

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 7th day of ~~February~~ ^{March}, 2000
Original Application No. 401 of 1992

CORAM :-

Hon'ble Mr. Refiquddin, J.W.

Hon'ble Mr. S. Biswas, A.M.

1. Rajveer Singh
S/o Shri Samudar Singh
R/o Vill & Post-Malpura,
Distt-Agra,
Employed as Civilian Motor Driver Gde II,
Motor Transport Section, Ordnance Equipment
Factory, Hazratpur, District-Ferozabad.
2. Rakesh Kumar
S/o Shri V.P. Singh,
R/o Vill & Post-Bhondela,
P.S. Jalesar, Distt-Etah,
Employed as Civilian Motor Driver, Gde II,
Motor Equipment Factory, Hazratpur,
District Ferozabad.
3. Niranjan Kumar
S/o Shri Raja Ram,
R/o Vill & Post-Dhanauli,
District Agra,
Employed as Civilian Motor Driver, Grade II,
Motor Transport Section, Ordnance Equipment Factory,
Hazratpur, District-Ferozabad.

(Sri M.K. Upadhyaya, Advocate)

..... 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.D.F. Group Headquarters,
E.S.I.C.-Bhawan, Sarvodaya Nagar, Kanpur.
3. General Manager,
Ordnance Equipment Factory, Hazratpur,
District Ferozabad.

(Km. Sadanna Srivastava, Advocate)

..... Respondents

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U R D E R

By Hon'ble Mr. Rafiuddin, J.M.

The applicants have challenged the validity of the punishment order dated 7-11-1989 passed by the General Manager, Ordnance Equipment Factory, Hazratpur, respondent no.3 and also the orders dated 8-3-1991 and 21-3-1991 passed by the Appellate Authority i.e. Additional Director General of Ordnance Factory, Kanpur respondent no.2 rejecting the Appeals filed by the applicants against the aforesaid punishment order.

2. The applicants were working as Civilian Motor Drivers Grade II at the relevant time in the Motor Transport Section of Ordnance Equipment Factory, [✓] Hazratpur, Ferozabad. According to the applicants, they have been active functionaries of the Ordnance Equipment Factory Employees Union, which is a Registered Trade Union of the Employees of the Ordnance Factory. This Trade Union is also affiliated to the All India Trade Union Defence Employees Federation and is duly recognised by the Government of India. They claim that there has been a rival Trade Union in the Factory which is affiliated to Bhartiya Majdoor Sangh and is known as Ordnance Equipment Factory Karmachari Sangh. One Sri D.C. Tripathi, [✓] working as Chargeman Grade I in the Ordnance Equipment Factory, was the President of the Union of which the applicants were office bearers. Sri D.C. Tripathi was looking after all the Engineering Divisions (Maintenance) of the Factory but later on some Foremen and Assistant Foremen were posted on transfer in some of the engineering sections of the Factory, which happened to be less important than the Engineering Section, under the charge of the said Sri D.C. Tripathi. However, Sri D.C. Tripathi, being experienced and competent hand continued [✓] entrusted to be ~~interested~~ with the charge of three Engineering

Sections of the Factory, as a result of which the Members of NGU Association in collusion with the Ordnance Equipment Karamchari Sangh, a rival Trade Union, started agitation in the Factory demanding removal of Sri D.C. Tripathi from the position of the Incharge of the three important Engineering Sections. The said agitation started on 7-7-1988 and the agitatorist resorted to gherao and other pressure tactics against the management of the Factory which yielded to the pressure and agreed to remove Sri D.C. Tripathi from the position of three important Engineering Sections w.e.f. 9-8-1988. Sri S.K. Sharma, being Chairman and Sri M.L. Sharma, being the Secretary of the NGU Association were given the charge of both the Sections of which Sri D.C. Tripathi was holding the charge till then. Sri D.C. Tripathi as a result of this reshuffle was left without charge of any section and was also ordered to work under the said Sri S.K. Sharma in the M.M. Section of the Factory. The gherao was lifted only after the General manager of the Factory agreed to suspend the applicants and Shri Krishna Gopal, the General Secretary of the applicants' Union and also to take stern action against Shri D.C. Tripathi, the President of the applicants' union. The applicants were suspended w.e.f. afternoon of 6-8-1988 in anticipation of contemplated disciplinary proceedings.

