

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

DATED: THIS THE 15th DAY OF ^{December} ~~OCTOBER~~ 1997

CORAM:- Hon'ble Mr. S. Das Gupta AM
Hon'ble Mr. D. C. Verma JM
-

Original Application No. 1330/92
connected with
Original Application no. 74 of 1992
With
Misc. Application no. 214 of 1992
IN

Original Application No. 1175 of 1991

O.A.1330/92

Mohani Shankar Mishra son of
Late Shiv Hari Mishra, Chargeman II
(removed from service as disciplinary measure)
Small Arms Factory, Kanpur- - - - - - - - - - -APPLICANT

C/A Sri Y. K. Saxena

Versus

1. Union of India through
the Secretary, Ministry of Defence
Production, South Block,
New Delhi.
 2. The Chairman/Secretary,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta-1
 3. The General Manager
(the Disciplinary authority)
Small Arms Factory,
Kanpur.
 4. Sri H. M. Singh,
Dy General Manager, Inquiry Officer,
Small Arms Factory, Kanpur- - - - - - - - - - -Respondents
- C/R Sri Ashok Mohiley.

O. A. No. 74 of 1992

M.S.Mishra s/o Late Shiv Hari Misra
Chargeman, Small Component section,
Small Arms Factory, Kanpur.- - - - - Applicant

C/A Sri Y.K.Saxena

Versus

1. The Union of India through the Secretary,
Ministry of Defence, Deptt.of Defence,
New Delhi.
2. The Chairman/Secretary,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta-1
3. The General Manager,
Small Arms Factory,
Kanpur.
4. The Deputy General Manager,
Sri H.S.Chaddha,
Small Arms Factory,
Kanpur.
5. The Deputy General Manager,
Sri U.N.Singh,
Small Arms Factory,
Kanpur.
6. The Assistant Works Manager,
Sri C.K.Samvedi,
Small Arms Factory,
Kanpur.
7. Sri S.N.Pal
Foreman, S.C. Section,
Small Arms Factory, Kanpur.- - - - - Respondents

C/R Sri Ashok Mohiley

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Misc. Application no. 214/92 In O. A. 1175/91

M.S. Mishra s/o Late Sheo Sheo Hari Mishra,
Chargeman, S. C. Section,
Small Arms Factory, Kanpur - - - - - Applicant

C/A Sri Y.K. Saxena

Versus

1. Union of India through the Secretary,
of Defence, Deptt. of Defence,
New Delhi.
2. The Chairman/Secretary,
Ordnance Factories Board,
10-A Auckland Road,
Calcutta.
3. The General Manager,
Small Arms Factory,
Kanpur.
4. The Dy. General Manager,
Sri H.S. Chaddha,
Small Arms Factory,
Kanpur.
5. The Dy. General Manager,
Sri U. N. Singh,
Small Arms Factory,
Kanpur.
6. The Assistant Works Manager,
Sri C. K. Samvedi,
Small Arms Factory,
Kanpur.
7. Shri S. N. Pal,
Foreman, S. C. Section,
Small Arms Factory,
Kanpur. - - - - - Respondents

C/R Sri Ashok Mohiley

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ORDER

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

As all the aforesaid matters relate to the same controversy, these were taken up together for hearing and are being disposed of by this common order.

2. Before we enter into a discussion on the merits of the aforesaid matters, it would be pertinent to give in brief the back ground of these cases.

3. The applicant was allegedly involved in a misconduct inasmuch as while performing payment duty on 1.4.1991, ^{he} paid Rs.1,142/- only to one Sri S.N.Pawl Shop Foreman after taking latter's signature in token of full payment of Rs.4,142/- and pocketing the remaining sum of Rs.3,000/-. After preliminary enquiry, the applicant was placed under suspension by the order dated 3.4.1991. Challenging this order, the applicant filed the O.A. No.1171/91. The O.A. was decided at the admission stage itself by an order dated 3.12.1991 in which a direction was given to the respondents to serve the copy of the charge sheet to the applicant within 3 months from the date of communication of the order. It was further provided that the applicant shall cooperate with the enquiry and if despite such cooperation, enquiry was not concluded within the specified period, the order of suspension shall be deemed to have been quashed.

