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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 903 of 1986
(Original Suit No. 1773 of 1984)

S. P. Pandey	vs.	Plaintiff.
Union of India and Others		Defendants.

Hon'ble Mr D.K. Agrawal, J.M.
Hon'ble Mr K. Obayya, A.M.

(By Hon'ble K. Obayya, A.M.)

Original Suit No. 1773 of 1984 filed in the Court of Munsif, City Kanpur has been received in this Tribunal under Section '29' of the Administrative Tribunals Act, 1985 and registered as T.A. No. 903 of 1986 ~~as~~ ~~referred~~.

2. The plaintiff who was employed in the Ordnance Equipment Factory, Kanpur filed the above suit, praying for a decree of declaration that the order of removal dated 09.02.84 and the appellate order dt. 04.07.84 and the order dated 14.3.84 forfeiting his pay & allowances during the period of suspension is null and void, and to treat him to be continuing in service with all consequential benefits.

3. This Suit was earlier heard by a Bench of this Tribunal consisting of Hon'ble Mr Justice S. Zaheer Hasan, V.C. and Hon'ble Mr Ajay Johri, A.M. which allowed the Suit and quashed the orders under challenge. Thereafter, there was a review application filed by the defendants which was rejected. The defendants moved the Supreme Court in appeal. By an order dated 02.05.1988 in Civil Appeal No. 1695 of 1988, the Hon'ble Supreme Court set aside the orders of the Tribunal and remanded the case to be disposed of afresh after hearing both the parties with the observation that the Tribunal has not kept in view the scope and jurisdiction and power to interfere with the orders passed in disciplinary proceedings.

4. The brief facts of the case are that the plaintiff was appointed as Labour 'B' Grade in the Ordnance Equipment

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Factory, Kanpur in the year 1963. He was promoted to the post of Packer and from there to the post of Dresser and later to Checker. In 1976 on his exercising option, he was posted as Assistant Store Keeper in the Receipt and Bond Section. During February, 1979 a package containing 7850 numbers of needles supplied by Singer Sewing Machine, Bombay was received by registered post, parcel no. 4648. The parcel was entered in the Central Register at Sl. No. 3578. Later, after material inspection, a slip was prepared and store was taken charge on 10.03.79 under receipt and voucher No.S/41/88/LP dt. 10.03.79. This was against Supply Order No.PB-LP/39 dt. 09.01.79. By mistake, another parcel containing the same number of needles was received on 28.02.79. The entry in the Central Register was made at Sl. No. 3978 on 03.03.79 under the signature of the plaintiff. However, it was noticed that the second consignment was not sent to the Store, and it was not returned to the Supplier. The plaintiff was asked to trace it, and within a week's time, but he failed to do so. After which the plaintiff submitted reply stating that the consignment if received had been delivered to the Godown Keeper and the signature of the Godown Keeper obtained in the register. There was a preliminary enquiry and the plaintiff was kept under suspension with effect from 29.04.81. The charge-memo was issued to him on 14.08.81. The plaintiff denied the charge and regular enquiry was proceeded with. The Inquiry Officer concluded his enquiry and submitted a report on 09.02.84 holding the plaintiff guilty of the charges. The disciplinary authority agreed with the findings of the Inquiry Officer, removed the plaintiff from service by an order dt.9.2.84. The plaintiff preferred an appeal, in which the punishment was changed to one of compulsory retirement.

5. The plaintiff challenged the punishment order on the ground that the charge was issued to him by an officer, who is not competent to issue the same. The enquiry was not held properly, opportunity was not given to him to defend his case, disciplinary authority has not appreciated the evidence properly

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and the appellate authority has not applied his mind in disposing of the appeal and that the documents relied upon were not supplied to him. The plaintiff was also kept in the dark so far as the preliminary enquiry was concerned. He was also kept under suspension by the In-charge-Officer and that he is not governed by Rule 20 of the CCS(Conduct) Rules, 1964.

6. The respondents contested the Suit and they have denied that the officer issuing the charge-memo and the Officer keeping the plaintiff under suspension were not competent. According to them, the enquiry was held as per rules and opportunity was given to the plaintiff to defend his case. The disciplinary authority was competent to pass the order as he was In-charge of the post of General Manager. The disciplinary authority considered the enquiry report and agreed with the findings of the Inquiry Officer and passed orders of punishment. The appeal was considered on merits with reference to all the documents and it was only after such consideration the penalty was moderated from that of removal to that of compulsory retirement. It is also stated that all the documents were duly supplied and that the revocation of suspension was done without prejudice to the enquiry. The delay in enquiry was partly due to the change of the defence assistant made by the plaintiff.

