



CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO. 18 of 1986.

Bhagwati Prasad Kemani

.... Petitioner.

Versus

Union of India and others

..... Respondents.

Hon'ble D.S.Misra-Member-A

Hon'ble G.S.Sharma-Member-J

(By Hon'ble D.S.Misra)

This Civil Misc. Writ Petition no. 729 of 1980 has come to us on transfer under section 29 of the Administrative Tribunals Act, 1985. The petition has been filed against the order of termination against the penalty of removal from service passed on 15.4.1975 by the General Manager, Ordnance Factory Dehradun (hereinafter referred to as respondent no.3) and the order of rejection of appeal dated 29.3.1977 of Director General Ordnance Factory (hereinafter referred to as respondent no.2)

2. The petitioner's case is that while working as Senior Draughtman in the Ordnance Factory, Dehradun, a chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was served on 23.2.1974. On receipt of the reply from the petitioner, an inquiry was held and a notice was served on him on 1.7.1974 to show cause why he may not be reverted from the post of Senior Draughtman to the post of Draughtman. Petitioner submitted a reply to the show cause notice on 22.7.1974. On 4.11.1974, petitioner was transferred from Drawing Section to Training Section. Petitioner requested the section incharge to intimate him in writing as to why he was being transferred from Drawing to Training Section, which amounted to punishment. The Section incharge instead of intimating

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-2-

the reasons for the transfer of the petitioner made a complaint against him as a result of which, he was placed under suspension on 14.11.1974. Another chargesheet was served on the petitioner on 21.11.1974, and he submitted his reply within time. A court of inquiry was convened and evidence was recorded on 24.12.1974 and thereafter the suspension of the petitioner was revoked. The petitioner was issued a memorandum on 24.3.1975 to show cause why he may not be removed from service. The petitioner submitted his reply to the said memorandum. He was removed from service on 15.4.1975 by an order dated 15.4.1975 of the respondent no.3 (copy at annexure-1). The petitioner filed an appeal, which was rejected by an order dated 6.4.1977 by respondent no.3 (copy at annexure-2). The petitioner made several representations to respondent no.1 but no decision on his representation was received by the petitioner. Petitioner has challenged the dismissal order on the ground that he was not afforded proper opportunity to defend himself before the court of inquiry and that the finding of the court of inquiry that the petitioner was guilty of misconduct and was not a fit person to be retained in service was wrong and against the evidence on record. He also contended that the order of removal from service, not being a speaking order, was illegal. Similarly his appeal to respondent no.2 was passed without affording him an opportunity of being heard and without applying his mind to the full facts and circumstances of the case and that it was not a speaking and reasoned order and was, therefore, illegal.

3. In their reply, respondents stated that while working as a Draughtman at Artision Training School, Heavy Vehicle Factory, Avadi, Madras to Ordnance Factory Dehradun, on 12.6.1967, the petitioner was promoted to the post of Senior Draughtman vide order no. 851 dated 16.11.1972. On 28.1.1974, petitioner was given a job which he did not do and instead he handed over the said job to the Tracer. Since the Section Incharge of the petitioner wanted that work to be done by the petitioner, he again asked the

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-3-

petitioner to do the said work. Deputy Manager, Divisional Officer for drawing office vide his note dated 6.3.1974 reported that the petitioner, as a senior draughtman, refused to prepare the drawing of the blade of the sharing machine, and that when he was given another work and equipment design, he refused to do the work. A chargesheet under Rule 14 of the C.C.S. (CCA) Rules was served on the petitioner on 22.3.1974 (copy at annexure-SA-1). In his reply dated 30.3.1984 petitioner denied the charges, which were levelled against him. On denial of the charge by the petitioner, an inquiry was directed by the General Manager through his letter dated 4.4.74 (copy at annexure-CA-1). After holding an inquiry, the ~~per~~ inquiry-authority submitted a report on 18.6.1974 in which the charges were found to be established against the petitioner. A showcause notice dated 1.7.1974 (copy at annexure-CA-2) was given to the petitioner stating therein that the petitioner is given an opportunity of making representation against the proposed penalty of reversion from the post of senior draughtman to the post of draughtman. The petitioner submitted his reply dated 22.7.1974 and also sought a personal interview with the General Manager. The said request of the petitioner was accepted and the General Manager, finding the petitioner to be mentally upset, decided to give an opportunity to the petitioner to work in another section under a fresh atmosphere. The respondents have denied the allegation of the petitioner that his transfer from drawing section to the training section was ^{was} by way of ^{be} punishment and asserted that this was done to provide him a change of environment. It is alleged that the petitioner did not comply with the order passed by superiors and on receipt of a complaint from the head of section/divisional officer about disobedience of the order of inter sectional transfer, the petitioner was put under suspension through a letter dated 4.11.1974 under sub-rule(1) of Rule 10 of CCS(CCA) Rules, 1965. The petitioner was served with a chargesheet dated 21.11.1974 and he was directed to submit the reply within 10 days of the receipt of the said memorandum of chargesheet.