3. The respondents thereafter filed M.A. No.214/92 in which it was brought out that the applicant had been charge sheeted on 29.5.1991 levelling three articles of charge. It was further brought out that although the charge sheet was sent to the applicant at his residential address, the applicant evaded receiving the same. A copy of the charge sheet was pasted on the door of his residence. Thereafter an Enquiry Officer was appointed

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by an order dated 19.7.1991 and information in this regard was also sent to the applicant at his residential address but the same was returned undelivered with the postal remark that despite many attempts, the addressee was not available. The respondents further stated that the Enquiry Officer sent a notice on 20.7.1991 informing the applicant ^{about} the date fixed for the hearing but the notice was received back undelivered. Thereafter all communications were pasted on the door of the applicant's official quarter. It was alleged that the applicant had thus filed O.A.1175/91 and obtained an order thereupon by misrepresenting the facts. The respondents accordingly prayed for suitable orders keeping in view the facts brought out in the aforesaid Misc.application.

4. Thereafter the applicant filed O.A.No.74/92 seeking same reliefs as were sought in O.A. No.1175/91. The plea taken in this application was that although the applicant had delivered copy of the Tribunal's order dated 3.12.1991 to the respondents on 6.12.1991, the respondents had taken no action for the compliance of the said order. Notice was issued to the respondents to show cause as to why the O.A. shall not be admitted. Pleadings were also exchanged. However, during the pendency of the said application, O.A. No.1130/92 was filed praying that a direction be issued to the respondents to complete the enquiry proceedings in accordance with the laid down procedure and also to quash the order dated 2.9.1992 by which the Disciplinary authority had imposed on the applicant penalty of removal from service.

5. In view of the aforesaid narration of facts, it would be clear that M.A. No.214/92 in O.A. No.1175/91 has become infructuous and requires no further orders. This Misc.application stands disposed of accordingly. So far as the O.A. no.74/92 is concerned, the same is

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clearly barred by the principle of res-judicata, the applicant having agitated the similar matter in the earlier O.A. No.1175/91 which was finally disposed of. What ~~there~~ remains to be considered is O.A. No.1130/92 which we now take up for consideration.

6. The impugned order dated 3.9.1992 by which the applicant was removed from service has been challenged by the applicant mainly on the ground that he was denied reasonable opportunity to defend himself. He has taken the plea that no charge sheet was served on him nor the dates of the enquiry proceedings were communicated. He has also pleaded that the Enquiry Officer was biased against him as the applicant had filed a defamatory suit against him. The further plea taken by him is that the entire proceedings are malafide inasmuch as the authorities concerned were biased against him because of the fact that the applicant in his capacity as an office-bearer of Non-gazetted officers' association had sent a letter to the Ministry of Defence alleging that the Officers of the factory had resorted to strike.

7. The respondents have filed counter affidavit in which it has been stated that Sri S.N.Paul, Foreman of the Shop in which the applicant was working had submitted a complaint to the effect that although he had signed the pay bill as a token of his having received full ~~pay-~~ payment of the salary of Rs.4,142/-, the applicant who was on payment duty, had paid only Rs.1,142/- and did not pay the remaining amount of Rs.3,000/-. The applicant ~~also~~ did not also refund the sum of Rs.3,000/- in the cash office and thus he retained the money thereby committing gross mis-conduct. The applicant thereafter was placed under suspension after holding the preliminary fact-finding enquiry. Subsequently a charge memo dated 29.5.91 was sent to his residential address under registered post

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h. Undelivered
A/D but the same was received back. Subsequently all communications regarding the appointment of an Enquiry Officer and the notices issued by the Enquiry Officer intimating the dates of enquiry were received back undelivered with the remarks of the Postal department that the addressee was never available to receive the letters. Copy of the charge sheet and all the notices were also pasted on the door of the applicant's residence. Despite all the efforts, the applicant did not come forward to participate in the enquiry with the result that the Enquiry Officer was compelled to proceed against the applicant exparte and submitted his report finding^g that the charges against the applicant^{were} established. Copy of the enquiry report was also sent to the applicant by registered post A/D in order to enable him to make any representation against the findings of the Enquiry Officer but again the same was received back undelivered with the remarks of the Postal authorities that the same could not be delivered despite a number of attempts as the applicant was never available. Thereafter the Disciplinary authority, after taking into consideration facts and circumstances of the case and the findings of the Enquiry Officer passed the impugned order of penalty removing the applicant from service. The respondents have also brought out that the applicant had not exhausted remedial measures available to him as he had not preferred an appeal under rule 23 of CCS & CCA rules and, therefore, the application should be rejected on this ground alone.

