

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 1521 of 2005

ALLAHABAD this the 30th day of November, 2012

**HON'BLE MR. D. C. LAKHA, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J**

Uma Shanker Singh Chandel, Ex. T. No. 512/SM-II, S/o Sri Ramdin Singh Chandel, R/o House No. 169/11, Vijay Nagar Colony, Kanpur.Applicant.

V E R S U S

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chairman/ Secretary, Ordnance Factory Board, I.O.A Shahid K- Bose Road, Kolkata.
3. Sr. General Manager, Ordnance Factory, Kanpur. Respondents

Present for the Applicant: Sri R.K. Shukla

Present for the Respondents: Sri Himanshu Singh

O R D E R

By Hon'ble Mr. Sanjeev Kaushik, JM

The instant Original Application has been filed under section 19 of Administrative Tribunals Act 1985 whereby the applicant seeks quashing of Charge Sheet dated 27.11.1991 (Annexure-IV), Letter dated 27.11.1991 (Annexure-III), Order dated 21.03.2005 (Annexure - II) passed by the Disciplinary Authority imposing the penalty of removal from service and the order dated 06.10.2005 (Annexure -I) passed by the Appellate Authority whereby the statutory appeal filed by the applicant has been rejected.

2. The facts of the case, in brief, are that initially the applicant after completing two years apprentice training in the year 1973 was

appointed at Vehicle Factory, Jabalpur by the respondent No. 3 in April 1973 from where he was removed on 03.12.1975. Subsequently his name was sponsored by the Employment Exchange against the vacancies notified by the Ordnance Factory, Kanpur and he appeared in the interview on 13.07.1977. He was declared successful and was appointed at Ordnance Factory, Kanpur on 27.08.1977. It is stated that after joining at Ordnance Factory, Kanpur the order of removal from service was set aside and he was reinstated by the Management of Vehicle Factory, Jabalpur on 10.12.1979. Thereafter the applicant wrote a letter on 28.01.1980 to the General Manager, Vehicle Factory, Jabalpur intimating about his appointment at Ordnance Factory, Kanpur. Consequently the respondents issued a charge sheet to the applicant on 13.11.1981 for suppression of fact of his previous service at Vehicle Factory, Jabalpur at the time of his appointment in Ordnance Factory, Kanpur (Annexure-IX). The applicant submitted his reply on 23.11.1981 (Annexure-X). Thereafter the respondents did not take any action for about 10 years and after an inordinate delay the respondent No. 3 issued a letter dated 27.11.1991 whereby canceling the charge sheet dated 13.11.1981 on the ground that the charge sheet was not drafted properly. It is averred that on the same day i.e. 27.11.1991 the respondent No. 3 issued a fresh Charge Sheet on same set of facts as contained in earlier charge sheet dated 13.11.1981. The applicant submitted his reply on 30.12.1991/06.01.1992 (Annexure - XIV) but without giving any opportunity to the applicant enquiry was conducted ex-parte and acting upon the ex-parte inquiry report the Disciplinary Authority, passed the order dated 10.05.1994 imposing the major penalty of removal from service (Annexure -XV), which was challenged by the

applicant by way of O.A No. 949/1994. The said O.A was decided on 04.02.2002 quashing the order dated 10.05.1994 and the respondents were directed to commence a fresh disciplinary proceeding against the applicant from the stage of submissions of explanation to the Charge Sheet dated 27.11.1991. Thereafter the applicant was reinstated in service on 24.04.2002 and inquiry proceeding was ordered to be started vide order dated 08.07.2002. On 18.04.2003 the applicant demanded some documents but the same were not supplied to him. It is further stated that without considering the case of the applicant the Inquiry Officer submitted undated Enquiry Report. The applicant submitted his reply to the Enquiry Report on 22.12.2004 and based upon the said report, the Disciplinary Authority passed the order dated 21.03.2005 (Annexure-II). Feeling aggrieved by the order dated 21.03.2005 the applicant preferred Statutory Appeal provided under rule 23 of Central Civil Services (Classification, Control and Appeal) Rules 1965 (hereinafter referred as "1965 Rules") on 07.04.2005. The Appellate Authority by its order dated 06.10.2005 rejected the appeal (Annexure -I), hence the O.A.

