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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

(10)

Allahabad this the 26th day of February 1997.

Original Application no. 1193 of 1988.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Madan Lal Bhatia, S/o Sri A.N. Bhatia, 23/1 Shastri Nagar, Kanpur.

... Applicant.

C/A Sri Arvind Kumar

Versus

1. Union of India through the Ministry of Defence
New Delhi.
2. Joint Director/Vigz. Ordnance Factory Board,
10-A, Auckland Road, Calcutta- 700001.
3. General Manager, Small Arms Factory, Kanpur.

... Respondents.

C/R Sri Ashok Mohiley.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

The applicant has come to us seeking the following reliefs by ^{way of} direction to ^{the} respondents:-

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- i. A direction to quash order dated 01.12.86 stopping one increment of the applicant with cumulative effect.
- ii. A direction to quash order dated 30.06.88 dismissing the appeal of the applicant against the order of punishment.
- iii. A direction to pay full salary to the applicant during his period of suspension.
- iv. A direction to let the applicant file his option so that his pay may be fixed after taking his option into consideration.
- v. A direction to promote him as Machinist Grade II (Highly Skilled) from the date of promotion of his juniors in 1984.
- vi. A direction to the respondents to pay arrears of salary and allowance on the post of Machinist (H S II) and Machinist A from 1984.

2. The applicant mentions in his application that he was appointed as a fitter in Small Arms Factory in Kanpur in 1982. He rose to the level of Machinist HS Grade II on 14.11.88, the date of filing this application. He was held guilty in Criminal Case no. 1168/80 for entering the house of one Sri Ranguath Dube with Lathis, Dandas and brickbats and assaulting him and punishment of R.I. varying from one to one and a half year was awarded under sections 147, 452 and 323/149 I.P.C vide judgement dated 2.8.82. The charge was that Sri Madan Lal did not deliberately bring to the notice of the management that he was facing a criminal trial since 1980 and that he was

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awarded punishment in the case in 1982. A memorandum containing the charge was issued on 19.10.82. In his defence the applicant replied that he was falsely implicated and that he had filed an appeal against the judgement of the Metropolitan Magistrate. He also said that he never concealed information and mentions his application dated 8.1.78 in this connection. He states that he replied to the show cause notice dated 19.10.82 on 3.11.82. He states that after more than 3 years Sri R.K.S. Rathor was appointed as inquiry officer on 12.10.85. He submitted his report ~~representation~~ on 08.06.86 acquitting the applicant. The Deputy General Manager informed him on 29.11.86 that the disciplinary authority had decided to drop the proceeding initiated against him. However, he received order of penalty dated 1.12.86 along with findings of the disciplinary authority. No show cause notice was given to him before penalty was imposed by the General Manager after inquiry officer's findings that the authorities were duly informed by the applicant of his involvement in the Criminal Case. The Disciplinary Authority has no cogent reasons to differ ^{with} the findings. An appeal dated 18.12.86 was rejected by non speaking order without application of mind dated 30.06.88 passed by the Joint Director Vigilance Ordnance Factory Board. Thus the suspension of the applicant from 25.08.82 to 14.10.85 was unjustified as the applicant was acquitted by the Court. The show cause notice was issued to him on 19.12.86 as to why his pay and allowances over his ^{is} substances allowances should not be forfeited for the period of suspension.

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He replied on 13.01.87, but his plea for full wages was rejected on 23.01.87. He states that, although charge sheet was issued in 1982 and the Additional District Judge acquitted the applicant on 04.09.85, his suspension was revoked on 14.10.85 after appointment of inquiry officer on 12.10.85. His contention is that the award of minor penalty after conducting the inquiry for major penalty shows that his suspension was unjustified and he should be paid full pay and allowances. He suffered loss of seniority due to suspension. He has not been allowed to give option in 1984 after acceptance of third pay commission report by the Government. His juniors consequently got promotion in 1984. It is also contended that once proceedings were dropped, there was no justification to impose penalty on 01.12.86. He has also stated that the disciplinary authority in case of the applicant is D.G.P.O and not General Manager.

3. Arguements of Sri Arvind Kumar learned counsel for the applicant and Sri Ashok Mohiley learned counsel for the respondents were heard.