3. Thereafter the applicants were served with identical memo of charge which was dated 15-9-1988 and identical charges were levelled against the applicants which are as under :-

"ARTICLE I. Gross misconduct is that S/Shri Rakesh Kumar, Rajveer Singh and Niranjan Kumar all OMO Gr. II, DEF Hazratpur on 6-8-1988 between 1000 hrs. and 1015 hrs., the said employees jumped over the perimeter/security wall from inside the factory near old MT Section and entered in the campus of Admin Block to suppress disturbances created in Admin Block by Shri D.C. Tripathi and Shri Krishan Gopal and after few minutes again these employees entered back in the factory by jumping over the perimeter/security wall."

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4. The departmental enquiry was conducted by the Inquiry Officer, who vide his report dated 1-11-1989 found the charge levelled against the applicants as established. The disciplinary authority vide the impugned order dated 7-8-1989 on the basis of findings given by the Inquiry Officer imposed the penalty of deduction in their pay to the minimum of their pay scales for a period of three years with cumulative effect and this reduction will have the effect of postponing of their future aspect of pay.

5. The Appeals were preferred by the applicants against the aforesaid penalty order which were also rejected by the Appellate Authority upholding the penalty imposed by the disciplinary authority.

6. The applicants have questioned the validity of the penalty order as well as the Appellate Orders on the ground that the applicants have been victimised on account of Trade Union's Rivalry. The charges have been levelled against the applicants without any material. The issuance of charge sheet, order of suspension, initiation of disciplinary proceedings and the punishment orders have been passed by incompetent authority. Thereafter the enquiry was misconducted and was extremely biased and prejudiced. The applicants were denied the reasonable opportunity of defence by denial of relevant material documents demanded by them. The enquiry report is based on conjectures and surmises and is perverse. The Appellate Authority also did not properly considered the Appeals and rejected the same illegally. The conclusion of the disciplinary authority is based on extraneous material.

7. The respondents have contested the claim of the applicants and denied the allegations in the OA. It is denied that the applicants were office bearers of the Trade Union till the date of their suspension. The applica

subsequent to their suspension order formed a new Union w.e.f. 19-11-1988. The enquiry was conducted against the applicants because there was complaint from Security section that the applicants jumped over the perimeter/security wall defying security instructions. The General Manager is the appointing authority of the applicant as well as the authority competent to impose penalty to 'C' Grade employees like the applicants. The enquiry has been conducted in accordance with the provisions of Rules 1965 and no provisions of Rules have been violated by the Inquiry officer. The Defence Assistants were provided to the applicants as per Rules. The Appeals preferred by the applicants were rejected after careful consideration of the facts and circumstances of the case by the Appellate Authority. Thus, there is no case made out by the applicants to justify interference by this Tribunal.

8. We have heard counsel for the parties.

9. Learned counsel for the applicants has ~~primarily~~ ^{rightly} not pressed the contention of the applicants that the disciplinary authority is not their appointing authority ~~consider~~ in the present case. We, therefore, do not take ~~note~~ of this aspect in this order.

10. Learned counsel for the applicants has, however, contended that in the present case the conduct of the departmental enquiry is not proper because two of the applicants were not given the facilities of Defence Assistants by the Inquiry Officer and consequently because the Inquiry Officer did not permit production of documents and witnesses in defence and rejected the application of the applicants without any basis. As regards providing the assistance of any employee during the enquiry proceeding is concerned, learned counsel for the respondent has rightly argued that as per Rules, the delinquent official can be provided assistance of any employee if he gives his

consent and the same is locally available. However, in the present case the applicant nos. 1 and 3 did not submit the name of Defence Assistants either from their HQs with which they were serving or from the station where the enquiry was being held and consequently the applicant no. 2 was provided local Defence Assistant. It is also worth mentioning that Sri D.S. Tripathi, who assisted the applicant no. 2 during the enquiry was also assisting other applicants because it was a common enquiry against the applicants and the charges levelled against the applicants were of the similar nature. It has not been denied on behalf of the applicants that as per Rules only local Defence Assistants can be provided whereas the applicant nos. 1 and 3 gave names of persons who were posted far from Kanpur, i.e. Bhusawal and Trichunapalli. The applicants also did not submit their consent, or willingness for providing them assistance in the proceedings. Under these circumstances the Inquiry Officer rightly rejected the application of the Applicant Nos. 1 and 3 for appointment of Defence Assistants.

