

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Transfer Application No. 203 of 1986 (O.S. 704/83)
alongwith

Transfer Application No. 179 of 1986 (O.S. 13/84)

Allahabad this the 15th day of Sept 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. S. Daval, Member (A)

Transfer Application No. 203/86
(O.S. No. 704 of 1983)

Shri Mohammad Hanif, Tailor 'A' T.No. 3020/333, C.F.S.
R/o House No. 227, Mohalla Tarin Jalal Nagar, Shahjahanpur.
Plaintiff/Applicant

By Advocate Sri M.K. Ibadhyay

Versus

1. Union of India, Ministry of Defence through Secretary, Ministry of Defence Production, New Delhi.
2. D.G.O.F., 6, Esplanade East, Calcutta.
3. Addl.DG.O.F.(OE.F.) Group, E.S.I.C. Bhawan, Sarvodaya Nagar, Kanpur - 5.
4. The General Manager, Ordnance Clothing Factory, Shahjahanpur.
5. Shri G.N. Chaturvedi, General Manager, Ordnance Clothing Factory, Shahjahanpur.

Defendants/Respondents

By Advocate Sri Ashok Mohiley.

Transfer Application No. 179/86
(O.S. No. 13 of 1984)

Mehd. Shafi, S/o Sri Middu Khan A/a 40 years, Sakin, Gauharpura, Shahjahanpur.

Plaintiff/Applicant

By Advocate Sri M.K. Ibadhyay

Versus

1. General Manager, Sri Jagjit Singh, Ordnance Clothing Factory, Shahjahanpur.
2. Addl. Director General, Ordnance Factories, Sarodaya Nagar, Kanpur.
3. Director General of Ordnance Factories, 44 Park Street, Calcutta.
4. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.

Defendants/Respondents

By Advocate Sri Ashok Mohiley.

Q U E R

BY Hon'ble Dr. R.K. Saxena, J.M.

These are two cases which were pending before the Civil Court, Shahjahanpur and were transferred to the Tribunal on its creation. The same question of law whether the order of punishment can be passed by the General Manager of the Factory when the Director General is shown as the appointing authority in the schedule, is involved in both the cases. Hence, they are taken up together for disposal.

2. The petitioners of both the cases are employees of Ordnance Clothing Factory, Shahjahanpur but the facts of the two cases are different which are disclosed separately. So far as the T.A. 205 of 1986 Mohd. Hanif Vs. Union of India and Others is concerned, it is stated that this Mohd. Hanif was a Tailor 'A' in the said Ordnance Clothing Factory, Shahjahanpur. He was apprehended hiding himself in the night of 7/8.3.1980 by the side of the perimeter wall near New Welfare Canteen and attempted theft of Government material. On checking, it was found that he had five bundles containing cut components of shirts and had covered the same in a blanket. On the basis of these facts, he was placed under suspension on 08/3/1980 and a charge-sheet dated 12.5.1980 under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, ^{was served.} One Munnan Tailor 'A' was also found committing theft in the same manner. He too was charge-sheeted and both of them were proceeded against in a common inquiry. On the completion of the inquiry, the disciplinary authority - General Manager recorded a finding whereby the services of the applicant - Mohd. Hanif and Munnan were terminated by the

order dated 08/3/1982. Feeling aggrieved by the said order of removal and without exhausting other departmental remedy, this applicant-Mohd. Hanif filed original suit no. 704 of 1983 in the Court of Munsif, Shahjahanpur. The case was, however, transferred to the Tribunal on its creation. Hence it is pending here.

3. The applicant - Mohd. Shafi of T.A. No.179 of 1986 was working as Tailor 'B' in the Ordnance Clothing Factory, Shahjahanpur. It was reported to the authorities on 24.9.1982 at 13.10 hours that some persons were gambling inside the factory. The security staff ~~were~~ reached there and apprehended some of the persons but this applicant ran away after pushing aside the security darban. The applicant was, however, placed under suspension on 27.9.82 and a charge-sheet dated 16.10.82 was served on him. The charges were denied and, therefore, the inquiry proceeded in accordance with the rules. Ultimately the disciplinary authority passed an order of removal from service on 02/5/1983. The appeal which was preferred by this applicant, had been rejected by the Additional Director General, Ordnance Factories, Kanpur on 11.11.1983. Feeling aggrieved by the said order, the applicant filed original suit no. 13 of 1984 in the Court of Munsif, Shahjahanpur wherefrom it was transferred to this Tribunal. The common plea in both the cases was that the orders of punishment were passed by the General Manager who was not an appointing authority and thereby ^{not} ~~competent~~ to inflict the punishment.

