

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 26th day of Sept. 1996.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application no. 212 of 1993.

Ram Prakash son of Sri Mahabir Prasad,
T. No. 7498 /L. Lab.
R/o. Village of Bhtoor Kalan, PO.O
Dhruv Nagar, Distt. ~~Nagpur~~.....Applicant.
Kanpur.

(THROUGH COUNSEL SRI N.L. AGARWAL)

Versus

1. Director General, Ordnance Factory,
Ordnance Equipment Factories, Gr. ESDIO
Bhawan, Sarvodaya Nagar, Kanpur.

2. General Manager, Ordnance Parachute Factory,
Kanpur.

.....Respondents.

(THROUGH COUNSEL K.M. SADHNA SRIVASTAVA)

O_R_D_E_R_(oral)

(By Hon. Mr. S. Das Gupta, Member-A)

This application was filed seeking quashing
of order dated 10.11.1990 passed by the disciplinary
authority imposing penalty of removal from service on
the applicant and also the appellate order dated
17.3.1992 by which the penalty was confirmed.

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2. The applicant, who was appointed on 8.11.1979 on compassionate ground as his father died in harness, started absenting himself with effect from 18.1.1989. He was served with a charge memo on 18.10.1989 and after due disciplinary proceedings, the aforesaid order dated 10.11.1990 was passed imposing penalty of removal from service. An appeal was filed by the mother of the applicant but, the same was rejected by order dated 17.3.1992.

3. The grounds taken by the applicants were that he was not given any opportunity to defend himself in the disciplinary proceedings and that the leave applications submitted by him with medical certificate were not considered. The other ground taken is that the penalty imposed is disproportionate.

4. The respondents have filed a counter-affidavit in which it has been stated that the applicant was given intimation regarding the inquiry but, the letters issued to the applicant were received back with the remarks of the postal authorities that the applicant had refused to accept these letters. They have annexed photo copies of notice as well as the envelops bearing the aforesaid remark. It is stated that in these circumstances, enquiry had to proceed ex parte. Since the charge against the applicant was found to be established, the penalty of removal from service was imposed.

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5. At the time of argument, learned Counsel for the applicant only emphasised that the penalty imposed on the applicant is disproportionate. No arguments were advanced on the other grounds. In any case, there is no specific averment as to the manner in which the applicant has been denied any opportunity to defend his case. It is clear from the averments that the applicant was given notice of an Enquiry but he refused to accept this notice and thus forfeited the opportunity to put up his own case. We cannot, therefore, hold that there was denial of opportunity to the applicant. So far as the question of quantum of penalty is concerned, it is now settled law that the Tribunals do not have jurisdiction to enter into the question as to whether the penalty is proportionate to the gravity of the charge unless the penalty is so disproportionate as to ipso facto establish the fact that the authorities have acted arbitrarily. We have seen that the applicant has been absenting for a quite long time and the very conduct of the applicant during inquiry also would indicate that he lacks interest in serving in the department in which he was working.

6. In such a situation, we do not consider it appropriate to interfere in the quantum of penalty, in view of the specific position of law as laid down in the case of Samrendra Kishore Endow. Learned Counsel for the applicant cited the decision of Hon'ble Supreme Court in Giriraj Sharma and also S. V. Giri. Apart from the fact that in both cases quantum of penalty was disproportionate

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fact remains that the Hon'ble Supreme Court can interfere under the inherrent powers under Article 136 of the Constitution of India while the Tribunals do not possess such power.

7. In view of the foregoing, we find no ~~merit~~ in this application and dismiss the same. Parties shall bear their own costs.

J.M.

AM

(Pandey)