

(1)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 1st day of November, 2001.

Original Application No. 309 of 1997.

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Hon'ble Maj Gen KK Srivastava, A.M.

Bhagwan Din Son of Narayan,
Resident of Village-Raghunathpur,
Post Pachor, Tehsil Bilhaur,
District Kanpur Dehat, employed
as Tailor, Ticket No.2575, L.T. Section,
Ordnance Equipment Factory, Kanpur.

(Sri M.K. Upadhyaya, Advocate)

..... .Applicant

Versus

1. Union of India through the
Secretary Ministry of Defence,
Department of Defence Production,
Government of India, New Delhi.
2. Additional Director General,
Ordnance Factories, O.E.F. Group Headquarters,
G.T. Road, Kanpur.
3. General Manager,
Ordnance Equipment Factory,
Kanpur.

(Km. Sadhna Srivastava, Advocate)

..... .Respondents

O R D E R (O_r_a_1)

By Hon'ble Mr. SKI Naqvi, J.M.

While posted as Tailor, the applicant Bhagwan Din, was served with a memo of charge dated 9-2-1996 with the allegation that on 18-1-1990 he alongwith other employees of the Ordnance Equipment Factory, Kanpur were required to fill in 300 sleeping bags during night shift, but the applicant exhorted co-workers not to work for want of proper and sufficient place for the same for which the work could not be done and the Factory had to suffer losses and thereby the applicant contravened Rule 3(1)(ii) and (iii). This charge sheet was for minor punishment. On having received this memo of charge, the applicant moved an application on 16-2-1996(Annexure-A-4) claiming

SAC

court of enquiry to enquire into the fact giving rise to the charge sheet. Except for this request the applicant did not prefer any explanation in support of fact giving rise to the proceedings. The disciplinary authority passed order dated 31-7-1996 and imposed penalty of reduction of pay by three stages from Rs.1130/- to Rs.1070/- per month in the time scale of the pay of Rs.950-1500 with cumulative effect for a period of three years w.e.f. the date of issue of the order. The applicant preferred an appeal against this punishment order which has been decided on 22-1-1997 (Annexure-A-2) and the appeal has been rejected. The applicant has come up seeking relief against the punishment order, as well the appellate order.

2. The respondents have contested the case and filed counter reply.

3. Heard Sri MK Upadhyaya, counsel for the applicant and Km Sadhna Srivastava, counsel for the respondents.

4. The main contention raised from the side of the applicant is that the punishment order is in nullity because of having been passed against rules and established law because of the fact that when the applicant claimed for court of enquiry as per his request dated 16-~~7~~²-96 (Annexure-A-4) the disciplinary authority ought not to have proceeded to pass the punishment order without getting the matter enquired or passing a reasoned order to his prayer. Sri MK Upadhyay, counsel for the applicant took us through law as laid down in (1987) 3 ATC 950 -Samir Kumar Ghosh Vs. Union of India and Others decided by Jabalpur Bench of the Tribunal in TA No.449/1986 on February 23, 1986 and also the verdict in OA No.1645/1992 rendered by this Tribunal at Allahabad on 8-1-1997. He also referred to O.M. No.11012/18/85-Est(A) dated 28-10-1985.

Sect

5. In Samir Kumar Ghosh case (supra) it has been held that when the charged employee demands enquiry, it cannot be rejected except by recording reasons therefor. In Mahendra Kumar Dixit case decided by the Allahabad Bench of the Tribunal in OA No.1645/1992 (supra) followed the principle laid down in Mansa Ram Vs. General Manager (Telephone) J & K Circle, Srinagar and others reported in AIR 1980,382 wherein their Lordships held as under:-

"There can be no manner of doubt that where a minor punishment is sought to be imposed, the procedure for holding an enquiry need not be followed, unless otherwise desired by the disciplinary authority. But surely it does not mean that the enquiry is barred or that it is entirely subject to the pleasure of the disciplinary authority. The latter must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned finding whether an enquiry is or is not necessary. In the absence of such finding an order imposing the penalty would be invalid and of no legal consequence unless, of course, it can be shown that the omission has not resulted in any material prejudice to the employee."

6. In the above referred OM dated 28-10-1985, it has been provided that, "the implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not."

7. Km. Sadhna Srivastava, counsel for the respondents in reply to above referred legal position, submitted that it is nowhere mandatory that whenever a delinquent demands an enquiry, the disciplinary authority shall

SG

order for such an enquiry but by implication the provision as per rule, the disciplinary authority shall apply its mind to ascertain as to whether enquiry is needed as per circumstances of a particular case or not and shall pass a reasoned order accordingly. In support, she further submits that the impugned order dated 31-7-1996, the copy of which has been annexed as Annexure-A-1, contains reason for not holding enquiry in para 5.4 of the order.

8. We gave thoughtful consideration to the referred legal position and also the facts and circumstances ~~of and~~ the prayer made. It is quite evident that when the charge memo dated 9-2-1996 was served upon the applicant, he immediately moved an application dated ~~15-6-1992~~ ¹⁶⁻²⁻¹⁹⁹⁶ (Annexure-A-4) demanding court of enquiry, but the authority concerned kept silent till the punishment order dated 31-7-96 was passed. The point in ~~support~~ ^{support} of enquiry has been dealt with in para 5-4 of the punishment order, which goes to show that the disciplinary authority held that in the cases of minor penalty the delinquent has no right to demand for enquiry of fact.

9. In view of referred law and rules as discussed above, we are not in a position to agree with this contention that the delinquent cannot demand for enquiry in cases of minor penalty. It has clearly been held in Mansa Ram case (supra) and followed by this Tribunal in M.K. Dixit case (supra) that where a minor punishment is sought to be imposed, the procedure for holding of enquiry need not be withheld unless otherwise desired by the disciplinary authority. But surely it does not mean that enquiry sought should not be held or that it is clearly subject to the wishes of the disciplinary authority and as per the facts and circumstances of the case a detailed confronted enquiry was required in order

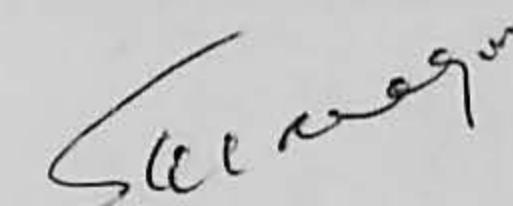
Ses

to arrive at correct conclusion in the instant case. Failure on the part of the disciplinary authority to do the same is violative of the principles of natural justice. Therefore, the order of punishment without holding any enquiry does not sustain.

10. With the above position in view, we allow the OA and set aside the impugned order with consequential benefits to the applicant. However, we grant liberty to respondents to hold a detailed confronted enquiry and then to proceed as per rules, or otherwise the disciplinary authority should give detailed reasons for rejecting the contention of the applicant. The OA is decided with the above observation. No costs.



Member (A)



Member (J)

Dube/