

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

ORIGINAL APPLICATION NO. 1206 OF 1987.

Dated: This the 29th day of September, 1995.

QUORUM.

Hon'ble Mr. Justice B.C. Saksena, V.C.

Hon'ble Mr. S. Das Gupta, Member(A).

Ram Prakash, son of Prag Narain, Labour 'B' Ordnance Clothing Factory, Shahjahanpur; C/o Suresh Kumar Saxena, Premnagar, Colony, Barujai, Shahjahanpur.

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(By Counsel Sri RK Tiwari).

Versus

1. The Additional Director General, Ordnance Factories, Ordnance Equipment Group, Sarvoday Nagar, Ministry of Defence, Government of India, Kanpur.
2. The General Manager, Ordnance Clothing Factory, Shahjahanpur.
3. Shri SP Mishra, at present Joint General Manager, Officer in Temporary Incharge, Ordnance Clothing Factory, Shahjahanpur.
4. The Director General of Ordnance Factories, Ministry of Defence, Government of India, Calcutta.
5. The Secretary, Ministry of Defence, Government of India, New Delhi.

• • • • • Respondents.

(By counsel Sri A. Mahiley)

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By Hon'ble Mr. S. Das Gupta, Member(A).

This O.A. has been filed challenging the order dated 24.1.1987 by which the penalty of removal was imposed on the that applicant. It has been prayed in the said order be quashed

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and the applicants be taken back in service and be treated to be in service from the date of his suspension and full pay and allowances be paid to him as per rules.

2. The applicant was working as a Labour 'B' in the Ordnance Clothing Factory, Shahjahanpur. On 1.8.1985 he was suspended and a charge memo was served on him on 4.8.1985 for major penalty. An inquiry was held and after recording the statements of the witnesses, the Inquiry Officer in his report dated 14.6.1986 concluded that the charges against the applicant were not proved. The General Manager of the Factory after considering the findings of the Inquiry Officer disagreed with the same and by its order dated 24.1.1987 removed the applicant from service with immediate effect. The applicant submitted an appeal against the order of removal. It is stated that although more than six months had expired since the submission of the appeal, the appellate authority has not yet passed any order, and this led the applicant to approach this Tribunal seeking the aforesaid reliefs.

3. The applicant's case is that as he was Union Vice-President, he was being harassed for his Union activities. It is stated that on 29.7.85 on which the incident leading to his suspension and charge sheet took place, he was not on duty. The applicant has claimed that he never took part in the alleged beating of Vinod Babu, which was the cause of action in the disciplinary proceedings and, therefore, the witnesses which were examined ^{for} _{in} the prosecution specifically stated in their statements that they had not seen the applicant/manhandling Vinod Babu. He was, thus, falsely implicated in this case due to his union activities.

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4. The applicant has further alleged that the suspension order was issued by the Officer in temporary charge, who was not the competent authority to issue the order of suspension. He has also taken the ground that the said officer was not competent under the law to initiate proceedings against the applicant and as such the entire proceeding is vitiated. The further ground taken by him is that a co-accused in the alleged incident of beating has been retained in service while the applicant has been removed and thus the applicant has been deprived of his fundamental right of equality and equal protection of law. The applicant has also averred that the General Manager of the Factory was not competent to impose order of removal on him.

5. The respondents have filed a counter affidavit in which it has been stated that both the applicant and one Hira Lal Shukla were placed under suspension and thereafter charge sheet for beating one Vinod Babu inside the Factory premises was served. A common inquiry was instituted. After the inquiry was ordered the co-accused Hira Lal preferred an appeal to the appellate authority enclosing photostat copy of affidavits of three persons who had witnessed the incident. These affidavits along with others were relied upon by the disciplinary authority while regarding its disagreement with the Inquiry Officer's finding that the charges were not proved against the applicant. They have stated that the General Manager of the Ordnance Clothing Factory is not competent authority to impose major penalty on the applicant and the Officer in Temporary Charge is empowered to place the applicant under suspension and also to order appointment of an Inquiry Officer. It has been further stated that

the appeal preferred by the applicant was rejected by the appellate order dated 23.5.1988 and communicated by the order dated 21.7.1988 to the applicant. It has been further stated that there has been no discrimination against the applicant with regard to penalty imposed.

