

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD: THIS THE 10TH DAY OF AUGUST 2005.

ORIGINAL APPLICATION NO. 473 OF 2001

**HON'BLE MR. D. R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J**

R. K. Verma son of Late Trilok Chand Verma Resident
of H. No.355-B, Rama Devi Chauraha, G.T. Road,
Kanpur Nagar.

.....Applicant
(By Advocate : Shri R. K. Shukla)

V E R S U S

1. Union of India through Secretary, Ministry of
Defence, Department of Defence Production,
Govt. of India, New Delhi-11
2. The Director General of Quality Assurance,
Directorate General of Quality Assurance,
Department of Defence Production, Ministry of
Defence, Govt. of India.
3. The Sr. Quality Assurance Officer, Senior
Quality Assurance Establishment (GS), Ministry
of Defence (DGQA), Govt. of India, Post Box
No.307, Kanpur.

.....Respondents
(By Advocate: Shri S. Singh)

O R D E R

By K.B. S. Rajan, Member (J) ,

When an alleged charge has, by the Inquiry
Authority, been held as "not established" and when
the misconduct held as 'proved' did not figure in
the Charge sheet, can the penalty order imposed on
such a finding be held valid? Answer to this
question is an emphatic "NO". This case comes under
this category.

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2. Minimal facts to resolve the controversy are as under:-

- (a) The applicant was served with a charge sheet in 1991, for an alleged misconduct committed in 1988, and the charge reads as under:-

"Shri R.K. Varma while functioning as Chargeman in the Office of QAE (GS) during 1988 committed gross misconduct and exhibited lack of integrity and devotion to duty in as much as he along with S/Shri Madan Singh, Chargeman, V.K. Rastogi, Asst. Foreman, Rajendra Prasad Dixit, Examiner and Raj Bahadur Singh, Examiner maliciously rendered assistance to Shri B.S. Yadav in accepting the consignment of knitted tubular banian material offered for inspection by M/s Chawla Textiles as conforming to specification and issuance of Inspection Note No. TCW/VI/10/1 dated 6.2.88 while the consignment in question was of a substandard nature as most of the rolls contained more than 12 knitting defects which according to the guidelines, deserved out-right rejection and he has thereby contravened Rule 3(1)(ii) & (ii) of CCS (Conduct) Rules, 1964."

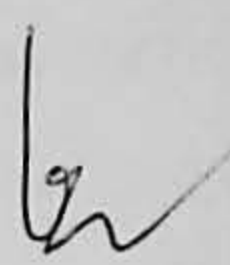
- (b) The inquiry authority had inter alia rendered his finding (vide inquiry report dated 12-07-1999) as under:-

"(vii) The rendering of malicious assistance to Lt. Col. B.S. Yadav could not be established.

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Findings:

... 3. It will be observed from the above that the charges framed against Shri R.K. Verma, C/M II has been proved to the extent that he has not carried out the Bulk Inspection as per instructions contained in CQA (T&C) Kanpur letter No. G/4974/TY/CON/TC-21 dated 20-11-1985.

- (c) The Disciplinary authority, on the basis of the above said finding of the Inquiry Authority had, by his order dated 05-09-2000 held as under:-

 "Whereas the undersigned in agreement with the findings of the IO holds the charge as proved."

Now therefore, the undersigned imposes on the said Shri R.K. Verma, CM II with immediate effect the penalty of of reduction in basic pay by one stage in the pay scale of Rs 5,000 - 150 - 8,000 for a period of one year without cumulative effect.

- (d) On appeal, the Appellate Authority had, vide order dated 21-11-2000 upheld the penalty order imposed by the Disciplinary Authority.
- (e) Revision petition filed by the applicant was also dismissed, vide Revision Authority's order dated 23-05-2001.

3. The applicant, thus, after having met his Waterloo in the hierarchy of administrative forum, has filed the OA before this Tribunal, challenging the three orders i.e. Penalty order of the Disciplinary Authority, that of the Appellate authority and that of the Revision Authority.


