Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 1519/97

New Delhi, this the 6th day of August, 1998.

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

In the matter of:

Jaswinder Singh s/o Sh. Jhanda Singh,
R/o WZ 717, Nangal Raya,
Near Railway Crossing,
New Delhi. ....Applicant

(By advocate: Mrs. Meera Chhibber)

Versus

Union of India through:

1. Secretary,
   Ministry of Defence,
   South Block,
   New Delhi.

2. Director General of Ordnance Services,
   Directorate General of Ordnance branch
   Master General of Ordnance branch
   Army Headquarter,
   DHQ, P.O. New Delhi.

3. Commandant,
   COD, Delhi Cantt,
   Delhi. .....Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R

by Hon'ble Shri T.N. Bhat, Member (J)-

In this O.A. the applicant, who was working as Labourer in the Central Ordinance Depot, Delhi Cantonment, has assailed the punishment order dated 22.7.1996 passed by the Commandant by which he has been removed from service as also the appellate order dated 28.2.1997 by which the appellate authority, namely, Director General, Ordinance Services, has rejected the applicant's appeal against the punishment order.

6.8.98

2. The applicant was charge-sheeted by the Memo dated 17.7.1995 for the following Articles of charges:-

"(a) On 25.3.1995 at about 0930 hrs at the time of entering the depot for mustering in, misbehaved with the Security JCO Nb Sub KS Rawat who was on Gate duty.

(b) On 03.4.1995 & 04.04.1995 at about 0955 hrs. forcibly passed out from the Oval Gate COD Delhi Cantt. Report of Security JCO Sub Govind Ram is relevant on the matter.

(c) On 25.4.1995 at about 1010 hrs he forcibly passed out from the Gate and also used abusive language with DSC Security Sep Kishan Chand, Sep Hari Singh and L/Nk Prem Singh.

(d) On 01.06.1995 at about 1100 hrs. he made a forced entry into the DIC HQ office and asked to see the Commandant immediately. On being told by DIC HQ (Lt. Sangeeta Luthra) that Commandant is very busy at that time, he deliberately created commotion and used abusive language".

(14)

3. After holding the departmental enquiry and affording the applicant the necessary opportunity to produce his defence, the disciplinary authority passed the punishment order.

4. The impugned orders have been assailed mainly on the ground that the charges were vague and that the applicant was not guilty of any misconduct. The applicant has also sought to bring out that there was no evidence establishing the alleged misconduct of the applicant and that, therefore, the findings recorded by the Enquiry Officer and accepted by the disciplinary authority are perverse. Another ground taken is that the order of punishment is a non-speaking one and discloses non-application of mind by the disciplinary authority which fact has been accepted even by the appellate authority in the appellate order. It is further averred that the documents relied upon were not furnished to the applicant and that this would by itself constitute a sufficient ground to quash the impugned orders on the ground of violation of principles of natural justice. The further plea taken by the applicant is that he was not permitted to engage a defence assistant. Lastly, it is contended that the punishment awarded is too harsh and is disproportionate to the gravity of the charges and the evidence on record.

5. The respondents have resisteed the O.A. by filing a detailed counter in which it has been averred that adequate opportunity was granted to the applicant to defend himself and that even the enquiry proceedings were held in Hindi to enable the applicant to properly understand the proceedings. In reply to the applicant's plea regarding defence assistant the respondents have stated that the

applicant himself had stated before the Enquiry Officer that he would not engage any defence assistant. It is further emphatically denied by the respondents that the charges were vague. It is averred that the contents of the charge sheet clearly bring out the misconduct alleged to have been committed by the applicant and there is no question of any vagueness in the charges.

6. To the counter of the respondents the applicant has filed a rejoinder reiterating the contentions made in the O.A.

7. We have heard at length the arguments of the learned counsel on either side and have perused the material on record. We have also examined the departmental records pertaining to the enquiry proceedings.

8. The first contention raised by the learned counsel for the appliant is regarding the alleged vagueness of the charges. Learned counsel for the applicant in this regard has relied upon the judgements of the Apex Court reported as 1995 (6) SCC 157 and 1995 (!) SCC 322. However, on going through the contents of the charges as also the articles of charges, we find ourselves unable to agree with the contention of the applicant's counsel that the charges are vague. It is specifically mentioned in the articles of charge that on 25.3.1995, 3.4.95, 4.4.1995, 25.4.1995 and 1.6.1995 the applicant forcibly entered or left the depot-premises during odd hours and that he also used abusive language and created commotion. We are convinced that the charges are not vague and that the applicant understood the charges very well, enabling him to defend himself against those charges.

