

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Transfer Application No. 898 of 1986

(O.S. 583/81)

Soney Lal

..... Applicant

Versus

Union of India and Others

..... Respondents

CORAM:

Hon'ble Justice U.C. Srivastava, V.C

Hon'ble Mr. K. Chayya, Member(A)

The applicant who joined the Ordnance Clothing Factory at Shahjahanpur under the Ministry of Defence as Supervisor 'B'(Clothing Technical) in 1963 as a direct recruit, was upgraded as Supervisor 'A' w.e.f. 9.12.1969 which post was later redesignated as Charge Man II in 1980. He was subjected to a disciplinary proceeding in 1979 for alleged misconduct for which he was placed under suspension on 14.5.1979, charge sheet dated 25.6.79 was issued and on denial of the charge regular enquiry was held. The Enquiry Officer submitted his report holding the charge established and accepting the report the Disciplinary Authority imposed punishment of dismissal of applicant vide order dated 28.3.80. The applicant preferred appeal and the Appellate Authority modified the punishment from that of

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dismissal to removal by its order dated 1.1.1981. Aggrieved the applicant filed a suit in the Court of Munsif City Kanpur praying for a decree of declaration that the order of dismissal dated 28.3.80 and the appellate order of removal of dated 1.1.81 are illegal, ultravires and that the applicant is continuing in service with all benefits attached to the post. The above suit was received in the Tribunal by way of transfer under section 29 of the Administrative Tribunal Act 1985 for adjudication.

2. The charges against the applicant are as follows:-

- (1) That on 8.5.79 at about 11.30 A.M the accused Govt. servant attempted to go out of main gate unauthorisedly on the false pretext that he was on opening duty.
- (ii) Committed attempt of theft of Govt. property on 8.5.79 at about 11.30 A.M Upon search the accused Govt. servant was found in possession of the govt. material viz cut components of two complete shirt Angola"

3. The impugned orders are assailed on the ground that the proceedings were instituted by an Authority lower in rank to the appointing

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authority and also the charge sheet was issued by an officer who was not competent to frame charges and also because the applicant was prevented from approaching the disciplinary authority and other authorities for explaining true facts and from making representations through the elected representatives like M.L.A.s and M.P.s as well as office bearers of the Regd. Trade Union of Factory Workers, on account of application of rule 20 of the CCS (Conduct) rules, 1964 and also that inquiry officer was appointed by the incharge officer who was lower in rank than the disciplinary authority namely Director General of Ordnance Factory, Calcutta and as such the inquiry was held by incompetent person and that the procedure prescribed under rule 14 was not followed by the Enquiry Officer and the findings of the inquiry are perverse and that the punishment order was not speaking order like wise appellate order was also not a speaking order. Disciplinary Authority did not apply it's mind to the proceedings on record.

4. The respondents have resisted the case and in their reply it is pointed out that reasonable opportunity was provided to the applicant and that prescribed procedure was followed and there was no violation of rules of disciplinary proceedings or Principle of natural justice. The applicant cross-examined all the witnesses and also examined

his own defence witness. The statements of witnesses were properly recorded and that the finding of the Enquiry Officer is not perverse and the orders of punishment ^{as that of} also the Appellate Authority are not illegal and that the Officer Incharge was empowered to exercise all powers of disciplinary ^{authority} as exercised by the G.M., and he was competent to suspend the applicant and pass orders in the disciplinary cases. There was no breach of any rule and that the orders are not arbitrary or malafide, they were passed after due consideration of the enquiry report and submissions of the applicant and material on record.

5. We have heard the counsels of the parties. It was contended on behalf of the applicant that the enquiry was not properly held and Authority who passed the order of punishment was not Competent Authority as he was ^{were} only Incharge G.M. of the office. These contentions/~~was~~ refuted by the counsel for the respondents who stated that inquiry was held in accordance with the rules and the applicant was given opportunity and that the orders were passed by the Competent Authority who was vested with all the powers of General Manager.

6. So far as the enquiry is concerned we have seen the record. The inquiry was held on different dates. The applicant and defence helper were

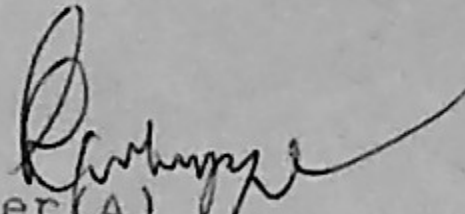
present and the witnesses were also cross examined by them and the enquiry officer concluded the enquiry and rendered his report taking into consideration the evidence adduced and material on record. In the circumstances it cannot be held that the applicant had no opportunity either to participate in the enquiry or to defend his case, The applicant also submitted very lengthy defence statement which was considered by the Disciplinary Authority. Regarding the competency of the Disciplinary Authority, it was brought to our notice that vide order dated 2.3.72 the Director General of Ordnance Factory, Calcutta had delegated all the powers of appointment of class III, class IV non industrial posts to General Managers/Officer Incharge/and also officer in temporary charge of Ordnance Factory. The above delegation was in exercise of powers conferred under Proviso of Sub rule (1) of Rule 9 of CCS(CC&A) Rules 1965. A copy of the order was also shown to us. It is well settled that the appointing authority is also vested the powers of removal, dismissal etc. The punishment order in these circumstances passed by the Disciplinary Authority cannot be said to be an order not passed by the Competent Authority. As the charges indicate the applicant was found making ~~the~~ attempt to go out of main gate at a time when he should have been attending to his duties. His statement is that


he was on duty from 6.30 a.m. onwards on the day of incident i.e. 8.5.79 was found to be incorrect as he was noted for duty in 9 AM to 7 P.M. shift. When a search was made, certain material concealed inside his underwear was detected and it was clothing material belonging to government. The seized material was kept on separate bundle and it was also identified at the time of enquiry by the witnesses who were present at the time of incident. The Disciplinary Authority has agreed with the findings of the enquiry report and passed the impugned order of dismissal. The Appellate Authority moderated the penalty from that of dismissal to removal. The Appellate order is very brief and cryptic and it has not considered the pleas taken by the applicant. It cannot be said that the order of Appellate Authority is an order passed in accordance with the rules. Accordingly, we set aside the appellate order dated 1.1.1981 and direct the Appellate Authority to reconsider the matter after issue of notice to the applicant and also by giving him an opportunity of personal hearing and pass such orders as are deemed proper in the circumstances. Let the above exercise be completed within two months from the date of receipt of the copy of this order. The applicant

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shall co-operate in expeditious disposal of this appeal. The application is allowed partly as above. Parties to bear their own costs.


Member (A)


Vice Chairman

Dated: 12th January, 1993:

(Uv)