

RESERVED

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 15<sup>th</sup> day of March, 1996

Original Application No.756 of 1988

District : Kanpur

CORAM:-

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

Hon'ble Mr. S. Das Gupta, A.M.

Narendra Singh

Son of Sardar Attar Singh

Resident of A-467, Chaukhandi,

Tilaknagar, New Delhi-18.

(By Sri N.K. Nair, Advocate)

. . . . . Applicant

Versus

1. Union of India  
Through the Secretary,  
Ministry of Defence Production,  
Government of India,  
NEW DELHI.

2. Director General of Ordnance  
Factories/Chairman, Ordnance  
Factory Board,  
10A, Auckland Road,  
CALCUTTA-700 001

3. General Manager,  
Small Arms Factory,  
Kalpi Road, KANPUR.

(By Sri A Mohiley, Advocate)

. . . . . Respondents

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O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

In this application filed under Section 19 of the Administrative Tribunals Act, 1995, the applicant has assailed the order dated 11-4-1987 passed by the General Manager Small Arms Factory, Kanpur imposing penalty of dismissal of the applicant. He has also assailed the order dated 23-8-1988 by which his appeal against the order of penalty was rejected. He has sought quashing of both these orders and his re-instatement in service with full pay and allowances for the entire intervening period from the date of his suspension till the date of his reinstatement.

2. The applicant was working as a planner in the planning section of the Small Arms Factory, Kanpur. He has claimed that he was an active trade union worker. He has alleged that Sri R.C. Katheria, the Security Supervisor in the Factory, picked up unwarranted quarrel with the applicant and there ensued exchange of hot words and altercation between the two. Hence, Sri Katheria sought to take vengeance against the applicant. It is alleged that on 24-8-1984, while the applicant was mustering out through the staff gate of the Factory during lunch recess, the said Sri Katheria forced the applicant to accompany him to the Search Room near the gate. The applicant was shown a cloth bage containing certain articles and suddenly Sri Katheria accompanied by other members of Security Staff started accusing that the said bag belonged to the applicant and that the applicant was guilty of attempting theft of Government material. It is further alleged that Sri Katheria called the orderly officer and certain other officials to the Search Room and the applicant,

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forced under threat, and inducement put his signature on the sealed cover in which the bag was kept. On the same date he was placed under suspension and later on a major penalty charge memo was served on him. The applicant having denied the charges, an enquiry was ordered. The Inquiry Officer submitted his report holding the applicant guilty of charge of attempted theft of Government property. Accepting the report, the General Manager of the Factory passed the impugned order dated 11-4-1987 imposing the penalty of dismissal from service. The appeal against this order was also rejected by the impugned order dated 23-3-1988.

3. The applicant has assailed the order of penalty on several grounds. In the first place, it has been pleaded that the applicant was wrongfully prevented from availing the assistance of the trade union and other sources as a result of admonition in the charge memo that he shall not bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service. The second plea taken by the applicant is that the General Manager of the factory was not competent either to suspend him or to charge sheet him or to initiate disciplinary action against him. The third plea is that the applicant had nominated one Sri Sunder Lal, Section Supervisor of the Central Telegraph Office, Lucknow as his Defence Assistant and Sri Sunder Lal had also communicated his willingness to assist the applicant but the Inquiry Officer had rejected this request and forced him to nominate a Defence Assistant from Kanpur only. This plea is also connected with yet

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another plea that the Inquiry Officer was biased. The next plea is that the report of the Inquiry Officer was biased and the findings are not based on proper assessment of evidence. The appellate order has been challenged on the ground that the points raised by the applicant in his memo of appeal have not been properly considered by the appellate authority and the same has been dismissed by a non-speaking order.

4. The respondents have filed a counter affidavit in which it has been stated that the Small Arms Factory is a defence establishment engaged in the manufacturing of small arms required for the armed forces. Because of this, a tight security cover is given against theft/pilferage of government material. The applicant was caught redhanded while attempting to takeout government material on 24-8-1984 during mustering out at the time of lunch recess. He was directed for rigorous search by Sri R.C. Katheria, the Security Supervisor and Havildar Jaman Singh took personal search of the applicant and found that tied to the right leg of the applicant was a cloth bag containing cover revettes, copper tacks and copper washers, weighting 1.650 Kgs. The applicant gave a statement that these materials were recovered from his bag. Thereafter, he was placed under suspension and charge sheeted. An inquiry was ordered. The applicant was given adequate opportunity to defend himself. The disciplinary authority agreed with the findings of the Inquiry Officer that the applicant was

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guilty of the charge and thereafter imposed the penalty of dismissal from service. The applicant's appeal was considered by the competent authority and the same was dismissed on merit.

5. The respondents have denied the applicant's contention that he was an active trade union worker or that he picked up quarrel with Sri Katheria. They have alleged that the applicant has concocted fictitious story to make out a case in his favour.

6. The applicant has filed a rejoinder affidavit confirming the contention in the OA and denying the contrary averments in the O.A.