7. In the rejoinder, the plaintiff mentioned that the procedure for receipt of the material is that the material is received by the In-charge, Receipt & Bond Section along with the original challan. The original challan is returned to the contractor/supplier's representative and the duplicate challan is sent to the Assistant Store Keeper, who receives the same after signing in the register. In case the packets are received by post parcel, the procedure is that the parcel is received at the gate and entered in the register. Thereafter, it is brought to the Establishment Section where entries are made and the same is subsequently brought to the In-charge of Receipt and

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Bond Section who receives the material. After making entry, the material is sent to U.A. Section for material inspection. The plaintiff admits that he has signed in the register and challan. Though he denied that he had anything to do with the actual receipt of the material. He also reiterated his contentions that the charge-sheet was issued by the Deputy Manager (Administration) who had no authority to initiate disciplinary proceedings and issue charge-sheet. He also stated that he was not afforded opportunity to produce defence witnesses. He further stated that he was not responsible for keeping the material in safe custody.

8. We have heard the learned counsel for the parties. The learned counsel for the plaintiff submitted before us that this was a case where opportunity was not given to the plaintiff to defend his case, and orders were passed without considering the evidence; there was no evidence to connect the plaintiff with the alleged offence. The learned counsel for the defendant stated that the enquiry was held in accordance with the rules, and the plaintiff was given opportunity to explain his case. The prosecution witnesses were cross-examined and the documents relied on were made available. His further submission was that the disciplinary authority and appellate authority were competent to pass orders, and the orders were passed after due consideration of the material before them.

9. The article of charge issued to the plaintiff was for gross misconduct, dereliction of duty, and causing loss to the Government. The imputation was that he received a consignment of 7850 Nos. of needles, entered the same in the register, but did not send them to the stores or return them to the suppliers.

10. We have gone through the record. It is noticed that the enquiry was held on 15.09.82, 15.03.83, 16.08.83,

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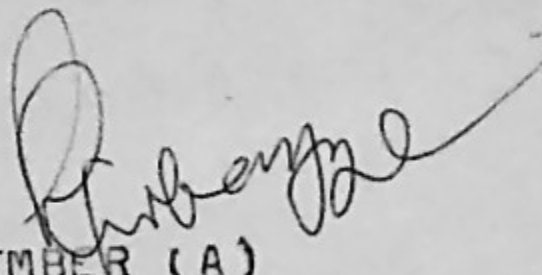
19.09.83, 20.09.83, 22.09.83, 07.11.83, 11.11.83, 12.11.83 and 15.11.83. The plaintiff was present during the proceeding on all the dates. The defence assistant was also present during the later part of the proceedings. It would appear that the enquiry was adjourned on 15.09.82 at the request of the plaintiff. Again on 15.03.83, 16.08.83, 19.09.83, it was adjourned at the request of the plaintiff to enable his defence assistant to be present at the enquiry. When the defence assistant could not attend the enquiry in spite of notice, the enquiry commenced on 20.09.83 where PW.1 K.M. Lal was examined. Since the plaintiff was present at the enquiry and also signed the statement recorded, he did not choose to cross-examine the witness, but another opportunity was given to the plaintiff to cross-examine PW.1 on 11.11.83, and PW.1 was cross-examined on that day. The defence assistant attended the enquiry from 07.11.83. PW.2 Sri B.N. Srivastava was also cross-examined by the plaintiff. PW.3, PW.4 and PW.5 were also cross-examined by the plaintiff. He also gave his defence statement and he said that he has no witnesses to produce on his behalf and he was himself examined. At the end of the enquiry, he also presented a written brief. In this background, it would appear that the contention that no opportunity was given to the plaintiff to present his case or the enquiry was not held properly is wholly unsubstantiated.

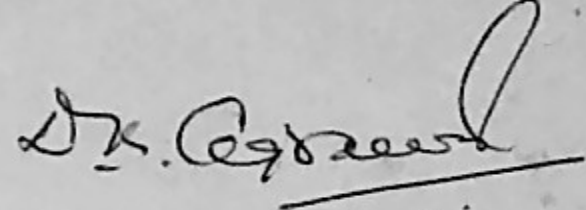
So far as supply of the documents is concerned, the article of charges itself indicated documents on which the charge was to be proved, and these documents were made available to the plaintiff by the Enquiry Officer. Further, it is noticed that he has not taken up this plea either in the course of the enquiry or at the stage of the appeal. We are of the view that the enquiry has been held as per rules and no irregularity is established. The punishment order was imposed by competent authority.

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The appellate authority has exercised his mind and disposed of the appeal and reduced the punishment to that of compulsory retirement. This shows due application of mind and appreciation of facts. It is well settled that the Tribunal cannot go into the question of quantum of punishment. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or competent authority where they are not arbitrary or utterly perverse. The Tribunal cannot go into the appreciation of the evidence. The Enquiry Officer in his report has clearly held that the charge was established and that the plaintiff is responsible for missing of the duplicate needles received in store. In these circumstances, we do not see any reason to interfere with the orders of punishment. We are of the view that there is no merit in the Suit and accordingly it is dismissed; Parties shall bear their costs.


MEMBER (A)


MEMBER (J)

November 16, 1990.
Allahabad.

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