

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1562 of 1992

Allahabad this the 6th day of June 1997

Hon'ble Dr. R.K. Saxena, Member { J }
Hon'ble Mr. D.S. Baweja, Member { A }

Hasnain Akhtar Ansari, aged about 30 years, S/o Haji Ahmad Hussain, resident of 25/10, New Labour Colony, Baboopurwa, Kidwai Nagar, Kanpur, presently employed as Tailor (skilled), Ticket No. 8016/L, Section M-4'P', New Site, Ordnance Parachute Factory, Kanpur.

Applicant

By Advocate Sri N.K. Nair

Versus

1. Union of India through the Secretary, Ministry of Defence, Department of Defence Production, Government of India, New Delhi.
2. Additional Director General, Ordnance Factories, OES Group Hd. Qtrs., ESIC Bhawan, Sarvodaya Nagar, Kanpur.
Parachute
3. General Manager, Ordnance/Factory, Kanpur.

Respondents

By Advocate Sri Ashok Mohiley.

O R D E R

By Hon'ble Dr. R.K. Saxena, J.M.

This is an application moved by the applicant H.A. Ansari under Section 19 of the Administrative Tribunals Act, 1985 to seek the relief that the punishment order dated 23.3.1991 (annexure A-1) passed by The General Manager, Ordnance Parachute Factory, Kanpur be quashed and the order passed by the appellate authority confirming the order of punishment of disciplinary authority, be also quashed.

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2. The facts of the case are that the applicant was employed as Skilled Tailor in the Ordnance Parachute Factory (for short O.P.F.), Kanpur and was working under the respondents. It is stated that on 30.1.1990, the applicant was served with a charge-sheet on the basis of a complaint made by one Rakesh Singh, Supervisor, that the applicant had abused him and threatened ^{with} the dire consequences. The inquiry was started. The Inquiry Officer came to the conclusion that the charges were not established against the applicant. The disciplinary authority, however, disagreed with the conclusion drawn by the Inquiry Officer that no charge was established. He had furnished the copy of the report of the Inquiry Officer to the applicant and after the reply was given, the order of disagreement was passed. Thereafter the disciplinary authority also passed the impugned order on 23.9.91 whereby it was held that the charges were established and the applicant was punished by reduction of his salary two stages below for a period of one year with cumulative effect. It was further specified that the applicant who was drawing salary of Rs.1030/-, would draw only Rs.990/- w.e.f. 23.9.1991 in the time scale of Rs.950-20-1150-EB-25-1500 for a period of ^{one} year with cumulative effect. The applicant had preferred an appeal to the Additional Director General, Ordnance Factories but the same was rejected on 21.7.1992 vide annexure A-2.
.....pg 3/-

3. Feeling aggrieved by the said orders, this O.A. has been preferred on the grounds that a false complaint was ^lalleged by Rakesh Singh against him and his statement materially ^ldiffered from that of the allegations made in complaint. It is also contended that out of 8 witnesses, 6 had contradicted the allegations made against the applicant by way of charges; and those who had stated anything, their statements suffered from material contradiction. The applicant further stated that there was no evidence to substantiate the charges and there was no ground to disagree with the report of the Inquiry Officer. According to the applicant, the disciplinary authority failed to consider the points which indicated falsity in the case. The copy of the order of disagreement was not supplied and the order of punishment which was recorded by the disciplinary authority and appellate authority are perverse and not based on facts and proper appreciation of evidence. Hence their quashment as is already pointed out, is sought.

