

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,
ALLAHABAD.**

ORIGINAL APPLICATION NO. 979 OF 1998.

ALLAHABAD THIS THE 22ND DAY OF SEPTEMBER 2008.

Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. Manjulika Gautam, Member (A)

Munshi Lal, aged about 41 years, son of late Late Balak Ram, Resident of 116/209, Janta Nagar, Rawatpur, Kanpur, presently employed as Supervisor (Store), P. No. 054041, SI Station, Ordnance Equipment Factory, Kanpur.

.....Applicant

By Advocates: Shri N.K. Nair/Shri M.K. Upadhyaya

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, Ordnance Equipment Factories Group Hd. Qrs., G.T. Road, Kanpur 280013.
3. General Manager, Ordnance Equipment Factory, Kanpur.

.....Respondents

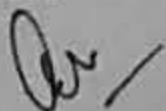
By Advocate: Shri R.C. Shukla

O R D E R

Delivered By : Justice A.K. Yog, Member (J)

Heard Shri M.K. Upadhyaya, Advocate, learned counsel for the applicant and Shri R.C. Shukla, Advocate, learned counsel for the respondents. Perused the pleadings on record.

2. At the outset we express our shock on perusing 'Paper-Book' of this 'O.A' which contain illegible Annexures, which are of no use. Both the counsel and the Registry is responsible and required to be cautious and vigilant. Filing of illegible copies- frustrates judicial process'.



3. Factual matrix, in short, is noted. Disciplinary Enquiry was initiated against the applicant, Enquiry Officer submitted his report; order of punishment was passed on 29.1.1997/Annexure A-1 to the O.A; he was served with Charge memo dated 10.10.1994; filed reply on 12.11.1994/Annexure A-19 and order of punishment was passed on 29.1.1997/Annexure A-1.

4. Relevant paras 8 and 9 are reproduced:

"8. But taking into account that Shri Munshi Lal Chargeman/Store Issue section is only 40 yrs of age and had put only 20 yrs. Of service in the Factory and also since it is the first offence of this nature committed by him, the undersigned is inclined to take a lenient view and decide to impose on him the penalty of a reduction on rank i.e. from Chargeman-II N/T (Store) to Supervisor N/T (Sore) for a period of 5 years.

9. Accordingly the undersigned imposes on Shri Munshi Lal, Chargemen -II N/I(Store), P, No. 054041, OEFC the penalty of Reduction N/T (Stores) for a period of 5 yrs w.e.f 29.1.1997 with further direction that after the period of reversion he will be eligible for promotion if found it on the basis of performance and availability of vacancy".

5. Against above order, Applicant filed appeal which decided on 3.6.1998/Annexure A-2 to the O.A. Relevant paras 5 and 6 of this order reads:

"5. In view of the foregoing there exist no mitigating circumstances warranting interference with the penalty which has been imposed by the Disciplinary Authority on proven misconduct. Thus, the undersigned has decided to dismiss the appeal.



6. The undersigned, therefore, rejects the appeal of Shri Munshi Lal, Supr. (Ex. C/M-II), Ordnance Equipment Factory, Kanpur.

6. Disciplinary Authority/General Manager passed another order dated 31.7.1997/Annexure A-3 to the O.A. For convenience, said order is reproduced:

"Order

Whereas as show cause notice NO.VIG/D-50/ML/54 dated 8.3.1997 was issued to Shri Munshi Lal, Supervisor (Store) (earlier Chargeman-II) P.No. 054041, Ord. Equipment Factory, Kanpur to give him opportunity to submit his written representation if any, within 15 days from the date of receipt of the show cause notice dated 8.3.1997 against the proposal made there in.

And whereas Shri Munshi Lal, Supervisor (Store) DEFC has submitted his written representation dated 14.3.1997 in response to the Show Cause notice dated 8.3.1997 for consideration of the undersigned.