6. The applicant has filed a rejoinder affidavit reiterating the contentions made in the original application. It is further stated that he had never received copy of the appellate order.

7. The grounds taken by the applicant relating to the jurisdiction of the Officer in Temporary Charge in suspending him and initiating disciplinary action against him and of the General Manager of the Clothing Factory in imposing the penalty of removal on him are without any supporting rules. The General Manager is the Chief Executive of the Establishment in which the applicant was working as a Labour 'B'. In normal course, therefore, he would be the competent disciplinary authority in respect of the applicant unless otherwise shown. No rule has been quoted before us by the applicant to indicate otherwise. Similarly the Officer, who was holding temporary charge of the Factory should also be normally competent to place the applicant under suspension and to initiate disciplinary proceedings, as has been specifically averred by the respondents. In the absence of any evidence to the contrary we have no reason to disbelieve the statements of the respondents.

8. The substantive ground taken by the applicant is that the Inquiry Officer had found the charges as not established against him and yet the disciplinary authority has imposed penalty of removal from service. We have seen from the records

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that all the witnesses who were examined by the Inquiry Officer had stated during the course of inquiry that they had not seen the applicant beating Vinod Babu, which was the basis of the charge sheet. The Inquiry Officer, therefore, came to the conclusion that the charges against the applicant were not proved. The findings of the Inquiry Officer, however, were not accepted by the disciplinary authority. He disagreed with the findings of the Inquiry Officer and recorded his own finding. The CCS(CC & A)Rules clearly provide that a disciplinary authority is fully at liberty to disagree with the findings of the Inquiry Officer, but in that case he shall record the reasons for his disagreement. The disciplinary authority has recorded reasons for his disagreement and it is necessary for coming to a decision of this controversy to reproduce the findings of the disciplinary authority. The findings which were recorded in enclosure to the impugned order of penalty are as follows:-

"I have gone through the proceedings of the enquiry and disagree with the findings on the reasons given hereunder:-

The Inquiry Officer has failed to take into consideration the documentary evidence listed as Annexure III to the Charge Sheet. In his statement dated 29.7.85, Shri Vinod Babu has clearly stated that he was called and beaten by Shri Ram Prakash and that Shri Hira Lal caught hold of him for letting Shri Ram Prakash escape. Similarly S/Shri Kishan Lal, Noor Hasan, Chironji Lal and Mhd. Shami in their statement dated 30.7.85 have confirmed the involvement of Shri Ram Prakash and Hira Lal Shukla in calling and beating Shri Vinod Babu. In view of this evidence, the statement of these individuals in the enquiry appears to be given under some incentive or pressure and can not be relied upon. The enquiry report has also been confirmed by Sri Ahirwar. Moreover, the affidavits of

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of S/ Shri Noor Hasan, Chitonji Lal and Kishan Lal, submitted by Shri Hira Lal Shukla himself, are to be relied upon more being on oath than statement in the enquiry.

The undersigned has, therefore, come to the conclusion that the charge against Shri Ram Prakash for manhandling Shri Vinod Babu is therefore proved by the above evidence combined with other evidence on record.

Shri Hira Lal Shukla, co-accused, caught hold of Shri Vinod Babu instead of stopping Shri Ram Prakash from beating Vinod Babu, thus he managed to let Shri Ram Prakash escape from being caught by Shri Vinod Babu. The statement of Shri Vinod Babu dated 29.7.85 listed in Annexure III of the Charge Sheet Memo is relevant. The affidavits stated above also establish the above act of Shri Hira Lal Shukla. Therefore the charges against Shri Hira Lal Shukla for active connivance in manhandling Shri Vinod Babu is established."

