

Cl
RESERVED

A2
1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

* * * *

Allahabad : Dated 17th day of May, 1996
Original Application No. 363 of 1989

District : Kanpur

CORAM:-

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

Hon'ble Mr. T.L. Verma, J.M.

Radhey Shyam Son of Ghurendra Prasad,
Resident of 13/152, Parmat, Kanpur, at
present posted as Carpenter in the
Ordnance Equipment Factory, Kanpur.

(By Sri G.D. Mukherjee, Advocate)

. Applicant

Versus

1. The Union of India through
Secretary Ministry of Defence Production,
New Delhi.
2. The Director General Ordnance Factories Board,
Auckland Road, Calcutta.
3. The Additional Director General,
Ordnance Equipment Factories,
I.S.I.C., Bhawan, Sarvodaya Nagar,
Kanpur.
4. The General Manager,
Ordnance Equipment Factory,
Kanpur.

(Sri Ashok Mohiley, Advocate)

. Respondents

W

- 2 -

O R D E R

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

Under challenge in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, is an order dated 17-2-1986 passed by respondent no.3 by which the penalty of reduction in rank was imposed on the applicant. He has sought quashing of the said order and also a direction to the respondent to pay him pay and allowances during the period of suspension from 26-6-1984 to 30-11-1984 and also full pay and allowances from 23-10-1986 i.e. the date of his removal from service to 8-3-1988 i.e. the date of his reinstatement in the lower rank.

2. The facts giving rise to this application are that the applicant, ~~was~~ appointed as Assistant Store Keeper in the Ordnance Equipment Factory, Kanpur, was suspended w.e.f. 26-6-1984 and thereafter served with a major penalty charge memo under Section 14 of the CCA (CCS) Rules 1965. There are four articles of charge, all relating to the alleged failure on the part of the applicant in following stores procedure and improper accounting of stores. The suspension was revoked by an order dated 30-11-1984. Thereafter, an inquiry into the charges was held by Mr. G.P. Sharma, Deputy General Manager of the Ordnance Equipment Factory. The Inquiry Officer ~~submitted his report~~ submitted his report holding that all the charges except one was established against the applicant. Agreeing with the findings of the Inquiry Officer, the General Manager of the Ordnance Equipment Factory, respondent no.4 in this case,

W.L.

imposed on the applicant the penalty of removal from service w.e.f. 23-10-1986 by an order dated 22-10-1986 (Annexure-A-6). The applicant preferred an appeal against the order of penalty and the appellate authority, respondent no.3 in this case, disposed of the appeal by moderating the penalty of removal from service to that of reduction to the post of Carpenter which the applicant was holding prior to his appointment as Assistant Stores Keeper. There was a further direction in the appellate order that the period during which he was removed from service~~s~~ would be treated ~~as~~ non. The applicant thereafter joined duty on the post of a Carpenter on 8-3-1988. He subsequently submitted ^{not} a review petition which was~~not~~ disposed of till the date of filing of this application.

3. The applicant's challenge to the impugned order is substantively on the ground of competence of the authorities passing the order of penalty. He had submitted that formerly the Director General Ordnance Factory Board (DGOF for short), respondent no.2, was alone the competent authority of Class III and Class IV employees of the Ordnance Factories and he alone was authorised to impose the penalty mentioned in Rule 11 of the CCA(CCS) Rules, 1965. The power of appointment was subsequently delegated by the DGOF to the General Managers of the Ordnance Factories, in terms of the proviso to Rule 9(i) of the CCA(CCS) Rules vide Notification dated 2-2-1972. However, by such delegation of power, the General Managers, it is alleged, did not acquire the right of power of imposing

W.L.

12
- 4 -

penalty mentioned in Column 4 of the Schedule and for the first time this power of imposing penalty on Class III and Class IV employees was delegated to the General Managers by the President vide Notification dated 2-1-1987. Thus, the case of the applicant that though respondent no.4 was the appointing authority by virtue of the delegation of powers, he was not competent to impose any penalty on the applicant prior to 2-1-1987. Since the order of penalty was passed by the respondent no.4 prior to 2-1-1987, such order was without jurisdiction and hence illegal and void ab initio. The other ground taken by the applicant is that there was a clear cut finding that there was no loss ~~to~~ of the Government and, therefore, moderating the penalty of reduction to the lower rank was harsh and arbitrary ~~and arbitrary~~ and not in commensurate with the gravity of the charge.

4. The respondents have filed a counter reply in which it has been stated that on receipt of report regarding shortage of Wattle Extract Solid to the tune of 1,27,943.70 Kgs in the Tanning Material Godown, ~~the~~ Board ~~of~~ inquiry was conducted by Sri I.S. Ahluwalia, Deputy General Manager to investigate the circumstances leading to shortage/discrepancy of the said material. On receipt of the finding of the Board Inquiry, the applicant was placed under suspension w.e.f. 26-6-1984. Thereafter, the applicant was charge sheeted and an Officer ~~inquiry~~ was appointed. The report of the inquiry submitted by the Inquiry Officer was carefully

W.C.

examined by the General Manager Ordnance Factory and ^{it} was viewed that there were several lacunae in the findings. Hence, the inquiry report was directed to ^{be} remanded to the Inquiry Officer to remove the lacunae and to give adequate opportunity to the applicant to defend his case. The inquiry report was ~~resubmitted~~ resubmitted and after carefully examining the same, the General Manager of the Factory, who was the disciplinary authority agreed with the findings of the Inquiry Officer and thereafter imposed the penalty of removal from service. The appellate authority, however, carefully considered the appeal and moderated the penalty to that of reduction to the rank of Carpenter which the applicant was holding prior to his promotion to the post of Assistant Stores Keeper.

