

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

(THIS THE 16<sup>th</sup> DAY OF MARCH, 2010)

PRESENT:

**HON'BLE MR. A. K. GAUR, MEMBER-J**

**HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

**ORIGINAL APPLICATION NO. 1151 OF 2004**

(U/s, 19 Administrative Tribunal Act.1985)

Pher Mohammad, aged about 50 years, son of late Rahimullah, resident of 1/47 B Kalidin Ka Hata, Nawab Ganj, Kanpur Nagar, employed as Tailor (Highly Skilled) T. No. 7234, M-4-C, Ordnance Parachute Factory, Kanpur.

.....Applicant

By Advocate: Shri N.K.Nair  
Sri M.K.Upadhyay

Versus

1. Union of India, through the Secretary, Ministry of Defence Production, Government of India, New Delhi.
2. Additional Director General of Ordnance Factories, O.E.F. & P. Factories Group Head Quarters, G.T. Road, Kanpur.
3. The General Manager, Ordnance Parachute Factory Kanpur.

..... Respondents

By Advocate: Shri H. Singh

**ORDER**

**(DELIVERED BY:- MR. A. K. Gaur, MEMBER-JUDICIAL)**

We have heard parties counsel. Shri Himanshu Singh, learned counsel for the respondents.

2. The applicant is aggrieved by the order dated 29.5.2003 passed by the General Manager, Ordnance Parachute Factory, Kanpur, imposing the punishment/penalty reduction in pay by two stages in the time-scale of pay Rs.4000-100-6000/- i.e. from Rs.4700/- per month to Rs.4500/- per month for a period of two years, with cumulative effect and further ordered that applicant will not earn increments of pay during the period of such reduction and the reduction will have the effect of postponing the increments of pay.

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The application is also against the order passed by the disciplinary authority dated 29.5.2003. The appeal has been preferred by the applicant which has also been rejected by the appellate authority vide its order dated 13.10.2004.

3. It is seen from the record that the applicant while working as Tailor (Highly Skilled-II) in Ordnance Parachute Factory, Kanpur, was awarded penalty of reduction in pay by two stages for a period of two years, with cumulative effect. This penalty was awarded to the applicant on the charges of lending money on interest inside the factory and also exhibiting immoral literature, which was also found in the possession of the applicant while on duty. It has been contended by the applicant that the enquiry officer in his report has not considered any of the evidence in accordance with provisions of rule.

4. It is also submitted that the enquiry officer had referred to the alleged statement said to have been given by the witness to the Security Personnel, while such statement were not recorded by Gazetted Officer and even ordinarily the officer of the Night Duty in-charge of the factory had not signed on such statements. The enquiry officer has based his perverse conclusion that the applicant is guilty of the allegations, solely on the basis of the alleged statements of the witnesses said to have been taken by the Security personnel.

5. It is also pointed out that on receipt of copy of enquiry report, the applicant submitted his representation dated 18/19.4.2003 addressed to the General Manager, Ordnance Parachute Factory, Kanpur. It is alleged that during the course of enquiry, the prosecution failed to prove that the applicant has been indulging in money lending business while on duty in the factory. Several witnesses cited in the charge-sheet, were not produced and none of those who were produced as witness have proved the allegation that the applicant had been indulging in money lending business.

6. It is also clearly and specifically mentioned in the original application that disciplinary authority did not properly consider the evidence that during the course of enquiry, he also did not consider

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the various points of the applicant in his written brief and the representation of the applicant against report of the enquiry officer. The enquiry officer, disciplinary authority and the appellate authority have passed orders in a most casual and perfunctory manner without application of mind. Respondents have filed a detailed reply but nothing substantial have been indicated herein. However, the allegation contained in paragraphs 4, 19, 20 & 21 of the OA has subsequently been denied by the respondents. We have also carefully perused the appellate order. The appellate order is cryptic and non-speaking and has been passed in violation of following decisions of Hon'ble Supreme Court:-

**A. Chairman/Disciplinary Authority, Rani Laxmi Bai Gramin Bank Vs. Jagdish Varshney (JT 2009 Vol 4 SC 519),**

**B. N.M. Arya Vs. United India Insurance Company (2006 SCC (L&S) 840),**

**C. D.F.O Vs. Madhusudan Das (2008 Vol I Supreme Today page 617),**

**D. Director, I.O.C Vs. Santosh Kumar (2006 Voll. 11 SCC page 147), and**

**E. State of Uttaranchal Vs. Karag Singh (2008 Vol 8 SCC page 236).**

In the aforesaid cases the Hon'ble Apex Court has held that while deciding the representation/appeal/revision by the competent authority, speaking order should be passed.

7. Appellate order is dated 13.10.04. More than five years have already lapsed and at this stage it would not be appropriate to remit the matter back to the appellate authority again. Sri M.K.Upadhyay, learned counsel for the applicant has invited our attention to the decision rendered by Hon'ble Supreme Court reported **2001 SCC (Labour & Services) page 8 Union of India Vs. K.A. Kitto and others** in order to buttress his contention that this is the duty of the enquiry officer to consider the evidence of witness. A perusal of the record clearly indicates that neither Inquiry Officer nor disciplinary authority has considered the evidence of the witnesses.

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8. We have given our thoughtful consideration to the pleas advanced by the parties counsel and we are firmly of the view that the order passed by the disciplinary authority and the appellate authority deserves to be quashed and set aside.

9. Accordingly the O.A. is allowed with no order as to costs. The order passed by the Appellate Authority dated 13.10.2004 and order passed by the Disciplinary Authority dated 29.05.2003 are hereby quashed and set aside. The respondents are directed to give all the consequential benefits to the applicant within a period of three months.

Corrected by  
6-4-10.

Member  
A.M. 2.14

~~Be it noted that we have not passed any order on merits of O.A.~~

*[Signature]*  
Member (A)

*[Signature]*  
Member (J)

/Shashi/