

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

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O.A. No. 980
 T.A. No. 19986

DATE OF DECISION 6/2/91

<u>O.P.Srivastava</u>	Petitioner
<u>Shri R.L.Sethi</u>	Advocate for the Petitioner(s)
Versus	
<u>Director General Ordnance Factories, Calcutta and another</u>	Respondent
	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. Mukerji, V.C.

The Hon'ble Mr. G.Sreedharan Nair, V.C.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

9 agra

S.P.
6/2/91

G.Sreedharan Nair
 V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration No.O.A. 980 of 1986

Date of order 6/2/91

D.P. Srivastava ..

Applicant

- versus -

Director General, Ordnance Factories,
Calcutta and another ..

Respondents

CORAM: Hon'ble Shri S.P. Mukerji, V.C.

Hon'ble Shri G. Sreedharan Nair, V.C.

Counsel for the applicant : Shri R.L. Sethi.

For the respondents : Shri R.M. Bagai

ORDERHon'ble Shri G. Sreedharan Nair, V.C.:-

The applicant, while working as Supervisor 'A' under the respondents, was placed under suspension by the respondents by the order dated 9.9.1981 on the ground that he was detained under Police custody for more than 48 hours, having been arrested by the Police in connection with a criminal case under section 379 I.P.C. It is alleged that the criminal case ended in acquittal by the judgment delivered on 17.10.1984. Hence, according to the applicant, the period of suspension has to be treated as period spent on duty after reinstating him in service and he is to be allowed the consequential benefits.

2. On 27.12.1983, a memorandum of charges was issued against the applicant for gross misconduct, negligence, carelessness and dereliction of duties in violation of

sub-rule(1) of rule 3 of the CCS(Conduct) Rules. The imputation was that the applicant did not maintain the relevant registers, and handled the documents carelessly with the result monetary loss was caused as unauthorised persons were enabled to collect amounts. The applicant denied the charge. An enquiry was conducted. The Enquiry Officer reported that the charge is established. Accepting the report of the Enquiry Officer, the disciplinary authority by the order dated 31.5.1985 imposed upon the applicant the penalty of dismissal from service. The appeal submitted by the applicant was dismissed by the appellate authority by the order dated 5.5.1986.

3. The applicant has prayed to quash the order imposing the penalty and for treating the period from the date on which he was suspended till the date of dismissal as spent on duty. It is urged that the report of the Enquiry Officer was based only on surmise, and the conclusion is perverse. It is further alleged that the disciplinary authority has not applied its mind and has not passed a speaking order. The same attack is made against the order of the appellate authority also.

4. In the reply filed by the respondents, the various averments in the application are traversed. It is contended that the order imposing the penalty was passed in accordance with law and does not require interference.

5. On going through the order of the disciplinary authority, we cannot but agree with the plea of the applicant that the disciplinary authority has passed the

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order imposing the penalty in a mechanical way, without application of mind. The disciplinary authority has not assessed the evidence tendered in the course of the enquiry and is not seen to have arrived at a conclusion on the truth of the imputations, but by merely stating that he agrees with the findings of the Enquiry Officer in toto has issued the order holding the applicant guilty, and has imposed the extreme penalty of dismissal from service.

6. The applicant had submitted a detailed memorandum of appeal before the appellate authority setting forth specific grounds for quashing the order of the disciplinary authority and complaining about the imposition of the extreme penalty of dismissal from service. However, by merely stating that the appeal has been duly considered and that there is no merit in the appeal, it was dismissed by the appellate authority. It is needless to highlight that the appellate authority has paid scant regard to the provision in Rule 27 of the CCS(CCA) Rules, ordaining the matters to be considered by the appellate authority.

7. It was vehemently argued by counsel of the respondents that the order of the appellate authority is a reasoned and speaking order and hence is not open to attack. We are unable to agree. The first paragraph of the order of the appellate authority refers to the facts of the case. The second paragraph is to the effect that the appeal submitted by the applicant has been duly considered by the appellate authority and that he has found no merit in the appeal and the penalty imposed has been found justified.

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There is nothing in the order to indicate that the appellate authority has made any attempt to marshal the evidence on record for the purpose of arriving at the conclusion about the truth of the imputations, or to justify the imposition of the extreme penalty of dismissal from service. The principle laid down by the Supreme Court in ~~Ramchander~~ v. Union of India (AIR 1986 Supreme Court 1173) squarely applies. We hold that there has not been an objective consideration by the appellate authority of the points raised in the memorandum of appeal, after due application of mind.

8. Counsel of the respondents invited our attention to the decision of the Supreme Court in John Martin v. State of West Bengal (AIR 1975 Supreme Court 778). where it was held that even if no speaking order is passed by the State Government while rejecting the representation of the detenu under the Maintenance of Internal Security Act, (1971), there is no failure of justice. When rule 27 of the CCS(CCA) Rules mandates the appellate authority to consider the various matters laid down therein while dealing with an appeal, if such consideration is not indicated by the records, the order of the appellate authority can on no account be sustained in law. As such, the decision referred to above has no application.

9. It follows that the order of the disciplinary authority and that of the appellate authority cannot be sustained. They are accordingly quashed and the matter is remitted to the disciplinary authority for a proper assessment of the evidence let in at the enquiry and to

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arrive at a conclusion as to the truth of the imputations levelled against the applicant after affording the applicant an opportunity of being heard with respect to the report of the Enquiry Officer. The applicant shall be reinstated in service forthwith w.e.f. 31.5.85 when he was dismissed. The applicant shall be considered to have been placed under deemed suspension in accordance with sub-rule (4) of rule 10 of the CCS(CCA) Rules.

10 As the applicant was placed under suspension by the order dated 9.9.81 on account of his involvement in the criminal proceedings, with the acquittal in the proceedings on 17.10.84 and in absence of any order of suspension to be passed under sub-rule (5) of rule 10 of the CCS(CCA) Rules, he was bound to be admitted to duty on 17.10.84 and the period of suspension from 9.9.81 to 16.10.84 and the period from 17.10.84 till his dismissal on 31.5.85 should have been treated as on duty. Evidently, it appears that since the departmental proceedings had been initiated and were pending, no such orders of reinstatement or of continuance of suspension during the pendency of disciplinary proceedings under rule 10(5) of the CCS(CCA) Rules had been passed. Since the two proceedings are distinct, the pendency of the departmental proceedings cannot be relied upon for not passing appropriate orders revoking the suspension when the applicant was acquitted by the criminal court, and making

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provision therein for treatment of the period of suspension as duty. It was also necessary to pass order under rule 10(5) for continuance of suspension beyond acquittal till the termination of disciplinary proceedings. Since such order of suspension cannot now be passed with retrospective effect (AIR 1954 Cal-340 and AIR 1958 (MP- 44)the applicant will have to be treated as on duty from 9.9.81 to 31.5.85 and under deemed suspension vide rule 19(4) thereafter till the conclusion of disciplinary proceedings or even earlier if the competent authority so disposes. As such, orders in that behalf shall be passed by the 2nd respondent within a period of two months from the date of receipt of copy of this order.

11 The application is disposed of as above.

Er. Sreedharan Nair
6.2.1991

(G. Sreedharan Nair)
Vice Chairman

S.P. Mukerji

(S.P. Mukerji)
Vice Chairman