4. The case of Mohd. Hanif was decided by this Tribunal on 12.10.1987 and quashed the order of removal. The defendants (the authorities of Ordnance Clothing Factory) were, however, given liberty to initiate fresh departmental actions for the alleged misconduct of the

plaintiff/applicant of the case. The base on which the order of removal was quashed was the view taken by the Tribunal in O.A. 213/86 General Manager, Ordnance Equipment Factories, Kanpur Vs. Supriya Roy, decided on 01.9.1987 in which it was held that General Manager was not competent to act as disciplinary authority. The authorities of the Ordnance Factories moved review application which too was rejected by the Tribunal on 01.3.1988. The matter was, therefore, taken before the Hon'ble Supreme Court in S.L.P. which was decided on 31.1.1991. On the basis of the decision given by their Lordships of Supreme Court in Scientific Adviser to the Ministry of Defence and Others Vs. S. Danial g. Ors. etc. I.T. 1990 (2) S.C. 544, the case was remanded to investigate whether the General Manager had got power of dismissal of the applicant. This matter was again heard by the Bench and decided on 13.1.1992 and the order of punishment was set aside on the ground that the copy of the report of the Inquiry Officer as was laid down in 'Union of India Vs. Mohd. Ramzan Khan A.I.R. 1991 S.C. 471' was not given effect and, thus, the rule of *audi alterem partem* was violated. The matter was again taken before the Hon'ble Supreme Court and the S.L.P. was decided on 20.10.92. The order of Tribunal was quashed because the operation of the ratio in Ramzan Khan's case was prospective and thus, the case was again remanded for disposal. Hence it is before us.

5. The case of Mohd. Shafi was heard by this Tribunal on 15.3.1988 and on the ground that the General Manager who had passed the order of removal, was not competent to do so, quashed the order of punishment with an opinion to proceed afresh against the delinquent

employee within a period of 6 months, if so desired. This order was also challenged before their Lordships of Supreme Court and on the basis of the ratio in Scientific Adviser's case, the matter was remanded vide judgment dated 31.1.1991 with the directions to investigate if the General Manager had the authority to pass the order of removal. On remand, the matter was again heard by the Bench and decided on 13.1.1992 when the order of punishment was quashed on the ground that the copy of the report of Inquiry Officer as was laid down in Union of India and Others Vs. Mohd. Ramzan Khan's case was not given. This order of the Tribunal was again challenged before the Hon'ble Supreme Court and it was decided on 20.10.1992 alongwith the case of Mohd. Hanif and the case was remanded. Thus, this case too has again come up for disposal.

6. It may be pointed out that no new material by way of affidavit or counter-affidavit or rejoinder-affidavit has been brought on record. The learned counsel for the parties have, however, shown the copies of the rules and regulations in connection with the empowerment of General Manager with the authority of appointment and punishment.

7. We have heard Sri M.K. Upadhyay, counsel for the applicant in both the cases and also Sri A. Mohiley counsel for the respondents. We have also perused the record.

