

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

ORIGINAL APPLICATION NO. 1159 of 2001.

Allahabad, this the 12th day of January, 2006.

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

Mohd. Aslam,
Son of Hazi Mohd. Hussain
Resident of H. No.224-B, Shyam Nagar,
Kanpur.

.....Applicant.

(By Advocate: Sri R.K. Shukla)

Versus

1. The Union of India through Secretary, Ministry of Defence, Department of Defence Production, Govt. of India, New Delhi-11.
2. The Addl. Director General, Ordnance Factories, O.E. F. Group Hqrs. Ayudh Upaskar Bhawan, G.T. Road, Kanpur.
3. The General Manager
Ordnance Equipment Factory,
Kanpur.

.....Respondents.

(By Advocate : Sri Saumitra Singh)

O R D E R

By this O.A. filed under section 19 of A.T. Act, 1985, the applicant has prayed for quashing the impugned order passed by the Disciplinary Authority dated 14.11.2000 (Annexure A-I) and the appellate order passed by the Appellate Authority dated 20.6.2001 (Annexure A-II).

2. Shorn of details, the applicant, while working as Tailor skilled grade in the pay scale of Rs.3050-4590/- in the Ordnance Equipment Factory, Kanpur, was served with memorandum of charges vide letter dated

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5.10.2000. The main allegations were that on 25.8.2000 (i) he was missing from duty place at about 0245 hours leaving the machine motor in running condition, (ii) having been hot, motor took fire (iii) before leaving his duty place, the petitioner did not shut off the motor and (iv) due to non-putting of the motors, the loss sustained to the Govt. property. Thus, his conduct was unbecoming of a Govt. servant in violation of Rule 3(i), 3 C.C.S (Conduct) Rules, 1965 (Annexure A-III). On receipt of the chargesheet, he submitted a detailed explanation denying the charges vide his letter dated 13.10.2000. In his representation, he demanded a full fledged inquiry along with an opportunity to cross examine the witnesses (Annexure A-IV). However, the Disciplinary Authority passed the impugned order and imposed the penalty of reduction of pay by one stage i.e. Rs.3875 from Rs.3950 in the time scale of the pay of Rs.3050-4590 for a period of one year without cumulative effect.

3. Aggrieved by this order, the applicant preferred an appeal and the appellate authority rejected the appeal dated 7.1.2001 and confirmed the order of the Disciplinary Authority.

4. Aggrieved by the above impugned orders, the instant O.A. has been filed and is being challenged on various grounds mentioned in para 5 of the O.A. The main grounds, inter alia, are as under:-

"(a) Because the action of respondent No.2 and 3 in passing the impugned orders, is patently illegal and arbitrary.

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- (b) Because the respondent No.3 did not follow the procedure as laid down in Rule 16 (i) (d) of CCS (CC&A) Rules 1965.
- (c) Because the respondent No.3 did not appoint any enquiry on the request of applicant and did not give any reason in writing for non-appointment of enquiry.
- (d) Because the respondents violated the existing instructions as laid down in DOP&T O.M No.11012/18/85-Estt. (A) dated 28.10.1985.
- (e) Because the respondents have violated the provisions of natural justice.
- (f) Because the respondents have violated the principles of law laid down in the cases of *Mansa Ram Vs. General Manager, Telecom (1980) 3 SLR 520 (J&K)*, *Samir Kumar Ghose Vs. Union of India (1987) 3 ATc 950* and *Ram Pravesh Mahato Vs. Union of India (1987) 3 ATC 927"*.

In view of the reasons mentioned above, it has been pleaded that the O.A. deserves to be allowed.

5. Respondents have resisted the O.A. and filed detailed counter affidavit refuting the claim of the applicant and it has been argued that under Rule 16 of C.C.S (CCA) Rules 1965, the applicant was given an opportunity to make such representation as he may wish to make against the charge memorandum. Accordingly, the applicant submitted his representation dated 13.10.2000 denying the charges. Taking into account, the facts and circumstances of the case, documents on record and points raised in the petitioner's representation, the Disciplinary Authority came to the conclusion that charges leveled against him were found correct and he did not think it necessary to hold another enquiry when a fact finding board enquiry had already been conducted. Besides, enquiry is not mandatory under Rule 16 of the CCS (CCA) Rules for imposing minor penalty as for this Article 311 of the Constitution of India is not attracted. Accordingly,

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the Disciplinary Authority imposed the penalty of reduction of pay by one stage and the Appellate Authority affirms the order of the Disciplinary Authority. It has been argued that full opportunity was given and there is absolutely no violation of principles of natural justice. Thus, both the impugned orders are perfectly valid and legal and the O.A. is devoid of merit and be dismissed.

6. During the course of the argument, counsel for both the parties reiterated the facts and the legal pleas from their respective pleadings. No new arguments were advanced.

7. I have heard very carefully the rival submissions of the counsel for the parties and perused the records.

8. From what has been discussed above, the only crucial question which falls for consideration and adjudication is the validity of the impugned punishment order dated 14.11.2000 (Annexure A-I) and the appellate order dated 20.6.2001 (Annexure A-II). There is no dispute about the fact that no full fledged enquiry was done in this case and it has been admitted by the respondents vide Para 6 of the C.A wherein it has been submitted that enquiry is not mandatory under Rule 16 of the CCS(CCA) Rules for imposing minor penalty. On this point, I would like to refer to Govt. of India G.I. Department of Personnel and Training O.M NO.11012/18/85-Estt. (A) Dated 28th October 1985 which provides for holding of an enquiry

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when requested by the delinquent. Rule 16 (I)(b) also provides for holding an enquiry in a manner laid down in sub Rule 3 to 23 of Rule 14 in every case in which Disciplinary Authority is of the opinion that such enquiry is necessary. This provision clearly shows that it is in the discretion of the Disciplinary Authority to hold a full fledged enquiry or not to hold the same. However, his discretion has to be applied on the basis of some objective criterion and he has to give reasons for the same. The Central Administrative Tribunal, Madras in the case of I. Jebaraj Vs. Union of India-1998 (37) A.T.C. 38 has held that the Disciplinary Authority has to exercise discretion whether enquiry is necessary or not. Formation of opinion requires application of mind. Cuttack Bench of the Tribunal, in the case of Ram Pravesh Mahato Vs. Union of India and others - 1987 (3) ATC 927 has held that if it is decided not to hold enquiry, reasons thereof has to be recorded. As such, the impugned punishment order certainly suffers from this legal infirmity as no reasons have been given for not holding the enquiry.

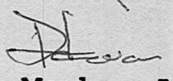
The Apex Court in the case of O.K. Bhardwaj Vs. Union of India - 2002 SCC (L&S)188 has held that Departmental enquiry even in the case of minor penalty is necessary particularly when the facts are denied. In the instant case, the applicant has denied the allegation and the facts and the respondents undisputedly neither held an enquiry nor have recorded any reasons for not holding the enquiry. In view of the statutory provision of Rule 16 (i) (b) of CCS(CCA)

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Rules and legal position laid down by the Apex Court, the O.A. deserves to be allowed on merit.

9. In view of the facts and circumstances mentioned above and the discussion made, the O.A. succeeds on merit and is allowed. The impugned punishment order dated 14.11.2000 and appellate order dated 20.6.2001 are quashed and set aside. Respondents are directed to restore his pay to the stage of Rs.3950/- on the date when it was reduced to Rs.3875/-. He is entitled to refund of the amount already deducted from his pay within a period of three months from the date of receipt of copy of this order.

No order as to costs.


Member-A

Manish/-