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-4-

Petitioner submitted his reply on 9.12.1974 denying the charges levelled against him. An inquiry was instituted vide order dated 12.12.1974 (copy at annexure-CA 3). After completing the inquiry proceedings, the Chairman of the court of inquiry submitted his report, in which the charges framed against the petitioner were found to be established. After going through the whole inquiry report, an order was passed on 24.3.1975 by which the petitioner was issued a show cause notice proposing the penalty of removal from service (copy at annexure-CA-4). The petitioner requested for an interview with the General Manager, which was allowed and the interview with the General Manager took place on 17.4.1975. During the course of his interview, the petitioner expressed that he wanted to leave station as early as possible. Petitioner submitted his reply to the show cause notice on 7.4.1985 stating therein that he had nothing to say in the matter and no other assertion shall be submitted by the petitioner in reply to the show cause notice. After considering the whole matter and record, the petitioner was awarded penalty of removal from service on 15.4.1975. The respondents denied the receipt of any representation addressed to respondent no.1 by the petitioner as stated in para 8 of the petition. The respondents also denied the allegation of the petitioner contained in paragraphs nos. 10,11,12,13,14,15, 16 17 of the petition and asserted that the petitioner was given full opportunity to defend him ^{self} during the course of inquiry proceedings. It is also asserted that the order of dismissal of the appeal was a speaking order, made after full consideration of the appeal by respondent no.2. Although the appeal was time barred, it was considered on merit also and then dismissed.

4. The petitioner filed a rejoinder affidavit in which the assertions made in the petition were reiterated and denied the contention of respondents that his services were permanently transferred from the Heavy Vehicles Factory Avadi Madras and

52

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-5-

contended that the disciplinary proceedings against the petitioner initiated by the authorities of Ordnance Factory Dehradun were without jurisdiction and disciplinary proceedings against him could only be initiated and taken after transmission of the same to his parent department under section 20 of the CCA Rules, 1965. He also asserted that the job given to him by the Section Officer on 28.1.1974 was entrusted to the Tracer as the drawing was to be traced by the Tracer as usual. Petitioner alleged that the section -in-charge suddenly changed his mind and made a false complaint against the petitioner as he was prejudiced against him. He denied having ever refused to carry out any work assigned to him during the course of his service. Petitioner also asserted that in his representation dated 22.7.1974, in reply to the show cause notice, he had stated that Sri R.P. Chatterji and Sri S.N. Hom and other officers were prejudiced against the petitioner and were bent upon to harm him. The petitioner alleged that this was due to the fact that he did not agree to the proposal of Sri R.P. Chatterji to associate him in preparing the design of a weapon which would be extremely beneficial for the defence of the country. The petitioner has asserted that after considering his reply and his interview with the General Manager, the proposal of his reversion from the post of senior draughtman to that of draughtman was not implemented and the petitioner was exonerated of the charges for which the inquiry was held. He has asserted that his transfer from Drawing Section to Training Section was in the nature of punishment and sheer loss to the government exchequer. He also challenged the setting up of a court of inquiry to enquire into the charges framed against him and asserted that the proceedings of inquiry and findings arrived at on the basis of illegal inquiry are vitiated, for want of jurisdiction and no action could be taken on the basis of such inquiry. It is further alleged that the General Manager of the Ordnance Factory Dehradun, in his capacity as the appointing authority of the petitioner, could not delegate his powers of making inquiry to some other officer. Further that since he

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-6-

was exonerated of the charges in the earlier inquiry, the second inquiry could not be initiated on similar charges. It is stated that the court of inquiry held no specific investigation of the allegation of disobedience by the petitioner and the conclusions are based on mere assumption. It is also stated that the court of inquiry did not recommend the penalty of removal from service and as such the disciplinary authority was not justified in passing the order of removal from service against the petitioner. The petitioner has ~~also~~ alleged that his request for providing assistance of a legal practitioner was wrongly and illegally refused by the disciplinary authority and therefore the inquiry proceedings were illegal and void.

