

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

original Application No. 992 of 1997

this the 24th day of March 2004.

HON'BLE MR. JUSTICE S.R. SINGH, VICE CHAIRMAN
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

Mobin Ahmad, aged about 45 years, S/o Sri Muneer Ahmad Khan, R/o 135/2, Vijainagar Colony, Kanpur, employed as Labour (unskilled), T.No. 112, Bomb Shop, Ordnance Factory, Kanpur.

Applicant.

By Advocate : Sri N.K. Nair.

Versus.

1. Union of India through the Secretary, Ministry of Defence, Department of Defence production, Govt. of India, New Delhi.
2. Chairman, Ordnance Factory Board/Director General of Ordnance Factories, 10-A Shaheed Khudi Ram Bose Road, Calcutta.
3. The General Manager, Ordnance Factory, Kalpi Road, Kanpur.

Respondents.

By Advocate : Sri Amit Sthalekar.

O R D E R

PER S.C. CHAUBE, MEMBER(A)

Through this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the following orders:

(1) order dated 12.2.1994 of General Manager, Ordnance Factory, Kanpur, reducing the ~~payment~~ of the applicant to the lowest grade for a period of one year with cumulative effect.

(ii) order dated 20.9.95 of the appellate authority rejecting the appeal of the applicant.

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(iii) order dated 2.6.1994 of D.G.M. (Admn.) directing that the period of suspension of the applicant from 16.5.92 to 9.2.94 will not count towards his increment leave and pension etc.

2. Earlier a departmental enquiry under Rule 14 of CCS(CCA) Rules, 1965 was initiated against the applicant for the offences of (i) attempted theft of Government property; and(ii) missing from place of duty.

3. Briefly, the facts are that on 14/15.5.1992 during the night shift when the applicant was posted in the Bomb shop of Ordnance Factory, Kanpur, the security staff were on factory round from 0030 hours. At about 1.40 A.M. they reached near Bomb shop canteen and noticed that one person wearing half shirt and underwear was about to throw a plastic bag containing some material across perimeter wall of the factory. Seeing the security personnel, the individual ran away from the spot leaving behind the Govt. material and one Chappal of right foot. The security staff took the bag containing copper scrap and the chappal in their custody for further enquiry. A surprise check was carried-out by the security staff from 0310 hours to 0415 hours on the same night in which the applicant reported back in Bomb shop at 4.30 A.M. Accordingly, he was called in security office for interrogation.

4. It has been contended by the applicant in his O.A. that he had gone to attend the nature's call during the surprise check of the security personnel. Further, he has pleaded that if it was known to him that surprise check was conducted, then he would have gone before the security staff to prove his presence. Further, according to the applicant, there is contradiction in the report regarding date and time in S.O.'s surprise check report and Head of the Section's report. It has further been pleaded that the applicant has falsely

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been implicated by the Incharge of Night shift duty and Security personnel . He has further argued that the Enquiry officer and the disciplinary authority have totally ignored the above contradictions with malafide intention and prejudicial view to punish him. Finally, the applicant has contended that though the charge of Article I was not proved in the departmental enquiry, but based on the preponderance of probability of attempting theft of Govt. property, the disciplinary authority has held him guilty and imposed a harsh punishment

5. Besides the following pleas have also been raised in the O.A.

(i) G.M. passed a non-speaking order dated 12.2.1994 inflicting the punishment on the applicant.

(ii) Missing memo was not issued by the Night shift Incharge as was required on the close of the shift. Infact, missing report was prepared in the next shift and was signed by the Foreman who was not present at the time of surprise check.

(iii) As per practice, pay of the employee is deducted ~~for~~ the period of missing, ^{whereas} ~~while~~ in the present case, applicant has been imposed a major penalty for the charge of missing from place of duty during the surprise check by the Security personnel.

(iv) The appellate authority did not analyse the evidence and consider the points raised in the appeal preferred by the applicant. Forfeiture of full pay and allowances during the period of suspension also amounts to violation of the principles of natural justice and, therefore, double jeopardy.

6. Respondents in their Counter affidavit, on the other hand, have stated that the Article I of the charge ^{not} could ~~be~~ conclusively proved in the court of enquiry.

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However, Article II of the charge was proved. During the surprise check on 14/15.5.92, the individual was found missing from his duty place from 0310 hours to 0415 hours. Accordingly, security staff showed him missing for the aforesaid period in their missing report.

7. Respondents have further pleaded that the applicant had himself admitted that he had gone to attend the nature's call without seeking permission from the Night shift Incharge. The points raised by the individual regarding difference in time of the missing report have ^{no} weight and meaning. Finally, the applicant has failed to bring out any reasonable point to dis-prove the charge and ^{lastly} the penalty imposed by the disciplinary authority and confirmed by the appellate authority, according to the respondents, is fully justified and well warranted.

8. We have heard both the counsels and perused the pleadings.

9. Confining our attention to the evidence and pleadings relating to second charge against the applicant being missing from place of duty during the surprise check carried-out of the Bomb shop by the Security personnel from 0310 hours to 0415 hours in the night shift of 14/15.5.92, close ^{scrutiny} ~~security~~ of the averments in the O.A. and Counter affidavit adequately support the absence of the applicant from his place of work at Bomb shop. This fact is also accepted by the applicant in his O.A., although the reasons for absence are different. According to the applicant, he was missing from his place of duty to attend the nature's call. After taking into account the evidence, the disciplinary authority has come to the conclusion that the charge of missing from work place against the applicant has been amply

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proved.

10. However, applicant has pleaded before the appellate authority in his appeal dated 23.3.1994 that the workers found missing in the Security's surprise check were either dealt with by the principles of 'No Work No Pay' or with the simple warning or stoppage of over time only. The appellate authority, however, vide its order dated 20.9.95 has neither accepted, nor rejected this contention of the applicant. In the light of the decision (1995 6 SCC 749) of Hon'ble Supreme Court in B.C. Chaturvedi's case, we are not inclined to interfere in the present case because there is no inconsistency with the rules of natural justice or violation of statutory rules prescribing the mode of enquiry etc. In the present case, since the findings of the disciplinary as well as appellate authorities are based on evidence, we would not like to interfere with the punishment awarded to the applicant.

11. For reasons discussed above, the O.A. has no merit and the same is accordingly dismissed. with no order as to costs.

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MEMBER (A)

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VICE CHAIRMAN

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