

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of July, 2004.

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 96 of 2001

Guru Dayal Shama S/O Late Sri Ram Nagina Shama R/O 60/A-6,
Vijai Nagar, Kanpur.....

.....Applicant.

Counsel for applicant : Sri M.K. Upadhyay.

Versus

1. Union of India through the Secretary, Department of
Defence Production, Ministry of Defence, Govt. of India,
New Delhi.
2. The General Manager, Small Arms Factory, Kalpi Road,
Kanpur.
3. Additional Director General of Ordnance Factories, Govt.
of India, Ministry of Defence Ordnance Factory Board,
10-A, Shaheed Khudiram Bose Road, Calcutta.

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..... Respondents.

Counsel for respondents : Sri R. Choudhary.

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O.A. No. 99 of 2001

Nirmal Chand Shama S/O Late Gyan Chand R/O 192/6, Juhi
Lal Colony, Kanpur.....

.....Applicant.

Counsel for applicant : Sri M.K. Upadhyay.

Versus

1. Union of India through the Secretary, Department of
Defence Production, Ministry of Defence, Govt. of India,
New Delhi.
2. Deputy Director General of Ordnance Factory Board, 10-A,
Shaheed Khudiram Bose Road, Calcutta.
3. Additional Director General of Ordnance Fac-tories,
Govt. of India, Ministry of Defence Ordnance Factory
Board, 10-A, Shaheed Khudiram Bose Road, Calcutta.
4. The General Manager, Small Arms Factory, Kalpi Road,
Kanpur.....

..... Respondents.

Counsel for respondents : Sri R. Choudhary.

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O R D E R

BY HON. MR. D. R. TIWARI, A.M.

With the consent of the counsel for the parties, it is proposed to dispose of these two O.As. i.e. O.A. No. 96/01 and O.A. No.99/01 by a common order as the facts of these two O.As. as well as cause of action and the relief sought are similar in nature. The O.A. No.96/01 will be the leading case.

2. By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing of the punishment order dated 6.12.1999 (Annexure A-1) and the appellate order dated 11.11.2000 (Annexure A-2) by which his pay has been reduced by one stage for a period of one year with cumulative effect and which was upheld by the Appellate Authority.

3. The facts of the case, in brief, ~~are~~ that the applicant is working as Machinist, H.S. Gr.II in the Small Arms Factory, Kalpi Road, Kanpur. The applicant was placed under suspension w.e.f. 10.6.1998 as the disciplinary proceedings against the applicant was contemplated (Annexure A-3). The disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 was initiated against the applicant by issue of a chargesheet wide memo dated 1.9.1998 (Annexure A-4). Two article of charges framed against the applicant are as under :-

Art.I - "GROSS MISCONDUCT" in that Shri Guru Dayal Sharma, Mach (HS Gr.II) T.No.270/LC, SAF, Kanpur abused and scuffled with Sri N.C. Sharma, C/M Gr. I/LC on 9-6-1998 at about 3.25 P.M. resulting in Blood oozing from Shri N.C. Sharma's right palm conduct unbecoming of a Govt. Servant-Violation of the Provisions of Rule 3(1)(iii) CCS (Conduct) Rules, 1964.

Art.II- "GROSS MISCONDUCT" in that Shri Guru Dayal Sharma, Mach (H.S. Gr.II) T.No. 270/LC, SAF, Kanpur created a scene of indiscipline inside LC section leading to gathering of a large number of employees at the

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spot on 9.6.1998 at about 3.25 PM, there by production activities were hampered conduct unbecoming of a Govt. Servant violation of the Provisions of Rule 3(1)(iii) CCS (Conduct) Rules, 1964."

4. The applicant submitted the written statement of defence denying all the charges vide letter dated 7.9.1998 (Annexure A-5). Consequently, the Disciplinary Authority vide order dated 7.10.1998 appointed the Inquiry Officer and the Representing Officer (Annexure A-6). The applicant also appointed his Defence Assistant vide his representation dated 1.11.1998 which was accepted by the Inquiry Officer. The enquiry commenced on 9.11.1998 and four prosecution witnesses were examined and cross examined. The prosecution also produced Sri T. Tripathi, Works Manager during the enquiry as prosecution witness who was not even listed in the list of witnesses. During the course of examination, he deposed that he was not eye witness and he had not visited the alleged place of incident. The applicant also produced two independent defence witnesses namely i) Sri R.P. Singh and ii) Sri Swami Nath. They also corroborated in their deposition that there was no scuffle or quarrel between the applicant and Sri N.C. Sharma and there was no loss of production due to alleged scuffle/quarrel. Copy of the statement of both defence witnesses are at Annexure A-13.

