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Central Administrative Tribunal,
Allahabad.

Registration T.A.No.1079 of 1986

Raj Kishore Applicant

Vs.

Union of India Respondent.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This application for review under Section 114 read with O.XLVII R.1 of the Code of Civil Procedure for setting aside the judgment and decree passed on 15.10.1984 by the IX Additional District Judge, Kanpur in civil appeal no.497 of 1983, has been received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The brief facts of this case are that the applicant while working as Machinist in the Ordnance Factory, Kanpur was charge sheeted for committing theft etc., in connection with an incident of 3.11.78 and after disciplinary proceeding, he was removed from service by the General Manager vide his order dated 3/4.12.1979. The said order was challenged by the plaintiff by filing suit no.108 of 1982 in the Court of Munsif City Kanpur on the grounds that the disciplinary proceedings against him were instituted by an officer in the temporary charge of

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the post of General Manager, who was not competent to do so. It was also alleged that no presenting officer was appointed by the disciplinary authority and the inquiry officer who had conducted the disciplinary proceedings against the applicant had misconducted himself by cross-examining the applicant and various other irregularities were committed during the course of disciplinary proceedings. The stand of the applicant was that the Director General Ordnance Factor Calcutta was the only person competent to initiate disciplinary proceedings against him and all the proceedings taken against him were illegal and without jurisdiction and the order passed by the disciplinary authority was not a speaking order and his removal violates the principles of natural justice and fundamental rights. The suit was contested by the respondent and according to it, all the proceedings taken against the applicant were taken in accordance with law by competent persons and the charges levelled against him having been established, he was rightly found guilty and punished for the same.

3. Out of the 3 issues framed by the trial Court in this case, issue no.1 was to the effect whether the punishment order dated 3/4.12.1979 is illegal, inoperative and ultra-vires as alleged in paragraph 15 of the plaint. Deciding this issue in favour of the plaintiff,

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it was held that the appointing and disciplinary authority of the plaintiff was the Director General, Ordnance Factory and the General Manager Ordnance Factory, who had issued the charge sheet to the plaintiff and had passed the order of punishment was not authorised under the rules to do so and the entire disciplinary proceedings were thus without jurisdiction. It was further held that the General Manager did not pass a speaking order showing the application of his mind and as such, the order of punishment is against the principle of natural justice and is void and ineffective under the law. The suit was accordingly decreed and the order of removal of the plaintiff from service was set aside. The defendants filed civil appeal no.497 of 1983 against the decision of the trial Court, which was heard and allowed by the IX Additional District Judge Kanpur on 15.10.1984 and it was held that the General Manager, Ordnance Factory Kanpur was the appointing authority of the plaintiff and there was no lack of jurisdiction on his part and the appeal preferred by the plaintiff to the Director General, Ordnance Factory was dismissed. The removal of the plaintiff from service, was, therefore, not illegal and void.

4. Aggrieved by this decision, the plaintiff filed a review petition before the

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appellate Court stating that the impugned order was a non-speaking order and violates rule 17 of the Central Civil Services (Classification, Control and Appeal) Rules, which is a manifest error of law and it escaped the notice of the Court. It was further alleged that the appointing authority does not come into play and only the disciplinary authority was competent to punish the plaintiff and the appeal filed by the plaintiff against the impugned order was disposed of by an incompetent authority without jurisdiction and this fact also escaped notice of the appellate Court. The review petition has now come before us and the learned counsel for the plaintiff raised all those points before us, which he had taken in his plaint against the validity of the disciplinary proceedings and the impugned order. The petition has been contested on behalf of the defendant-appellant and it was contended that it is not a fit case for review and it does not call for any interference by this Tribunal.

5. The question as to who is the competent disciplinary authority for class III and IV employees of Ordnance Factory Kanpur was being agitated in a number of cases before us. We, therefore, after hearing the arguments in this case directed the parties to produce the relevant rules of the Ordnance Factory Kanpur so that this question could be effectively decided for ever.

Before the arguments in this case could be reheard after the production of the additional material required by us, this Bench handed down its decision on the similar point in Appeal No.213 of 1986- General Manager Ordnance Equipment Factory Kanpur Vs. Supriya Roy under Section 29-A of the Administrative Tribunals Act XIII of 1985 on 1st Sept.1987 holding that the General Manager Ordnance Factory Kanpur is merely appointing authority of class III and IV employees of his factory but he was not the disciplinary authority till the notification dated 2.1.1987 issued by the President of India amending Central Civil Services (Classification, Control and Appeal) Rules (for short CCA Rules) and its schedules and the ratio of that case will equally apply to the instant case.

6. In short, we will like to deal with the controversy arising in this case. According to the entry no.(xi) in Part V of the Schedule of the said rules as it stood before amendment, the Director General, Ordnance Factories (for short DGOF) Calcutta was the appointing as well as disciplinary authority of class III and IV employees of the Ordnance Factories. After the amendment to rule 9 of the CCA Rules, the DGOF delegated his powers of appointing authority to General Managers and others. Neither any delegation regarding the disciplinary powers was made nor it could be possible under the rules and that is why, the President had to make an amendment in the rules and schedule and now, after 2.1.1987, the General Manager of the Ordnance Factory is both the appointing and disciplinary authority. The learned Addl.

