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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

Original Application No. 540 of 1988.

Shri Hira Lal Applicant.

Versus.

Union of India & others Respondants.

Coram:

Hon'ble Mr. A.K. Sinha, Member (J).,

Hon'ble Mr. V.K. Seth, Member (A).

J U D G M E N T.

(By Hon'ble Mr. A.K. Sinha, Member (Judicial)).

1. The applicant aforementioned, who was a Lascar bearing Pass No.29W/10, under the Air Officer Commanding, Bamrauli Air Force Station, Bamrauli, was charge sheeted on 24.5.86 as per Annexure I to complaint I, alleging misconduct and misbehaviour on his part and the charges were as follows:-

1. That the said Shri Hira Lal Lascar Pass No.29W/10 while functioning as Lascar at Education Section of No.29 Wing AF Stn. Bamrauli during the period 01 Apr.'86 to 05 May'86 reported late on the following dates:-
1/4/86 to 3/4/86, 5/4/86, 7/4 to 12/4, 16/4 to 19/4, 23/4 to 26/4 and 29/4 to 3/5/86.
2. That during the period while functioning in the aforesaid office, the said Shri Hira Lal Lascar Pass No.29W/10 disobeyed the orders issued by ACC through medium of SRC vide S1 Nos.78/86, 82/86, 88/86 and 95/86 the camp cleaning programme.
3. That during the aforesaid period and while functioning in the said office, the said Hira Lal Lascar Pass No.29W/10 at Station Education Section of No. 29 Wing AF Stn Bamrauli during from 01 Apr 86 to 03 May 86 reported late on the following dates and timings as indicated below:
09 15Hrs. on 1.4.86, 0900 Hrs. on 2/4, 3/4, 5/4, 7/4, 8/4, 9/4, 10/4, 11/4, 12/4, 16/4, 17/4, 18/4, 19/4, 23/4, 24/4, 25/4 08-45Hrs. 26/4, 0900 Hrs. 29/4/86, 30/4, 1/5, 2/5 and 3.5.86.

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4. That during the aforesaid and while functioning in the aforesaid office the said Shri Hira Lal failed to attend the work on 21/4, 23/4 and 5/5/86 from 06-30Hrs. for camp cleaning programme as per the SRC S1 Nos. 82/86, 88/86 and 95/86.

The first two charges relate to his negligence and dereliction in duty and the last two charges relate to his misconduct and misbehaviour. The applicant was directed to submit his written statement and his defence and whether he desires to be heard in person within ten days of the receipt of the memorandum of the charges.

2. It appears from the pleadings of the parties, and this fact is not disputed, that an enquiry was conducted in which the applicant participated and his contention was that he was assigned to perform duties of Lascar and he was not required to perform the duties assigned for Camp-cleaning programme or of grass-cutting. The applicant had also alleged to have pleaded before the enquiry officer that the charges of his having been late on duty were not in conformity with the dates on which the applicant was found guilty. It appears, that the enquiry officer, having considered all these pleas raised by the applicant vide his findings dt. 26.12.86 (Annexure-II) found the applicant guilty of charge mentioned in Article I of the memorandum of charges that on 23/6, 30/6, 7/7, 14/7, 21/7, 28/7, 4/8, 11/8, 18/8, 25/8, 1/9, 8/9, 15/9, 22/9, 29/9 and 13/10 of the year 1986 did not attend camp cleaning programme at 0630 Hrs. on above dates, thereby he disobeyed the lawful orders of Air Officer Commanding 29 Wing Air Force Station Bamrauli which were duly published in the station routine orders. On the basis of these findings of the enquiry officer, the disciplinary Authority vide his order dated 9.2.86 passed major penalty of dismissal of the applicant from service (Annexure A-III). The applicant filed review petition (Annexure A-IV) which is yey pending with the Authorities concerned and has not yet

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not yet been disposed of. The applicant has also filed a petition before the authority concerned for expeditious disposal of his review petition but no action was taken and, therefore, the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for setting aside the order of dismissal dt.9.2.87 with a direction to re-instate the applicant with consequential relief as regards his salary etc.

