

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ( ALLAHABAD BENCH ) ALLAHABAD .

D.A.NO. 493 of 1989.

OF 199

T.A.NO.

Date of decision : 30-8-93

..... Indra Nath Tewari..... Petitioner

..... Shri G. D. Mukherjee Advocate for the petitioner.

Versus

..... Union of India & Ors. .... Respondents .

..... Shri N. B. Singh ..... Advocates for the Respondent(s)

\*\*\*\*\*

CORAM :-

The Hon'ble Mr. Justice R. K. Varma, VC

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the judgment ? ✓
4. Whether to be circulated to all other Benches ?

R. K. Varma  
Signature

NAQVI/

A2  
1

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 493 of 1989

Indra Nath Tewari

..... Petitioner

Versus

Union of India and Ors

..... Respondents

OCRAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C

HON'BLE MR. V.K. SETH, MEMBER(A)

( By Hon. Mr. Justice R.K. Varma, V.C. )

By this petition Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought quashing of the order dated 20/21.8.87 passed by respondent no.3, the Disciplinary Authority namely the General Manager, Government Opium and Alcoloid Works Undertaking, Ghazipur vide (Annexure III to the petition) as well as the Appellate order dated 24.1.89 passed by the Respondent No.2, the Appellate Authority namely the Chief Controller/Dy Narcotics Commissioner, Government Opium and Alcoloid Works, Gwalior vide (Annexure V to the petition).

2. In the Departmental enquiry held against the petitioner, who was working as Upper Division Clerk in the office of respondent no.3, there were five charges alleged against the petitioner. The Enquiry Officer found that the first three articles of charge were not proved. But the remaining two articles of charge were found to be partially proved. For the purpose of deciding this petition the findings of the Enquiry officer relating to articles of charge Nos 4 and 5 alone are relevant. These two articles

R.K. Varma

:: 2 ::

of charge as framed are reproduced hereunder:

ARTICLE OF CHARGE- IV

That during the aforesaid period and while functioning in the aforesaid office, the said Sri Indra Nath Tewari is alleged to have misbehaved with, abused and attempted an assault on a senior officer of this Undertaking.

ARTICLE OF CHARGE - V

That during the aforesaid period and while functioning in the aforesaid office, the said Sri Indra Nath Tewari is alleged to have failed to maintain absolute integrity conduct, discipline and devotion to duty.

*R. K. Varmi*  
3. Relating to Article of Charge No.4, the Enquiry Officer's finding is that the petitioner shouted and abused the Manager and misbehaved with him. As regards Article of Charge No.5, the finding of the Enquiry Officer is that the allegation of failure to maintain absolute integrity and devotion to duty against the petitioner, is not established but the failure of discipline on the part of the petitioner on account of the incident with the Manager, is proved.

4. The learned counsel for the petitioner has pointed out that the order of punishment passed by the Disciplinary Authority (Annexure III) proceeds on the assumption that the Enquiry Officer has found the Articles

of charge Nos. 4 and 5 as fully proved, whereas infact these charges are only partially proved according to the findings of the enquiry officer.

5. It has been submitted that the allegation of failure on the part of the petitioner to maintain integrity and devotion to duty in charge no.5 have not been found proved by the Enquiry Officer and similarly, in charge no.4 the allegation of assault is found, not proved. It has been pointed out that on an F.I.R dated 18.10.84 (Annexure VI to the petition) lodged in connection with the incident the police investigated the case and submitted its final report saying that the offence of assault is not established but the fact of uttering abuses is found. The final report submitted by the police is annexed with the petition as (Annexure VII).

5. It has also been pointed out that the order passed by the Appellate Authority (Annexure V) also suffers from the same defect imasmuch as the appellate authority also proceeds on the basis that the charge nos 4 and 5 are fully proved, since the order does not take into account the fact that certain portions of the allegations in the two charges were found not proved by the Enquiry Officer.

6. The contention of the learned counsel for the petitioner is that the order of punishment passed by the Disciplinary Authority (Annexure III) as well as the appellate order (Annexure V) passed by the appellate authority on the question of quantum of punishment cannot be sustained in the circumstances, since if the fact of the two charges having been found only partially proved by the Enquiry Officer, had been present to the mind of the Disciplinary Authority

*R.K. Varma*

AR  
4

:: 4 ::

as well as the Appellate Authority, while passing the order of punishment, it is not unlikely that the quantum of punishment would have been less than what has been awarded on the assumption that both the charges were fully proved. This contention of the learned counsel in our opinion, has substance and must be accepted. The quantum of punishment as surviving after the Appellate order is the penalty of withholding of two successive increments in the new payscale imposed by the Disciplinary Authority and found to be just and in order by the Appellate Authority.

7. In view of the non-consideration of the fact that the articles of charge nos 4 and 5 were only partially proved and not wholly proved, the matter deserves to be re-considered by the Disciplinary Authority on the question of quantum of punishment and the impugned orders passed on an assumption that the two articles of charge have been fully proved are liable to be set aside.

8. In the result, this petition is allowed. The impugned orders (Annexure III to the petition) and (Annexure V to the petition) passed by the Disciplinary Authority and the Appellate Authority respectively are quashed. The case is remanded to the Disciplinary Authority for making an order afresh in accordance with law after considering the fact that the articles of charges no. 4 and 5 have been proved only partially as detailed in the finding of enquiry given by the Enquiry Officer.

9. There shall, however, be no order as to costs.

*W.W.*  
Member (A)

*R.K. Vane*  
Vice Chairman

August 30<sup>th</sup>, 1993

(Uv)