5. On the conclusion of the enquiry, the Presenting Officer filed his written brief (Annexure A-15). Thereafter Defence Assistant also submitted written brief (Annexure A-16) to the Inquiry Officer. The Inquiry Officer submitted his enquiry report along with its finding to the Disciplinary Authority. The Inquiry Officer has given finding that the Charge No.1 is 'proved' and Charge No.2 'not proved'. The enquiry report was forwarded to the applicant vide his letter dated 27.3.99^x with the direction that the applicant may make representation/submission within 15 days against

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the enquiry report and its findings. The applicant submitted the representation and stated that the enquiry proceeding was vitiated and is against the principles of natural justice. He has further submitted that the finding of the Inquiry Officer to the effect that Charge No.1 was proved, is not sustainable in law and is against the principles of natural justice. The Disciplinary Authority, on receipt of the enquiry report and the representation from the applicant, passed the impugned order by which his pay was reduced by one stage for a period of one year with cumulative effect. On appeal, the Appellate Authority justified the penalty imposed on the applicant and the appeal was rejected being devoid of any merit.

6. Being aggrieved by the punishment order as well as the appellate order, the applicant filed the instant O.A. challenging these orders on various grounds. It is contended that the written brief of the Presenting Officer is false as he has stated that PW-I and PW-II have confirmed about the Article of Charges 1 and 2 during the examination. It may be stated that the main eye witness of the aforesaid incident had clearly denied any quarrel between N.C. Sharma and G.D. Sharma. It is further pleaded that the Presenting Officer has submitted the photo copy of the Patient Attendance Register of the Factory Dispensary to prove that G.D. Sharma and N.C. Sharma quarreled and sustained injuries and went to the dispensary for treatment. It is further submitted that N.C. Sharma has also denied any quarrel with the applicant and he has not made any complaint against the applicant. It is also submitted that PW-3, who is stated to be the eye witness and informer of the incident has specifically denied that he is a witness to any quarrel and has reported any incident of this kind. In view of this, the applicant has stated that the entire enquiry proceeding is vitiated.

7. The respondents, on the other hand, have opposed

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the contention/submissions of the applicant. They have stated that G.D. Sharma and N.C. Sharma were involved in a quarrel and both of them reported to the Factory Dispensary for treatment of their injuries shortly after the quarrel. They have further stated that the statement to the effect that there was no quarrel is an after thought which is not worthy of credence. They have also stated that all the points raised by the applicant ⁱⁿ his written brief have been duly considered by the Inquiry Officer and the Inquiry Officer has mainly relied upon the statement made during the enquiry proceedings by the two junior Works Manager and Sri Tripathi. On the basis of careful appraisal of the evidence on record, the Inquiry Officer found that the quarrel had taken place. Respondents have further stated that the Inquiry Officer has taken and evaluated the entire evidence in its totality and has thereafter come to the finding that Charge No.1 is established. They have also stated that it is not the function of this Tribunal to reassess the evidence as an Inquiry Officer and to record the finding. It is further submitted that as per the settled law, this Hon'ble Tribunal should interfere only if it is of the view that the findings recorded by the Inquiry Officer were perverse and wholly unsupported by the evidence on record of there was violation of principles of natural justice which is not the case here.

8. We have heard and carefully considered the rival contention/submission of the parties. We have also perused the pleadings and documents annexed therewith.

9. ~~The~~ ^{Perusal} of the preceding paras would show that the grounds to assail the impugned order advanced by the applicant has been ^{wholly} ~~wholly~~ contested by the respondents. However, some of the issues, which merit detailed examination, are given in the succeeding paragraphs.