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District Judge while allowing the appeal of the respondent had taken the view that as the General Manager was the appointing authority he could act as disciplinary authority. This view is not in accordance with the provisions of CCA Rules and the learned Judge lost sight of the definition of 'appointing authority' given in clause (a) of rule 2 of the CCA Rules. According to this definition, if the appointing authorities of any class of persons are more than one, the highest authority has to act as appointing authority for the purposes of these rules. The General Manager simply enjoyed the delegated powers of appointing authority and the real appointing authority of the applicant was DGOF. Thus according to the definition of the 'appointing authority' given in clause (a), the DGOF was his appointing authority and the view taken by the learned appellate Judge is not correct.

7. The definition of 'disciplinary authority' given in clause (g) of rule 2 states that the 'disciplinary authority' means the authority competent under these rules to impose on a Government servant any of the penalties specified in rule 11. According to the schedule, the DGOF alone was competent to impose penalties on class III and IV employees of the Ordnance Factory, Kanpur on the date the applicant was punished by the General Manager. The General Manager was, therefore, not competent to do so and he wrongly exercised the jurisdiction of 'disciplinary authority' in doing so. The view taken by the trial Court was, therefore, correct and the finding on this point was wrongly upset in appeal.

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8. The learned Additional Standing Counsel appearing for the respondents in this case invited our attention to the decision dated 28.7.1987 in T.A.No.862 of 1986- Union of India Vs. Janottam Kumar rendered by another Bench of this Tribunal at Allahabad of which one of us was a member. That case also related to the Ordnance Equipment Factory Kanpur and it was held in that case that the General Manager was the competent appointing and disciplinary authority of class III and IV employees of his Factory. Such finding was recorded on the statement given at the Bar on behalf of the Union of India that under a notification issued in 1971 even the powers of disciplinary authorities were delegated to the General Managers. The copy of the notification promised to be supplied could not be made available and after waiting for reasonable time, the aforesaid finding was recorded on the assumption that such powers were delegated to the General Managers. It now transpires that the notification dated 8.12.1971 issued by the Director of Ordnance Services applies to the civil employees of Command Stationary Depots and not to the employees of the Ordnance Factories. No notification of 1971 delegating the powers of disciplinary authority to the General Managers of the Ordnance and Equipment Factories ~~was~~ produced on behalf of the respondents before us in the present case. On the other hand, the learned counsel for the respondents has produced two notifications dated 2.3.1972 and 15.10.1972 issued by the DGOF. Under the first notification, he delegated his powers of appointing authority to General Managers of the Ordnance Factories and under the second, it was clarified that after the delegation of the powers of appointing authority, there was now no need to delegate the powers of punishing authority. In our opinion, these notifications are of no help to the respondents on the point in issue.

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9. The decision in the case of Supriya Roy (Supra) was given by this Bench subsequent to the decision in the case of Janottam Kumar (supra) after considering all the relevant notifications and rules and as such, we are bound to follow the law laid down in that case on the point in controversy. As the decision in the case of Janottam Kumar (Supra) relied upon by the respondents was based on a statement of fact given at the Bar, which was later on found to be incorrect, the same cannot be cited as a good precedent and we are unable to follow the said decision.

10. In view of the above considerations, we find that the learned appellate Judge did not take into consideration the relevant provisions of CCA Rules for determining the disciplinary authority of the applicant and as such, there is sufficient ground for allowing this review petition. It is not necessary to consider the other points raised by the applicant in his appeal as the same will be considered when his appeal is heard by the Tribunal.

11. The review petition is accordingly allowed and the judgment and decree dated 15.10.1984 passed by the IX Additional District Judge, Kanpur are hereby set aside. The civil appeal no.497 of 1983 Union of India Vs. Raj Kishore shall be registered as a separate transferred application and be listed for hearing in due course. The parties shall bear their own costs of the review petition.

MEMBER (A)

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MEMBER (J)

Subarao
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Dated Sept. 14, 1987
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Reserve

Central Administrative Tribunal, Allahabad.

Review Application No.4-B-T of 1988

Union of India , , ,

Applicant

Vs.

Raj Kishore , , ,

Respondent

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This Review application under Section 22 (3)(f) of the Administrative Tribunals Act XIII of 1985 read with rule 17 of the Central Administrative Tribunal (Procedure) Rules 1987 is directed against our order dated 14.9.1987 pass in T.A.No.1079 of 1986. The order dated 14.9.1987 sought be reviewed was passed on an application for review moved by the respondents against the judgment and decree passed by IX Additional District Judge, Kanpur in Civil Appeal No.497 of 1983. In view of the ban imposed on the powers of review by rule 9 of Order 47 CPC, this application to review an order made on an application for a review of the decree is not maintainable under the law.

2. There is yet another reason to reject this application on merits. The main ground taken by the applicant in the review petition is that this Bench had based its judgment under review on its earlier decision dated 1.9.1987 in the Civil Appeal General Manager Vs. Supriya Roy and the said judgment is not yet final as the applicant has applied for the review of the said judgment. In the meantime, the review petition filed on behalf of the applicant against the decision dated 1.9.1987 in the aforesaid case has been disposed of and the decision given on 1.9.1987 was maintained. In view of the finality

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attached to the said decision, it is now not open to reconsider this review petition on merits.

3. The review petition is accordingly dismissed without any order as to costs. The Civil Appeal between the parties to the instant case be now listed for hearing as ordered in our judgment under review.

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MEMBER (A)

S. Narayan
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MEMBER (J)

Dated: 10th March, 1988
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