

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 142 of 2001

Allahabad this the 29th day of March, 2005

Hon'ble Mr. V.K. Majotra, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Member (J)

B.N. Ram, S/o Late/Shri Resident of H.No. Kanpur Nagar.

Applicant

By Advocate Shri R.K. Shukla

Versus

1. Union of India through the Secretary, Ministry of Defence Department of Defence Production, Govt. of India, New Delhi-11.
2. The Secretary, Ordnance Factory Board, 10-A, Shaheed Khudi Ram Bose Road, Calcutta-1.
3. The General Manager, Field Gun Factory, Kalpi Road, Kanpur.

✓ ✓ Respondents

By Advocate Shri Saumitra Singh

O R D E R (Oral)

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

By this O.A. applicant has prayed for the following reliefs:

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order of punishment dated 10.09.1999 passed by the respondent no.3 imposing the penalty of stoppage of two increments for two years with cumulative effect, as well as the appellate

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order dated 17.05.2000 passed by the respondent no.2, rejecting the appeal of the petitioner dated 28.09.99(annexure A-I and annexure A-II);

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents no.2 and 3 to pay all withheld amount of increments together with all consequential benefits such as arrears of pay and upgraded scales under assured career progression scheme of the govt."

2. The brief facts, as per the applicant, are that while working as Lower Division Clerk in the respondents' establishment, on 09.05.1997 the applicant was served with a charge sheet dated 08.05.1997(annexure A-III) with following charges;

"Article of Charge-I Negligence in duties. Did not adhere to the instructions of I/c FS for obtaining OT sanction for 2 hours in r/o Shri Ved Prakash, CM-II/FS for extra work done on 07.12.95.

Article of Charge-II Tampering official documents of financial character i.e. OT sanction No.FS/OT/03/95 dt. 09.12.95 unauthorisedly.

Article of Charge-III Conduct unbecoming of a Govt. servant in violation of Rule 3(1) (iii) of CCS(Conduct) Rules,1964."

3 The applicant denied the charges leveled against him vide his representation dated 19-05-97. Thereafter an Inquiry Officer as well as Presenting Officer were appointed and a regular inquiry was conducted. After conducting the inquiry proceedings, the Inquiry Officer finally submitted his report/finding on 08.11.1998 (annexureA-4) wherein charge no.1 is held to be not proved but charges no.2 and 3 were found proved against the applicant. The inquiry report was given to the

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applicant vide letter dated 13.07.1999 asking him to submit his representation, if any, in writing within 15 days of receipt of the letter dated 13.07.1999. He submitted his representation on 29.07.1999 in response to the inquiry report. The disciplinary authority after considering the inquiry report as well as the representation filed by the applicant, imposed penalty of stoppage of 2 increments, when next due, for a period of two years, with cumulative effect vide memo/order dated 10.09.1999. Aggrieved by this, the applicant preferred an appeal dated 28.09.1999 before appellate authority i.e. respondent no.2, who considered the appeal of the applicant and rejected the same vide order dated 17.05.2000, which was served on the applicant vide letter dated 30.05.2000. Hence, aggrieved by the action of the respondents, the applicant has filed this O.A.

4. Learned counsel for the applicant pressing the grounds taken in paragraph no.5 of the O.A. submitted that although no charge was proved against the applicant but he was awarded the punishment illegally. The main argument of learned counsel for the applicant is that although the applicant has filed his representation against the inquiry report but the disciplinary authority did not consider the representation of the applicant in true letter and spirit and has passed the punishment order without recording his own findings on each article of charges as well as the grounds taken in the representation filed by the applicant. The disciplinary authority has also not passed the penalty order in reasoned and speaking form. Learned counsel further submitted that he filed a detailed appeal to the appellate authority on 28.09.1999, which has also been rejected by a non speaking order

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by the concerned authority without appreciating and considering the points raised by the applicant in his appeal. Learned counsel for the applicant finally submitted that the disciplinary authority has passed the order in violation of Rule 15 (2-A) of C.C.S.(C.C.A.)Rules, 1965, which clearly states that the representation of the employee against the inquiry report should be considered and the concerned authority should record its finding in the matter.

5. Resisting the claim of the applicant, the respondents filed counter affidavit. Inviting our attention on paragraph no.4 of the counter affidavit, learned counsel for the respondents submitted that as a *prima facie* case existed against the applicant so the charge ^{n memo} dated 08.05.97 was served upon the applicant with 3 charges, out of which charge no.1 was not proved against the applicant but charges no.2 and 3 were found proved against the applicant. The inquiry report was given to the applicant vide letter dated 13.07.1999 asking him to submit his representation. The applicant submitted his representation on 29.07.1999. The disciplinary authority duly considered the representation of the applicant and did not find the same to be satisfactory. Accordingly, the penalty of stoppage of 2 increments, when next due, for a period of two years, with cumulative effect, was imposed on the applicant vide order dated 10.09.1999. He filed appeal before the appellate authority, which was also rejected vide order dated 17.05.2000. Learned counsel for the respondents finally submitted that there is no illegality in the order passed by the disciplinary authority as well as appellate authority. Therefore, the O.A. is liable to be dismissed. The applicant has wrongly



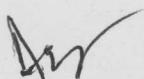
stated that no charge has been proved against him while out of 3 charges, 2 charges have been proved against the applicant.

6. We have heard the learned counsel for the parties and perused the record.

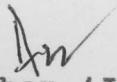
7. Learned counsel for the applicant has assailed the impugned orders mainly on the ground that the same have passed without considering the representation of the applicant, violating Rule 15(2-A) of C.C.S.(C.C.A.) Rules, 1965. We have gone through the above-mentioned rules. This Rule has been substituted by notification No.F.No.11012-20-1998-Estt(A) dated 21.08.2000 published as GSR No.337 in the Gazette of India dated 02.09.2000. Rule 15(2-A) reads as under:-

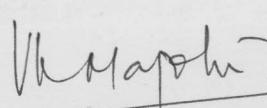
"The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub rules(3) and (4)."

8. We have also gone through the punishment order dated 10.09.1999 which clearly indicates in para 3 of the aforesaid letter that the applicant submitted his representation dated 29.07.1999, which has been duly considered by the disciplinary authority and the same has not been found to be satisfactory. This fact is also admitted in paragraph no.16 and 17 of the counter affidavit and no finding to this effect has been mentioned in the order. It is well known principle of law that justice should not only be done but it should appear to have been done. Therefore, contention of the applicant has some basis that his representation was not considered as per law.



9. Under the facts and circumstances, we are of the considered view that the order passed by the disciplinary authority dated 10.09.1999 as well as order dated 17.05.2000 passed by the appellate authority need reconsideration in the interest of justice. Accordingly, applicant's case is remitted back to the concerned authorities to reconsider the matter in the light of the above observations and pass a reasoned order after considering the representation of the applicant dated 29.07.1999 as per law within a period of 3 months from the date of receipt of a copy of this order. With these directions, the O.A. stands disposed of. No order as to cost.


Member (J)


Vice Chairman 29.3.05

/M.M./