3. Pursuance to the notice the respondents appeared and filed detailed counter affidavit and contested the claim of the applicant. It is averred that the applicant was initially appointed as Machinist 'B' in the respondents' department on 29.08.1977 and in August 1981 it was brought to the notice of Respondent No. 3 that the applicant was earlier appointed as Machinist 'C' in Vehicle Factory, Jabalpur on 21.04.1973 from where he was already removed on 03.12.1975

on account of alleged misconduct. Since the applicant did not mention the fact of his previous appointment in the Attestation Form submitted on 20.08.1977, the matter was referred to Vehicle Factory, Jabalpur, who in reply confirmed that the applicant was removed from service and reinstated after consideration of his appeal but he did not join Vehicle Factory, Jabalpur. Since the applicant did not mention the fact of his previous employment under Column No. 11 (b) of the Attestation Form which amounts to concealment of his conduct at Vehicle Factory, Jabalpur deliberately, therefore, the applicant was served with Memorandum of Charge dated 13.11.1981. It is further submitted that while the applicant was posted in Jabalpur he was convicted by Session Court, Jabalpur on 17.06.1975 under section 147, 149/33, 149/322 IPC in which imprisonment of six months and one year in each case was imposed upon him. It is further submitted that the penalty awarded by Sessions Court was set aside by the Hon'ble High Court of M.P on 16.11.1978 and the applicant was released under section 4 of Probation of Offender Act. Thus the applicant was under trial during period from 17.06.1975 to 16.11.1978 which includes the period of his appointment in Ordnance Factory, Kanpur during 1977. This fact came into the notice of respondents during September 1984. It is argued that since this fact was having a serious bearing on the misconduct the earlier charge sheet dated 13.11.1981 was cancelled and the applicant

was issued a fresh charge sheet on 27.11.1991 (Annexure A-6 of O.A) for the following charges: -

"Article-I

That the said Shri U.S. Chandel, T. No. 562/NSM, Machinist (Skilled) is charged with Gross misconduct in that he suppressed the facts of his previous employment/ service at Vehicle Factory, Jabalpur at the time of his appointment in Ordnance Factory, Kanpur in August 1977.

Article II

That the said Shri U.S. chandel, Machinist (Skilled) is further charged with Gross misconduct in that he suppressed the facts of his stay in Jabalpur for more than 1 year at a time of his appointment in Ordnance Factory, Kanpur in August 1977.

Article III

That the said Shri U.S. Chandel, Machinist (Skilled) is further charged with Gross misconduct in that he suppressed the facts of his prosecution/conviction by the Sessions Court, Jabalpur on 17.06.1975 under the following section which was subsequently set aside by the Hon'ble High Court of M.P on 16.11.1978 convicting him u/s 143 IPC and directing to release him u/s 4 of Probation of Offender Act at the time of his appointment at O.F.C in August 1977.

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4. The applicant denied the charges vide his representation dated 30.01.1992, therefore a Court of Enquiry was appointed on 16.03.1992. As usual inquiry was completed and a copy of enquiry report was forwarded to the applicant vide memorandum dated 27.08.1993. The applicant made his representation on 02.09.1993, which was duly considered by the Disciplinary Authority, who on the basis of facts and evidences found the applicant guilty of the charges and has passed the order dated 10.05.1994 imposing the penalty of removal from service. The applicant challenged the order dated 10.05.1994 by filing O.A No. 949/94 before Hon'ble C.A.T., Allahabad, which was disposed off vide order dated 04.02.2002 and in compliance thereto, a speaking order dated 24.04.2002 was passed by the Disciplinary Authority whereby reinstating the applicant in service treating the applicant under deemed suspension from 04.02.2002. Further, an Enquiry Officer was appointed on 08.07.2002 to inquiry into the charge sheet dated 27.11.1991. The Enquiry Officer submitted the inquiry report on 24.09.2004 in which the charges leveled against the applicant were found proved. A copy of inquiry report was forwarded to the applicant on 02.12.2004 for submitting his representation. The applicant filed his representation on 22.12.2004 and the Disciplinary Authority in the light of evidence on record and the points raised by the applicant in his representation has passed the order dated 21.03.2005

