

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 10th day of May 2002.

QUORUM : HON. MR. RAFIQUDDIN, J.M..

HON. MR. C. S. CHADHA, A.M.

O. A. No. 510 of 1997.

Virendra Nath Agnihotri s/o Late Sri Babu Ram Agnihotri r/o
23 E/5, Debeli Fort Udyog, Nagar, Kanpur..... Petitioner
Counsel for petitioner : Sri Mohd. Arif & Sri A.A. Khan.

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. General Manager, Ordnance Factory, Kalpi Road, Kanpur.
3. Deputy General Manager, Administration, Ordnance Factory, Kalpi Road, Kanpur Nagar.
4. The Works Manager (Administration), Ordnance Factory, Kalpi Road, Kanpur.
5. The Enquiry Officer, Sushil Thakur, Dy. General Manager shall appointed under the Rules of the Ordnance Factory, Kalpi Road, Kanpur Nagar..... Respondents.

Counsel for respondents : Sri Amit Sthalekar.

O R D E R (ORAL)

BY HON. MR. RAFIQUDDIN, J.M.

The applicant, who was posted as U.D.C. at Ordnance Factory, Kanpur, was served with a memo of charge under Rule 14 of the CCA(CCS) Rules on 22.10.91. It was alleged that the applicant prepared false L.T.C. bills without valid authorities in respect of 16 industrial employees of the Factory, whose particulars and details have been mentioned in the chargesheet. The applicant was also charged for gross misconduct because he in connivance with Sri Tripathi, U.D.C. and Ganti Prasad, L.D.C. caused destruction of government money to the tune of Rs.1,16,930/= and thus, he did not maintain absolute integrity in violation of Rule 3(i) and (iii) of CCS(CGA) Rules 1964. The Enquiry Officer applicant denied the charges levelled against him and submitted a report after conducting enquiry against him on 30.9.95 (Annexure 10 to the O.A.) in which he held as under :

"His statement shows that preparation of false LTC requisition bills in L.B. Section in connivance with accounts was going on during the period in which Shri V.N. Agnihotri, UDC/L.B. (Now in EAO) has been charged for such a gross misconduct, but his indirect involvement could not be proved before the court by any of the witnesses, only the opinion of Hand Writing expert has confirmed based on the hand writing of all the advance requisition bills that Shri V.N. Agnihotri, UDC/EAO has prepared all the produced bills before him.

Therefore, the court has come to the conclusion that Shri V.N. Agnihotri, while functioning as UDC/L.B. (Now in EAO) during the period his employment has committed gross misconduct by defaulcating the Govt. Money to the tune of Rs.1,61,930.00 by preparing advance LTC requisition bills without valid authorities in respect of 16 employees and thus could not maintain absolute integrity during period of employment which is unbecoming of a government servant."

2. The disciplinary authority after considering the report of the Enquiry Officer and the representation submitted by the applicant against the enquiry report, the disciplinary authority vide impugned order dated 2.11.95 (Annexure-13) held the applicant guilty of the charges as enumerated in the memo of charge and imposed the penalty of dismissal from service. The applicant preferred an appeal before the appellate authority on 22.11.95 which was considered and rejected by the appellate authority vide order dated 9.12.96 (Annexure 1 to the O.A.).

3. By means of this O.A., the applicant has challenged the validity of the punishment order dated 22.10.91 and the appellate order dated 9.12.96 mainly on the grounds that the findings given by the Enquiry Officer are illegal as the E.O. as well as disciplinary authority have relied upon the uncorroborated evidence of hand writing expert. It is further stated that the opinion of the handwriting expert was obtained from a private agency instead of Govt. agency. The request of the applicant for summoning the hand writing expert for cross examination was also rejected and as such the applicant was denied the reasonable opportunity to defend himself during the disciplinary proceedings which is against the principles of natural justice and the impugned order has been passed in an arbitrary manner and, therefore, liable to be quashed.

Corrected vide
order dt 6/11/2002

B.Ghosh

R

4. We have heard Sri Mohd. Arif and Sri A.A. Khan for applicant and Sri A. Sthalekar for respondents.

5. Counsel for the respondents has defended the action of the Enquiry Officer as well as disciplinary authority stating that the enquiry was conducted in a proper manner and the applicant was afforded opportunity to defend himself. It is also contended that the expert report submitted by the private handwriting expert is permissible under law and the Enquiry Off. has rightly placed reliance on such evidence. It is obvious from perusal of the findings which have been referred to above that the Enquiry Officer has based his findings solely on the report of private handwriting expert which is merely opinion and the same cannot be relied upon without any other evidence. It is also on the record that the applicant was not permitted to cross examine the handwriting expert because he was not cited as one of the prosecution witnesses in the memo of charge. This reasoning given by the E.O. is obviously wrong because once he placed reliance on the report of handwriting expert, he cannot deny the right of the applicant to cross examine the private handwriting expert. Under these circumstances, we hold that the applicant has been denied a proper opportunity to defend himself during the disciplinary proceedings which vitiate the findings given by the E.O. The findings and conclusions made by the E.O. are not based on evidence and the same are perverse and deserves to be quashed.

6. At the cost of repetition it is stated that during enquiry as many as 15 witnesses were examined against the applicant but none of them supported the case of the prosecution and denied that it was the applicant ^{to} ~~to~~ prepared the claim of LTC bills. Therefore, the Enquiry Officer has clearly stated in his report that the indirect involvement of the applicant could not be ^R ~~approved~~ by any of the witnesses and it is only the opinion of the handwriting expert (private) which confirmed

R

that the disputed bills were prepared and produced by the applicant. Thus, it can safely be held that this finding arrived at by the Enquiry Officer is not based on any evidence and is, therefore, does not prove the charges levelled against the applicant. We also find that the appellate authority has also not considered this important aspect of the case and has confirmed the findings of the Enquiry Officer/Disciplinary authority without applying his mind and the same also deserves to be quashed.

For the reasons stated above, we quash punishment order dated 22.11.91 and the appellate order dated 9.12.96.

Since the applicant has already attained the age of superannuation, he will be entitled for all consequential benefits as per the rules.

No order as to costs.

Concurred vide
Pd. 26.01.01/6/2002

Chandru

A.M.

Ranjiv
J.M.

Asthana/
16.5.02