8. In this case the orders of removal have been assailed on behalf of the applicants/plaintiffson the ground that General Managers were not competent to pass

the orders of punishment. No other ground to challenge the orders of removal has been raised. The contention of the other party is that the General Managers were competent enough to record the order of punishment. It is an admitted fact that Central Civil Services (Classification, Control and Appeal) Rules, 1965 are applicable to the employees including the present applicants/plaintiffs of the Ordnance Clothing Factory, Shahjahanpur. The contention of the learned counsel for the applicants/plaintiffs is that the Director General, Ordnance Factories has been shown as the appointing authority as well as the punishing authority in the schedule so far as it related to the grade 'C' post and grade 'D' post in the Ordnance Factories and Ordnance Equipment Factories. The contention of the learned counsel for the respondents/defendants on the other hand is that this situation was obtainable in the Rules of 1965 but it was changed when on 02/3/72, the Director General had delegated to the General Manager the powers to make appointments to Class III and IV employees borne on the non-industrial and industrial establishment. It is further submitted that this delegation of power was done in exercising powers under proviso of Rule (1) of Rule 9 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. It has been brought on record as annexure-1 which was moved under Section 22(3) of Central Administrative Tribunals Act, 1985 on 16.11.1987. Sri A. Mohiley argues that to remove the confusion of any kind the schedule was amended on 26.11.1986 when General Manager was shown as the appointing authority as well as the punishing authority of all grade 'C' and 'D' post in Ordnance Factories and Ordnance Equipment Factories. The contention of Sri Mohiley therefore, is that the powers were delegated to the

General Managers on 02/3/1972 whereas these orders of punishment have been passed on 08/3/82 in the case of Mohd. Hanif and 02/5/1983 in the case of Mohd. Shafi. Thus, according to Shri Mohiley, the orders were passed by the competent authority and no illegality can be peeped through therein.

9. Sri M.K. Upadhyay contends that the delegation of power was not held valid as was held in the case of General Manager, Ordnance Equipment Factories, Kanpur vs. Supriya Roy and thus, the order of delegation on 02/3/1972 will carry no weight. He further argues that the amendment in the schedule of Central Civil Services (Classification, Control And Appeal) Rules, 1965 was made only on 26.11.1986 and thus, the orders of punishment which were passed prior to the said amendment should be held illegal. His emphasis is also to the effect that the S.L.P. which was filed challenging the order in General Manager Vs. Supriya Roy's case was rejected by their Lordships of Supreme Court. Sri Mohiley in this connection has placed reliance on the decision of the Supreme Court in Scientific Adviser to Ministry of Defence and Others Vs. S. Daniel and Others etc (supra). In this case the decision of Supriya Roy's case was under consideration of their Lordships of Supreme Court and it was observed that the dismissal in limine of S.L.P. could not be a ground for not considering the issue in those appeals which were before their Lordships on merits. It is, thus, clear that the ratio of Supriya Roy's case has got no relevance. In the case of Scientific Adviser's case their Lordships held that the powers could be delegated to any other authority by one which has been described in the rules. It is further held by their Lordships that the delegate authority may pass the orders not only of appointment

but of punishment as well. In view of this legal position, the cloud of confusion has altogether been clear. There is no dispute that General Managers were delegated the powers on 02/3/1972. Sri Mohiley has pointed out that the amendment in the schedule on 26.11.1986 was made because the powers of General Manager who were delegated were again questioned and there was no definite case law as has now come through Scientific Adviser's case of the Hon'ble Supreme Court and, therefore, by way of precautionary measure that amendment of schedule was done. In view of these facts, it is clear that the delegation of power on 02/3/1972 was good enough and it could not be doubted in the light of the amendment of the schedule. Since this delegation of power takes place prior to the recording of the order of punishment in two cases, the competence of General Manager cannot remain open for attack. In other words, we come to the conclusion that the General Managers were competent to pass the order of punishment on 08/3/82 in the case of Mohd. Hanif and 02/5/1983 in the case of Mohd. Shafi.

10. We have already held that no other ground of attack of the order of punishment has been taken by the applicant/plaintiffs. Thus, we presume that there was no other illegality or procedural irregularity in the cases. It has been averred in the written statement of the two cases that the due procedure was adopted and every opportunity of defence was given to these applicants/plaintiffs. It has not been specifically controverted.

11. Having considered these points and legal position, we come to the conclusion that there is no illegality in the orders of removal passed in the two

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cases. Thus, the cases filed by Mohd. Hanif and Mohd. Shafi are devoid of merits. They are dismissed. No order as to costs.

Shafi
Member (A)

D. M. M.
Member (J)

/M.M.M.