

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the **07th** day of **March, 2011**

Present:

HON'BLE DR. K.B.S. RAJAN, MEMBER- J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A

ORIGINAL APPLICATION NO. 806 OF 2004

Bhusi Ram, Ex L.D.C/E.M. Ordnance Factory, Kanpur, R/o Mini
L.I.G 290, Barra-5, Kanpur.

.....Applicant.

V E R S U S

1. Union of India through the Director General, Ordnance
Factories, 10-A, S.K. Basu Road, Kolkata.
2. Assistant Works Manager/Admn. 3, Ordnance Factory, Kalpi
Road, Kanpur.
3. Senior General Manager, Ordnance Factory, Kalpi Road,
Kanpur.

.....Respondents

Present for the Applicant:	Sri R.K. Shukla
Present for the Respondents:	Sri R.D. Tiwari

ORDER

(Delivered by Hon'ble Dr. K.B.S. Rajan, J.M.)

The applicant at the relevant point of time working as Checker
in the respondents' organization was served with a charge sheet on
26.02.1992 which was in fact, preceded by an order of suspension

from 07.09.1991. The charges as contained in Annexure A-4 Memorandum dated 29.06.1992 are as under : -

(Article : I)

That the said Shri B. Ram, while functioning as LDC/EM during the period of his employment is charged with Gross Misconduct in that at the time of payment, he in connivance with S/Shri K.L. Verma, Ex-cashier/Cash Office now UDC/LB, Virendra Singh, UDC/LB & S.P. Srivastava, AAO & Rajendra Prasad, Clerk, Accounts Office/OFC, identified S/Shri K.K. Verma, T. No. 912/EMOP, Munni Singh Yadav, T. No. 956/EMOP, Vishwa Nath, T. No. 903/EMOP & Babu Ram, T. No. 392/EMOP/EM against SAR No. 986, dt.17/7/89 for Rs. 6540/- 1007, dt. 20/7/89 for Rs. 6449/- 1008, dt. 20/7/89 for Rs. 5442/- and 1009 dt. 20/7/89 for Rs. 6556/- respectively whereas the above person were not entitled for the said payment and those SARs were also not routed through LB after its passing by local accounts.

(Article: II)

Shri B. Ram, IDC/EM is further charged for Gross Misconduct in that he in connivance with S/Shri K.L. Verma, Ex-Cashier/Cash now UDC/LB, Virendra Singh, UDC/LB, S.P. Srivastava, AAO & Rajendra Prasad, clerk, Accounts office caused defalcation of Govt. money to the tune of Rs. 24,987/- by way of fake payment to the said individuals.

Shri B. Ram, LDC/EM, has, thus, acted in the manner unbecoming of govt. servant and did not maintain absolute of CCS (conduct) Rules 1964."

2. The applicant having denied the charges, an inquiry was conducted and the Inquiry Officer has held that the charges remain proved vide Annexure 5-B dated 06.07.1995. After making a copy of the inquiry report available to the applicant and on applicant's furnishing his representation, the Disciplinary Authority imposed a penalty of compulsory retirement vide Annexure -1 Order dated 06.09.1995. The applicant, vide Annexure -6 filed an appeal before the Appellate Authority. The Appellate Authority dismissed the appeal vide Annexure -7 order dated 10.01.1997.

3. Aggrieved by the order of the Appellate Authority dated 10.01.1997 the applicant moved this Tribunal in O.A No. 451/97, which was allowed by the Tribunal stating as under :

"5. In our opinion, the defence of the applicant has not been appreciated in the light of the documents available on record. We have perused the original records. The representation submitted by the applicant has not been considered by the respondents in the light of the discrepancies mentioned therein. However, we are of the opinion that even if the report of the Hand Writing Expert was submitted little late before the appellate authority, the interest of justice required in this case that report should have been taken into consideration and, if necessary, the Hand Writing Expert should have been examined. This little exercise could have been done even at the appellate stage. One very important aspect of the matter was that original bills were not examined at all by the enquiry officer and this material evidence was withheld by the department in our opinion, without perusal of the original bills real story could not be ascertained. In the circumstances, we feel that the matter may be remitted back to the appellate authority to reconsider the appeal and pass the fresh order in the light of observation made above and in the light of explanation of the applicant.

6. For the reasons stated above this O.A is allowed. The order of the appellate authority dated 10.1.1997 (Annexure -II) is quashed. The appeal of the applicant shall stand revive and shall be considered and decided afresh in accordance with law and in the light of the observations made above within a period of three months from the date of communication of this order."

4. The Appellate Authority has considered the appeal afresh and passed Annexure -2 order dated 03.03.2004 whereby the appeal was disallowed. The applicant has come before this Tribunal challenging the aforesaid Annexure -1 and Annexure - 2 orders.


5. The respondents have contested the O.A. They have justified the imposition of penalty of compulsory retirement as well as dismissal of the appeal. The applicant has filed his Rejoinder

Affidavit reiterating his contention made in the O.A. Supplementary C.A and Supplementary R.A have also been filed by the respective parties.

