

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

O.A./T.N.No.361 of 90

DATE OF DECISION

8/4/96

Krishna Gopal

PETITIONER(S)

Sri NK Nair & Sri MA Siddiqui

ADVOCATE FOR
THE PETITIONER(S)

VERSUS

UOI and Ors.

RESPONDENTS

By Km.Sadhna Srivastava

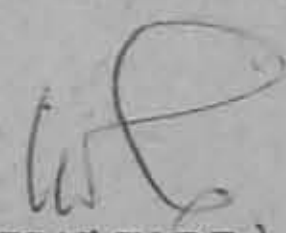
ADVOCATE FOR THE
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. S. Das Gupta Member (A)

The Hon'ble Mr. T.L. Verma Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether to be circulated to all other Bench ?


(SIGNATURE)

VKF/-

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

Allahabad : Dated this 8th day of April, 1996
Original Application No.361 of 1990

District : Agra

CORAM:-

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

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

Krishna Gopal Son of Shri Daya Ram
Resident of 24/26, Kazi Para Agra.

(By Sri NK Nair & Sri MA Siddiqui, Advocates)

. Applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence Production,
Government of India, New Delhi.
2. Additional Director General of Ordnance Factories,
O.E. Fys. Group H/ rs., ESIC Bhawan,
Sarvodaya Nagar, Kanpur.
3. General Manager, Ordnance Equipment Factory,
Hazratpur, District Ferozabad.

(By Km. Sadhna Srivastava, Advocate)

. Respondents

ORDER

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

Through this application filed under Section 19 of the Administrative Tribunals Act, the applicant has assailed the order dated 9-9-1989 by which the penalty of removal from service has been imposed on the applicant. He has also challenged the appellate order dated 16-2-1990 by which his appeal was disposed ^{of} moderating penalty of removal from service to that of compulsory retirement. It has been prayed that both the orders be quashed and the respondents be directed to grant all consequential benefits to the applicant.

2. The applicant was an active member of the Trade Union. Since May, 1986, he was holding the post of Joint Secretary of the OEF Employees Union

Hazratpur affiliated to the All India Defence Employees Federation. He was placed under suspension w.e.f. 6-8-1988 pending disciplinary action against him and a charge sheet dated 15-9-1988 was subsequently served on him alleging that he had committed gross misconduct of unauthorisedly forcing his way out from the factory's main gate and misbehaving and manhandling of security staff. An Inquiry Officer was appointed. After inquiry the Inquiry Officer found the charges against the applicant established. These findings were accepted by the General Manager of the factory who ~~accepted~~ ^{passed} the impugned order of penalty of removal from service. On appeal the appellate authority by the impugned order dated 16-2-1990 moderated the penalty to that of compulsory retirement ^{from} service.

3. The applicant has alleged that there was an Inter-Union rivalry on the issue of the President of his Union holding certain supervisory posts. On the day of the incident, he claims to have received an information that Sri DC Tripathi, the President of his Union was going to be manhandled by the members of rival union and, therefore, he left the workshop and came to the administrative building and met the General Manager, ^{to report} ~~to report~~ ^{to report} him. He used to go to the administrative complex in his capacity as Joint Secretary of the Union frequently and production of the gate pass was never insisted upon. In any case, he could not obtain a gate pass as the incharge of his section and also the next senior person had gone to the administrative complex at that time. The applicant claims that he only met the General Manager and requested him to instruct the gate officials to permit other office bearers of the applicant's Union to come to the administrative block for meeting the General Manager and that such permission was given and the office bearers were allowed to

the General Manager's Office in a deputation. He has denied of allegations regarding forcing his entry through the gate or manhandling the security staff.

4. The applicant has alleged that the General Manager of the factory was not the competent authority to take disciplinary action against the applicant. His further allegation is that the inquiry was conducted ex parte without any justification. He has stated that he had given a list of three names to act as his defence assistants and out of these three persons one had also given his consent. The Inquiry Officer, however, did not accept the nomination of the defence assistants but advised the applicant to nominate someone from nearby Ferozabad or Agra. This, not only unduly prejudiced the applicant in the disciplinary inquiry but is also indicative of the bias on the part of the Inquiry Officer. Even otherwise, he has been denied sufficient opportunity to defend himself, due to the manner in which the inquiry was conducted, the applicant alleged.

5. The respondents have filed a counter affidavit giving details of the chain of incidents leading to the chargesheeting of the applicant. It has been asserted that the applicant was given full opportunity both in terms of the statutory rules as well as in accordance with the principles of natural justice to defend himself but instead of attending the inquiry proceeding, the applicant raised unnecessary objections in order to delay the proceedings. The Inquiry Officer, however, furnished to the applicant the copy of day to-day proceedings through the registered post. It has been contended that the General Manager is fully competent to take disciplinary action against the applicant.