10. At the outset, we would like to make it clear that

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in a disciplinary proceeding, judicial review is limited to the extent that the disciplinary proceedings are vitiated on account of procedural illegality causing prejudice to the delinquent official, a case of no evidence coupled with perverse finding applying the test of common reasonable prudent ^{man} ~~may not~~ and lastly on proportionality of punishment. In view of this legal principles of law, we would like to examine the following two issues :-

- i) Illegality or otherwise of the enquiry proceedings culminating in enquiry report and its findings; and
- ii) Whether the punishment order and the appellate orders are cryptic and arbitrary.

11. In so far as the enquiry proceeding is concerned, we have carefully perused them and heard the counsel for both the parties. During this proceeding both oral as well as documentary evidence were available. It may be noticed that PW-I turned hostile and PW-3, the eye witness of the incident, denied of his being a witness of the incident. The applicant had also denied that he had a quarrel with N.C. Sharma who is stated to have been injured by the applicant. During the examination, N.C. Sharma, the victim has also denied that there was any quarrel or scuffle. This clearly shows that the eye witness, PW-I, the applicant and the victim of the quarrel have all denied the existence of the incident. The Inquiry Officer has relied on the evidence of PW-2 and one Sri Tripathi, who was not even listed in the list of witnesses. They were neither the eye witnesses nor they visited/inspected the place where the incident had taken place. They have deposed on the basis of ^{hearsay} ~~here say~~. It appears that the Inquiry Officer was left with no witnesses and he relied on the written brief of the Presenting Officer who produced the photo copy of the Patient Attendance Register of the Factory Dispensary. It is settled principles of law that during the course of enquiry, the document produced

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should be proved by examination and cross-examination of the maker of the documents. In this case, not a single functionary of the Dispensary was examined/cross-examined during the enquiry. The applicant was not given an opportunity to rebut the documents relied upon against him and it is not permissible in the eye of law. The applicant has relied on the judgment of the Apex Court in the case of Kuldeep Singh Vs. Commissioner of Police & others (1999) SCC (L&S) 429. It may be mentioned that the aforesaid document has been relied on by the Inquiry Officer which was not listed as one of the documents to prove the charges. The evidence adduced at the enquiry by the DW-I and DW-2 has not been relied on without any bonafide reasons, thus, the principles of natural justice has been violated. In this view we come to the conclusion that the enquiry proceedings and its finding has vitiated the disciplinary proceedings and may be termed as perverse.

12. The applicant has argued very strongly that the order of the Disciplinary Authority shows that he has not applied his mind and he has passed a non speaking order. It has been further pleaded that the applicant has stated in his representation that the Patient Attendance Register was produced during the enquiry and this was not examined and he was not provided an opportunity for cross-examination. He has also stated that this was not one of the documents listed in the list of document. In addition, he has pointed out the irregularities of the enquiry proceedings and the Disciplinary Authority has simply stated that his arguments have no substance to refute the findings of the Inquiry Officer. The perusal of the appellate order clearly shows that the Appellate Authority has not adverted to the points raised by the applicant in his memo of appeal. Consideration of the points raised by the applicant is very essential and the Appellate Authority is supposed to give reasons before

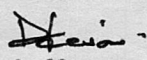
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he passes the order.

13. We are aware of the decision of the Apex Court in Mahavir Prasad Vs. State of UP (AIR 1970 SC 102) wherein it has been held that the Disciplinary Authority is a quasi judicial authority and he is not absolved from passing a self contained speaking and reasoned orders dealing with the contentions of the applicant. Similar is the position of the Appellate Authority who is supposed to pass a reasoned order taking into account the points raised by the applicant in his memo of appeal. It has also been alleged that the applicant was not provided opportunity of personal hearing by the Appellate Authority. In the case of Mahavir Prasad (Supra) it has been observed that recording of reasons in support of a decision by a quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached from ground of policy or expediency. Having regard to these factors we are of the considered view that the enquiry was not held in accordance with the rule and stands vitiated. Both the punishment orders as well as the appellate order have not been passed properly.

14. In view of the facts and circumstances mentioned above and the discussions made, both the O.As. are allowed. The impugned punishment order dated 6.12.1999 and the appellate order dated 11.11.2000 of the O.A. No.96/01 are quashed and set aside. Similarly, the impugned orders of O.A. No.99/01 dated 8.10.1999 and the order dated 14.11.2000 are quashed and set aside. The respondents are directed to restore their pay in the time scale of the pay with all consequential benefits under the law within a period of three months from the date of receipt of a copy of this order.

Cost easy.


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