6. Counsel for the applicant has taken us through the earlier order of the Tribunal and submitted that the said order mandates the respondents/appellate authority to consider the case of the applicant afresh **in the light of observation** made. The observation made included - if necessary, 'the Hand Writing Expert should have been examined'; the original bills were required to know the real story; the defence of the applicant has not been appreciated in the light of documents available on record. According to the counsel for the applicant, the appellate authority failed to consider the appeal in strict compliance of the aforesaid mandates. The counsel further submitted that following are the grave legal infirmities in conducting of the proceedings: -

"a. A number of documents were relied upon of which few are statement made by the complainant. These persons have not been examined much less opportunity granted to the applicant to cross examine. The decision of the Inquiry Officer is based upon the statement of these persons, who have not been examined;

b. The mandatory requirements as contained in Rule 14(18) of CCS (CCA) Rules 1965 have been thoroughly omitted;



c. In the absence of requisite witnesses not having been examined and with the shallowness of the depositions of the examined witnesses, who could not prove the misconduct the inquiry has become a case of 'No Evidence'.

d. The disciplinary authority thoroughly failed to view the case as per the prescribed procedure. The appellate authority also failed to consider the case under Rule 27 of CCS (CCA) Rules."

7. Counsel for the respondents has been indeed very fair enough to submit that failure to comply with rule 14(18) of CCS (CCA) Rules is seriously a grave legal lacuna. As an Officer of the Court he has conceded the deficiencies in the conducting of the proceedings and not tried to justify the action on the part of the respondents. He has also submitted that none of the individuals, whose statement were relief upon, had been examined much less cross examined.

8. Arguments were heard and documents were perused.

9. As held in the case of *State of Uttaranchal v. Kharak Singh*, (2008) 8 SCC

"The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities."

Thus, strict adherence to the procedure adopted is compulsory Principles of natural justice have not been fully complied with which is very much essential to facilitate the applicant to vindicate his stand. Such an exculpatory ventilation was not available to the

applicant in this case. It is settled law that when relied upon document is not admitted, the prosecution has to prove the same for which purpose the author of the document should be made available for cross examination by the delinquent official. In this regard, the following decision by the Apex court refers:

Director General, Indian Council of Medical Research v. Anil Kumar Ghosh (Dr), (1998) 7 SCC 97, wherein, it has been observed that when the factum of issuance of a document was not in dispute, there is no necessity to examine the official, which impliedly meant that where the authenticity of a document is in dispute, it is essential to examine the author of the said document.

This requirement is given a complete go-by. The statements of non-examined individual (S/Sri Mannu Singh Yadav, Vishwanath and Ram Dayal) have been relied upon by the Inquiry Officer vide last para 9 of the inquiry report. Thus, non examination of the important witness is fatal to the proceedings.

10. Coming to the next issue about the mandatory questions of the inquiry officer to be put to the charged official, the Inquiry Officer has stated vide para 5 and 6 as hereunder:-

- "5. On completion of the evidences on behalf of the prosecution, Shri B. Ram and his Defence Assistant were told by the court to produce the evidence on their behalf. Shri B. Ram has not produced any witnesses on his behalf.
6. After completion of the evidences and defence statement the brief from Presenting Officer and Defence Counsel were received and the same are enclosed. The brief of the Presenting Officer was given in the court to the individual where Defence Assistant was also present.

11. The above goes to show that the mandatory examination by the Inquiry Officer under rule 14(18) of CCS (CCA) Rules has not been complied with at all. This is fatal to the very inquiry. See

Ministry of Finance v. S.B. Ramesh, (1998) 3 SCC 227 and **Moni Shankar vs Union of India (2008) 3 SCC 484 – para 20**, wherein it has been held that circumstances appearing against the charged official should be duly disclosed (so as to enable him to meet the same.)

12. The applicant's counsel is not wrong when he argued that the Appellate Authority has not considered the case of the applicant as mandated in rule 27(2) of CCS (CCA) Rules. It has been held in the case of **Narinder Mohan Arya vs United India Insurance Company Ltd (2006) 4 SCC 713**. Thus, the rules require that the Appellate Authority shall consider the appeal not only to the extent of grounds of appeal but on his own he shall have to ensure that the disciplinary proceedings have been duly followed by the Inquiry Officer / Disciplinary Authority.

13. In view of the above the inquiry proceedings cannot stand judicious scrutiny. The impugned order vide Annexure A-1 and A-2 are, therefore, quashed and set aside. The applicant is now ~~68~~ 73 years of age. Under normal circumstances he would have superannuate in ~~2008~~ 30.6.1997 or so. He shall be entitled to have the entire period of absence in the wake of order of compulsory retirement till the date of his normal superannuation counted as qualifying service. His pay shall be worked out giving the benefit of 6th Pay Commission's recommendation and he is entitled to the annual increments due to him. Respondents shall work out the extant of emoluments that applicant would have received for the period of absence had he not been compulsorily retired and pay 50% thereof as back wages while

X Corrected order dated 15.11.2011,

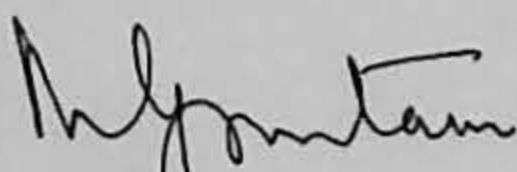
S. K. -


15.11.2011

the applicant is entitled the pension arrived at on the basis of last pay drawn (taking into account the annual increments due to him) and arrears of pension shall also be made available to the applicant in full. Time calendared (from the date of receipt of certified copy of the order) for compliance of this order is as under : -

- A. Preparation and forwarding a fresh PPO — 3 weeks
- B. Calculation of arrears of pension due from normal date of superannuation till the date of payment of revised pension — 8 weeks
- C. Working out of 50% of the back wages from the date of compulsory retirement till the date of normal superannuation and payment of the same after adjusting the extent of pension received by the applicant during the above period — 12 weeks

14. Normally this Tribunal would have imposed heavy cost against the respondents where the applicant has been forced to move the Tribunal twice. However, the fair statement made by the counsel for the respondents and his ^{sober}~~show~~ way of presentation has dissuaded from heavy cost.


Member-A


Member-J

Anand/