4. The respondents opposed the O.A. on the grounds that a complaint was lodged by Rakesh Singh and on the basis of the said complaint, the applicant was charge-sheeted. The inquiry started and the Inquiry Officer who had submitted his report, was not clear in his conclusion. He had simply stated

that out of 8 witnesses including the complainant, five of them had denied the factum of the charge. It is contended that the Inquiry Officer totally ignored the statements of the witnesses Daya Ram and Ram Lakhan. It is also averred that copy of the inquiry report was given to the applicant on 22.6.91 for furnishing defence representation on 28.6.91. It is also averred on behalf of the respondents that the disciplinary authority did not agree with the report of the Inquiry Officer and after recording reasons on 23.9.91 and holding that the charges were proved against the applicant, had imposed the penalty of reduction of pay by two stages for a period of one year with cumulative effect. It is, therefore, contended that the disciplinary authority did not commit any procedural mistake or otherwise in awarding the punishment. Similarly the order of the appellate authority is also justified.

5. The applicant filed rejoinder in which those very facts, as were mentioned in the O.A., were restated.

6. We have heard the learned counsel Sri N.K.Nair for the applicant and Sri A. Mohiley, learned counsel for the respondents. The record is also perused.

7. The learned counsel for the applicant has attacked the order of punishment and the appellate order mainly on the ground that the disciplinary authority had disagreed with the Inquiry Officer but before recording the note of disagreement, no notice was given to the applicant. Thus, it is claimed that the entire proceedings are vitiated and the impugned order of punishment does not survive in the eye of law. In this connection reliance has been placed on the cases "Narayan Misra Vs. State of Orissa 1969 S.L.R. 657" "Ram Kishan Vs. Union of India and Others 1995 S.C.C. (L&S) 1357", Shanker Lal Vishwakarma Vs. Union of India and Others (1987) 2 A.T.C. 545" and "Krishna Murari Lal Vs. Union of India and Others (1989) 9 A.T.C. 80". First two cases were decided by their Lordships of Supreme Court, third case was decided by the Jabalpur Bench of the Tribunal and last case was decided by the Patna Bench of the Tribunal. The Bench^{es} of ~~the~~ Jabalpur and Patna took the view that without giving the notice to the delinquent employee when there is disagreement, punishment would be illegal. Their Lordships of Supreme Court in the case of Narayan Misra (supra) had observed that when the appellant before the Court was acquitted on the charge and the same charge was taken into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. Their Lordships

further held that that did not appear to have been done and the Conservator of Forests used against the applicant charges of which he was acquitted without warning him that he was going to use them. It was, therefore, found against the principle of fair play and natural justice. What appears from this observation is that the attention of the delinquent employee is required to have been drawn towards the fact which had gone in his favour at the earlier stage. If this principle is made applicable in the present case before us, we find that the copy of the report of the Inquiry Officer was given to the applicant and he had submitted his explanation on 28/6/91. In this explanation, the applicant had ^Ldiscussed the evidence which was ^{adduced} ~~advised~~ during the inquiry. He also ^Ldiscussed the report and statement of Bakesh Singh on whose complaint, the inquiry had started and the statements of S/Shri Daya Ram and Ram Lathan. ^LIt may be recalled that besides Bakesh Singh, Daya Ram and Ram Lathan are two witnesses who had supported the factum of the complaint ^Lalleged by Bakesh Singh. The applicant made an attempt in this explanation that the statements of Daya Ram and Ram Lathan were not reliable ^Land they had contradicted. It is, however, clear that the purpose of drawing the attention of delinquent employee was served because he had an opportunity to explain as to why a different view taken by the Inquiry Officer,

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should not be taken. In another case of 'Ram Kishen' relied upon by the learned counsel for the applicant, ² is ~~laid~~ down the purpose of the show-cause notice in the case of disagreement with the findings of the Inquiry Officer. Their Lordships pointed out that the purpose of giving show-cause notice is to enable the delinquent employee to show that the disciplinary authority is persuaded not to ~~disagree~~ ^{& disagree} with the conclusions reached by the Inquiry Officer for the reasons given in the inquiry report. We find that this purpose in the case before us is achieved when the applicant got the copy of report of the inquiry and submitted his explanation to show as to why the statements of Daya Ram and Ram Lakhan should not be relied upon. In view of this fact, the contention of the learned counsel for the applicant that the proceedings are vitiated because the notice was not given, loses its strength.

