

(10)

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1172/2004

New Delhi this the 11th day of February, 2005.

Hon'ble Shri Shanker Raju, Member(IJ)
Hon'ble Shri S.K. Malhotra, Member(A)

Nasir Hussain Alvi,
S/o Sh. Zahid Hussain Alvi,
R/o 274, Sadar Kabari Bazar,
Meerut Cantt., Meerut.

..... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Director General-EmE(Civ)
(Vice Chief o Army Staff)
Army Headquarter, DHQ,
P.O. New Delhi.
3. Commander(HQ),
Base Workshop Group-EME
Army Headquarters,
Meerut Cantt., Meerut,
UP.
4. Commandant,
505, Army Base Workshop,
Delhi Cantt. 110 010.
5. Shri R.S. Soni,
Inquiry Officer,
C/o Commandant,
505, Army Base Workshop,
Delhi Cantt-110 010.

..... Respondents

(through Sh. Madhav Paniker, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(IJ)

Applicant impugns respondents' order dated 4.6.2002 imposing upon him
a penalty of reduction to lower grade to the minimum scale with cumulative effect



as well as order dated 16.11.2002 rejecting the appeal as well as order dated 9.2.2004 rejecting the revision.

2. Applicant while working as Turner in Army Base Workshop was charged with frequent unauthorized absence without intimation from June to November, 2000 and late coming on duty as a specific charge the past mistake of the applicant was incorporated. On the finding of guilt, the applicant was imposed punishment which was upheld in revision which gives rise to the present O.A.

3. Learned counsel of the applicant at the outset states that the enquiry is vitiated for violation of principles of natural justice and deprivation of reasonable opportunity in so far as the compliance of Rule 14(18) of the CCS(CCA) Rules, 1965 has not been complied with and also the past record figured as an additional charge has not been proved on the basis of documents.

4. Learned counsel states that whereas in the list of documents only attendance and acquaintance roll was listed, no witness has come forth to establish the charge. In this conspectus, it is stated that his request to supply the brief extracts and record has not been adhered to.

5. On the other hand, respondents' counsel vehemently opposed the contentions and stated that the documents were got inspected by the applicant, as such, there is no illegality and on the issue of compliance of Rule 14(18) of the CCS(CCA) Rules, 1965, there is no definite reply given by the respondents.

6. As regards supply of documents is concerned, we are of the considered view that whenever documents are recorded by the enquiry officer to hold a person guilty of the charge and even without specific demand are to be furnished. Moreover, if a specific demand is made, the documents are to be served and the inspection of the documents is not a valid ground.

7. We find support from the decision of the Apex Court in the case of State of U.P. Vs. Shatrughan Lal (1998(6) JT 55). As regards prejudice is concerned, if the documents are not even listed in the list of documents, the same cannot be relied upon to arrive at a finding. For want of these documents, the punishment imposed upon the applicant and he has been deprived of reasonable opportunity

to put forth his defence and this constitutes denial of reasonable opportunity. Moreover, substantive rules of procedure laid down under CCS(CCA) Rules obligates upon the authorities to furnish the relevant documents, the rule of prejudice shall not apply in that event.


8. As regards compliance of Rule 14(18) of the CCS(CCA) Rules, 1965 is concerned, it provided that after the evidence is recorded, the enquiry officer is mandated to put to the delinquent the circumstances appearing to him in evidence by questioning the delinquent to sought an explanation.


9. This mandatory compliance has not been done by the Enquiry Officer. Applicant was not examined under Rule 14(18) of the Rules *ibid*. Rule 14(18) has been held to be mandatory by the Apex Court in Ministry of Finance & Anr. Vs. S.B. Ramesh (1998(3) SCC 227) as well as by the Tribunal in OA-1826/1998 decided on 14.9.2001 in Charanjit Singh Khurana Vs. U.O.I.

The aforesaid decision was taken to the High Court as well as Supreme Court and was upheld. In this view of the matter, non-compliance of Rule 14(18) also vitiates the enquiry.

10. As the enquiry is vitiated, on this ground as well as the consequent orders passed, the other contentions are not required to be adjudicated.

11. In the result, OA is partly allowed. Impugned orders are set aside. However, this shall not preclude the respondents to take up the proceedings, if so advised, after furnishing the brief extract of punishment to the applicant and resume the enquiry from that stage and after valid compliance of Rule 14(18), the applicant shall also be entitled to the consequential benefits. No costs.


(S.K. Malhotra)
Member(A)


(Shanker Raju)
Member(J)