

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Original Application No.133 of 1997.

Allahabad this the 04th day of September 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr.D.R. Tiwari, Member-A.

Mohd. Ataharullah Khan
son of late Salim Ullah Khan,
aged about 44 years, Resident
of House No.333-8, Sultanpura,
Agra Cantt. 282001.

.....Applicant.

(By Advocate : Sri A.P. Srivastava/
Sri A.K. Jaiswal.)

Versus.

1. Union of India
through Secretary
Ministry of Defence
New Delhi.
2. The Commander Head Quarter Technical
group EME Delhi, Cantt.
3. Commandant, 509, Army Base Workshop,
Bandu Katra, Agra-282001.....Respondents.

(By Advocate : Sri A Sthalekar)

O R D E R

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A., filed under section 19 of Administrative
Tribunals Act 1985, applicant has challenged the ^{order dated} 26.09.95
by which the Disciplinary Authority awarded punishment
of dismissal from service on conclusion of the
disciplinary proceedings. The order was challenged
in appeal. Appeal has been dismissed by order dated
06.07.1996(Annexure 1).

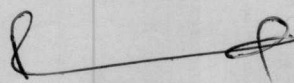
2. The facts giving rise to this original application
are that applicant was serving as Tin Copper Smith
(Mate) Ticket No.6347 (Civilian employee) in 509

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Army Base Workshop Agra Cantt. The applicant was served with memo of charge dated 06.04.1993 for gross misconduct, that is ~~while~~ while not on duty, ^{applicant} entered into the Workshop without taking any valid permission/ Visitor pass and committed theft of Government property on 09.03.1993. It was alleged that on 09.03.1993 at about 1 P.M he arrived at the Gate and entered into the Workshop requesting the Gate J.C.O. to meet a person at MES Power Station which is just near the Gate. Thereafter, within 5 minutes he went out of the Workshop. Again, at about 03 P.M on 09.03.1993, he arrived at the Gate and requested to go to Finance Section for enquiring about his payment and leave etc. As such, his Gate Pass/Visitor Pass should have ^{been} prepared, ^{but} in the meantime he without waiting to take Gate Pass, immediately entered into the workshop. It is further submitted that on 09.03.1993 while he was going out of the Workshop at 3.15 P.M., he was searched at the Wicket Gate by Chowkidar Sri Raj Kumar, who was on duty there. During ~~search~~ ^{search} he felt something hidden at the stomach portion. Shri Attar Ullah Khan with a view to ^{to} escape himself, started running inside the Workshop but he was chased by Chowkidar Shri Raj Kumar who did not allow him to run more and finally compelled him to stop near the Pension Section. By that time CASO and Duty DCO seeing him running, helped and caught him there. Applicant was thereafter searched, Old Copper Wire ~~was~~ ^{found}



was found hidden ⁱⁿ the stomach portion, under the lace of Paijama and duly covered by Kurta and was weighing 1 Kg and 150 Gms, the proceedings thereafter started. As usual Enquiry Officer was appointed. The applicant on service of memo of charge by letter dated 21.4.93 requested for supply of documents so that he may submit an effective written statement. However, the documents were refused by order dated 27.04.93 (Annexure 5). Enquiry Officer ^{passed order} ~~submitted~~ that under the provisions of Sub-rule (4) of Rule 14 of CCS (CCA) Rules 1968, ^{applicant} ~~he~~ first required to submit ^{his} ~~the~~ defence statement. After receipt of ^{his} ~~the~~ written statement of defence, the inquiry will be held in respect of the article of charges which are not admitted. Copies of the documents ^{is} ~~the~~ annexed as Annexure 3 of the Chargesheet, will be provided to ^{him} ~~the~~ during the course of inquiry, after receipt of ^{his} ~~the~~ defence statement. As the applicant could not file the defence statement and also could not appear before the Enquiry Officer, except for one and two days, Enquiry Officer submitted ex-parte report on which basis punishment order was passed.

3. Learned counsel for the applicant has submitted that the respondents proceeded against the applicant in an arbitrary manner. Applicant was not provided ^{necessary} ~~the~~ the ~~defence~~ documents and he was not given effective

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opportunity to defend himself. He placed reliance on the judgment of Hon'ble Supreme Court in the case of Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and others, (1995) 1 UPLBEC 217 (SC) and State of U.P. Vs. Shatrughan Lal & Another, 1998 (2) LBSER 838 (SC). Hon'ble Supreme Court in the case of Committee of Management, Kishan Degree College (Supra) has held in para 5 as under:

"....It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to reply on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principle of natural justice.....".

4. In the present case, from the document² filed as Annexure 5, it is clear that Enquiry Officer by order passed on 27.4.1993 refused to supply the article of charges and asked the applicant to submit his written statement of defence and he further submitted that ²the ⁴~~document~~ ⁴article of charges shall be supplied during the course of Inquiry. The similar view has been taken by Hon'ble Supreme Court in the case of State of U.P. Vs. Shatrughan Lal and another (Supra) wherein para 4, it has held as under:

"Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective

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opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilized against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him.....".

5. Learned counsel for the respondents, however, submitted that the course ^{adopted by} enquiry ^{officers} was just and proper. Applicant was required to submit his written statement of defence. However, we do not find any merit in the submissions. For submitting the written statement of defence, ^{perusal} of the document, which ^{were} proposed to be relied upon document in the enquiry, ^{was} required to be supplied, ^{and} without help of the documents, effective defence cannot be prepared. Judgments of Hon'ble Supreme Court are squarely applicable in the facts of the present case.

6. For the reasons stated above, O.A. is allowed. Orders dated 26.09.1995 (Annexure 2) and order dated 06.07.1996 (Annexure 1) passed by Appellate Authority are ^{quashed}. Respondents are directed to proceed afresh from the stage of service of charge-sheet and conclude the enquiry after giving all the documents to the applicant and opportunity of hearing shall also be given to the applicant in accordance with law. As the case is very old, enquiry shall be concluded within 6 months. The applicant shall be treated under suspension during the enquiry period and paid subsistence allowance for the rest of period when ^{impugned order were} ~~the~~ effective, The Disciplinary Authority shall pass the order in accordance with law.

Manish
Member-A.

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Vice-Chairman.