

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1460 of 1998,

Allahabad, this the 21<sup>st</sup> day of April, 2004

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

Hon'ble Mr. A.K. Bhatnagar, J.M.

Mohd. Shamim Khan,  
S/o Mohd. Ibrahim  
R/o Quarter No.59/9 'R'  
Type Fy. Estate  
employed as Stamper Ticket No.  
5290/534, P-3 Production in  
Ordnance Clothing Factory  
Shahjahanpur.

.... Applicant.

(By Advocate : Shri M. Lal)

Versus

1. Union of India through its Secretary,  
Ministry of Defence Production,  
New Delhi.
2. The Addl. Director General,  
Ordnance Factories, Ordnance  
Equipment Fys. Gr. HQs.  
G.T. Road, Kanpur - 13.
3. The General Manager  
Ordnance Clothing Factory,  
Shahjahanpur.

..... Respondents.

(By Advocate : Shri A. Mohiley)

ORDER

By Hon'ble Mr. A.K.Bhatnagar, J.M. :

By this O.A. filed under Section 19 of A.T. Act, 1985,  
the applicant has challenged the order dated 24.4.1998  
passed by respondent No.3 reducing the pay of the applicant  
by one stage for a period of one year with cumulative effect

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(Annexure-A-1) and sought for quashing the same and further prayed for quashing of the Appellate order dated 19.8.98 passed by respondent No.2. He has further prayed for restoring his pay and status in the service as he used to hold before imposition of the impugned order dated 24.4.98.

2. The brief facts as per the applicant are that he was working as Stamper Ticket No.5290/D.P. 3 in the Ordnance Clothing Factory Shahjahanpur. It was reported by the Senior Security Officer vide letter No.SO/CFS/14 dated 3.3.97 that the applicant while functioning as such on 1.3.97 committed gross misconduct by manhandling Shri Mahesh Chandra, Labour (unskilled) Ticket No.6597/D, Ordnance Clothing Factory, Shahjahanpur thereby causing injury to him. For this gross misconduct the applicant was placed under suspension with effect from 4.3.97 (AN) and Memo of charge sheet under Rule 14 of CCS (CCA) Rules,1965 vide No. VIG/162-C/IE/07/97 (14) dated 15.3.97 was served on him. The applicant submitted his reply to the charge sheet and denied the charges levelled against him. The respondent No.3 i.e. General Manager, Ordnance Clothing Factory Shahjahanpur ordered a common Court of Inquiry vide order dated 5.5.97 by appointing the Deputy General Manager as Inquiry Officer. The Inquiry Officer submitted his report dated 27.1.98 to the Disciplinary Authority and held that the charges against Shri Mohd Shamim Khan are not established. The General Manager after going through enquiry report dated 27.1.98, disagreed with the findings of the Inquiry Officer and he accordingly gave <sup>his</sup> ~~its~~ own reasons of disagreement and held that the charge contained in the charge sheet dated 15.3.97 which was issued to the

applicant is established against him. Thereafter, a show cause notice dated 26.3.98 alongwith disagreement Note of the General Manager and the findings of the Inquiry Officer were sent to the applicant which is filed as Annexure-A-4 of the O.A. The applicant submitted his reply vide letter dated 3.4.98 to the disagreement Memo and show cause notice given to him by the Disciplinary Authority. After considering the representation of the applicant he came to the conclusion that dis-agreement memo is wholly reasoned and is substantiated by the facts and found the charges levelled against the applicant as established.

3. Accordingly a penalty of reduction of pay by one stage for a period of one year with cumulative effect was imposed on the applicant vide order No. VIG/162-C/IE/07/97 (14) dated 24.4.98. The applicant preferred a departmental appeal dated 1.5.98 to the Additional Director General, Ordnance Equipment Factories Group Headquarters, Kanpur which was also rejected vide order dated 19.8.98, hence the applicant filed this DA.

4. Learned counsel for the applicant submitted that the action of the Disciplinary Authority i.e. respondent No.3 establishing the charge by way of disagreement memo is arbitrary and against the evidence on record as the Inquiry Officer did not hold the applicant guilty and no charge was established against him. It is further submitted that respondent No.3 based his disagreement on the evidence given by two witnesses namely Mahesh Chandra Sharma and Ved Prakash which <sup>not have been</sup> should <sup>with regard to</sup> be considered as there are contradictions in their statements <sup>place of incident and</sup> presence of witnesses at the time of alleged incident. It clearly shows that the Authority concerned gave

disagreement memo with closed mind. It is further submitted that disciplinary authority while differing from the Inquiry Officer did not evaluate all the evidences of prosecution as well as defence witnesses adduced by the applicant. It is submitted that <sup>the</sup> disagreement memo is based on no evidence. It is further submitted that the medical report has also not been verified and proved by the Doctor. It is again submitted that the applicant was given no opportunity of personal hearing before dismissing his appeal, therefore, the order passed is illegal. Learned counsel finally submitted that the Senior Security Officer has submitted his report only on the basis of the report of Foreman who never visited the place of occurrence as alleged.

5. Learned counsel for the applicant placed reliance on the following cases :-

(i) S. Goplan Vs. Director General of Works Central Public Works Department, New Delhi (1991) 16 A.T.C. 691.

(ii) Ganga Prasad Tiwari Vs. Union of India & ors (1987) 4 A.T.C. 97.

