

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2634/1990 with
~~XXXXXX~~ CCP 111 of 1991 199

DATE OF DECISION 12.03.1992

<u>Shri R.K. Joon</u>	Petitioner
<u>Shri G.D. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. through the Secretary</u>	Respondent
<u>to the Govt. of India, Min. of Defence & Others</u>	
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

The applicant, who has worked as Senior Storekeeper in the office of the Director General of Ordnance Services, Ordnance Depot Shakurbasti, New Delhi, is aggrieved by the impugned order dated 28.11.1990 imposing on him the penalty of dismissal from service after holding a departmental enquiry against him. He has challenged the impugned order of dismissal on the ground that it has been passed in contravention of the provisions of OM dated 25.3.1968 and OM dated 20.05.1968 issued by the Ministry of Defence on the procedure to be followed in dealing with

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disciplinary action against the Trade Union Workers. While the applicant claims that he is a Trade Union Worker and is, therefore, entitled to the protection of the aforesaid Memoranda, the respondents contend that he is not a Trade Union Worker and that he is not entitled to the protection envisaged under the aforesaid Memoranda.

2. We have carefully gone through the records of the case and have heard the learned counsel of both parties. On 14.12.1990, the Tribunal passed an interim order directing that the impugned order dated 28.11.1990 shall stand stayed. The matter was heard on 8.1.1991 and 9.1.1991 when the interim order was directed to be continued until further orders. By order dated 18.1.1991, the application was admitted, leaving the preliminary objections raised by the respondents to be heard and decided with the merits at the time of final hearing.

3. CCP 111/1991 has been filed by the applicant alleging that the respondents did not comply with the afore-said interim orders passed by the Tribunal, that he was not allowed to join duty and that he has not been paid any salary from the month of December, 1990. By order dated 17.1.1992, another Division Bench presided over by the Hon'ble Chairman directed that the CCP be heard along with the main application.

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4. The basic question to be considered is whether the two office Memoranda, referred to above, are applicable to the instant case. In case they are so applicable, the applicant would be entitled to succeed in the present proceedings. The learned counsel for the applicant stated that in the present application the challenge is only restricted to the passing of the impugned order in contravention of the aforesaid two office Memoranda and that the applicant would challenge the validity of the impugned order dated 28.11.1990 in separate proceedings.

5. Office Memorandum dated 25.3.1968 issued by the Ministry of Defence deals with the procedure to be followed in the case of victimisation/harassment of Trade Union Workers. The said OM refers to the question of victimisation/harassment of Trade Union Workers raised by the Staff side representative during the discussion at the meeting of the Departmental Council of the Ministry of Defence held on 27.2.1968. In pursuance of the directive given by the Chairman of the Council, the matter was discussed further at a meeting held in Additional Secretary's room on 27.2.1968. After detailed

discussions, the following decision was taken:-

" Any complaint against victimisation/ harassment of a Trade Union Worker for Trade Union activity or activities, concerned (?) Joint Secretary by a D.O. letter from the Leader of the Staff side of the Departmental Council. A copy of this letter will also be endorsed in all case to the Additional Secretary. When such a complaint is received, step will be taken to ensure that final punishment is not inflicted before the case is examined in the Ministry. A report will be called for from the local authorities within 30 days and expeditious action taken to examine the matter. It will not, however, be possible to issue a blanket order to the effect that the normal procedure laid down in the Rules should not be gone through. After examination of the case by the Joint Secretary or higher authorities, Government will take such action as may be necessary. The Ministry, may also order an on-the-spot enquiry by an appropriate officer of the Ministry/Service Headquarters, where such enquiry is considered necessary by the Ministry".

6. The above OM was followed by Office Memorandum dated 20.5.1968 which provides, inter alia, that no disciplinary action should be finalised in regard to those cases which are brought to the notice of the Government in pursuance of the instructions contained in the Ministry of Defence OM dated 25.3.68. Pending examination of the case by Government, this decision should be taken to mean that even show cause notice proposing or recommending punishment in any inquiry wherein the individual may feature directly or indirectly should not be given against any individual until the Government are fully seized of the circumstances of the case.