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6. As regards rejection by the Inquiry Officer of the nomination of the defence assistants, it has been averred in the CA that on 17-4-1989, the applicant moved in an application giving three names of defence assistants but this application did not contain the consent of the proposed defence assistants and, therefore, the application was rejected since as per rules the consent of the proposed defence assistants was required. It has been alleged that the consent letter of Sri Supriya Roy, one of the persons named as defence assistants by the applicant is a forged letter, which was not to put before the Inquiry Officer.

7. The applicant has filed a RA reiterating the contention in the OA and denying contrary averments in the CA.

8. We have heard learned counsel for the parties and carefully perused the pleadings on record.

9. It is quite clear from the averments in the OA that the entire case has a genesis in inter Union rivalry. There is no denial by the respondents that the applicant was the Joint Secretary of a Union and that there have been certain problems relating to the deployment of the President of that Union. However, none of these facts would come to the aid of the applicant in case ^{it is proved} ~~he disputes~~ that he had made a forcible entry through the main gate and manhandled the security staff which were the charges against him.

9. The applicant has challenged the order of disciplinary authority on the ground that the said authority was not competent to initiate disciplinary action against him. He has, however, not annexed any document to support

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that the General Manager of the factory was not competent authority. The respondents on the other hand have specifically averred that the General Manager was fully competent in this regard. However, they have also not referred to any rule or annexed any document to prove their contentions. However, as the applicant was a semi skilled Switch Board Attendant, which is a Group 'D' post, we are of the view that the General Manager of the Factory in which the applicant is employed, being the Chief Executive of the Unit, is competent to initiate disciplinary action against the applicant unless shown to the contrary.

10. The applicant has alleged that the inquiry was held ex parte and he was not afforded sufficient opportunity to defend himself. We have carefully gone through the averments in the OA as well as in the CA and have also gone through the report of the Inquiry Officer. We are satisfied after perusal of these documents that the applicant was himself guilty of not attending the inquiry proceedings and, therefore, if the inquiry was held ex parte, the applicant cannot assail such proceedings on the ground that he was not afforded opportunity.

11. As regards allegations that the Inquiry Officer had rejected the applicant's nomination of defence assistants despite one of them having given the consent letter, it would be relevant to refer to the statutory provisions in this regard. Sub Rule (a) of Rule 8 of the CCS (CCA) Rules, 1965, which lays down the provision in this regard 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."

12. From the statutory provisions it would be clear that a charged government servant has right to take assistance of ~~from~~ any government servant posted either at the Headquarters of the charged Government servant or at the place where the inquiry is held. In the case before us, the inquiry was held at Hazratpur where the factory is situate. So far as the applicant is concerned, his Headquarters is obviously the factory itself where he is posted. Therefore, in accordance with the rules, he could have been allowed to take assistance of other Government servants at Hazratpur itself. In that view of the matter, the Inquiry Officer did not commit any statutory irregularity in not accepting the defence assistance~~s~~ nominated by the applicant as they were from Kanpur, Jabalpur and ~~Lahore~~^{Iskapore}. The controversy as to whether the consent letter of Sri Supriya Roy was produced before the Inquiry Officer or not, therefore, appears to be wholly irrelevant in our view in this context. Moreover, there is a clear recording in the chronology of the inquiry proceedings to the effect that on 17-4-1989, the applicant submitted an application mentioning the names of three defence assistance, without their consent to act as defence assistants. This would lead support to the contention of the respondents that the applicant did not produce the consent letter of Sri Supriya Roy alongwith the application for engagement of defence assistants. Even if such consent letter was available, the Inquiry Officer would have ^{been} well within his statutory rights to reject the request as such defence assistants were outsiders.

13. The more important point to be considered in this context is whether refusal of the Inquiry Officer

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to allow any of the persons mentioned by the applicant to act as his defence assistant did cause any serious prejudice to the applicant in defending himself in the departmental inquiry. We have carefully considered the matter. The applicant himself was a Joint Secretary of the Union. There must have been other office bearers of the Union in the factory itself, who could have as well acted as his defence assistant. He himself has stated that the President of his Union could have well assisted him in the inquiry but he was preoccupied with other disciplinary matters. It is difficult to ~~accept~~ ^{accept} that the President of the Union could not have found some time to assist the Joint Secretary of the Union who was facing departmental inquiry.

