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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.462 of 1987

Mohd. R.U. Khan Applicant

Versus

Union of India & Others..... Respondents.

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

This is a petition received under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner has challenged the order dated 2.6.86 passed by the General Manager, imposing a penalty of recovery of Rs. 702/- as costs of two Reamers without conducting the enquiry and on the grounds that the order is not self contained and speaking and that the Director General, Ordnance Factory is the proper authority for imposing the penalty under Rule 11 and the order was issued by the General Manager who was not competent to issue the same. The petitioner has also challenged the Appellate order passed by the Deputy Director General Ordnance Factory confirming the penalty on 16.4.87 on the grounds that it is also a non speaking order and that the appellate authority i.e. Deputy Director General Ordnance Factory did not possess the power of the appellate authority which vested in an officer of a higher rank than the Director General.

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2. The applicant is a Machinist at the Small Arms Factory, Kanpur. He is working as a highly skilled grade II Machinist. According to the applicant he has been working efficiently and to the entire satisfaction of the Department and possesses a clear meritorious record of service. He was taking keen interest in the Union activities and was elected as a Joint Secretary. The administration thereupon became vindictive due to his Union activities and transferred him to another machine which performs a highly precision task. The applicant has said that on this machine one Reamer could be used on a number of components and at the same time a number of Reamers could be used only on one component alone. On 14.9.85 he had produced a number of components which were tested and passed and there were no complaints but a complaint was made against him for breakage of the Reamers. He has said that this is a normal routine in the production of the component and the first Reamer broke while completing the 28th job and the 2nd on the 10th job. Besides this ~~also~~³ on earlier occasions ³ too three Reamers had broken while working on the machine but no adverse notice was taken by his Incharge. For the breakage of these two Reamers a chargesheet was issued to him by the General Manager. Since he is not the disciplinary authority he could not initiate the disciplinary proceedings nor he could impose the

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penalty under Rule 11. However the applicant submitted his explanation and requested that a departmental enquiry may be constituted to enquire into the matter but no enquiry was held and no opportunity was given to him to lead his evidence. Ultimately the order imposing the penalty of recovery of Rs. 702/- was passed arbitrarily and without jurisdiction by the General Manager on 2.6.86. The applicant had appealed against this order to the Chairman, Ordnance Factory Board but the same was disposed of by the Deputy Director General, Ordnance Factory. The Reamers are a class 'C' stores and consumable items and they are likely to break while working on the lathe, ³¹ ~~as used~~ and ^{the 31} cannot be treated as an offence. He has therefore prayed for setting aside of the order dated 2.6.86 and the appellate order dated 16.4.87 and for issue of a direction to stop the recovery of the amount and the refund of the amount already recovered alongwith the interest.

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3. In their reply the respondents have said that the applicant had broken two Reamers due to his carelessness. According to the report received by the administration the applicant ^{38 used to} demand one Reamer for completion of every five jobs. In reply to the show cause notice he denied the charges. He has stated that he manufactured 27 and 10 jobs from

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the said Reamers. On his explanation, comments were asked for from the Foreman of the concerned Shop. After considering the whole case carefully the disciplinary authority imposed the penalty which is under dispute. The appeal preferred by the applicant was also rejected by the appellate authority. In regard to his claim for satisfactory working the applicant has been taken up in 1975 and 1977 for sleeping on duty while in 1976 he was also taken up for inefficient performance resulting in his incurring loss. The Factory workers are accountable for stores issued to them and if any losses are attributable to their negligence the same are recovered from them. According to the respondents the applicant had applied excessive ^{hand} ~~in~~ pressure deliberately resulting in the breakage of the Reamers. The General Manager is the disciplinary authority in respect of all the Industrial workers and is fully competent to initiate proceedings. The applicant was also afforded reasonable opportunity to defend his case. His representation was carefully considered by the disciplinary authority before imposing the penalty. The respondents have maintained that it was due to the adamant attitude of the applicant that the Reamers were broken. Another operator who had been detailed in his place now has given satisfactory production. The applicant has also not exhausted the alternative

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remedy available to him of seeking a review provided under Section 29 of the Central Civil Service Rules.

4. In his rejoinder the applicant has said that the life of a Reamer is uncertain like any other class 'C' store and it is a normal feature of the production in the Workshop. He has maintained that the General Manager is not competent to impose any of the penalty prescribed under Rule 11 and it is only the Director General, Ordnance Factory who could impose a penalty.

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5. We have heard the learned counsel for both sides. The submissions made before us were that no proper enquiry was done before the imposition of the penalty and the applicant was not heard before the imposition of the punishment which he had requested in his explanation. It was also submitted that the General Manager had no jurisdiction to impose the penalty. The learned counsel for the respondents however maintained that General Manager was fully competent to issue a minor penalty and an enquiry was not required for imposition of a minor punishment. We have also perused the case file. In the Schedule showing the authorities competent to impose penalties with reference to Rule 11 the Director General, Ordnance Factory has been shown ^{as} the authority competent to impose all penalties. Rule 11 deals

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with minor and major penalties. The learned counsel for the respondents however mentioned that these powers have now been delegated to the General Managers who have become competent as far as disciplinary cases are concerned for imposing minor and major penalties. We have however not been shown any documents to show if such a delegation has since been made in regard to the imposition of a penalty of recovery of pecuniary losses caused to the Govt. by negligence. The Govt. instructions say that the penalty of recovery can be imposed only when it is established that the Govt. servant was responsible for a particular act of negligence or breach of rules and that such negligence or breach caused the loss. Therefore the disciplinary authority has to correctly assess and comment in a realistic manner ^{on} the contributory negligence on the part of the officer and while determining any omission or lapse on the part of the officer the bearing of such lapses on the loss considered and the extenuating ^{we} circumstances in which the duties were performed should be given due weight. The only report on which action has been taken is the report of the Foreman in which he has said that the breakage was due to application of undue ^{hand} ~~any~~ pressure. There is no doubt that breakage of a tool can be attributed to the negligence of an operator but at the same time it can also result

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from the quality of the tools depending on its tampering and hardening. We do not find that the report of the Foreman reflects correctly on the ^{of} ~~cause~~ ^{cause} leading to the breakage of the Reamers. The position would have become clearer if as requested by the applicant in his explanation he would have been heard by the competent disciplinary authority. Though it was not necessary to conduct a proper disciplinary enquiry for imposition of a minor penalty, ^{of} the Govt. orders in regard to the imposition of the penalty of recovery of pecuniary losses also envisages correct determination of the omissions or lapses which might have led to the loss and also giving weight to the extraneous circumstances in which the duties might have been performed and ~~as~~ this was only ^{if possible} ~~possible~~ if the delinquent had been given an opportunity to be heard. We therefore feel that ends of justice will be ~~made met~~ ^{met} if the disciplinary authority hears the applicant and then takes a decision on his responsibility for the breakage of the Reamers. Imposing a penalty mainly on a report of the Foreman of the Shop which is also ^{of} ~~very~~ ^{very} sketchy has resulted in ~~injustice~~ ^{injustice} ~~and~~ ~~is~~ ~~not~~ ~~fair~~ ~~and~~ ~~is~~ ~~not~~ ~~just~~ ~~and~~ ~~is~~ ~~not~~ ~~fair~~. We therefore set aside the appellate order as well as the order of the disciplinary authority and direct that the respondents will hear the applicant and then a decision will be taken by the competent disciplinary authority on the degree of the responsibility fixed on the applicant. The petition is disposed of accordingly. Parties will bear their own costs.

श. ज. श्री
Member (A)

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Vice Chairman

Dated the 11th Feb., 1988