5. We have heard the arguments of the learned counsel for the parties. Learned counsel for the petitioner argued that General Manager Ordnance Factory Dehradun was not competent to act as the disciplinary authority in respect of the petitioner, as the petitioner held a permanent lien in the Heavy Vehicles Factory Avadi. However, the petitioner himself has stated in para 9 of his rejoinder-affidavit that the General Manager of the Ordnance Factory Dehradun was the appointing authority of the petitioner and he should have himself conducted the inquiry. It is also on record that the applicant had himself sought transfer to the Ordnance Factory Dehradun from the Heavy Vehicles Factory Avadi Madras. Both the factories are under the Ministry of Defence and the Director General of the Ordnance Factories is the Controlling Officer for all these Factories. The General Manager Ordnance Factory Dehradun has the same status and rank as the General Manager Heavy Vehicle Factory Avadi Madras. We are, therefore, of the opinion that this argument is not valid.

6. The second point taken by the petitioner is that the appointing authority should have enquired into the matter and that he could not appoint a court of inquiry to enquire into the matter.

152

(7)

-7-

Sub rule(2) of Rule 14 of the CCS(CCA) Rules, 1965 states as follows:

" Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1950, as the case may be an authority to inquire into the truth thereof."

From the above rule, it is evident that the disciplinary authority has the choice of either inquiring into the matter himself or may appoint an authority to enquire into the matter. The word authority does not exclude the appointment of a court of inquiry consisting of two or more officers to hold the inquiry. On the other hand, a court of inquiry has the advantage of more than one independent opinion about the truth of the matter. For the reasons mentioned above, we are of the opinion that this objection of the petitioner is not valid.

7. The third point taken by the petitioner is that he was not allowed the assistance of a legal practitioner to defend himself in the inquiry. Sub-rule 8(a) Rule 14 of the said Rules reads as follows:-

" The Government servant may take the assistance of any other Government servant posted in any office either at his head quarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

It is not the case of the applicant that the Presenting Officer appointed by the disciplinary authority was a legal practitioner. In these circumstances, the rejection of the request fortaking the

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assistance of legal practitioner by the disciplinary authority is in accordance with the above-mentioned rule and we are of the opinion that this objection of the petitioner is also not valid.

8. The fourth point taken by the learned counsel for the petitioner is that he was exonerated of the charges levelled against him in the first inquiry and that these very charges were enquired into in the second inquiry and therefore, the punishment awarded on the basis of second inquiry was unlawful and void. A perusal of the second chargesheet dated 21.11.1974 available as S.A.2 would show that there were only two articles of the charges alleging the failure of the applicant to carry out the order of transfer and refusal to carry out official work even after repeated advice. A perusal of the statement of the imputation of misconduct or misbehaviour in support of each article of the charge would also indicate that the inquiry was conducted in respect of matters which were different from the first inquiry. In these circumstances, we are of the opinion that this objection of the petitioner is not valid.

9. The fifth point taken by the petitioner is that the order of inquiry did not afford full and complete opportunity to the applicant to defend himself. On going through the record of the inquiry, it is found that the applicant attended the inquiry and cross-examined the witnesses. He did not produce any witnesses in support of his defence and the Chairman of the court of inquiry submitted the report with its findings. In view of this, we are of the opinion that this objection is not valid.

10. The sixth point taken by the petitioner was that in his reply to the show cause notice, points mentioned in his representation were not considered properly by the disciplinary authority. We have gone through the impugned order dated 15.4.1975 of the disciplinary authority and we find that the General Manager of the Ordnance Factory Dehradun in his capacity as the disciplinary

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authority thoroughly examined the report of inquiry and the reply submitted by the applicant in reply to the show cause memorandum and he had also given an oral hearing to the applicant on 7.4.1975. During his interview with the General Manager, the applicant stated that he did not wish to submit any representation to the penalty proposed in the show cause memorandum. In view of this the objection raised by the petitioner does not appear to have any force and we are of the opinion that the impugned order imposing penalty of removal from service was passed by the disciplinary authority after proper examination of the entire case.

11. The last point taken by the petitioner was that the appellate authority had not passed a speaking order, while rejecting the appeal. A perusal of the impugned order dated 23rd March, 1977 would show that the Director General Ordnance Factories in his capacity as the appellate authority, had considered the appeal and the relevant records of the case and had come to the following conclusion.

- (1) Procedure prescribed in the CCS(CCA) Rules, 1965 had been complied with.
- (ii) The findings are justified.
- (iii) The penalty imposed is adequate, and
- (iv) The appeal is also time barred.

The order further states that there was no reason or mitigating circumstance to modify the decision already arrived at and the appeal of Sri B.P.Kemani is accordingly dismissed. We are of the opinion that the order of the appellate authority is ^aproperly speaking order prescribed under the CCS(CCA) Rules and does not suffer from any defect. bz

12. For the reasons mentioned above, the petition is dismissed without any order as to costs.

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Member-A

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Member-J