imposing the penalty of removal from service. It is further submitted that in the Attestation Form, in paragraph 01 and 02, it was clearly mentioned that suppression of any factual information, details of conviction etc. would be a disqualification and is likely to render the candidate unfit for employment under Government. As per the procedure prescribed by the Government, which is now well established over several years, at the time of initial appointment every candidate is asked to give full and detailed information about himself in the attestation form. There is a warning given in the attestation form that (1) the furnishing of false information or suppression of any factual information in the attestation form would be a disqualification and is likely to render the candidate unfit for the employment under the Government; (2) If detained convicted debarred are subsequent to the completion and submission of his form, the details should be communicated immediately to the Union Public Service Commission or the authorized to whom the attestation form has been sent earlier, as the case may be failing which it be deemed to be a suppression of factual information; (3) If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to the notice at any time during the service of a person his services would be liable to be terminated. The attestation form is so signed that no one can overlook this serious warning on top front page.

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Despite such categorical and unambiguous instructions, the applicant violated the aforesaid instructions and suppressed the factual information regarding his detention / conviction during his employment at Vehicle Factory, Jabalpur, which tends to be a disqualification for his employment at Ordnance Factory, Kanpur. It is further submitted that infact the applicant did not mention in the attestation form about his stay at Jabalpur for the period of his employment at Vehicle Factory, Jabalpur and gave false declaration that he was residing in Kanpur at the relevant time. It is further submitted that the applicant also suppressed the facts of his prosecution / conviction by Sessions Court, Jabalpur on 17.06.1975 under Section 147, 149/333, 149/332 IPC in which he was convicted for six months / one year each, which was subsequently set aside by the Hon'ble High Court, M.P at Jabalpur on 16.11.1978. This fact of suppression of information on the part of the applicant being in violation of the instructions for filling up against column 12(i) (a), (b), (c), (d), (e) and (f) of the Attestation Form. Therefore, the very appointment of the applicant has rightly been terminated.

5. The applicant preferred statutory appeal on 07.04.2005 but before the out come of the appeal, the applicant filed O.A No. 823/2005, which was dismissed on the ground that the applicant filed the O.A without waiting for a period of six months for a decision on his appeal.

However, the Appellate Authority i.e. respondent No. 2 considered and disposed off the appeal of the applicant dated 07.04.2005 by a reasoned and speaking order dated 06.10.2005.

6. So far as the question regarding delay in issuing Charge Sheet dated 27.11.1991, it is submitted that after issuing charge sheet dated 13.11.1981 a letter dated 30.01.1982 alongwith representation of the applicant was forwarded to Ordnance Factory Board, Kolkata with a request to advise disposal of disciplinary action against the applicant intimating that the applicant is said to be Organization Secretary of Majdoor Union, Ordnance Factory, Kanpur affiliated to AIDEF. A report has also been received from Superintendent of Police, Budaun (U.P) that the applicant was found in rural fare of Vill. Baxena, P.S – Hazaratpur TC (BDN)-2) telling himself as C.P. I Worker. It is further submitted that reminders dated 23.04.1982, 16.03.1983, 25.07.1983, 12.11.1983 were also forwarded to Ordnance Factory Board, Kolkata. In the meantime the facts regarding involvement of the applicant in criminal case pending before trial court, Jabalpur also came into notice. Therefore, letter dated 24.02.1984 was forwarded to Vehicle Factory, Jabalpur with a request to intimate the details of criminal case (Annexure-2 of Written Arguments). In response thereto, the Vehicle Factory, Jabalpur intimated the facts regarding the