4. The first plea about delay in launching disciplinary proceedings against the applicant has been replied by the respondents in their CA stating that show cause notice was issued before taking action under rule 19 of the CCS (CCA) rules 1965. The applicant preferred appeal against his conviction and the judgment of the Appellate Court was awaited. A ~~the~~ separate case was launched for violation of the conduct rule for concealing material information regarding his involvement/conviction in Criminal Case. It is also stated that the applican

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submitted his reply to the Charge Sheet after a considerable delay but the applicant has contested this contention of the respondents in his Rejoinder affidavit. The respondents have stated in the counter reply that the applicant has tried to mislead the court by joining two separate cases. The applicant was subjected to departmental action for his concealment of material information under Rule 3 of the Conduct Rules for which he was issued charge sheet which was replied to him by 19.7.85. The respondents have mentioned that a separate showcause notice was given consequent upon his conviction on the basis of the judgment given by the trial court, but since the applicant preferred an appeal, the show cause notice was dropped. The applicant's contention in the Rejoinder reply is that he has not joined two separate cases of his suspension and ultimate penalty related to the same cause of action cannot be accepted by us because the action under Rule 19 and 14 of the CCS (CCA) Rules cannot be undertaken against the applicant. The Only action under Rule 19 of the CCS (CCA) rule is dependant on the outcome of the criminal case. The second charge under rule 14 of the CCS (CCA) Rules is for the violation of Conduct Rules and stands on its own ~~messy~~ legs.

5. The second plea of the applicant is that the Inquiry Officer had acquitted the applicant, which has not been admitted by the Respondents in their Counter affidavit. The respondents have mentioned in their C.A. that the applicant should have mentioned in his O.A. about the findings of the Disciplinary Authority disagreeing with the findings of the Inquiry officer. Therefore, the statement of acquittal only misguides the court. The applicant in his Rejoinder affidavit has denied that he concealed any material facts. The respondents have mentioned in the counter reply that the

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disciplinary authority has deferred with the report of the Inquiry officer for cogent reasons and has recorded a separate finding in a perfectly legal and valid manner.

6. The third issue raised by the applicant was that the proceedings against him were dropped. The respondents have mentioned that the proceedings were dropped as regards the disposal of Show Cause notice issued to him under rule 19 was concerned, the applicant has pointed out in his rejoinder affidavit that the letter clearly states that the Disciplinary authority had decided to drop the proceedings against him without any reference to Rule 19, or Show Cause Notice. The applicant has contended that his case is similar to the case of Amarjeet Singh, which was proceeded against by the respondents on similar charges. He was considered to be on duty during his period of suspension and allowed pay and allowances for the period. The respondents have admitted this position although, they have stated that the full ^{payment of salary etc. in the} case of Amarjeet Singh, is not based on any direction of the Tribunal, but on the violation of the respondents. They have clarified that two separate communications were served upon the applicant bearing No: SAF/43/C/IE/GM/VO dated 19.10.1982, and another letter bearing No: SAF/43/C/IE/GM/VO/179(I) dated 19.10.1982. The first of which was the Show cause notice which was withdrawn.

7. As regards the plea of the applicant that no show Cause notice was given to him before the imposition of penalty, the respondents in this regard have drawn attention to Rule 15(2) to (4) of the CCS(CCA) rules, 1965, which states that that since the major penalty proceedings were conducted, the Disciplinary authority after considering

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the Inquiry report and recording his findings could impose any penalty prescribed. No show cause notice was necessary after the findings of the Inquiry officer before imposition of the penalty. The Disciplinary proceedings were undertaken after issuing a Charge Sheet and was in order.

8. As regards the disposal of the appeal by a non-speaking order, the respondents have denied and have stated that the order was absolutely legal and self-speaking. We have perused the order of the Appellate Authority and find that the appellate authority had agreed with the disciplinary authority and has given a reasoned and speaking order.

9. As regards the contention of the applicant that the applicant was entitled to full wages instead of subsistence allowance after his honourable acquittal by the court, the respondents have mentioned in the Counter affidavit that the applicant had committed gross mis-conduct by concealing information of his arrest and of conviction in a criminal case in order to continue working in the factory.

10. As regards the next point, the respondents have stated that the disciplinary authority differed with the report of Inquiry officer for cogent reasons and recorded a separate findings in a perfectly legal and valid manner.

