

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1161 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)

M.K. Dixit, son of Late Janardan Prasad Dixit,
resident of H.No.G/T II, 449, Armapore Estate, Kalpi
Road, Kanpur.

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, KOLKATA-700001.
3. The General Manager, Field Gun Factory, Kalpi Road, Kanpur-208009.

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 10.07.2000 imposing the penalty of reduction in basic pay to the minimum of the pay scale i.e. from Rs.4110/-to

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Rs.3050/- for a period of one year with order of not earning increments during the period of reduction and further the reduction having the effect of postponing future increments of pay (annexure A-I) and further ordering for making of recovery of Rs.15,222.31 from the applicant's pay; and appellate order dated 29.11.2000 passed by the respondent no.2 rejecting the appeal of the petitioner(annexureA-II).

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay/refund all the amount deducted by the impugned order dated 10.07.2000(annexure A-I) and to restore the petitioner's pay at the same basic pay from which his pay was reduced with other consequential benefits.

(iii) to issue writ, order or direction directing the respondents to refund the whole amount of Rs.15,222.31 recovered as a loss to the state."

2. The brief facts giving rise to this O.A. are that the applicant while working as Store Keeper in the Stores Section of Field Gun Factory, Kanpur was served with a charge sheet no. 1562/21/99/MKD/VIG dated 18.04.1999(annexure A-III) leveling four charges against him;

"i) Found negligent in performing duties which led to shortage of 24 Nos of steel tubuler with nut bolt washer and J Bolt kept in his custody as Store Keeper in Misc. Godown.

ii) Negligently missed Bin Card F.No.9913248006 while working as Store Keeper in Misc. Godown/stores.

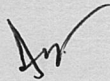
iii)He is habitual offender in performing his duties negligently which had led to shortage/discrepancy in godown/stores.

iv) Conduct unbecoming of a Govt. Servant in violation of Rule 3(1) (iii) of CCS(Conduct) Rules, 1964."

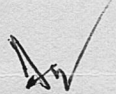
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3. By way of representation dated 20.04.1999, the applicant denied the charges leveled against him. Thereafter an Inquiry Officer as well as Presenting Officer were appointed and regular inquiry proceedings were conducted against the applicant. After conducting the inquiry proceedings, the Inquiry Officer finally submitted his report/finding on 25.03.2000 (annexure A-4) wherein charges were found proved against the applicant. He submitted his representation on 06.05.2000 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 reduction to the minimum of the time scale of pay Rs.3050-4590 for a period of one year with effect from 01.07.2002. It was also ordered that during reduction of pay, the applicant would not earn increment and on expiry of this period, the reduction will have the effect of postponing his future increments of pay and also ordered recovery of 15,222.31 from his pay towards loss caused to the State. The applicant preferred an appeal dated 09.08.2000 (annexure A-11) before appellate authority against the order of disciplinary authority, who considered the appeal of the applicant and rejected the same vide order dated 29.11.2000 (annexure A-II). Hence, aggrieved by the action of the respondents, the applicant has filed this O.A.

4. Learned counsel for the applicant pressing the ground; taken in paragraph no.5 of the O.A. submitted that the order passed by respondent no.3 is not a reasoned and speaking order as the facts mentioned in the representation of the applicant dated 06.05.2000 have not been considered at all before passing the impugned order, which is violative of principle of natural justice. Learned counsel



further submitted that the respondent no.3 has awarded two punishments (i) recovery of Rs.15,222.31 as loss incurred to the State and (ii) penalty of reduction of pay to the minimum of time scale of pay for a period of one year with effect from 01.07.2002 and he will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The main argument of learned counsel for the applicant is that the appellate authority has not considered all the points raised in the appeal of the applicant in his order and the appeal has been rejected by a non speaking order. Learned counsel further submitted that the disciplinary authority i.e. respondent no.3 has passed the order without considering the representation filed by the applicant, which is against the provision 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. The further contention of learned counsel for the applicant is that in this case charge sheet was given after 11 years while he worked on the said post for only 4 months, therefore, he cannot be made responsible for all the losses. He placed reliance on following case laws:-

- (i) George James Vs. The Senior Divisional Commercial Manager, Bangalore and Ors. 2001(3) ATJ page 503 O.A.No.357/99 (CAT Bangalore Bench, decided on 17.10.2001);
 - (ii) Dy. Comdt. S.C. Parashar Vs. Union of India & Ors. 2003(3) A.I.S.L.J. paged 447;
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(iii) Daya Ram Yadav Vs. Union of India and others O.A. No.1572 of 2001 (Allahabad Bench) decided on 08.01.2002.


5. Resisting the claim of the applicant, the respondents filed counter affidavit. Learned counsel for the respondents submitted that the applicant was prima facie found responsible for loss to the State so the disciplinary action was initiated against him. Learned counsel further contended that the penalty has been rightly imposed on the applicant after considering the inquiry report as well as the representation filed by the applicant, so it is a reasoned and speaking order. The applicant filed appeal against this order, which was duly considered and rejected by a reasoned and speaking order. There is no illegality in any order passed by the respondents, therefore, the O.A. is liable to be dismissed. It is finally contended by the counsel for the respondents that the applicant could have very well preferred a revision against the appellate authority's order but instead of moving to the revisional authority, the applicant chose to prefer this O.A.

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

7. We have gone through annexure A-1 the order dated 10.07.2000, in paragraph no.3 of the same it is mentioned as follows:-

"And Whereas Shri M.K. Dixit, SK/Stores/FGK has submitted his representation dated 06.05.2000, which has been duly considered by the undersigned and the same has not been found to be satisfactory.

It is clear from the above that the representation of the applicant dated 06.05.2000 has

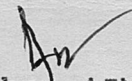


not been considered in true letter and spirit and it appears to have been passed mechanically as no reasoning is mentioned for not finding the applicant's representation satisfactory. We have also gone through the appellate order dated 24.11.2000 (annexure A-2), wherein it is mentioned in last two lines that "the appellant has not raised any valid point in the appeal and the same has been found to be merit-less", while the applicant has raised all the relevant points in his appeal dated 09.08.2000. We have also gone through paragraph no.15 (2-A) of C.C.S.(C.C.A) Rules, 1965, which is reproduced below:-

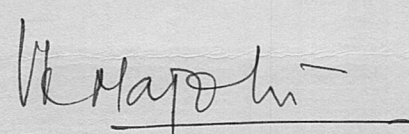
"The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub rules (3) and (4)."

It is true that the above mentioned rule was inserted on 21.08.2000 much before the appellate order dated 29.11.2000 was passed so it was expected from the appellate authority to have taken action as provided under Rule 15(2-A) of C.C.S.(C.C.A.) Rules, 1965.

8. Under the facts and circumstances and in view of the aforesaid rule position, we are of the considered view that the O.A. is liable to be allowed. Accordingly O.A. is allowed only to the extent that the orders passed by the disciplinary authority as well as appellate authority are quashed and the matter is remitted back to the respective authorities for reconsideration who may pass fresh orders as per extant rules within a period of three months ^{from the date of receipt of a copy of this order.} No order as to costs.


Member (J)

/M.M./


Vice Chairman

29.3.05