3. The respondents have appeared on notices and filed their counter affidavit repudiating the claim of the applicant and stated inter-alia that the applicant was habitual defaulter and late comer. A charge sheet was issued against him under the provisions of Rule 14(ii) of the CCS (CCA) Rules, 1965 and an enquiry was conducted in which the applicant participated and a final order of dismissal was passed by the disciplinary authority but on appeal, the Appellate Authority by his order dt.18.11.87 reduced the major penalty into withholding of three increments with non-cumulative effect and the same was forwarded to the applicant on 23.11.87 intimating him to join his duty immediately and necessary reminders were also subsequently given to him by letters which were returned back undelivered as the postman could not meet him, and his family members had informed the postman that the applicant is discharging his duty and had gone to Bamrauli Station for duty. In this connection, the respondents have filed the order of the Appellate Authority dt.18.11.87 (Annexure CA-1), CA-II dt.23.11.87 is an intimation sent to the applicant, CA-III is the intimation sent under registered cover to the applicant and CA-IV is the order dt.14.12.87 which shows that the applicant has not yet joined his duty.

3. Thus, from the counter affidavit filed by the respondents, it is quite clear that the order of dis-

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dismissal passed against the applicant has already been reduced by the appellate authority by substituting it with withholding of three increments with non-cumulative effect. The applicant was directed to join his duty which he has not done.

4. In this back ground of the facts, we find that relief no.ii has now no significance and the learned counsel for the applicant has also not pressed it in view of the fact that the order of dismissal passed against the applicant has since been modified and only withholding of three increments against the applicant has been imposed by way of punishment in proof of the charges under Article I of the memorandum of Charges.

5. The contention of the learned counsel for the applicant was that the charges for which the applicant was punished was not incorporated or mentioned in the said memorandum of charges under Article I., and therefore, it has been sought to be urged that the charges were in respect of some other dates whereas the applicant has been punished in respect of the alleged different dates regarding his coming late and disobedience to clean the camp grass. It was further submitted with reference to the 'general duties of Lascar' (vide Annexure CA-V) that in the said chart, no where it is mentioned that grass cutting was one of the duties of Lascar and on that basis it was sought to be urged that the charges are not proved and the order of punishment awarded to the applicant has got no legal sanctity and are fit to be set aside.

6. We have heard the learned counsels of the parties and have also gone in depth in looking into the documents filed by them along with the pleadings. We notice that the memorandum of the charges issued to the applicant, so far the Article I of the charges does not contain the dates for which the applicant was punished for not do-

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doing or performing his duties. Under Article I of the memorandum of charges, it is mentioned that the applicant while functioning as Lascar at Education Section of 29 Wing AF Stn. Bamrauli during 01 Ppr.86 to 03 May86 reported late on the following dates and timings as indicated below:

09 15 Hrs. on 1.4.86, 0900Hrs. on 2/4, 3/4, 5/4, 7/4, 8/4, 9/4, 10/4, 11/4, 12/4, 16/4, 17/4, 18/4, 19/4, 23/4, 24/4, 25/4, 08 45 Hrs. 26/4, 0900Hrs. 29/4/86, 30/4, 1/5, 2/5 and 3.5.86. whereas, he has been found guilty (vide Annexure A-II) in respect of "23/6, 30/6, 7/7, 14/7, 21/7, 28/7, 4/8, 11/8, 18/8, 25/8, 1/9, 9/9, 15/9, 22/9, 29/9 and on 13/10 of the year 1986 and it is alleged that on those dates he did not attend camp cleaning programme and thereby disobeyed the lawful authority.

7. Thus, it is obviously clear that the charges issued against the applicant were in respect of different dates whereas the punishment awarded by the disciplinary authority and the facts found by the enquiry officer as regards his guilt were in respect of different dates. So in that view of the matter, we are of the view that the proceedings drawn up against the applicant and the punishment awarded to him are not in accordance with law. In the result, the impugned orders dt.9.2.87 (Annexure A-III) based on the report of the enquiry officer dt.26.12.86 (Annexure II) are hereby set aside. The respondents are directed to re-instate the applicant and as a matter of the appellate authority while modifying the punishment, as stated above, had directed the applicant to join his duty but since the charges which were served on the applicant were quite different from the charges for which punishment was awarded causing great prejudice to the applicant, the appellate order of the Appellate Authority (Annexure CA-1) is also as a consequence set aside. The respondents are directed to reinstate the applicant within a period of one

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one month from the receipt of the copy of this order. The applicant shall not be entitled to the back wages. No order to cost.

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Member (A).

Member (J):
9.-9-1993.

Allahabad:
Dated September 9th, 1993.