

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.1436 of 1997.

Allahabad this the 01st day of July 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. D.R. Tewari, A.M.

Sri R.V.S Sengar
Son of Late Lal Bahadur Singh
R/o 74/106 Dhankutti,
Kanpur Nagar.

.....Applicant.

(By Advocate : Sri Pradeep Chauhan/
Sri Saumitra Singh).

Versus.

1. Union of India
through the Secretary
Ministry of Defence,
New Delhi.
2. Chairman/Joint Director Vigilance Ordinance
Factories Board 10-A, Auckland Road,
Calcutta- 700001.
3. General Manager
Field Gun Factory Kalpi Road,
Kanpur.

.....Respondents.

(By Advocate : Sri A Mhiley)

O_R_D_E_R

(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 10.10.1992 (Annexure A-1) by which the applicant
was awarded penalty of dismissal from service on conclusion
of Disciplinary Proceeding. The order was challenged in
appeal which was dismissed on 05.12.1994 (Annexure 4),



which has also been impugned.

2. Shri Ashok Mohiley learned counsel for the respondents raised preliminary objection that O.A. is liable to be dismissed on the ground of limitation. It is submitted that the last order was passed by Appellate Authority on 05.12.1994, whereas the O.A. has been filed on 23.12.1997, Thus, there is delay of more than 3 years. In reply learned counsel for the applicant has submitted that before filing this O.A., O.A. No.28 of 1997 was filed by applicant which was permitted to be withdrawn as O.A., suffered from some formal defects and liberty was given to file a fresh O.A. It is also submitted that no time limit was fixed for filing fresh O.A. Para 2 of the order dated 05.11.1997 reads as under:

"Sri S Singh learned counsel for the applicant has moved M.A. No.3798/97 with the prayer that there are some defects in the O.A. and they can not be rectified by way of amendment and, therefore, the prayer to withdraw the case with liberty to file fresh O.A., is sought. In view of this contents of this application and the statement made by Sri S Singh, at bar, the applicant is allowed to withdraw the O.A. with leave to file afresh".

3. It is true that O.A. has been filed on 23.12.1997. It appears that order ^{was} supplied on 20.11.1997 therefore, there appears some delay in availing the liberty granted by the Tribunal, but as the Division Bench had granted the liberty to file a fresh O.A., in pursuance of that order the present O.A. has been filed, In our opinion, it will not be proper and appropriate to accept

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the argument of respondents, that the O.A. be rejected on the ground of limitation. In our opinion delay, if any, is liable to be condoned and is accordingly condoned.

4. Learned counsel for the applicant has submitted that the charge No.2 was with regard to the theft of Government material in Tool 'A' Godown of stores section and charge No.6 was with regard to cutting the kunda of the main door of the Godown. Both these charges have not been proved against the applicant. It is also submitted that report was lodged with the police alleging theft of material from the Godown and nothing was found in case crime No.39/1988. It is submitted that the Appellate Authority has not recorded ~~the~~ reasons for dismissing the applicant's appeal. He has only shown agreement with the finding recorded by the Disciplinary Authority whereas the Disciplinary Authority has not recorded any finding. Order is cryptic and short. He has shown agreement with the report of Enquiry Officer. It is submitted that another officer against whom the Disciplinary Proceedings were initiated for awarding the punishment ^{was exonerated} on 18.07.1998, learned counsel for the applicant has placed before us the copy of the order dated 18.07.1998. It is submitted that the reasons ought to have been recorded for awarding extreme penalty of dismissal from service.

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5. Sri A. Mohiley learned counsel for the respondents, on the other hand, submitted that both Disciplinary Authority and Appellate Authority have considered the case in detail and have not found applicant fit to be retained in service and no interference is called for by the Tribunal.

6. We have carefully considered the submission made by learned counsel for the parties. The finding of Appellate Authority is being reproduced below:

"On scrutiny of the evidences on record it is seen that the Departmental Enquiry was conducted in accordance with the laid down procedure and all the charges excepting Art. II were established. He was afforded with reasonable opportunity to dispose the charges but after availing the same he failed to prove him innocent. His allegations & arguments are not based on facts. The Disciplinary Authority had considered his representation in the light of the evidences on record and after being fully convinced accounting all aspects of the case imposed the penalty. The penalty imposed after following the laid down procedure is justified. The appeal having no merit is hereby rejected".

7. From perusal of the aforesaid finding, it is clear ^{that} observations of the Appellate Authority are absolutely general. There is factual mistake, though ^{other} charges were found proved against the applicant, ^{but} ~~whereas~~ charge No. 2 and Charge No. 6, both were not found proved. The Appellate Authority, however, has acted under wrong notion ^{That} ~~that~~ the charge No. 6, which has not been proved against the applicant, has also been found proved. In the circumstances, the order suffers from manifest illegality. The Appellate Authority has shown general agreement with the finding of the Disciplinary Authority without scrutiny.

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It is clear that no finding has been recorded. He simply agreed with the Enquiry Officer. Where major punishment is awarded, ^{the} law creates an obligation on the Appellate Authority to consider the matter analytically from all angles and then come to just conclusion so that injustice may not be done to the delinquent employees. In the present case the charges which were found proved are regarding maintenance of stores. There may be negligence on the part of the applicant, but they could not be justified ~~for~~ extreme penalty of dismissal from service. If the applicant was not co-operating in the surprise checking of Godowns, why the immediate action had not been taken against him by the Authorities. The allegation ^{is} is that the surprise check was taken on 01.03.1988 whereas incident took place between 21.05.1988 and 23.05.1988 i.e., after about more than two months. There is no explanation on record why the action had not been taken against the applicant immediately. In our opinion all these angles require ^{the} consideration by Appellate Authority, hence, matter may be sent back to the Appellate Authority for fresh decision.

8. For the reasons stated above, the O.A. is allowed in-part. The order dated 05.12.1994 (Annexure 4) is

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quashed. The appeal of the applicant before Appellate Authority shall stand revived and Appellate Authority shall consider and decide the case in accordance with law and in the light of observations made by the Tribunal, within 3 months from the date, a copy of the order is filed. If the applicant prays for personal hearing, he may be afforded opportunity. ²⁷ No corb. 8

no order

D. D. S.
Member-A.

R. f.
Vice-Chairman.

Manish/-