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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALUHABAD.

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Registration No. 188 of 1986 (T)

R.P.Gangwar vs. Union of India.

Hon'ble S.Zaheer Hasan, Vice Chairman,

Hon'ble Ajay Johri, Member (A).

(Delivered by Hon'ble S.Zaheer Hasan,V.C.)

This civil appeal 1 (C.A.No. 18 of 1984) pending in the court of District Judge, Kanpur was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

On 19.9.1980 at 6.00 a.m. one bundle of bandages was recovered from the Jhola of plaintiff R.P.Gangwar, which he was taking out of the Ordnance Equipment Factory Kanpur while leaving. At that time he was posted as a Compounder in the hospital of the aforesaid Factory. Plaintiff's case is that his wife had received multiple injuries in both the legs and knee-joints on 7.9.1980, ~~she~~² was treated by Dr. A.K.Srivastava whereafter she received medical treatment on 18.9.1980 at the Combined Government Ordnance Equipment Factory and Parachute Factory Hospital, Kanpur as an out door patient. The applicant himself was a pharmacist in the aforesaid Hospital and it was not at

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all necessary for him to bring his wife every day to the Hospital for bandage. Since he was entitled to free medical treatment for himself and his family, he was issued a bundle of bandages in the evening of 18.9.1980, a little before the start of his duty hours, from the out door patient department by Sri S.B.Singh for dressing the injuries of his wife. The issue of the bundle of bandages was permitted by Dr. S.P.Roy Chaudhary of that Hospital. The bandages were collected from the out door patient department because according to Dr. R.A. Dharla the bandages were not available at that time in the dispensary. Since the applicant was getting late for duty in the Factory, he requested Sri R.A.Dharla to get a slip from M.I. room for the bandages collected from the out door patient department. Sri Dharla, the Pharmacist, obtained the slip for bandages from Dr. Prithi Pal, but he could not deliver it to the applicant since he had already left in hurry for duty inside the Factory along with the bandages. After the close of his duty hours in the morning when the plaintiff was coming out of the Factory gate with the said bundle openly, he was detained at the Factory Gate and a false charge of attempted theft was levelled against him. On 19.9.1980, the General Manager of the Factory, who is the disciplinary authority, suspended the applicant. This order of suspension was subsequently revoked on 9.12.1980. On 15.10.1980 a charge-sheet was issued. It was signed by the Deputy General Manager for General Manager. On 7.1.1981, the General Manager appointed Sri A.K. Routh, Assistant Manager, as Inquiry Officer. The medical slip and patient tickets were produced by the applicant and two witnesses were also

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examined by him in his defence before the Inquiry Officer. On 13.7.1981 the Inquiry Officer passed his order holding that the out door patient ticket and medical slip were not produced by the applicant on the gate at the time of search which was unbecoming of a Government servant; but in the court of inquiry the aforesaid evidence was produced. So, the Inquiry Officer was of opinion that ~~the~~ the applicant had no bad intention. The disciplinary authority passed the punishment order on 31.7.1981. It agreed with the finding of the Inquiry Officer and ordered withholding the increment for one year with cumulative effect with the observation that it was a case of mis-conduct — attempted theft of Government property. On 10.12.1981 the applicant filed a suit in the court of Munsif Kanpur which was dismissed. The applicant filed the present appeal before the District Judge, Kanpur which, as stated above, has been transferred to this Tribunal.

The General Manager is the appointing authority and he could very well pass the suspension order and also appoint Sri A.K.Routh as Inquiry Officer. The contention of the applicant is that the charge-sheet should have been given by the General Manager, but it was signed by the Deputy General Manager for General Manager. As already stated, the General Manager is the disciplinary authority. He suspended the applicant. He appointed the Inquiry Officer. After submission of the report of the Inquiry Officer, the General Manager passed the impugned order. The contention of the applicant is that the charge-sheet was submitted by the Deputy General Manager and not by the General Manager. This charge-sheet has been signed by the Deputy General Manager (Administration) for General Manager. Rule 14(3) of the Central Civil Services

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(Classification, Control and Appeal) Rules provides that the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of the misconduct etc. So, to our mind, the applicant could not prove that this charge-sheet was issued against the rules.

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The applicant was a Compounder in same Hospital. His wife had received injuries. His case is that he got one bundle of bandages issued from the Hospital. The Inquiry Officer came to the conclusion that the applicant should have produced documentary evidence when he was checked at the time of his exit from the Factory to show that the bandages were properly issued, but he produced that evidence at the time of inquiry which shows that he had no bad intention. The disciplinary authority agreed with this finding, but at the same time observed that it was a case of attempted theft of Government property which amounted to misconduct. The Inquiry Officer has never held that it was a case of misconduct or of ^{attempted} theft. According to him the only fault of the applicant was that he did not produce the evidence at the time of ^{search} which he produced during the inquiry which indicated that he had no bad intention. On a perusal of the order of the disciplinary authority it is quite clear that ^{it} did not apply ^{its} mind and ^{dictate} gave a contrary findings. So this order is definitely bad in law and must be set aside. In this view of the matter the applicants (plaintiff's) suit was wrongly dismissed, therefore, this appeal should be allowed.

This application (Civil Appeal No. 18 of 1984)

is allowed and the applicant's (Plaintiff's) suit is decreed and the impugned order is set aside.

Now the question arises whether a direction should be issued for remanding the case to the disciplinary authority for passing a fresh order according to law and pass appropriate sentence. The applicant was working as a Compounder in that very Hospital. There is good evidence to show that he got the bandages issued for his wife who had received multiple injuries. According to the Inquiry Officer, the applicant had no bad intention and his only fault was that he should have proved the documentary evidence when he was checked ~~at~~ the Gate. The omission is of trifling nature. The occurrence took place in the year 1980. We are running in 1986. The applicant is a petty Compounder. He must have spent sufficient time, money and energy during this long time in filing the suit and this appeal, and then coming to this Tribunal. As a compounder he was attached to that Hospital. His wife was ill and had received injuries due to an accident. In the circumstances mentioned above, we do not consider it expedient in the interest of justice to remand the case. We think, the matter should rest.

Costs on parties throughout.

September 19th, 1986.
R.Pr.

[Signature]
Vice Chairman.

[Signature]
Member (A).