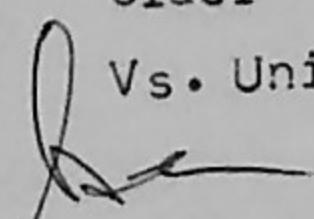
10. Besides the applicant was afforded reasonable opportunity to show cause as to why differences of Subsistence Allowance should not be forfeited. Since the applicant had been held guilty of the charge, the difference of pay and allowances were forfeited. The consequence of being overlooked for promotion is a natural outcome of his acts and omissions leading to penalty.

[Signature]

12. As regards the option, the respondents have stated that there was no practice of calling for option from any particular individual by writing separately to him and that the applicant has submitted application only with option duly filled on 10.11.1985 as against the last date of submission of requisite form by 31.5.84. The Ordnance Factory Board has no power to extend the last date for exercising option and communicated that the option could not be exercised after the due date. The applicant has mentioned in his Rejoinder affidavit that he could not fill option form because he was under ~~twice-once by stoppage of increment and then by not~~ suspension and was punished, allowing him to fill option form. We do not see double jeopardy in this because filling up the option form could not have been affected by his suspension and was purely voluntary on his part.

13. The plea of the respondents taken in their Counter affidavit that the applicant had not gone before reviewing authority before approaching ^{the} Tribunal and, therefore, he has not exhausted remedies available to him has been replied to by the applicant in his Rejoinder affidavit by stating that the applicant had exhausted all the statutory departmental remedies before approaching the Tribunal Under Sec. 19 of the Administrative Tribunals Act, 1985.

14. The applicant filed findings of the Disciplinary Authority differing with the Inquiry officer by a Supplementary Affidavit after filing Rejoinder affidavit. He filed yet, another Supplementary affidavit enclosing order in O.A.No: 1252/88 in case of Sri Amarjeet Singh Vs. Union of India and others, as well as, order made



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by General Manager consequent upon the order of the Tribunal. He was considered to be on duty during his period of suspension and yet, no order was passed for payment of difference of pay and allowances over the Subsistence Allowance to him. These are given as annexure-2, to the Supplementary affidavit.

15. In the light of the above discussions, it is clear that the only contention of the applicant which has force is the issue raised by the applicant in his Misc. Application No: 419 of 1996 in which, the applicant has claimed that common enquiry was conducted against the applicant and one Shri Amarjeet Singh on the same charges. Both were punished. But consequent upon the judgment of this Tribunal in O.A. No: 1252 of 1988 on 29.6.1992, ^{of Shri Amarjeet Singh} the penalty was changed to 'Censure,' ^{and} the period of suspension of Sri Amarjeet Singh was treated on duty and he was held to be entitled to full pay and allowances for the period ~~period~~ of suspension. The respondents have admitted ~~the~~ these facts through an affidavit of Deputy General Manager, Small Arms Factory, Kanpur dated 26.3.1996. The applicant clearly cannot be subjected to a treatment which is more unfavourable than that given to Sri Amarjeet Singh. We, therefore, partly allow the O.A. The applicant ^{shall} submit an application for review of his case to the respondents and direct the respondents to consider the case of the applicant



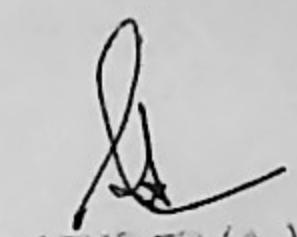
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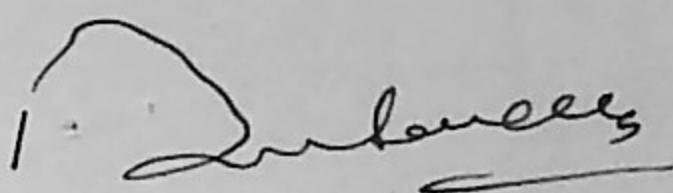
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and ensure that there is no discrimination against the applicant Vis a Vis the case of Sri Amarjit Singh and the treatment given to the applicant is not less favourable than that given to Sri Amarjit Singh. The ~~applicant~~ ^{respondent} shall pass an order in review, regularisation of the period of suspension and payment of arrears within two months and to pay arrears to the applicant within one month thereafter.

15. There shall be no order as to the costs.



MEMBER (A)



MEMBER (J).