11. So far as the question of production of certain documents and witnesses on the request of the applicants is concerned, we ~~do~~ did not find any force in this contention that by not allowing the request of the applicants for producing certain documents, they have been deprived of the opportunity of being heard or proceedings have been conducted in ~~the regard~~ ^{as per} violation of the principles of natural justice. The Inquiry Officer in his report has mentioned cogent reasons for rejecting such applications. It would be seen from the application moved on behalf of the applicants that the names of as many as 62 witnesses were mentioned in their application to be produced in their

defence and similarly there was a list of about 13 additional documents ^{Re} for preparation of defence which were required to be summoned for their defence. The charges levelled against the applicants were very simple. The only question before the Inquiry officer for consideration was ² whether the applicants jumped over the perimeter/security wall or not on the date of incident.

12. We have gone through the enquiry report and also the order passed by the Disciplinary Authority ~~on the request of the applicants for supply of certain documents.~~ ^{Lin} We do not find any illegality in the order of the Disciplinary Authority in refusing to supply copy of the documents mentioned on behalf of the applicants. During the enquiry the statements of Sri Chandrabir Singh and Sri Guljar Singh were recorded who were eye witnesses of the incident. These witnesses were duly cross-examined on behalf of the applicants and the inquiry officer placed reliance on their statements to prove the charges against the applicants. The claim of the applicants that they have been victimised being the office bearers of the Union, the inquiry officer has clearly held that none of the applicants were office bearers of the Union as claimed by them on 6-8-1988 i.e. the date of incident.

12. It is needless to emphasise that the scope of judicial review in case of departmental proceedings is limited. The Tribunal does not act as an Appellate Court. In the present case we find that the departmental enquiry was properly conducted and the applicants were given all the opportunities to defend themselves. There is also no case of malafide or bias on the part of the inquiry officer ~~msfr only in your stdnry vscr~~. The applicants during the enquiry have received fair treatment and they have not been deprived of the rights of their defence. Therefore,

we do not find any justification to interfere with the findings recorded by the Inquiry officer. This has been confirmed by the Disciplinary Authority. Similarly, also we do not find any shortcomings in the order passed by the Appellate Authority. The order of the Appellate Authority is well reasoned and will be discussed and it does not require any interference by the Tribunal.

13. Lastly learned counsel for the Applicants has urged that the punishment awarded to the applicants and the charges established against them do not warrant major penalty. The learned counsel for the applicants has, therefore, argued that the case may be remanded to the Disciplinary Authority for consideration regarding the punishment. In this point reliance has been placed on "State of Punjab Vs. Prakash Chandra 1998 SCC (L&S) 237 in which the Apex Court has observed that since the ~~punish~~ awarded to the delinquent official was not in terms of Rule 162 of the Punjab Police Rules, the Disciplinary Authority was directed to consider to award suitable penalty in regard to the nature of misconduct. We do not agree with the learned counsel for the applicants on this point because in the present case it is not alleged that the penalty has been imposed in contravention of any Rules. Hence, the observation of the Apex Court made in the case cited above is not applicable in the present case.

14. Learned counsel for the applicants ~~has~~ also referred to the case of "State Bank of India Vs. Samrendra Kisnore, 1994 SCC(L&S) 687 in which it has been observed that in the facts and circumstances of the case, the punishment of removal imposed on the delinquent official was harsh. Hence, the matter was sent to the disciplinary authority and the appellate authority to impose appropriate punishment.

15. Learned counsel for the respondents has on the other hand rightly contended that the applicants are the employees of a defence organisation which being a sensitive organisation requires strict discipline on the part of the employees. Since the charges levelled against the applicants are of jumping over the perimeter/security wall inside the Ordnance Equipment Factory, Kanpur, it cannot be said that the punishment imposed is harsh. Therefore, we do not find any justification to remit the case to the disciplinary/appellate authority for reconsideration of penalties imposed on the applicants. Consequently, the UA deserves to be dismissed.

16. In view of the aforesaid observations, the UA is dismissed with no order as to costs.

S. D. Sanyal
Member (A)

R. P. Muddu
Member (J)

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