

OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

\* \* \*

Allahabad : Dated this 9th day of December, 1996  
Original Application No. 815 of 1992

District : Kanpur

CORAM:-

Hon. Mr Justice B. C. Saksena  
Hon'ble Mr. S. Das Gupta, A.M.

~~Hon'ble Mr. T. J. Venkatesh, A.M.~~

Jagbir Singh Son of Late Prag Singh,  
Resident of 7/12, Sewagram Colony,  
Dada Nagar, Kanpur, presently employed  
as Durwan, Ordnance Factory, Kanpur.

(By Sri NK Nair, Advocate)

..... Applicant

Versus

1. Union of India, through the Secretary,  
Ministry of Defence, Department of Defence  
Production, Government of India, New Delhi.

2. Chairman, Ordnance Factory Board/  
Director General of Ordnance Factories,  
10-A, Auckland Road, Calcutta.

3. The General Manager, Ordnance Factory,  
Kanpur.

(By Sri Amit Sthalekar, Advocate).

..... Respondents

ORDER (Oral)

By Hon'ble Mr. Justice B.C. Saksena, V.C.

The applicant through this OA filed under Section 19 of the Administrative Tribunals Act, 1985, challenges the order of punishment dated 22-8-1988 passed by the General Manager Ordnance Factory, Kanpur, imposing on the applicant the penalty of reduction of pay by one stage from Rs. 822 to Rs. 810 in the pay scale of Rs. 750-940 for a period of one year and further

direction that the applicant will not earn increment of pay during the period of reduction and that on expiry of the said period of reduction, the same will have the effect of postponing the applicant's future increment of pay. The order passed by the departmental authority dated 14-2-1992 has also been challenged.

2. The applicant was working as a Durwan in the Ordnance Factory, Kanpur. He was served with a charge sheet which alleged two charges against the applicant. One was, gross negligence of duty inasmuch as on 10/11-8-1987 while posted for duty between the period 23.30 hrs to 0730 hrs at Perimeter Bastion No. 2, the applicant was found sleeping in the Guard Room at Ground Floor of the Security Staff. Similarly, another allegation was evidenced during the said hours that he was found sleeping at about 0330 hrs on the same night. The second article of charge against the applicant was that of gross neglect on 10/11-8-1987 that he was called by the Security Supervisor at his office for statement in that he threw papers at the face of the Security Supervisor and threatened him in the presence of other security staff. An Inquiry Officer was appointed to conduct disciplinary proceedings and record statement of witnesses. The Inquiry Officer on the basis of preponderance held that both the charges proved against the applicant. The punishment order was passed by the disciplinary authority and an appeal against this order had also been filed.

3. We have heard learned counsel for the parties and also perused the record carefully.

For

4. The learned counsel for the applicant has submitted that the Inquiry Officer has based his conclusion only on preponderance and both the charges are perverse and are based on no evidence. From the Inquiry Officer's report the learned counsel for the applicant tried to show that the statement recorded at the preliminary inquiry of the two witnesses were contradictory and they did not support the version contained in their statement in the inquiry. The learned counsel for the applicant submitted that if the earlier statement was to be relied upon, there was no necessity of recording the statement of the witnesses during the inquiry. We find from the Inquiry Officer's report that there is some contradictions between the averments made earlier in the preliminary inquiry and the version contained in the statement in the inquiry. We have carefully perused the record. The Inquiry Officer, however, has based his findings on the statement made by the earlier two said witnesses. It is also very much settled that the Tribunal does not sit as a court of appeal and ~~can~~ not <sup>can</sup> analyse the evidence and reach its own conclusion on the question of fact. The findings recorded by the Inquiry Officer or the authority can only be interfered with if the findings can be proved to be perverse or contrary to law. We have seen that the findings recorded by the Inquiry Officer is based on evidence of the other two witnesses, the contradictions in the statements of the two witnesses, namely, Shri Rajendra Prasad and Shri Harish Chandra would not be of any material consequence. Consequently, the findings of the Inquiry Officer being based on the evidence recorded during the inquiry cannot be said to be perverse. The veracity of a witness can be judged while putting earlier statement made by him.

✓ R.S.

Even if a witness retracts from his earlier statement, that earlier statement may be a basis for coming to the conclusion regarding the delinquency and veracity of witness. In this view of the matter, we are not inclined to accept that the Inquiry Officer's report is perverse. The learned counsel for the applicant has not raised any other submission. The learned counsel for the applicant laid more stress that the Inquiry Officer's report shows erasure of a few words in the last portion of the Inquiry Officer's report. Relevant portion scored out ~~above which were the maximum punishment indicated for the~~ <sup>can be deciphered to read</sup> charges levelled against the applicant, <sup>have</sup> do not been categorically established, even if this scored out portion in the inquiry Officer's report may be read. It was in the context of what follows this scored out portion, where the Inquiry Officer has stated that, "there is preponderance of probability that Shri Jagbir Singh slept while on duty in the night on 10/11-8-87, and misbehaved with his supervisor in his office on the morning of 11-8-87". Even if this scored out portion is read, the whole has to be read in conjunction. It appears that the Inquiry Officer had, no doubt, wanted to show that the charges cannot be categorically established but also indicated the preponderance of probability proved the charges against the applicant. Both the statements can stand together and earlier portion does not detract from the clear finding that the preponderance of probability established ~~the charge~~. Learned counsel for the applicant cited a decision reported in 1988 SCC (L&S) 243 - Bhagwati Prasad Dubey Vs. Food Corporation of India and Others. In the said case in para 3, it was observed, "normally this court does not interfere in the findings

1  
for

of fact arrived at in disciplinary proceedings. But leave to appeal having been granted, we have looked into the matter and find that in the present case the Enquiry Officer has reached his conclusion on no evidence and without a proper appreciation of the background and circumstances in which the appellant had to function at the relevant time.<sup>situation</sup> No such ~~situation~~ obtained in the present case. The findings of the Enquiry Officer cannot be said to be perverse.

5. Learned counsel for the respondents on the other hand submitted that even if the first charge is held to be proved and second charge is not held to be proved, it is for the disciplinary authority to have considered the quantum of punishment to be imposed. He cited a decision of the Hon'ble Supreme Court in the case of State of U.P. & Ors Vs. Nand Kishore Shukla & Anr, reported in JT 1996 (3) SC 551. Their Lordship had laid down that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the misconduct against the Government Servant. They further observed that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order.

6. In view of the above, the OA lacks merit and is dismissed accordingly. The parties shall, however, bear their own costs.

  
Member (A)

  
Vice Chairman