

(4) (A2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL -ALLAHABAD  
BENCH ALLAHABAD.

O.A. No. 1300 of 1988

Sri K.L. Sharma..... Applicant.

Versus

Union of India & others..... Opp. Parties.

A N D

O.A. No. 1301 of 1988

Mohd. Muslim..... Applicant.

Versus

Union of India & others..... Opp. Parties.

A N D

O.A. NO. 1302 of 1988.

Saroj Kumar..... Applicant.

Versus

Union of India & others..... Opp. Parties.

Hon'ble Mr. Justice U.C.Srivastava- V.C.  
Hon'ble Mr. A.B. Gorthi - Member (A).

( By Hon'ble Mr. Justice U.C.Srivastava- V.C.)

All the above noted three applications are disposed of, with the consent of the learned counsel for the parties, by means of this common judgment because the facts of all the three cases as also the questions of law raised are similar. The only difference is that the applicant in O.A. No. 1300 of 1988 K.L. Sharma was initially awarded the punishment of removal from service, whereas the applicants in the remaining two applications were awarded the punishment of compulsory retirement from service.

2. These applications have been directed

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against the punishment order dated 11.9.87 passed by the General Manager Ordnance Equipment Factory Kanpur imposing on the applicants the penalty of removal/compulsory retirement from their service from 11.9.87 and the appellate order reducing the punishment by taking a lenient view substituting the penalty of removal/compulsory retirement from service ~~as a refrigeration filter~~ to that of reduction of pay to the minimum of the pay scale of Filter-B (Refrigeration) for a period of one year cumulative effect and directing that the applicants be reinstated at the Ordnance Factory Shahjahanpur instead of Kanpur and also the further contention is that in the intervening period from the date of punishment till the date of reinstatement in service i.e. from 12.9.87 to 28.8.88 may be treated as 'dias non' and said period will not count towards accrual of Pension, Gratuity and increments etc. The applicants were working as Refrigeration Filters in the Ordnance Factory Shahjahanpur.

3. The applicants vide order dated 29.3.1984 they were served with a charge-sheet telling him ~~disciplinary proceedings would be initiated~~ that ~~their employment was to be finished as against~~ him under rule 14 of the C.C.S. (CCA) Rules 1965. The charge against the applicants was that while functioning <sup>as</sup> refrigeration <sup>Filter</sup> the applicants ~~were~~ committed gross mis-conduct of pilfering of Govt. material on 21.3.84 in connivance with some other co-workers, ~~managed~~ hiding some electrical goods in A.C. Machines prior to sending them to inspection bungalow on 21.3.84 and ~~removing~~ <sup>removing</sup> ~~recovered~~ them from the said machines in the inspection bungalow at an appropriate time on the same day. It was further mentioned that one 125 Watt. Mercury

lamp and rods were pilfered in the A.C. Machine was allegedly recovered from his possession at his residence. In the second charge against the applicants, they were charged with gross misconduct connected with the unauthorised possession of the alleged Govt. material. An Inquiry Officer was appointed and inquiry proceeded. After conclusion of the inquiry the inquiry officer submitted inquiry report to the disciplinary authority. Satisfying with the inquiry officer's report the disciplinary authority passed the said order. The applicants filed an appeal and the appellate authority reduced the punishment order and directed for reinstatement of the applicants in service with the other penalty referred to above. Feeling aggrieved with the impugned order the applicants have approached this tribunal. The applicants have challenged the inquiry proceedings on the ground that the disciplinary authority General Manager was not competent authority and the disciplinary authority of the applicants had no power to initiate the disciplinary proceedings and further that full opportunity to defend them was not given. So far as the first <sup>plea</sup> is concerned the same stands negatived. A decision in the case of ~~Scientific Advisor K M of I&T vs S. Daniel Ram Krishna Versus Union of India~~ decided by the Supreme Court reported in (1991) 15 A.C. 799. As such this <sup>plea</sup> has got no force and so far as the inquiry proceedings is concerned, we have noticed that the applicants were given full opportunity to defend themselves. They were given opportunity to have an Assistant and also to examine and to cross-examine the witnesses. The applicants through Assistant also submitted a brief after taking the copy of the inquiry report. The applicants have not raised <sup>in his</sup> grievance that they were prejudiced and they <sup>had</sup> not filed any

objection against the inquiry officer's report. As such in view of what has been said above the plea of the applicants that they <sup>were</sup> was deprived of the opportunity to defend <sup>themselves</sup> himself cuts <sup>no</sup> ~~none~~ else.

4. The learned counsel contended that by appellate order numerous punishments have been given but the same could not be done as has been noticed earlier and the particular punishment has been given. The appellate Authority was competent to award the said punishment and so far as the intervening period is concerned a duty was cast upon the appellate authority to specify as to how the same was <sup>to be</sup> treated. The appellate authority is directed that the said period will be treated as 'dies-nova', but while making this observation some clarifications remains. Some <sup>were given</sup> clarifications remains as a guide, ~~as has been~~ given to this word "dies-nova". The appellate Authority however has not made any observation regarding the suspension period, we hereby make it clear that the applicants are entitled to full salary during the period <sup>they were</sup> under suspension and so far as the period which has been treated as not ~~to be~~ to be counted should be counted in service and also towards pensionary benefits and gratuity etc, It will be open for the applicants to approach the appellate authority itself to specify as to how the appellate authority to recall that part of the order by which apart from observing that the said period will not be counted towards pay and leave, It has further observed that it would not be also counted towards pensionary benefits. It is open for the appellate authority to delete the said <sup>particular</sup> ~~part~~ in case the applicants approach the appellate authority within a period of one month from today with the <sup>above</sup> ~~above~~

observation regarding this part and payment of salary  
for suspension period. The application is otherwise  
dismissed. No order as to the costs.

*thomasj.s.*  
Member (A)

*lu*  
Vice Chairman.

Dt: February 19, 1992.

(DPS)