16

9. We are also not persuaded to agree with the contention of the learned counsel for the applicant that this is a case of no evidence. We find that as many as six witnesses have been examined by the Enquiry Officer and they have supported the version of the department concern. Even assuming that from ~~him~~ the evidence one could have possibly drawn conclusions at variance with the findings recorded by the Enquiry Officer, this would not, in our view, be a sufficient ground to substitute our own findings for the findings of the Enquiry Officer. The law on this subject is now well settled that the Courts /Tribunals are not acting as some sort of an appellate authority and cannot substitute their own findings for those arrived at by the enquiry officer and the disciplinary authority. In this regard it would suffice to cite only one judgemeent of the Apex Court which has been delivered in the case titled Transport Commissioner, Madras vs. A. Radhakrishnamurthy and reported in (1995) 1 S.C.C. 332 wherein it has been held that correctness of the charges is not subject to judicial review even after the conclusion of the departmental enquiry and that the scope of judicial review is restricted to charges which are based on `no evidence'.

10. However, we find considerable force in the contention of the applicant's counsel so far as the question of non-application of mind by the disciplinary authority is concerned. On going through the order of the disciplinary authority we find that no grounds have been given in that order for the view taken by the disciplinary authority. All that the disciplinary authority states is that after having carefully considered the enquiry report he agrees with the same and holds the applicant guilty of the charges. In our

considered view this is no order in the eyes of law. Even the appellate authority has in sub para (d) of para 2 of its order conceded that the order of the disciplinary authority is a non-speaking order but has tried to justify the same on the ground that since the disciplinary authority had agreed with the findings of the enquiry officer there was no necessity to give any more reasons. We are unable to agree with this view of the appellate authority, as it is necessary that the disciplinary authority should give some reasons for its views. Here, we may point out that while holding the applicant guilty of the misconduct the enquiry officer had recommended that a reduction of two stages of annual increments with recurring effect would meet the end of justice in this case, whatever the above expression might mean. The disciplinary authority does not seem to have noticed this observation in the concluding para of the enquiry report and has proceeded to pass the extreme penalty of removal from service.

11. That leads us to the question of quantum of punishment. We are conscious of the fact that the Courts/ Tribunals are not ordinarily competent to reduce the punishment awarded by the disciplinary authority or the appellate authority. But in appropriate cases it can certainly remit the matter to the disciplinary authority for reconsidering the quantum of punishment, particularly so in cases where the punishment awarded on the face of it appears to be too harsh and shocks the conscience of the court. In our considered view the instant case is one such case in which the punishment clearly appears to be harsh and unjustified in the circumstances of the case. All that the applicant is

alleged to have done is to enter and come out from the Ordnance Depot premises perhaps without seeking the necessary permission and shouting at the security Guards.

12. As regards the contention that adequate opportunity was not granted to the applicant to seek the assistance of the defence assistant, we find from the proceedings of the enquiry that not once but twice the applicant was asked to name his defence assistant and on both the occasions he volunteered to defend himself though he also mentioned the name of one Sh. R.C. Ghai. As regards Sh. Ghai the applicant had not produced any letter from him giving his willingness to appear as defence assistant.

13. As already mentioned, the applicant has also averred that he was not furnished with all the documents which were relied upon by the respondents. On this question, we find ourselves in agreement with the view expressed by the appellate authority that although copies of some documents listed in the chargesheet were not supplied to the applicant, this had not resulted in miscarriage of justice. We may, in this regard, further state that the applicant does not appear to have made any request for the copies of the documents during the course of enquiry. The case of prosecution was based upon the oral depositions of six witnesses and the applicant had availed of adequate opportunity to cross-examine all of them. Therefore, we are convinced that the applicant has not been prejudiced in any manner by non-furnishing of the documents.

14. In view of what has been held and discussed above, we partly allow this O.A. and quash the punishment order dated 22.7.1996 as also the appellate order dated 28.2.1997 and remit the matter to the disciplinary authority to pass a fresh speaking order in the matter in the light of the observations made by us hereinabove particularly those relating to the quantum of punishment. It is made clear that the applicant will be at liberty, if he still feels aggrieved by such an order passed by the disciplinary authority, to first file an appeal before the appellate authority and if aggrieved by that order also, to file a fresh OA, if so advised.

15. With the above order this O.A. is disposed of, with no order as to costs.

(S.P.Biswas)
Member (A).

6.8.1998
(T.N.Bhat)
Member (J).

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