9. It would be clear from the findings of the disciplinary authority that he has come to the conclusion that the charge against the applicant of manhandling Vinod Babu has been proved by statements of Vinod Babu, Kishan Lal, Noor Hasan, Chironji Lal and Mohammad Shami, ~~In their statement~~ recorded immediately after the alleged incident of manhandling in a preliminary enquiry. He has also relied on affidavits of Noor Hasan, Chironji Lal and Kishan Lal submitted by Hira Lal Shukla, who was the co-accused. It is also clear that in view of the earlier statements given by various witnesses, their ^{subsequent} ~~second~~ statement to the effect that the applicant was not involved in manhandling has not been believed by the disciplinary authority, who has taken a view that statements recorded before the Inquiry Officer were due to certain extraneous considerations.

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10. It is, therefore, clear that the disciplinary authority has ^{held} ~~not~~ the charge against applicant as proved only on the basis of statements recorded in preliminary inquiry in which the applicant had no opportunity of cross-examining the witnesses and on certain affidavits filed by some of the witnesses, not before the Inquiry Officer ^{but} ~~to~~ given to one of the co-accused.

11. A similar controversy came up before a Bench of this Tribunal in the case of R.N.Pathak Vs. Union of India, reported in 1987(2)A.T.C. 822. In that case also certain statements were given by witnesses at the time of incident and these were retracted both in the departmental proceedings. The Tribunal was of the view that although high standard of proof required in a criminal case for proving a charge beyond reasonable doubt does not apply to departmental proceedings, there should be some legal evidence in support of the charge even in a departmental proceeding. The tribunal held that since the findings on the charges proved against the applicant were based on no evidence before the Inquiry Officer, the order of removal from service was accordingly quashed.

12. Controversy before is is fully covered by the ratio decidendi of the decision in R.N.Pathak's case. In this case also statements given in a preliminary enquiry were retracted in the contronted inquiry held under the statutory rules relating to disciplinary proceedings. Also, as in the case of RN Pathak, the disciplinary authority has relied on the statements recorded in the preliminary inquiry and in addition has also relied on certain affidavits which were neither filed before the preliminary inquiry nor before the regular inquiry under the statutory rules.

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13. = It is the settled decision of law that the Courts/Tribunals shall not normally reappraise the evidence on the basis of which the disciplinary authority has taken any action. The Courts/Tribunals can and should, however, interfere in those cases where the findings of the Inquiry Office/disciplinary authority is based on no evidence. In this case, as in the case of RN Pathak, there is no direct evidence to prove the charge, even the complainant having retracted his statement before the Inquiry Officer and, therefore, the findings of the disciplinary authority are based on no evidence. The impugned order of the disciplinary authority is, therefore, bad in the eyes of law.

14. So far as the appellate order is concerned, the applicant has denied having received a copy of the same. Respondents, however, have specifically averred that the appeal has been disposed of by an order dated 23.5.1988. A copy of the order, however, has not been annexed to the counter affidavit.

15. We have noticed that this O.A. was filed on 17.1.1987 and it was admitted on 7.4.1988, whereafter notices were issued to the respondents. It is, therefore, clear that the order dated 21.7.1988 by which the appeal of the applicant is stated to have been rejected was passed during pendency of this O.A. Section 19(4) of the Administrative Tribunals Act, 1985 specifically stipulates that every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of an application pending immediately before its admission shall abate when such application is admitted by a Tribunal and no appeal or representation in relation to such matter

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shall thereafter be entertained. The respondents, therefore, have no jurisdiction in disposing of the appeal of the applicant after the O.A. was admitted. The appellate order is, therefore, unconstitutional.

16. In view of the foregoing the application is partly allowed. The impugned order dated 24.1.1982 is set aside. The applicant shall be reinstated forthwith, and the entire intervening period from the date of his removal from service till the date of his reinstatement shall be treated as on duty for all purposes except the back wages which, however, shall not be paid, to the applicant. So far as period of suspension is concerned, the disciplinary authority shall pass orders in accordance with law as to how such period shall be treated within a period of 3 months from the date of communication of this order. The parties shall bear their own costs.

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