

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 05th day of March, 2002.

Original Application No. 200 of 2001.

Q U O R U M :- Hon'ble Mr. C.S. Chadha, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

K.P. Yadav S/o Sri A.P. Yadav
R/o House No. 34/209, Bundu Katra, Gwalior Road,
Agra.

.....Applicant.

Counsel for the applicant :- Sri Yar Mohammad

V E R S U S

1. Union of India through the Secretary,
M/o Defence, New Delhi.
2. The Commandant, 509, Army Base Workshop,
Agra Cantt.
3. The Commander, Headquarters, Base Workshop Group,
Meerut Cantt.

.....Respondents

Counsel for the respondents :- Sri G.R. Gupta

O R D E R (Oral)

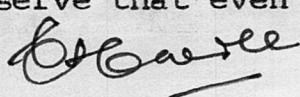
(By Hon'ble Mr. C.S. Chadha, Member- A.)

The case of the applicant is that he was initially appointed on the post of a Mechanic in Army Base Workshop, Agra Cantt. He was charge-sheeted on 24.09.77 for alleged mis-behavior with his superior officer Col. P.K. Jaggia. The case of the prosecution is that after appearing in the initial stages of the enquiry, the applicant did not co-operate with the enquiry officer and

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adopted delaying tactics by sending medical certificates on every date after January, 1999 and as such ex-parte proceedings were undertaken against the applicant, he was found guilty of the charge and dismissed from service.

2. The learned counsel for the applicant has pointed out that the applicant had sent certificates of duly authorised medical attendants regarding his inability to attend the enquiry. We feel that we need not go into the illegality or otherwise of the ex-parte proceedings against the applicant as the whole proceedings have been vitiated on another important ground. It is for the prosecution to prove the case against a delinquent official beyond doubt and such responsibility has to be discharged by the prosecution in a prescribed manner. The case of the prosecution is that the applicant mis-behaved with Col. Jaggia. The principles of natural justice require that Col. Jaggia should have been included in the list of prosecution witnesses and he should have been examined and the applicant should have also been given an opportunity to cross-examine Col. Jaggia to prove the veracity of the charges made by him. Even if the applicant did not co-operate with the enquiry officer, it is the duty of the prosecution to prove the charge without any doubt. We are afraid that the enquiry officer did not have even the basic knowledge of conducting departmental ~~enquiry~~ proceedings, because he did not even include the complainant as one of the witnesses for the prosecution. In absence of any statement made under oath by the complainant, the charge can never be proved. Therefore, without going in to the merits of the ex-parte proceedings or otherwise, we feel that the prosecution has failed to prove the charge against the applicant. We are also constrained to observe that even if the charge of

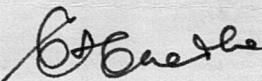

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misbehaviour is proved, the punishment of dismissal is grossly dis-proportionate to the alleged misbehaviour and it appears that the disciplinary authority has passed this order in colourable exercise of power.

3. In view of the above discussed circumstances, we feel that the prosecution has failed in every way to prove the charge. The order of dismissal is, therefore, grossly illegal and is quashed. The applicant shall be paid all the benefits as if the impugned order has never been passed. The order of this Tribunal shall be complied with within two weeks from the date of receipt of this order. It will be open for the respondents to hold a fresh proceedings against the applicant in accordance with law.

4. There shall be no order as to costs.


Member- J.


Member- A.

/Anand/