6. Learned counsel for the respondents resisting the claim of the applicant filed counter affidavit which was rebutted by the applicant by filing rejoinder. Learned counsel for the respondents submitted that the applicant was involved in a case of manhandling Sh. Mahesh Chandra Sharma inside Factory premises thereby causing injury to him, which is also supported by medical report dated 1.3.97. Shri Ved Prakash P.W.-I was present at <sup>the place of</sup> the occurrence and he is eye-witness who has clearly deposed before the Inquiry Officer about <sup>the whole</sup> the incident and there is no contradiction about the place of occurrence. The Disciplinary Authority found the charges proved after placing reliance only on two prosecution witnesses namely Ved Prakash PW -I and

injured Mahesh Chandra Sharma. All the prosecution witnesses were examined/cross examined during the course of court of enquiry proceedings except Dr. V.K. Gihar who medically examined the complainant Shri Mahesh Chandra Sharma. ~~It was~~ It was not considered necessary to produce Dr. V.K. Gihar <sup>was his</sup> medical report submitted by him which was very much on the record. It is further contended that since Inquiry Officer had not properly analysed and appreciated the facts and evidence on record, so the disciplinary authority dis-agreed with the findings of the Inquiry Officer and gave its own findings. He placed reliance on the testimony of eye-witnesses Ved Prakash and injured Mahesh Chandra Sharma. A proper show cause notice alongwith dis-agreement memo was duly sent to the applicant who filed his reply also therefore full opportunity was given to the applicant for putting up this case before disciplinary authority who after considering all the material facts before him passed the order. The applicant filed an appeal and Appellate Authority after considering the facts and circumstances of the case rightly rejected the appeal of the applicant. So far as the personal hearing of the applicant is concerned, he has never asked for any personal hearing from the Appellate Authority so there arises no question of providing personal hearing, hence the order passed by Appellate Authority (Annexure-A-2) is wholly reasoned and justified order.

7. Learned counsel for the respondents placed reliance on the following judgments :-

1. State of Assam and another Vs. Mahandra Kumar Das & ors. AIR 1970 SC 1255.
2. State of Andhra Pradesh and others Vs. S. Sree Rama Rao AIR 1963 SC 1723.

Learned counsel for the respondents placed reliance on B.C. Chaturvedi Vs. Union of India & ors 1996 SCC (L&S) 80 and submitted that Court/Tribunal cannot interfere with findings of fact based on evidence and substitute its own independent findings as held in Para 13 of the Judgment, which is reproduced below :-

"The disciplinary authority is the sole judge of facts. Where appeal is presented the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India Vs. H.C. Goel this Court held at P.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

8. Heard counsel for the parties and perused the pleadings on record.

9. We have gone through Annexure-A-3 Charge Sheet dated 15.3.1997 which contains list of documents and witnesses relied upon also. In Article (I) of charges framed against the applicant <sup>it is stated that</sup> on 1.3.97 at about 11 a.m. he was found involved in manhandling Shri Mahesh Chandra Sharma (US) thereby causing injury to him. By the above Act he has exhibited conduct unbecoming of a Govt. servant in violation of Rule 3(i) (iii) of the CCS (CCA) Rule, 1964. The list of witnesses contains the names of 08 witnesses including Shri Mahesh Chandra Sharma (injured) PW-2, Ved Prakash PW-I and other witnesses. We have seen the statement of PW-I who has clearly stated in his statement that he has seen the applicant alongwith one Anish Ahmed beating the injured Mahesh Chandra Sharma on the date of occurrence. We have also gone through the cross examination in which PW-I Ved Prakash clearly

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stated that he has seen Shamim (applicant) and Anish Ahmed beating Shri Mahesh Chandra Sharma. In cross examination he has also admitted that he has seen them beating the injured from a distance. We have seen the statement of injured Mahesh Chandra Sharma who has also clearly stated that the applicant and Anish Ahmed caused injury to him. He has clearly deposed specifying the role of the applicant in his examination in Chief as well as in cross examination. We have seen the report of the Inquiry Officer and the findings which is reproduced below :-

"Shri Anish Ahmed, Tailor (S/K), T. No.12184/596 P-3 section has accepted the charge framed against him, as such charge framed against him is established automatically. Charges against Shri Mohd. Sham Khan Stamer, T. No.5290/534, P-3 are not established."

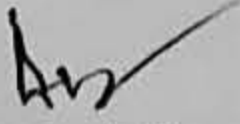
10. We are not able to understand how the Inquiry Officer came to this finding when there is clear cut evidence of injured and one eye witness who supported the case of the prosecution. We have also gone through the disagreement memo submitted by the Disciplinary Authority which has been passed after considering every aspect of the case. The statements of the witnesses out of which injured Shri Mahesh Chandra Sharma and one eye-witness Ved Prakash have clearly supported the case of the prosecution and so we find no illegality in the order passed by the disciplinary authority. We have also gone through the Appellate order Annexure A-II which is also a detailed and reasoned order which does not call for any intervention of the Court.


11. In the facts and circumstances and in view of the above discussions, we find no illegality in the order passed by Disciplinary Authority as well as Appellate Authority and no intervention is called for. Under the circumstances  
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the O.A. is liable to be dismissed being devoid of merit.  
Accordingly, the O.A. is dismissed being bereft of merit.

12. There shall be no order as to costs.

  
MEMBER (J)

  
MEMBER (A)

RKM/