5. It is the case of the respondents that the General Manager i.e. respondent no.4, was the competent disciplinary authority in respect of the applicant. The applicant was actually appointed by the said respondent and that ~~the~~ Bench of this Tribunal had already held in its order dated 28-7-1987 passed in the case of Union of India Vs. Jamottam Kummar that the General Manager of the Factory is the competent appointing and disciplinary authority.

6. The applicant has filed a rejoinder affidavit in which the contention made in the O.A. has been reiterated.

wf

7. The respondents subsequently filed a Suppl. counter affidavit in which it was emphasised that the applicant was actually appointed as Assistant Stores Keeper by the General Manager Ordnance Equipment Factory and, therefore, he was competent disciplinary authority in respect of the applicant.

8. We have heard learned counsel for both the parties ^{and} carefully ~~and~~ perused the records.

9. A copy of the order dated 28-7-1987 passed by the Bench of this Tribunal in T.A. No.862/86-Union of India Vs. Jamottam Kumar was made available to us by the learned counsel for the respondents. We have perused this decision carefully. In that case also one of the questions which came up for consideration was whether the General Manager of the Ordnance Equipment Factory was the competent disciplinary authority in respect of the applicant, who was a labour 'B', evidently a Class IV post. Although the Tribunal held that the order of penalty imposed by the disciplinary authority was a non est, such finding was on a different consideration. As regards the competence of the General Manager to impose penalty, it was held that the General Manager being the appointing authority, the plea taken that the DGOF ~~was~~ was the competent appointing as well as disciplinary authority, has to be rejected.

10. We are in respectful agreement with the view taken by the Tribunal in the case of Jamottam Kumar. We have also been shown a copy of the order dated

2-3-1972 by which the DGOF had delegated power of appointing authority in respect of Class III and Class IV employees to the General Managers of the Ordnance Factories, by the learned counsel for the respondents.

This letter was also referred ^{to} by the applicant in his averments. A text of this letter is reproduced below:-

"In exercise of the powers conferred upon me by the proviso of Rule (1) of Rule 9 of the CCS(OGA) Rules 1965, read in conjunction with the Schedule thereto published in the Official Gazette as S.R.O. No.3521 dated 25.9.71 and in supersession of previous orders issued in this regard, I hereby delegate to the General Managers/Officer-in-Charge Officer-in-Temporary Charge of Ordnance Factories the power to make appointments to Class III and Class IV employees borne on both Non-Industrial and Industrial Estts.

Excepting those specified in the Annexure to this letter.

2. This will regularise all past cases."

11. The applicant stated that by a subsequent Notification dated 2-1-1987, the power of imposing ~~of~~ penalty was delegated to the General Managers. The applicant, however, has not annexed a copy of the aforesaid Notification. On the other hand, the learned counsel for the respondents has shown us a copy of the letter dated 15-10-1972 issued by the DGOF in which all the ordnance factories have been advised that by virtue of delegation of powers of appointment of Class III and Class IV employees

WL

- 8 -

issued under the letter dated 2-3-1972, the General Managers are deemed to be the appointing authority specified in the Schedule to the CCA (CCS) Rules 1965, for the purposes of imposing penalty specified in Rule 11 abid.

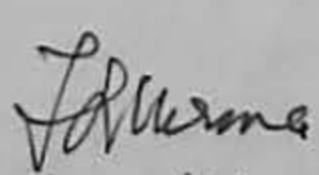
12. In any case, the respondents have specifically averred that the applicant was actually appointed as Assistant Stores Keeper by the General Manager Ordnance Equipment Factory. This has not been denied by the applicant. This fact read ~~with~~ in conjunction with the delegation of powers of appointment Class III and IV posts to the General Managers of the ordnance factories, leaves no room for doubt that the respondent no.4 was the appointing ~~t. and competent~~ authority to impose penalty specified in Rule 11 of the CCA (CCS) Rules on the applicant.

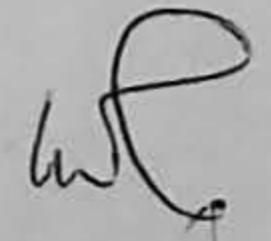
13. The order which has been actually impugned is the appellate order in which the order of the disciplinary authority has merged. A copy of the appellate order dated 17-2-1988 is Annexure-7. We have perused the text of the aforesaid order and we find that it is a speaking order indicating ~~the~~ application of mind. The applicant in fact has not indicated any ground for challenging the aforesaid order. This challenge is really to the order of the disciplinary authority and as we have already shown, this challenge does not appear to have any force.

WL

14. The other ground taken by the applicant in challenging the penalty of reduction in rank is that it is not commensurate with the gravity of misconduct. It is now the settled law that courts/tribunals do not function as appellate authority in respect of the disciplinary cases. They are only to see whether the disciplinary authority has followed the prescribed procedures and the charged official has got adequate opportunity to defend himself. It is not for the courts/tribunals to see whether or not the quantum of penalty imposed is commensurate with the gravity of misconduct. Only when the penalty imposed is so highly ~~disproportionate~~ ^{disproportionate} to the gravity of the misconduct as to raise a presumption of arbitrariness or vindictiveness on the part of the disciplinary authority, that the courts/tribunals may step in to grant relief. It has been unequivocally held by the Hon'ble Supreme Court in the case of Samrendra Kishore Endow (1994) 27 ATC 149 that High Courts or Administrative Tribunals cannot interfere if the penalty has been imposed after holding proper inquiry. In the case before us, we are unable to hold that the penalty imposed is so highly disproportionate to the misconduct alleged that there is reason for us to interfere.

15. In view of the foregoing, we find no merit in this application and the same is dismissed. The parties shall bear their own costs.


Member (J)


Member (A)