

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
SITTING AT NAINITAL

Dated: Nainital, the 13th day of June, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION NO. 749 OF 1997

Brij Lal, s/o Sri Kahini Ram,
r/o 71-B, Hathi Berkala, Dehradun
At present working as Durwan
Token No.6-34, O.L.F. Dehradun.

. Applicant

(By Advocate: Sri N.P. Singh)

Versus

1. Union of India through the Secretary,
Ministry of Defence, Department of Defence
Production, New Delhi.
2. The Secretary,
Ordinance Factories Board,
10-A, Auckland Road,
Calcutta.
3. General Manager,
Opto Electronics Factory,
Dehradun 248 008.

. Respondents

(By Advocate: Km. Sadhna Srivastava)

O R D E R (ORAL)

(By Hon'ble Mr. S. Dayal, AM)

This application under Section 19 of the
Administrative (Tribunals) Act, 1985 has been filed

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for setting aside penalty order dated 2.8.90 and appellate order dated 5.7.91. A direction has also been sought to the Respondents to treat the period of suspension from 4.10.89 to 19.10.90 as the period spent on duty with full back wages less subsistence allowance.

2. The case of the applicant is that while the applicant was on Durban duty on 1.10.89 at about 2130 hrs. in IIInd shift at Raipur Gate of the factory, he saw a person hiding himself behind the bush in the darkness and went to find out there and he found that Lance Naik Sri Prakash Narain was holding a bag containing two pieces of brass voves. On detection, L/N Sri Prakash Narain started shouting and four D.S.C. personnels also came there and implicated the applicant in the case of theft. The applicant was charged in the disciplinary proceedings with attempted theft of materials from the factory premises as also for leaving the place of duty without intimation/prior permission. The applicant was placed under suspension on 4.10.89, which was later on revoked by an order dated 19.3.90. The Enquiry Officer after conducting the inquiry held the charge of theft as not fully proved but held that Charge No.2 of leaving the place of duty without intimation/prior permission as proved. It is the case of the applicant that he was not on the spot duty but was on beat duty between the Raipur Gate and E-21 Building and that he was found within this area. The Disciplinary Authority imposed the penalty of reduction of pay by two stages in the time-scale

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of Rs.750- 940/- from the stage of Rs.774/- for the period of two years with cumulative effect. The appeal of the applicant was rejected. It is the contention of the applicant that both orders are perverse and without application of mind.

3. We have heard Sri N.P.Singh for the applicant and Km.Sadhna Srivastava for the Respondents.

4. The learned counsel for the Respondents raised the issue of limitation, stating that the order of disciplinary authority was passed on 2.8.90 and the order of appellate authority was passed on 5.7.91, while the O.A. was filed on 21.3.93, i.e. a period of six years after the order of appellate authority has been passed.

5. We find that the applicant had addressed an appeal to the Chairman, Ordnance Factory Board, Calcutta on 26.7.93 in which he had mentioned that he had submitted an appeal dated 26.9.90 but no action has been taken on his appeal. He also made an endorsement to the General Manager, O.E.F., Dehradun to inform him as to when his appeal was ^{forwarded &} ~~ordered~~ to the Chairman Ordnance Factory Board, Calcutta. The applicant by an application dated 26.10.93 requested the Chairman, Ordnance Factory Board, Calcutta to waive his punishment or allow him to take up the issue in the court of law, as he feels that the punishment is not justified. We find that the period of delay has not been sufficiently explained by the applicant but the applicant has claimed that the application is within the period of limitation.

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6. However, in order to see whether the period of limitation is required to be waived, we have considered the merits. The learned counsel for the applicant has contended that the disciplinary authority did not consider the explanation furnished by the applicant on 25.4.90 in response to the court of enquiry report. The applicant has stated that he had not left his post and that after 5.30 P.M. when the Raipur Gate is locked, his duty was of patrolling upto the building E-21 from Raipur Gate. He has mentioned that the incident, which occurred resulting in allegation against him was within his area of patrolling. The learned counsel has also drawn attention to the report of the Enquiry Officer, in which the statement of Sri Jai Narain, Durban G-36 was taken and Sri Jai Narain as defence witness had stated that he had reached the spot of incident and saw Sri Brij Lal standing along with Lains Naik Sri Prakash Chandra and Sri Raghuvir Pandey, who were asking him to take material on the ground and follow them. Sri Brij Lal stood quiet and after some time accompanied Sri Prakash Chandra and Sri Raghuvir Pandey towards the main gate. This witness, however, could not explain satisfactorily on a query by the Enquiry Officer as to what action he took regarding this incident. They were prosecution witnesses, who have supported the charge against the applicant. The learned counsel for the applicant has drawn attention to the observation of the Enquiry Officer that there was major difference in recognising the place of duty by the Duty Officer Sri P.K. Banerji.

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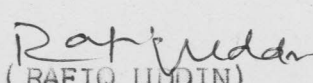
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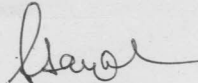
We have also seen the observation of the Enquiry Officer, regarding Sri P.K. Banerji's reply as to why he did not ask Sri Brij Lal to come to the spot.

7. The learned counsel for the applicant also stated that the appellate authority did not follow the provision of Rule 27 in deciding the appeal of the applicant. We find that there is a categorical finding of the Enquiry Officer that the applicant was entitled to the benefit of doubt with regard to the charge of attempted theft of material from the factory, but he had committed gross misconduct by leaving the place of duty without intimation/prior permission. We also find that the applicant in his Memo of Appeal had admitted that he left his duty place, when he saw ^LLang Naik Sri Prakash Chandra coming. The applicant also did not seek ^Lany personal hearing. We find the order of the appellate authority ^{is} ^Lreasoned and quite detailed.

8. We, therefore, find no reason to interfere with the orders, as passed by the disciplinary and appellate authorities, and that the application has no merits. The application is, therefore, dismissed as barred by limitation as well as lacking in merits.

There shall be no order as to costs.


(RAFIQ UDDIN)
JUDICIAL MEMBER


(S. DAYAL)
MEMBER (A)

Nath/