

OPEN COURT
 CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 4 th day of November, 2009

PRESENT.

HON'BLE MR. A.K.GAUR, MEMBER-J
HON'BLE MR. D.C. LAKHA, MEMBER-A

Original Application No.633/2005.

1. Munni Lal,
 S/o Late Bhikha Pal,
 R/o Village and P.O. Sangawa,
 Kanpur City, District Kanpur.
2. Havaldar,
 S/o Late Sri Deo,
 R/o New Cell, 4(Two) T.No.211,
 Ordnance Factory,
 Kalpi Road, Kanpur. ...Applicant

(By Advocate Shri Ram Chandra)

Vs.

1. Union of India through Director General,
 Ordnance Factory, Auckland Road,
 Calcutta.
2. General Manager,
 Ordnance Factory,
 Kalpi Road, Kanpur-9. ...Respondents

(By Advocate Shri R.C.Shukla)

ORDER

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

We have heard Shri Ram Chandra, learned counsel for applicants, and Shri R.C.Shukla for respondents.

2. The applicants have filed this O.A. challenging the order dated 12.9.1992 imposing a penalty of reduction in the pay of the

applicants, to the minimum as per Annexure 1-A and the Appellate Order dated 28.2.1997(Annexure 1-B) passed by the respondent No.2. The applicants filed O.A. 584/95 in this Tribunal, and the said O.A. was finally disposed of vide order dated 3.12.2001, directing the appellate authority to decide the appeal of the applicants. The Director General, Ordnance Factory, was directed to decide the appeal of the applicants within a period of three months, from the date of receipt of copy of the order. This order was passed on 3.12.2001. Against the order dated 3.12.2001 the Government of India approached this Tribunal by way of filing a Review Application No. 9/2002. Before the Review Court it was submitted that, once an appellate order dated 28.2.1997 received by the applicants on 13.5.1997, the same cannot be challenged now on the ground of delay and latches. The Review Court in its order clearly observed that, the counsel on both parties were present on the date when the O.A. was disposed of, and therefore, it would not be proper to blame either of the parties. The R.A. was accordingly disposed of, by giving liberty to the applicants to challenge the appellate order alongwith punishment order on the original side, vide order dated 24.5.2004. Consequently, the applicants have filed the present O.A. challenging the order dated 12.9.1992 (Annexure 1-A) and appellate order dated 28.2.2007 (Annexure 1-B).

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3. Shri Ram Chandra, learned counsel for applicants vehemently argued that, the applicants had been denied the right to cross examine the witnesses. He also submitted that the principle of natural justice and fair play have been violated by the respondents.

4. By filing counter affidavit learned counsel for respondents states that, in the night on 11/12.6.1982 a burglary by breaking open the window of SMS Godown in Ordnance Factory, Kanpur took place, and 300 kgs of Ferro Molybadium and 10 kgs. Of pure nickel balls costing Rs.55568.80 and Rs. 913.50 and other articles were stolen away by the applicants. A Board of Enquiry was conducted in which the applicants alongwith some other persons were found guilty. The applicants were placed under suspension on 24.7.1982. On 18.6.1982, an FIR under section 457/360 I.P.C. was lodged with Armapore Police by Security Office of the factory. According to the respondents the applicants had confessed their guilty that, the stolen materials were taken out of the Godown and concealed in the jungle area by them on 11.6.1982 at 8.00 p.m. by breaking open the window of SMS Godown. Both of them were taken to the aforesaid places, wherefrom they took out the stolen materials from the hide outs in the presence of Security Staff. Whole materials were collected, weighed and sealed in a steel box in the presence of orderly officer Shri A.K.Mathur, Manager, Security Staff and the applicants and

their signatures were obtained on the sealed box. Their statements were recorded in which they confessed their guilt. On 20.7.1982 at about 4.00 p.m., Shri Hawaldar (applicant No.2), fled away from the spot. On 19.7.1982 Mr. Agnoo Das and Munni Lal were caught by the Security Staff. According to the respondents, the charge of pilferage and burglary on government materials as framed in the charge sheet, were established. On receipt of enquiry report from the inquiry officer, the disciplinary authority forwarded a copy of enquiry report to the applicants to make their representations. The disciplinary authority, after careful consideration of relevant documents on record and the representations of the applicants, found the applicants guilty of charges levelled against them, and imposed the penalty of reduction of pay to the minimum i.e. Rs.750-940 in scale Rs.750-940, for a period of five years with cumulative effect vide order dated 12.9.1992.

5. Against the order of punishment, the applicants preferred an appeal. Shri Ram Chandra, learned counsel for applicants vehemently argued that the appellate order is not a speaking order, and the grounds taken in the memorandum of appeal, have not properly been considered by the appellate authority.

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6. The appellate authority has taken into account all the grounds raised by the applicants and on scrutiny of the case, he found that the charge under Article-I was not proved in the departmental enquiry, but, the main plank of the charge under Art.-II was proved in the departmental enquiry. The ground taken by the applicants that, they were not given any opportunity in the departmental enquiry to cross examine the prosecution witnesses, is incorrect. The accused and his defence assistant were given ample opportunity to cross examine the prosecution witnesses appropriately. The appellate authority, in its order, clearly observed that the confession statement was recorded on 20.7.1982 before the orderly officer.

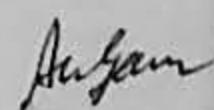
7. Mr.Ram Chandra, learned counsel for the applicants states that this confession was recorded due to coercion and duress.

8. The appellate authority has, in its order dated 28.2.1997 also observed that, if there was any undue pressure on the applicants from security side, he should have reported it to Orderly Officer or General Manager, but, he did not do so. The charges levelled in the departmental enquiry was different from those levelled against the applicants in criminal proceedings of Trial Court. The Trial Court in criminal proceedings has acquitted the applicants giving the benefit of doubt. It is the settled principle of law that, criminal proceedings and departmental proceedings are two

distinct proceedings. The acquittal of the applicants in criminal proceedings by giving the benefit of doubt, would not preclude the respondents from holding departmental enquiry.

9. Having given our thoughtful consideration to the pleas advanced by the parties' counsel, we are fully convinced that, since the applicants have already confessed their guilt before the competent authority, their other plea that they were not ~~seen~~ granted opportunity of hearing and charges are not proved in the departmental enquiry, have no legal basis. The applicants have utterly failed to make out any case warranting interference in the matter. Accordingly the O.A. is dismissed. No costs.


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