applicant's conviction and his release under Section 4 of Probation of Offenders Act by the Hon'ble High Court, Jabalpur vide letter dated 10.09.1984, (Annexure-3 of Written Arguments). Since the applicant was General Secretary of a recognized Union his case was again referred to Ordnance Factory Board, Kolkata vide letter dated 09.11.1984 (Annexure-4 of Written Arguments), followed by several reminders. In the meantime O.F.B., Kolkata also sought the original documents of the case and the same were furnished to OFB. Thereafter the matter was referred to Assistant Legal Advisor, Ordnance Factory Board, Kolkata with full facts. Thereafter a letter dated 08.10.1991 was received from OFB, Kolkata where intimating the facts of legal advise that an administrative decision may be taken in the matter(Annexure-5 of Written Arguments). Hence the Charge Sheet dated 27.11.1991 was issued to the applicant and after receipt of reply of the applicant, a detailed inquiry was conducted and after following all due procedure of giving opportunity of hearing and principle of natural justice, the order dated 21.03.2005 inflicting the penalty of removal from service was passed.

7. The applicant has also filed rejoinder affidavit reiterating the averments made in the O.A.

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8. We have heard Sri R.K. Shukla, learned counsel for the applicant and Sri Himanshu Singh learned counsel representing the respondents.

9. Learned counsel for the applicant attacked the impugned orders firstly that the Charge Sheet has been issued after lapse of more than 14 years and secondly that the applicant has not been given fair opportunity before the Inquiry Officer as he has not been supplied the documents which were necessary for the applicant to submit his effective reply, therefore, the impugned orders are liable to be set aside.

10. With regard to first argument, learned counsel for the applicant argued that the charge sheet has been issued after 14 years from the date of occurrence and the respondents have not explained the reasons for inordinate delay, therefore, liberty cannot be granted to the respondents to conduct inquiry against the applicant. In this regard he has referred to the judgments of Hon'ble Supreme Court reported as **2005 (106) FLR 1003 - P.V. Mahadevan Vs. M.D, Tamil Nadu Housing Board, State of A.P. Vs. N.Radhakrishan - 1998 (3) SLJ 162 (SC) and State of M.P Vs. Bani Singh - AIR 1990 SCC 1308.**

11. With regard to second argument the learned counsel for the applicant argued that the applicant made a specific written request on 18.04.2003 for supplying the relevant documents but the respondents rejected the request of the applicant without any cogent

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reason, therefore, the applicant has not been given fair treatment in the enquiry proceedings, hence the enquiry proceedings as well as the subsequent orders based upon it are liable to be set aside.

12. On the other hand, Learned counsel for the respondents supported the impugned orders and argued that the applicant has been given fair treatment while conducting the inquiry and the impugned order of removal from service has been passed after considering the inquiry report. He argued that this Tribunal has no jurisdiction to re-appreciate the evidence and sit as an appellate authority over the order passed by the Disciplinary authority which has also been affirmed by the appellate authority. He placed reliance on upon judgments of the Hon'ble Supreme Court in the case of ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority V. Gopi Nath & Sons, 1992 Supp (2) SCC 312*** and ***Govt. of A.P. V. Mohd. Nasrullah Khan, (2006) 2 SCC 373.***

13. We have considered the rival submissions of the respective parties and have gone through the records with able assistance of the respective counsels.

14. There arise two questions which are to be answered in this O.A. Firstly, whether there is delay in concluding the departmental proceeding and; secondly, whether non-supply of documents vitiate the departmental proceeding.

