

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1220 of 2021

Shri Bhuwanlal Ramji Jamaiwar

...Petitioner

Versus

The Union of India,

represented through the Secretary, Ministry of Defence, ...Respondents
New Delhi and others

Ms. Nidhi Dayani and Shri S.P. Bhandarkar, Advocate for the Petitioner
Mrs. Mugdha Chandurkar, Advocate for Respondent Nos.1 to 4

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 11 MARCH 2021

P.C.:

Heard learned Counsel for the parties.

2. The Petitioner has challenged the order passed by the Central Administrative Tribunal dated 8 November 2019, rejecting the Original Application No.2069 of 2019 filed by the Petitioner.

3. The Petitioner in the Original Application had challenged the order passed by the Appellate Authority dated 4 January 2019, confirming the order dated 29 November 2017 imposing penalty of compulsory retirement.

4. The Petitioner, a Chargeman, was working as a Gate Keeper in Ordnance Factory at Bhandara. A Memorandum containing a statement of Article of Charge was issued to the Petitioner on 19 December 2015. The charge was that the Petitioner while performing his duty at the Ordnance Factory, in the sensitive area, permitted certain consignments, which were not supposed to be permitted and consequently, he failed to maintain integrity and honesty while discharging the duty.

5. An inquiry was held against the Petitioner and the Petitioner was found guilty of major misconduct and the punishment of compulsory retirement was imposed. The Petitioner filed an Appeal before the Appellate Authority. The Appeal was dismissed. Thereafter, the Petitioner had filed an Original Application which was rejected by the impugned order. After dismissal of the Original Application, the Petitioner had also filed a Review which was rejected by the Tribunal and both these orders have been challenged in this Writ Petition.

6. The learned Counsel for the Petitioner firstly submitted that the Charge against the Petitioner is that the Petitioner had permitted a consignment as a fresh consignment which was already rejected was not proved. It is submitted that no evidence is produced to link the Petitioner with the concerned consignor of the goods, which were cotton yarn and the phone calls which were relied upon and particulars thereof were not submitted. It was also contended that that no sanction was granted when inquiry was conducted and *post-facto* sanction granted is bad in law. Thirdly, it was contended that looking to the service record of the

Petitioner having no incident except one alleged incident, the punishment of compulsory retirement was disproportionate and harsh.

7. As regards the challenge to the finding of the inquiry, the full fledged inquiry was held. Papers of the Inquiry Report are shown to us by the learned Counsel for the Respondents in which a finding is recorded that a rejected consignment of cotton yarn NE 2/2, which was returned to one firm M/s. Santosh India, Pune on 5 November 2015 was again intentionally permitted to be entered at 15.35 on the same day through a labourer by the Petitioner on a challan printed through WhatsApp. Considering the fact that the Petitioner on duty as a Gate Keeper in the Ordnance Factory, which is a sensitive area and such conduct cannot be considered as a mere lapse as it involves the security issue as well. The contention that the phone records were not shown to the Petitioner, the Inquiry Report itself indicates that the Petitioner had accepted the case. It is not possible for us to sit in appeal over the factual findings rendered, which have been looked at by the two Authorities i.e. the Appellate Authority and the Tribunal. As regards *post-facto* sanction, the Tribunal has looked into the issue and has held that it was again communicated the Petitioner, and thus there was no prejudice.

8. The contention that there was no prior incident before this major misconduct can only be relevant for quantum of punishment. Having established through the inquiry that the Petitioner had committed this misconduct, a lenient view is already taken by imposing punishment of compulsory retirement as thereafter Gratuity has been released. As

regards the argument of the proportionality of the punishment, it inheres that the finding of guilt is accepted. This stand was not taken before the Appellate Authority and the Tribunal. Even assuming that it can be considered for the first time in writ jurisdiction, it has to be kept in mind that the Petitioner was on duty as a Gate Keeper in an Ordnance Factory. The need to inculcate discipline and absolute integrity in sensitive defence area is of utmost importance. Thus if a punishment of compulsory retirement is imposed after holding that the Petitioner was guilty of misconduct, a lenient view is already taken. In these circumstances, no interference is warranted in writ jurisdiction.

9. The Writ Petition is accordingly rejected.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]