8. In the rejoinder affidavit, the applicant reiterated his contention made in the O.A. that he had retained Rs. 3,000/- from the salary of Sri S.N. Paul as the applicant had given a loan of this amount to Sri Paul which the latter did not repay. Rest of the

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averments are either in the nature of reiteration of his earlier contentions or denial of the contrary averments in the C.A. There is also on record Supp.CA filed by the respondents and ^a the Supp.~~CA~~^{affidavit} filed by the applicant but the averments in these pleadings do not bring out any additional fact relevant to the controversy before us.

9. We heard the learned counsel for both the parties and perused the pleadings on record.

10. There is no doubt that the enquiry into the charges against the applicant was held exparte. This infact is the main ground of the applicant's challenge ~~to~~ to the impugned order of penalty. The respondents have specifically pleaded that all communications including the charge sheet and the various notices issued by the Enquiry Officer fixing various dates of enquiry were sent to the applicant by post but the applicant evaded receiving these communications. Copies of these communications were also pasted on the door of the residence of the applicant which was in the factory estate. They even got a notification regarding the date of enquiry published in the local newspaper. However despite all ~~these~~ the applicant did not participate in the enquiry and, therefore, the same had to be concluded exparte.

11. The applicant on the other hand has alleged that none of the aforesaid communications was received by him. The fact that none of the communication was received by him is quite obvious. The question is that whether the respondents made all efforts to communicate the charge memo and the various other notices of the enquiry to the applicant and despite ^{the} this applicant failed to participate in the enquiry. In order to ascertain the correct position, we had carefully gone through the entire records of the

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disciplinary proceedings which was made available to us by the learned counsel for the respondents. It becomes clear to us from the perusal of the records that the respondents did make all efforts to communicate the charge memo as well as various notices of the Enquiry Officer to the applicant. It is significant that when the notice regarding the next date of enquiry was published in the local newspaper, the applicant chose to file a defamatory suit against the Enquiry Officer but refrained from participating in the enquiry though ~~he~~ clearly he had notice of the same. Therefore, it does not lie in his mouth to complain about the denial of reasonable opportunity to defend himself. The applicant's story that he neither knew about the charge sheet nor about the various dates of enquiry is wholly unbelievable.

12. Even if the enquiry is conducted *ex parte*, the Enquiry Officer has a duty to conduct ^{it} in a manner as laid down in CCS & CCA rules. We carefully perused the records of the *ex parte* disciplinary proceedings and found that the manner in which the enquiry was conducted was in accordance with the procedure laid down. Also, the Enquiry Officer arrived at his findings on the basis of the evidence on record and there is no perversity in his findings.

13. As regards allegation of the applicant that the Enquiry Officer was biased against him because of his filing ^a defamatory suit against him, there is nothing on record to indicate that the applicant had represented for the change of the Enquiry Officer. If the applicant thought that the Enquiry Officer was biased, he had the remedy of representing against the continuance of such Enquiry Officer in which case it would have been incumbent on the authority concerned either to change the Enquiry Officer or rejected the applicant's representation after ~~going~~

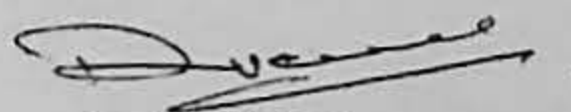
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giving due consideration to the same. Having not represented against the continuance of the Enquiry Officer, the applicant cannot now take the plea that such Officer was biased.

14. So far as the allegation that the authorities concerned were biased against him because of his sending a representation to the Ministry of Defence alleging that the Officers of the factory had abstained from work en masse is concerned, not much credence can be given to such an allegation. In any case the applicant has not impleaded the Disciplinary authority by name, such impleadment being sine-qua-non for establishing malafide against any authority. Respondents have denied that there was any absenteeism from work by the officers as alleged by the applicant.

15. The learned counsel for the applicant during the course of hearing urged before us that the penalty imposed on the applicant was too disproportionate to the gravity of misconduct charged. This was not the plea taken in the O.A. In any case this is an area in which courts or Tribunals are forbidden to trench upon unless quantum of penalty is so disproportionate to the gravity of misconduct as to shock judicial conscience. We do not consider that such is the matter in the case before us. This, therefore, would have been a matter to be appropriately considered by the Appellate authority. We have, however, noticed that the applicant approached this Tribunal without filing an appeal. According to the applicant, he could not file an appeal as he did not receive the copy of the enquiry report. For non receipt of the enquiry he is only to blame himself.

16. In view of the foregoing, O.A.No.1330/92 has no merit and is dismissed accordingly. Parties shall bear their own costs.


MEMBER (J)


MEMBER (A)