15. Admittedly the applicant was served with a charge sheet on 13.11.1981 which was cancelled on 27.11.1991 on the ground that

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the same has not been drafted properly and the same was cancelled without prejudice to issue fresh charge sheet. On the same very day i.e. 27.11.1991 the applicant was served with a fresh charge sheet. The pith and substance of the charges leveled in the charge sheet dated 27.11.1991 as well as in the previous charge sheet are same. After having reply from the applicant the competent authority imposed the penalty of removal from service by order dated 10.05.1994, which was set aside by this Tribunal vide order dated 04.02.2002 passed in O.A No. 949/94. Ultimately by order dated 21.03.2005 again the applicant was removed from service. The said order was upheld by the Appellate Authority. The arguments of the applicant that the impugned orders are liable to be set aside on the ground of inordinate delay and latches because the respondents firstly issued the charge sheet in the year 1991 and finalized the inquiry proceeding in the year 1994, which was set aside and finally by order dated 21.05.2005 the services of the applicant has been removed. Therefore, there is an inordinate delay in initiating the proceeding and on this ground only the O.A is liable to be allowed. No reasons have been given by the respondents for such inordinate delay of more than 10 years from 13.11.1981. Merely by issuing a fresh charge sheet by improving the charges will not wipe out the delay on the part of the respondents. The aspect of the delay in issuing charge sheet or concluding the proceedings have been considered by the Apex Court in the case of **State of M.P Vs. Bani Singh (Supra)**. In the said case Hon'ble Apex Court has considered the question of delay in initiating the departmental proceeding, which was subsequently considered in the case of **P.V. Mahadevan (Supra)**.



The Hon'ble Apex Court while dismissing the appeal in the case of Bani Singh has held as under: -

".....The irregularities which were the subject matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are no ground to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

16. No doubt in the instant case the charge sheet was issued in the year 1981 but the same was not finalized till 1991 when the earlier charge sheet was dropped and fresh charge sheet was issued . Therefore, the fault of the respondents for not completing the departmental proceeding in time and lingering the same the applicant cannot be made to suffer. Therefore, the impugned orders are liable to be set aside on this ground alone.

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17. With regard to the allegation of the applicant that his request for providing documents has been rejected by the respondents without any valid reason, therefore, the inquiry proceeding and the subsequent orders be set aside as principle of natural justice has been violated. It is held by the Apex Court that an employee has to show that what prejudicious has been caused to an delinquent employee in the absence of those documents. Nowhere the applicant has pleaded that in absence those documents he has been seriously prejudiced, therefore the arguments raised to this effect cannot be accepted. Our view has been supported by the judgment of the Hon'ble Apex Court reported in **Haryana Financial Corp. v. Kailash Chandra Ahuja, (2008) 9 SCC 31**. In the said judgment Hon'ble Apex Court has held as follows :

"21. From the ratio laid down in *B. Karunakar*¹ it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

In another judgment reported in **(2010) 5 SCC 349 - Union of India v. Alok Kumar**, Hon'ble Apex Court has held as follows: -

" We may notice that the respondents relied upon the judgment of this Court in *ECIL* that imposition of punishment by the disciplinary authority without furnishing the material to the respondents was liable to be quashed, as it introduced unfairness and violated the sense of right and liberty of the delinquent in that case. No doubt in some judgments the Court has taken this view but that is primarily on the peculiar facts in those

cases where prejudice was caused to the delinquent. Otherwise right from *S.L. Kapoor case*, a three-Judge Bench of this Court and even the most recent judgment as referred to by us in *Kailash Chandra Ahuja case* has taken the view that *de facto* prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment can be set aside, of course, depending upon the facts and circumstances of a given case. *Judicia posteriora sunt in lege fortiora*. In the latter judgment the view of this Court on this principle has been consistent and we see no reason to take any different view. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature lacks, the appellant may not be able to persuade the Court to interfere with the departmental enquiry or set aside the orders of punishment."

The applicant has not shown any prejudice hence this issue is decided against the applicant.

18. In view of the above we are of the considered view that the O.A deserves to be allowed. Accordingly the impugned Charge Sheet dated 27.11.1991 (Annexure-IV) as well as the consequent Order dated 21.03.2005 (Annexure - II) and the order dated 06.10.2005 (Annexure -I) are quashed and set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits. No costs.

/Anand/

(Anand)
Member-J

(Signature)
Member-A