

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

(12)

ORIGINAL APPLICATION No.699/1997

WEDNESDAY, THIS THE 10TH DAY OF APRIL, 2002

HON'BLE Mr. S. DAYAL .. MEMBER (A)

HON'BLE Ms. MEERA CHHIBBER .. MEMBER (J)

Umesh Chandra,
aged about 39 years,
S/o late Ram Narain,
R/o No.319, Om Purwa,
Chakeri Road, Kanpur. ... Applicant

(By Advocate Shri R.K. Srivastava)

versus

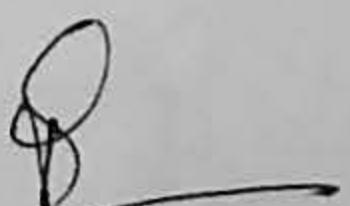
1. Union of India, through
the Secretary,
Ministry of Defence,
Department of Defence Production,
Government of India,
New Delhi.
2. Additional Director General,
Ordnance Factories,
O.E.F. Group Head Quarters,
G.T. Road, Kanpur.
3. General Manager,
Ordnance Equipment Factory,
Kanpur. ... Respondents

(By Advocate Kum. S. Srivastava)

ORDER - (ORAL)

Hon'ble Ms. Meera Chhibber, Member (J):

In this O.A., the applicant has challenged the order dated 17.4.1996, passed by the General Manager, Ordnance Equipment Factory, Kanpur, imposing on the applicant the penalty of Compulsory Retirement from service with effect from 17.4.1996 and the order dated



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27-7-1996, passed by the General Manager, Ordnance Equipment Factory, Kanpur, treating the period of suspension of the applicant from 21-1-1994 to 17-4-1996 as not spent on duty and for forfeiting the pay and allowances over and above the subsistence allowance paid during the period of suspension and also the Appellate order dated 20-12-1996.

2. The grounds taken by the applicant are that he was not concerned with the Foreman Shri D.K. Rastogi, nor was he working under him, nor had he any enmity with him. Therefore, there was no occasion for him to hit the Foreman with chappals. He has also stated that all the prosecution witnesses have become hostile and none of the witnesses have deposed against the applicant in the enquiry. That is why, even the Inquiry Officer had exonerated him of the charges and he has been punished without being involved in the incident at all.

3. We have perused the pleadings carefully and seen all the orders as well as the statements recorded during the inquiry which are annexed with the O.A. as well as the counter affidavit. The charge against the applicant was that Shri Umesh Chandra, the applicant herein, while functioning as Tailor (skilled) in the Ordnance Equipment Factory, had misbehaved with the superior staff (Foreman of the section) by striking with the chappal on his head without any provocation on 21-1-1994. Admittedly, a



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detailed inquiry was held thereafter where in the applicant had been given full opportunity to cross-examine the prosecution witnesses and lead his defence evidence as well. The Inquiry Officer, in his findings after discussing the evidence had held that the charges levelled against Umesh Chandra not fully established and there remains benefit of doubt which is in favour of the accused. However, ^{after} considering everything, the Disciplinary Authority gave a note of dis-agreement on 4-12-1995 giving therein the reasons as to why he does not agree with the report submitted by the Inquiry Officer and gave his own opinion on the basis of evidence which came on record and admittedly, the incident had taken place and whether he was holding a Chappal or a Sandal in his hand has been stated by all the prosecution witnesses. After dealing with every aspect of the matter the Disciplinary Authority concluded ^{that} ~~with~~ the charge of mis-behaviour with the superior staff (Foreman of the section) by striking with a Chappal on his head without any provocation is established beyond doubt against Shri Umesh Chandra, T.NO.705/TM, P No.105054, OEFC. The applicant gave his detailed representation which was considered by the Disciplinary Authority and after examining the representation, the Disciplinary Authority vide his order dated 17-4-1996, by a detailed and speaking order awarded the penalty of Compulsory Retirement from service with effect from 17.4.1996



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on the applicant. The applicant filed an appeal against this order which was also considered by the Appellate Authority and the same has also been rejected by a detailed and speaking order on 20.12.1996.