7. The respondents have contended that the applicant



is not an office bearer of the Trade Union and consequently he is not entitled to the benefit of the aforesaid Memoranda. According to them, the All India Association of Store Keeping Staff of the Army Ordnance Corps. is not a Trade Union within the meaning of Trade Unions Act, 1926 and a member of the said Association is not a Trade Union Worker.

8. We see no merit in the above contention. The Association in question was Registered under the Trade Unions Act, 1926 while its head office was at Agra. When the head office of the Association later on shifted to Delhi, it was re-registered in Delhi by Registrar of Trade Union vide his letter dated 31.3.58. The applicant has produced copy of the letter dated 23.3.32 granting recognition to the said Association and letter dated 31.5.88 regarding re-registration of the said Association in Delhi. (Vide Annexure A-14 and A-15 of the rejoinder-affidavit, pages 136-138 of the paper book). The General Secretary of the said Association wrote to the Deputy Labour Advisor, AGS Branch, Army Headquarter seeking a clarification as to whether the members/office bearers of the recognised service Association are treated as Trade Union Workers. The Deputy Labour Advisor informed the Association vide his letter dated 2.1.1991 that any member of a Trade Union/Association is a Trade Union Worker and that under the JCM Scheme, the term Association includes a trade union of employees. In view of this, the instructions contained in the two Office Memoranda are applicable to

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employees who are members of the Staff Association. The applicants have also produced along with their rejoinder-affidavit the constitution and bye-laws of the All India Association of Store Keeping Staff of the Army Ordnance Corps.

9. In view of the aforesaid documentary evidence produced by the applicant which has not been contradicted by the respondents by producing any evidence, we are of the opinion that the applicant, who is an office bearer of the Shakurbasti Depot Workers' Union for the last ten years, is entitled to the protection of the two Office Memoranda issued by the Ministry of Defence on 25.3.1968 and 20.5.68, mentioned above. In this view of the matter, we are of the opinion that the impugned order dated 28.11.1990 was passed by the respondents in contravention of the instructions contained in the aforesaid Office Memoranda and is not, therefore, legally sustainable.

10. We may now consider the preliminary objections raised by the respondents. According to them, the applicant being a civilian in Defence Services is not entitled to approach this Tribunal seeking any reliefs concerning his service matters. The Ordnance Depot, where he has worked, is an 'industry' within the meaning of the Industrial Disputes Act, 1947. He has also not exhausted the remedies available to him before filing the present application. The respondents have relied upon various

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rulings of courts and we have duly considered them*.

11. In our opinion, the above preliminary objections are not tenable. Section 14 of the Administrative Tribunals Act, 1985 confers jurisdiction on the Tribunal to adjudicate upon the service matters concerning civilians in Defence Services. In the instant case, the applicant is not claiming protection of Article 311(2) of the Constitution. He is also not seeking any remedy under the provisions of the Industrial Disputes Act, 1947 but is seeking relief on the ground of non-compliance with the procedure to be followed in the case of a Trade Union Worker like him which has been laid down on the basis of the decisions taken in the Department Council comprising the staff side and official side.

12. The applicant has also filed an appeal to the authorities concerned against the impugned order of dismissal dated 28.11.1990.

13. In the light of the above, we overrule the preliminary objections raised by the respondents.

14. In the conspectus of the facts and circumstances of the case, the application is allowed. We set aside and quash the impugned order of dismissal from service

* Rulings relied upon by the respondents:-

1989(10) ATC(SC) 513; 1990(3) SLJ(CAT) 544;
AIR 1989 SC 1185

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dated 28.11.1990 and direct the respondents to reinstate the applicant within a period of two months from the date of communication of this order. The applicant would be entitled to salary and allowances from 28.11.1990 to the date of reinstatement which shall be released to him within the same period.

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15. In view of the above orders and directions in the main application, the CCP is disposed of without passing any further orders. The notice of contempt is also discharged.

There will be no order as to costs.

Let a copy of this order be placed in both the case files.

D. K. Chakravorty 12/3/92
(D.K. CHAKRAVORTY)
MEMBER (A)

P. K. Kartha 12/3/92
(P.K. KARTHA)
VICE CHAIRMAN (J)

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