8. Before we part with this point, we would like to mention that the Inquiry Officer drew the conclusions that the charges were not established but he ignored the fact that the charge was supported by two witnesses Daya Ram and Ram Lakhan. In view of this fact, the conclusion drawn by the Inquiry Officer is definitely perverse. In such a situation, the disciplinary authority is vested with the power to disagree and to record his own reasons. In this case,

the reasons were recorded by the disciplinary authority on 23.3.91 and it was pointed out that the Inquiry Officer had ignored the statement of the two witnesses Daya Ram and Ram Lakhan. In this way, we find that the disciplinary authority had a valid reason to disagree with the Inquiry ^{officer} and he did accordingly. The formality of bringing this fact to the notice of the applicant was done when the copy of the report of the Inquiry Officer was given and the applicant submitted his explanation with respect to the statements of Rakesh Singh, Daya Ram and Ram Lakhan specifically.

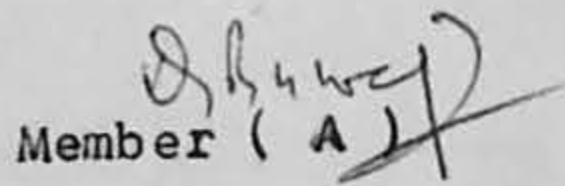
9. The learned counsel for the applicant also contends that it is a case of no evidence and, therefore, the punishment which was awarded to the applicant, was not justified. While discussing ^{the} the point of attention of the applicant to be drawn towards the report of the Inquiry Officer, we had already discussed in the preceding paras that the complainant - Rakesh Singh was supported by two witnesses namely Daya Ram and Ram Lakhan. The applicant himself admitted in the explanation given by him after the copy of the inquiry report was received, that the statements of two witnesses namely Ram Lakhan and Daya Ram were not reliable. What is needed in a departmental inquiry is that there must be some evidence. When we apply this principle, we find that there was some evidence in support of the charge. Whether that

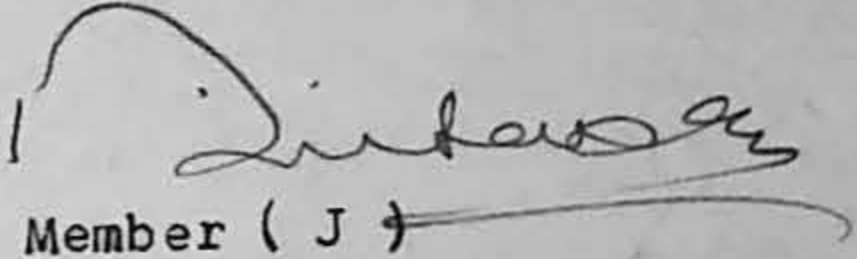
evidence should be believed or not is the domain of the departmental authorities namely the disciplinary authority and appellate authority. The contention of the learned counsel for the applicant that there is no evidence in support of the charge is without any basis. Simply because the Inquiry Officer has written that the charges are not established, will not debar the disciplinary authority from assessing the evidence which has been admitted by the applicant himself. We cannot enter into the arena of assessment of the evidence in judicial review. In coming to the conclusion whether the punishment has been recorded on the basis of no evidence, we sometimes enter into this field only to find if there is some evidence. When the applicant himself admits that the statements of Daya Ram and Ram Lakhan should not be believed because they are contradictory to their previous statements, it is definite indicator to the fact that there is some evidence. Thus, we find that this argument of the learned counsel for the applicant does not hold good.

10. The learned counsel for the applicant could not show any procedural defect or any violation of the principle of natural justice. Thus, we find that

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there is no illegality in the order of punishment. The O.A., therefore, fails. It is dismissed.
No order as to costs.


Member (A)


Member (J)

/M.M./