After careful consideration of the case taking all aspects into account the undersigned has come to the conclusion that the suspension for the period from 23.8.1994 (AN) to 4.3.1996 (FN) in respect of Shri Munshi Lal, Supervisor (Store) P. NO. 054041, DEFC, was wholly justified as he has not been exonerated of the charges leveled against him and a major penalty has been imposed on him.

NOW therefore, the undersigned hereby directs that the period from 23.8.1994 (AN) to 4.3.1996 (FN) during which Shri Munshi Lal, Supervisor (Store) (Earlier Chargemen) DEFC, was placed under suspension shall not be treated as period spent on duty for any purpose and his pay and allowances for the above mentioned suspension period over and above the subsistence allowance paid to him during the suspension period shall stand forfeited as per Article 193 CSR".

7. Learned counsel for the applicant submitted, with reference to charge memo dated 10.10.1994/Annexure A-17 to the O.A. to indicate that one S.D. Vijay Kumar (the then Store Holder/SR) had appeared as witness against him and his specific plea (that he had made



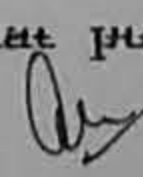
allegations against said S.D. Vijay Kumar, who (according to him) was involved in the alleged irregularities and responsible to issue cheques in question. It is being argued that on the sole basis of statement of S.D. Vijay Kumar, applicant could not be held. Further argument is that his categorical explanation has been ignored without reason/s.

8. Learned counsel for the respondents in reply referred to para 4 (g) of the order dated 29.1.1997/Annexure A-1 to the O.A. to show that aforesaid plea/defence of the applicant has been considered.

9. Learned for the applicant fails to dislodge the above defence; It appears, the discussion on the issue is not to the satisfaction of the applicant but that does not warrant interference with orders impugned in this O.A.

10. Learned counsel for the applicant thereafter submitted that order 31.7.1997/Annexure A-3 cannot be sustained being illegal and arbitrary. We are satisfied that order dated 31.7.1997 by Disciplinary Authority could not be passed as it amounted to enhance the 'punishment', awarded his earlier punishment order dated 29.1.1997. This could be done by Appellate Authority only-inasmuch as Disciplinary Authority was rendered 'functus-officio'.

11. There is nothing on record to show that requisite procedure, if any, provided under relevant Rules, has been followed. Punishment awarded by order dated 29.1.1997, as affirmed by order dated 01.7.1997 (noted above) shows that punishment imposed by the



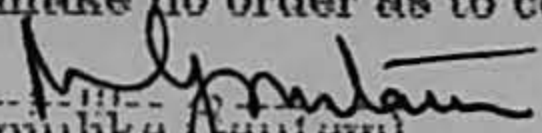
Disciplinary Authority viz- "punishment of reduction in rank i.e. from Chargeman- II N/T (Store) to Supervisor N/T (Store) for a period of 5 years" was modified by Appellate Authority- by giving further direction i.e. after the period of reversion he will be eligible for promotion if found fit on the basis of performance and availability of vacancy". Above expression go to show that punishment awarded was not with cumulative effect. Applicant could not suffer because of punishment of reversion after expiry of five years and he is entitled to be restored to his original position as he held just before initiation of Enquiry.

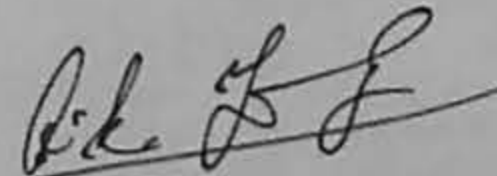
12. In view of the above, impugned order dated 31.7.1997/Annexure A-3 to the O.A. cannot be sustained and liable to be set aside.

13. Consequently aforesaid order dated 31.7.1997/Annexure A-3 to the O.A. are hereby set aside. Punishment order dated 29.1.1997/Annexure A-1 as affirmed by Appellate Authority vide order dated 3.6.1998/Annexure A-2 cannot be interfered with.

14. O.A stands partly allowed to the extent indicated above.

15. We make no order as to costs.


(Manjusha Gautam)
Member (A)


(Justice A.K. Yogi)
Member (J)

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