal for mercy (Annex A-15) to respondent No.2 against the order of respondent No.4 dated 14.01.2009. Thereafter as per the

advice of respondent No.2, he filed Revision Petition dated 17.06.2010 before the Revisionary Authority. However, the same was rejected vide order dated 18.01.2011.

2.4 Earlier also the applicant filed OA No.749/2011. However, the same was dismissed for non-prosecution due to non appearance of the counsel for the applicant. The order dated 15.11.2011 to this effect is Annex A-18. Thereafter he filed another OA No.367/2012. However, vide order dated 19.07.2013, the said OA was dismissed by this Tribunal with liberty to the applicant to file fresh OA with appropriate and necessary pleadings. The relevant order to this effect is Annex A-19. Vide present OA, the applicant has challenged the order of the Disciplinary Authority dated 14.01.2009, order of the Appellate Authority dated 29.04.2009 and order of the Revisionary Authority dated 18.01.2011.

2.5 The applicant has challenged all the above referred orders on the ground that the same are illegal and void.

2.6 Regarding charge No.I, it is submitted that the respondents were well aware that he was

detained in police/judicial custody. Regarding charge No.II, it is submitted that he could not send personal intimation as he was not allowed to enter premises of INS, Shivaji and hence the intimation was sent about his being released on bail through his wife. Regarding charge III, it is submitted that the applicant was under suspension during the relevant period from 07.01.2008 to 28.06.2008. Regarding charge No.IV, it is submitted that as per the Inquiry Officer, the same has not been proved.

2.7 It is stated that respondent No.4 did not apply his mind while passing order dated 14.01.2009 (Annex A-1). That all the charges levelled against the applicant basically emanated from his involvement in the criminal case but as now he has been acquitted of the said case, it proves that all the allegations are proved to be false and he was framed in the criminal case.

3. The respondents have filed detailed affidavit in reply.

4. We have heard the arguments of Shri Vicky Nagrani, learned counsel for the applicant and Shri V.B. Joshi, learned counsel for the

respondents at length and perused the material available on record.

5. The perusal of record shows that the Inquiry Officer submitted his report dated 22.08.2008 to the Disciplinary Authority. As per the said report, he gave the following findings on articles of charge:

"X-FINDINGS ON ARTICLES OF CHARGE

35. *After having gone through the material evidences on record and the entire circumstances, in the considered opinion of the undersigned, the following charges leveled against Shri K.K. Beedlam, Safaiwala of INS Shivaji vide Commanding Officer, INS Shivaji Memorandum A20/09/63 dated 14 Jun 08 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 has been proved beyond reasonable doubt:-*

- (a) Charge No.1
- (b) Charge No.2
- (c) Charge No.3

36. *It is submitted that Charge No.4 leveled against Shri K.K. Beedlam, Safaiwala of INS Shivaji vide Commanding Officer, INS Shivaji Memorandum A20/09/63 dated 14 Jun 08 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 is not proved."*

6. The Disciplinary Authority vide impugned order dated 14.01.2009 imposed penalty of 'Removal from service' upon the applicant from the date of issue of the said order. However, the perusal of the said order shows that the Disciplinary Authority did not go through the contents of the Inquiry report carefully as it

is clearly mentioned in the said report that the charge No.IV levelled against the applicant is not proved. However, the Disciplinary Authority in the impugned order dated 14.01.2009 made observations to the effect 'the Inquiry Officer held the DGS 'Guilty' of the charge framed against him on the basis of documentary and oral evidence adduced before him.' Learned counsel for the applicant has rightly pointed out that Disciplinary Authority has not given any disagreement note in the impugned order dated 14.01.2009 with regard to the findings of the Inquiry Officer that charge No.IV was not proved. Admittedly, the Inquiry Officer had held that charge No.IV was not proved, so the findings of the Disciplinary Authority to the above effect clearly show that either he did not go through the report of the Inquiry Officer carefully or without full application of mind issued penalty order in a casual manner.

7. Similarly, the order dated 29.04.2009 of the Appellate Authority upholding the order dated 14.01.2009 of the Disciplinary Authority also appears to be biased as though the Appellate Authority did observe that only charge

Nos.I, II and III were proved against the applicant but he made certain observations which were not part of the articles of charge against the applicant. It appears that he was influenced by extraneous circumstances as he made observations in the order dated 29.04.2009 in point (j) as follows:-

“(j) The appellant's alleged involvement in a criminal case causing grievous injury/hurt to a serving sailor and his pregnant wife cannot be overlooked/ignored. The items looted by the appellant and his associates from the victims were later recovered from him. Further, the appellant has also abused and threatened a lady service officer (Deputy Logistic Officer) for which FIR has been lodged with Lonavla Police Station.”

However, the articles of charge do not contain any such charge against the applicant. The observations made by the Appellate Authority as referred to above were not even the subject matter of the departmental enquiry against the applicant. He was never given any opportunity to put forth his defence in this regard. How Appellate Authority can use any such material against the applicant which was not the subject matter of the enquiry against him?. The action of both the Disciplinary Authority and Appellate Authority is against the principles of natural justice and so is the action of the Revisionary Authority who has also overlooked

all these circumstances while upholding the order of the Appellate Authority. The action of all these authorities being against the principles of natural justice, has resulted in miscarriage of justice.

8. In these circumstances, without commenting upon the merits of the case since the respondents have passed impugned orders without application of mind, therefore all these impugned orders dated 14.01.2009, 29.04.2009 and 18.01.2011 are set aside with directions to the respondent Disciplinary Authority to hear afresh the applicant on the quantum of punishment and pass appropriate orders thereafter. The Disciplinary Authority is directed to complete this exercise within a period of six weeks from the date of receipt of a copy of this order and communicate the order to the applicant within two weeks thereof. The applicant, thereafter, is at liberty to challenge the said order of the Disciplinary Authority, if required, as per law.

9. With these observations, the Original Application stands disposed of. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