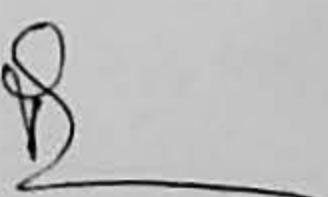
4. The applicant's counsel has drawn our attention to paragraphs 15 and 16 of the O.A., wherein, he has tried to show that one witness had stated that the applicant was carrying a chappal while the other person states he was having a sandal or hitting the Foreman. Also, he has tried to find out certain other contradictions in the statement of prosecution witnesses for example, the names of persons with whom the Foreman was talking at the time of incident and to which unit they belonged to. It seems the learned counsel for the applicant is taking this inquiry to be a criminal trial forgetting that in a departmental enquiry it is only preponderance of probabilities on which the case is decided as the requirement in disciplinary enquiry is not to prove the guilt beyond any doubt unlike a criminal trial. The law is well settled by the Hon'ble Supreme Court in the judgment in AIR 1989 S.C. 1185, wherein the Hon'ble Supreme Court has held that even if there is some evidence on record, which has been taken into consideration by the Disciplinary Authority to come to the conclusion that the charge is proved, xxxxxxxx xxxxx xxxx xxxxxxx

the Tribunal should not interfere in the matter or re-appreciate the evidence. In spite of which, since the applicant's counsel was vehemently arguing that this is a case of no evidence, we have looked into the statements of some of the witnesses which are brought on record and it is seen that Shri D.S. Yadav, who is one of the prosecution witnesses stated during the course of enquiry in the presence of the applicant that on 21-1-1994, Shri D.K. Rastogi, Foreman was talking near the gate of building No.216 with some employees when Shri Umesh Chandra reached there along with some employees of TM Gang No.7 and without any provocation he hit Shri D.K. Rastogi with a chappal from his back in my presence. We prevented him from striking again and the other persons also helped in removing him in front of Shri Rastogi. Similarly, Shri D.K. Rastogi had also stated during inquiry that on 21-1-1994, at around 12.50 when he was talking to some of the employees in front of gate of building No.216, somebody hit him on the back from the back and when he turned back Shri Umesh Chandra hit him again with a chappal in his hand. In the mean time, Shri D.S. Yadav, who was present there intervened and got hold of the hand of Shri Umesh Chandra who was trying to strike again and he further stated that when Shri Umesh Chandra was intervened by Shri D.S. Yadav, he used abusive language as stated in the statement. After having seen these statements, we are satisfied that it cannot be said to be a case of no evidence at all. The law is also well settled

by the Hon'ble Supreme Court that so long as the evidence is there, it should be left open to the Disciplinary Authority to assess the punishment that is required to be passed in the given circumstances of the case and the Court should not interfere in the question of quantum of punishment unless the punishment is so harsh and disproportionate to the mis-conduct that it shocks the conscious of the Court. In the instant case, the mis-conduct of the applicant is nodoubt very serious. In any organisation, discipline is the foremost thing to be maintained and if this kind of mis-conduct is not contained, it can lead to re-occurrences thus creating problem to the administration and to say that our conscious has not been shaken by the punishment awarded because, after Compulsory Retirement, the applicant still gets all his retiral benefits, etc.

5. The applicant's counsel has vehemently tried to say that the applicant had no enmity with Shri Rastogi nor was he working under Shri Rastogi. Therefore, there is no reason as to why he should hit the Foreman. We cannot enter into the mind of any person, nor are we called upon to give reasons as to why he had hit Shri Rastogi. The evidence on record is that he did hit Shri Rastogi with a chappal and that is sufficient and calls for no interference from the Court. The

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counsel has not been able to find out or point out any illegality in the conduct of inquiry nor has he given any other ground on which **any interference** is called for.

6. In view of the above, the O.A. is devoid of merit and the same is dismissed. No costs.



MEMBER (J)



MEMBER (A)

psp.