4. The Respondents contested the OA with the usual, customary and conventional counter.

5. Counsel for the parties were heard and the documents perused. The spinal contention of the counsel for the applicant is that the charge is that the applicant has along with S/Shri Madan Singh, Chargeman, Shri V.K. Rastogi, Asst. Foreman, Rajendra Prasad Dixit, Examiner and Raj Bahadur Singh, Examiner **maliciously rendered assistance to Shri B.S. Yadav in accepting the consignment of knitted tubular banian material** offered for inspection by M/s Chawla Textiles as conforming to specification and issuance of Inspection Note No. TCW/VI/10/1 dated 6.2.88 while the consignment in question was of a substandard nature as most of the

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rolls contained more than 12 knitting defects which according to the guidelines, deserved out-right rejection and he has thereby contravened Rule 3(1)(ii) & (ii) of CCS (Conduct) Rules, 1964." (underlining supplied). The counsel contended that the ultimate responsibility of "accepting" the material subjected to inspection was of Col. B.S. Yadav and the charge against the applicant is only to the extent that he had "maliciously rendered assistance" to the said Col. Yadav. And, when the I.O. has rendered a finding to the effect, The rendering of malicious assistance to Lt. Col. B.S. Yadav could not be established, nothing survived in the inquiry against the applicant and the finding rendered by the I.O. to the effect, "It will be observed from the above that the charges framed against Shri R.K. Verma, C/M II has been proved to the extent that he has not carried out the Bulk Inspection as per instructions contained in CQA (T&C) Kanpur letter No. G/4974/TY/CON/TC-21 dated 20-11-1985" is alien to the very charge. Should the authorities punish on the above said misconduct, then there should have been a specific charge to that extent, which is conspicuously missing from the charge sheet.


6. The Learned counsel for the respondent has absolutely no reply to the above contention and argument of the counsel for the applicant.



7. A combined reading of the charge sheet and the findings arrived at by the I.O. clearly shows that the finding cannot but be stamped as "perverse" in so far as it holds that charges framed against Shri R.K. Verma, C/M II has been proved to the extent that he has not carried out the Bulk Inspection as per instructions contained in CQA (T&C) Kanpur letter No. G/4974/TY/CON/TC-21 dated 20-11-1985. For, the above does not figure in as a separate charge nor does it form an integral part of the charge. Though a passing reference to the guidelines has been found in the charge sheet and the imputation also contains reference, slightly, in detail, nevertheless, non following of the same is not the charge, either specific or implied. If there be any omission in not following the guidelines, the same is the absolute fault of the accepting officer and the applicant cannot be held responsible for the same, for there has been no charge of that nature against the applicant.

8. In view of the above, we have no hesitation to hold that the finding is patently perverse and the impugned orders based on the Inquiry report are patently illegal and unsustainable.

9. In the result, the OA succeeds. The impugned orders i.e. 05-09-2000 of the Disciplinary Authority, order dated 21-11-2000 of the Appellate

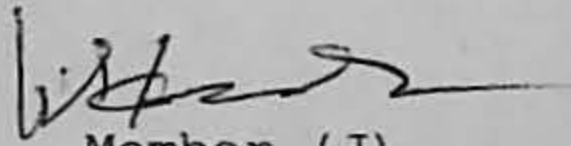


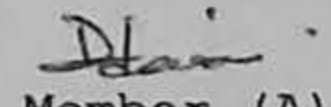
Authority and order dated 23-05-2001 of the Revision authority are all quashed and set aside.

10. The applicant is deemed not to have been subjected to any penalty at all and he is entitled to the increment that had been stopped in pursuance of the penalty order

11. The respondents are directed to release the increment which was stopped under the orders of the Disciplinary Authority vide order dated 05-09-2000 and this exercise be completed within a period of six months from the date of communication of this order.

12. Under the above circumstances there would be no orders as to cost.


Member (J)


Member (A)

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