7. We have heard learned counsel for both the parties and perused the record carefully.

8. The first plea taken by the applicant in challenging the order of penalty is totally untenable. The admonition in the charge sheet not to bring any outside influence to bear upon any authority cannot be taken as denial of a statutory right to the applicant to defend himself. Moreover, this is the standard proforma of the charge sheet prescribed in the CCS (CCA) Rules.

9. The next plea regarding the competence of the General Manager to initiate disciplinary action against the applicant has not been supported by any rule. The respondents on the other hand have clearly stated that the General Manager was <sup>the</sup> a competent authority. In the absence of any rule to the contrary, we see no reason to accept the applicant's contention in this regard.

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10. The next plea relates to the refusal of the Inquiry Officer to accept the nomination of Sri Sunderlal as the applicant's defence assistant. To appreciate the position in this regard, we may refer to the statutory provisions contained in the CCS(CCA) Rules. Sub-Rule 8(a) of Rule 14 ibid reads as follows :-

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

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11. Sub-Rule 8(a) makes it very clear that a charged government servant may take assistance of any other govt. servant posted in any office either at his headquarters or at a place where the enquiry is held. The provision to the Sub-Rule, however, permits departure from this provision to the extent <sup>that</sup> when the charged government servant may take assistance of any other government servant posted at any other station. But, for taking such assistance specific permission of the enquiring authority is required. In the case before us the applicant's headquarters as well as the place where the enquiry was being held is the same i.e. Kanpur. Normally, therefore, the applicant should have nominated a Government servant of any establishment posted at Kanpur. He, however, nominated a Government servant posted at Lucknow. It was not obligatory on the part of the Inquiry Officer to accept such nomination and he was well within his right under the statutory provisions of Sub Rule 8(a) of Rule 14 to reject such request. Thus, the rejection of the applicant's nomination of Sri Sunder Lal cannot ipso facto be considered a denial of opportunity to the applicant to defend himself. In fact, the applicant was asked to nominate <sup>a</sup> ~~several~~ government servant in Kanpur and he did so and the person nominated by him was allowed to act as defence assistant. If something is not statutorily permitted as a matter of course or under the rules, denial thereof cannot ipso facto constitute contravention of the rules of natural justice. Also such denial cannot <sup>be</sup> construed as a factor indicating bias on the part of the Inquiry Authority unless the allegations of being biased is

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supported by other evidence.

12. This brings us to the plea regarding bias on the part of the Inquiry Officer. As already pointed out the mere refusal to accept the nomination of his defence assistant cannot be construed as a factor indicating bias on the part of the Inquiry Officer. We have carefully considered various other circumstances alleged in the OA; to support the contention that the Inquiry Officer was biased. We are of the view that the applicant has not been able to lay firm foundation for presumption of such bias. The disciplinary authority had considered this plea more than once and had rejected the request of the applicant for change of the Inquiry Officer. One reason adduced by the disciplinary authority while rejecting the applicant's request is that he did not object to the nomination of the Inquiry Officer at the initial stage, but did so only at a subsequent stage. The only factual ground offered by the applicant in imputing bias on the part of the Inquiry Officer is that the said officer<sup>was</sup> his Divisional Officer and during the course of working the applicant was harassed by such officer. Had that been rightly so, it would have been natural on the part of the applicant to have objected to the nomination of the Inquiry Officer immediately after that officer was appointed as Inquiry Officer by the disciplinary authority.

13. The next plea relates to the findings<sup>of</sup> the Inquiry Officer and the allegation is that such findings are not based on evidence on record. We are unable to consider this point in the absence of a copy of the Inquiry Report which has been annexed neither by the applicant nor by the

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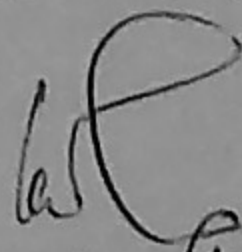
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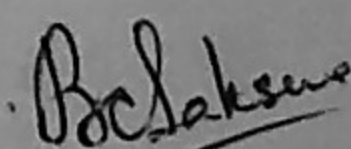
respondents.

14. The challenge to the appellate order is on the ground that the points raised by the applicant in his appeal has not been properly considered and that the appellate order is non-speaking. In the absence of a copy of the memo of appeal, we are unable to ascertain what are the points raised by the applicant in his memo of appeal. The appellate order itself cannot, however, be assailed as a non-speaking order. We have gone through the context of the earlier order and we find that the appellate authority has recorded its reasons for rejecting the appeal.

15. In view of the foregoing the challenge neither to the order of the disciplinary authority nor to the order of the appellate authority succeeds. The applicant has failed to establish any case requiring our interference. It is settled law that in the matter of disciplinary proceedings, the role of the courts/tribunals is very limited. It is not the action of the disciplinary authority but the manner in which the action was taken, alone comes under the judicial scrutiny. We do not find any infirmity in the proceedings.

16. We find no merit in this application and the same is, therefore, dismissed. There shall, however, be no order as to costs.

  
Member (A)

  
Vice Chairman

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