14. The Inquiry Officer even allowed the applicant to choose a defence assistant from any of the departments in nearby Ferozabad or Agra. The applicant, however, did not avail of this opportunity on the ground that he was not acquainted with any competent central Government employee of Agra or Ferozabad who could act as his defence assistant. We are, therefore, of the view that refusal of the Inquiry Officer to allow any of the three defence assistants initially nominated by him did not cause any serious prejudice to the applicant in defending himself.

15. The applicant has also pleaded that the Inquiry Officer was biased. We have carefully gone through the pleadings. Various circumstances cited by him to indicate that the Inquiry Officer was biased have been considered by us. We are not satisfied that these circumstances which include the refusal on the part of the Inquiry Officer to accept the applicant's nomination of defence assistant, establish any firm foundation for presuming existence on part of the Inquiry Officer.

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16. The applicant has further alleged that the findings of the Inquiry Officer are biased and that he did not consider and discuss various points raised by the applicant in his written brief.

17. We have gone through the report of the Inquiry Officer. There is no prima facie evidence of any bias in the findings. The findings are not perverse on the face of evidence on record.

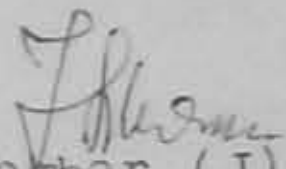
18. One more point requires to be mentioned. The applicant had alleged that a criminal complaint was lodged with the Police against the applicant among others in respect of the allegations contained in the memo of charge sheet. The police registered a criminal case under section 504/506 IPC and that the case was pending at the time when the disciplinary action was proceeded with. The applicant's point is that in view of the pendency of the criminal proceedings, it was not proper to proceed against the applicant departmentally. He has also stated that as the General Manager had preferred a criminal complaint against the applicant, through the security officer, he was not competent to act as a disciplinary authority.

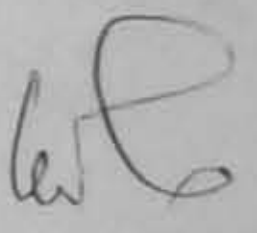
19. We reject both these pleas. In the first place, a copy of the charge sheet in the criminal case has not been filed so as to indicate whether the charges in the criminal cases were identical to the charges in the departmental inquiry. Even if these charges are identical there is no statutory or legal bar on simultaneous proceedings, criminal as well as departmental. The departmental proceedings do not automatically abate if criminal proceedings are initiated on identical ground. In the second place, merely because a criminal complaint has been lodged at the instance of the General Manager ^{of the} through the media of the media of the security officer/factory

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in the appeal. We have carefully gone through the appellate order. It is a well reasoned and speaking order in which the evidence against the applicant which is given in the inquiry has also been discussed. The application of mind of the appellate authority is quite evident in the appellate order, particularly in view of the fact that the penalty has been moderated. We find nothing wrong with the appellate order.

23. No other plea has been raised. We, therefore, are of the view that the applicant has failed to make out any case requiring our interference. In a departmental proceedings, it is not the action of the disciplinary authority which is justiciable. It is the manner in which action is taken which comes under the purview of the judicial scrutiny. We have not been able to find anything wrong with the manner in which the disciplinary authority has taken action against the applicant. The application, therefore, fails and is dismissed accordingly. The parties shall, however, bear their own costs.


Member (J)


Member (A)

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cannot make the General Manager incompetent to act as the disciplinary authority.

20. During the course of argument, the learned counsel for the applicant had pointed out that in Para 5.7 of the impugned order dated 9-9-1989, the disciplinary authority has recorded that he had written to his predecessor to confirm if he had given any permission to the applicant to come out and to meet him and he had denied having given such permission. The learned counsel for the applicant argued that this was a clear evidence of the fact that the disciplinary authority had relied on extraneous matters which did not come as evidence in the departmental inquiry.

21. We have given careful consideration to the point made by the learned counsel for the applicant. Had the information obtained by the disciplinary authority from his predecessor been the only piece of evidence based on which the applicant was found guilty of the charges, it would certainly be a proper case to conclude that the proceedings are vitiated as this evidence has been recorded behind the back of the applicant. The findings of the Inquiry Officer are, however, not based on this piece of evidence. His findings have been recorded on the basis of the evidence which have been recorded during the course of the inquiry. Moreover, whether or not the applicant was permitted by the former General Manager to come and visit him in the administrative block is of no relevance to the charges levelled against the applicant. Therefore, the plea taken by the learned counsel for the applicant that the proceedings against the applicant are vitiated cannot but be rejected.

22. As regards the appellate order, the plea taken by the applicant is that the appellate authority did not properly appreciate the point raised by the applicant

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