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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.718 of 1986

Ashok Gurtu Applicant

Versus

Union of India & Others Respondents

Connected with

Registration O.A. No.129 of 1987

Ashok Gurtu Applicant

Versus

Union of India & Others Respondents.

Connected with

Registration O.A.No. 532 of 1987

Ashok Gurtu Applicant

Versus

Union of India & Others Respondents.

Hon.D.S.Misra, A.M.

Hon.G.S.Sharma,J.M.

(By Hon.D.S.Misra, A.M.)

These are three connected applications under Section 19 of the Administrative Tribunals Act XIII of 1985 between the same parties and shall be disposed of by a common judgement.

2. The brief facts of the case in O.A. No.718 of 1986 are that the applicant, while working as Chargeman grade II, in the Small Arms Factory Kanpur, was served with three chargesheets dated 9.10.82 (copy Annexures 1, 2 and 3 to the petition); that on receipt of reply

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from the applicant denying the charges a court of enquiry was set up and the Inquiry Officer found the applicant guilty of the charges No.1 & 2 levelled against him; that the disciplinary authority agreed with the findings of the Inquiry Officer and by an order dated 9.9.85 (copy Annexure-13) imposed the penalty of reduction in rank from the post of Chargeman grade II to the post of Senior Draftsman. The applicant was also ordered to be debarred for promotion for a period of three years from the date of the order. The applicant filed an appeal against the order which was rejected by an order dated 8.5.86 (copy Annexure-A14). The applicant has prayed for quashing the order of penalty imposed upon him.

3. In O.A. No.129 of 1987 the applicant has prayed for quashing the order dated 19.1.87 (copy Annexure-A) passed by the General Manager, Small Arms Factory, Kanpur (respondent No.3) which has the effect of amending the order dated 9.9.85 passed by the same authority and referred to in O.A. No.718 of 1986.

4. In O.A. No.532 of 1987 the applicant has challenged the order dated 3.6.87 by which the pay of the applicant has been refixed from Rs. 1760/- to Rs.1680/- with effect from 1.1.1986.

5. We have heard the arguments of the learned counsel for the parties. The main point for consideration in O.A. No.718 of 1986 is whether there is any illegality in the conduct of the enquiry against the

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applicant under C.C.S. (CC&A) Rules. The first charge against the applicant is of "gross misconduct" in that the above said Shri Ashok Gurtu while functioning as Chargeman Grade II, DO, SAF, Kanpur went out at 12.15 hours on 18.6.82 telling Incharge Gate that he was on staggering lunch duty whereas no such staggered lunch duty was given to him and also did not turn back upto 1600 hours with fraudulent intentions amounting to cheating, failure to maintain absolute integrity and conduct ^{bl} ~~even~~ unbecoming of a Govt. servant. The second charge is regarding the applicant submitting leave applications fraudulently making therein forged signatures of Shri Sartaj Singh, D.M.G. and Shri H.B. Sarkar, F.D. with a view to get the same regularized by Incharge Establishment. The third charge reads as follows :-

" Gross misconduct" in that the above said Shri Ashok Gurtu while functioning as Chargeman grade II /DO, SAF misbehaved and tried to assault Smt. Laxmi Dhiman, Mazdoor TC Section, 47/ISA at about 7.45 A.M. on 26.6.82 near Vijay Nagar crossing, Kanpur.

6. The respondents have stated that the applicant was offered ample reasonable opportunities to defend himself according to CCS (CC&A) Rules. He was allowed to engage defence assistant. In support of this contention the respondents have submitted photo copies of the proceedings of the court of enquiry. The applicant participated on various dates and obtained copies of the day to day proceedings under his own acknowledgement. The applicant cross-examined the

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witnesses produced by the prosecution. The applicant has not pointed out any irregularity or illegality in the conduct of the enquiry. The main point urged on behalf of the applicant is that the Director General of Ordnance Factories being the appointing authority of the applicant, the General Manager, Small Arms Factory, Kanpur (respondent No.3) was not competent to impose any penalty on the applicant. This contention of the applicant has been disputed by the respondents who have asserted that the General Manager is the appointing authority of the applicant and the penalty has been imposed by him in his capacity as the disciplinary authority. This contention of the respondents has not been rebutted by the applicant by any document. The onus of proving his contention that the General Manager was not his appointing authority and the D.G.O.F. did not enjoy the powers of the appellate authority lay on the applicant. In the absence of any evidence furnished by the applicant it has to be held that the penalty order passed by the General Manager and the appellate order communicated over the signature of Shri J.K. Lahiri under the authority of Director General Ordnance Factories / Chairman, Ordnance Factory Board, Calcutta do not suffer from any illegality. Accordingly we find no merit in both the contentions of the applicant and we hold that there is no merit in the petition and the same is liable to be rejected.

7. In O.A. No.129 of 1987 the applicant has challenged the order dated 19.1.1987 on the ground that

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it amounts to the review of the order dated 9.9.85 for which there is no provision and is thus wholly illegal, arbitrary and without jurisdiction. It is further contended that it amounts to double punishment because the applicant had already been reduced from the post of Chargeman grade II to the post of Senior Draftsman and by this order the applicant was reduced to yet another lower grade of a Draftsman. In reply the respondents have stated that by the order dated 9.9.85 the applicant was reduced from the post of chargeman grade II scale Rs. 425 - 700 to the scale of Senior Draftsman scale Rs.330- 560 ; that consequent upon a decision of the Supreme Court, the scale of pay of senior Draftsman was made equal to the scale of pay of Chargeman grade II with effect from 1.1.73; that consequent upon the implementation of the decision of the Hon'ble Supreme Court the applicant was also treated as Senior Draftsman with effect from 1.1.73 rendering the penalty order dated 9.9.85 ineffective and inoperative; that the matter was therefore reexamined and it was decided to ~~the~~ issue fresh order for faithful implementation of the order of penalty imposed on the applicant vide order dated 9.9.85. We have examined the matter and we find that the order dated 19.1.87 mentions the above mentioned reasons for cancelling the order dated 9.9.85 ^{and} passing a fresh order imposing the penalty of reduction of the applicant from the

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post of senior Draftsman in the scale of Rs.425 - 700 to that of Draftsman in the scale of Rs. 330 - 560. On the facts and circumstances of the case we are of the opinion that there is no illegality in this order and there is no merit in the application which is liable to be rejected.

8. In O.A. No.532 of 1987 the applicant has challenged the order dated 3.6.87 by which the pay of the applicant has been refixed with effect from 1.1.1986 in accordance with the revised Pay Rules, 1986. A copy of the order is available as Annexure-3 to the petition in which it is stated that the pay of the applicant as on 9.9.85 was Rs. 560/- per month in the scale of Rs.330 - 560 and that his pay has been fixed at Rs. 1640/- in the revised scale of pay Rs.1200 - 2040 w.e.f. 1.1.1986. This is in partial modification of the order dated 21.10.86 by which the pay of the applicant was fixed at Rs. 1760/- in the scale of Rs.425 - 700. We have considered the matter and we are of the opinion that the order dated 3.6.87 is in the nature of refixation of pay as a follow up operation of the order dated 19.1.87 in respect of the applicant. This has been done correctly in accordance with the provisions of C.C.S. (R.P.) Rules, 1986. We are of the opinion that there is no merit in this application and is liable to be rejected.

9. For the reasons mentioned above the three petitions are dismissed without any order as to cost.

[Signature]
Member (J)

[Signature]
Member (A) 11/1/89

Dated the 11th Jan., 1989

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