

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT NAINITAL

THIS THE 18TH DAY OF APRIL, 2001

Original Application No.1609 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN:K.K.SRIVASTAVA, MEMBER(A)

Vinod Kumar Jindal, Son of
Late Shri L.K.Jindal working as
Auto Fitter(Skilled)(MS30)
Resident of 64/1 Jandha Bazar, Dehradun.

... Applicant

(By Adv: Shri N.P.Singh)

Versus

1. Union of India through the Secretary
Ministry of Defence Production
Govt. of India, New Delhi.
2. The Chairman
Ordnance Factories Board,
10, A Auckland Road, Calcutta-1
3. The General Manager,
Opto Electronics Factory
Dehradun-248008

... Respondents

(By Adv: Ms.Sadhna Srivastava)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the order of punishment awarded to him by order dated 22.4.1993(Annexure A1) by which Disciplinary Authority awarded penalty reducing him ⁱⁿ the pay scale by two stages (of Rs950-20-1150-EB-25-1500) from 990 per month to 950 for a period of three years with cumulative effect. It is further provided that he will earn his next increment after thirty six months of qualifying service from the date of issue of ^{this} order dated 26.4.1993 if otherwise eligible. Aggrieved by the aforesaid order applicant filed appeal which has been dismissed during the pendency of this OA by order dated 29.4.1994 which has been filed as Annexure 2 to

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the supplementary affidavit filed on 17.8.2000.

The facts giving rise to this dispute are ^{that} on the basis of report dated 22.6.1992 made by Smt. Satyawati, wife of Shri Raghubir Singh, R/o Qr.No.D-6/B situated within the factory premises of Opto Electronics, Dehradun and report of the same date made by Raghubir Singh, disciplinary proceedings were initiated against the applicant. He was served with a memo of charge, which are being reproduced below:

- i) That the said Shri Vinod Kumar Jindal, T.No.Ms-30, while functioning as Auto Fitter(Skilled) in MS Section, Opto Electronics Factory, Dehradun, has committed gross misconduct failure to maintain discipline inside the Factory estate-in that he trespassed the residence of Shri Raghubir Singh, Foreman/MS OLF/Dehradun, on 20.6.92 at about 2-15 p.m with ulterior motive, thereby ~~interfered~~ with his privacy.
- ii) That the said Sri Vinod Kumar Jindal, T.No. MS-30 while functioning as Auto Fitter (Skilled) in MS Section, Opto Electronics Factory, Dehradun has committed gross misconduct-conduct unbecoming of a govt. servant-in that he behaved insolently with the wife of Shri Raghubir Singh, Foreman/MS OLF/Dehradun on 20.6.92 at about 2-15 p.m at his residence and used slang language for her, thereby he created frightened situation at the residence.
- iii) That the said Shri Vinod Kumar Jindal T.NO.Ms-30 while functioning as Auto Fitter(Skilled)

in MS Section, Opto Electronics Factory, Dehradun has committed gross misconduct-failure to maintain discipline inside the factory Estate in that he threatened and intimidated the wife of Raghubir Singh Foreman/MS, OLF Dehradun at his residence on 20.6.92 at about 2-15 p.m walked away shouting that to-day he has created nuisance with the help of his associates for in Shri Raghubir Singh, Foreman/MS OLF/the factory and unless he breaks Raghubir Singh's hands and legs, he is not going to amend himself, thereby created horrified atmosphere in the house."

The Enquiry officer submitted his report dated 19.3.1993 and found the charges against the applicant true. The Disciplinary Authority agreed with the inquiry report and awarded penalty as stated above by the order dated 22.4.1993 The order of Disciplinary Authority has been confirmed by Appellate Authority by order dated 29.4.1994.

We have heard Shri N.P.Singh learned counsel for the applicant and Ms.Sadhna Srivastava learned counsel appearing for the respondents. We have also perused the original record pertaining to this inquiry produced by the learned counsel for the respondents.

Shri N.P.Singh learned counsel for the applicant has submitted that the orders passed by the Disciplinary Authority as well as Appellate Authority are very stretchy and short order and they have been passed in mechanical way without considering the statements of the witnesses particularly the defence witnesses produced by the applicant. Learned counsel also placed before us the statements of J.K.Singh and Sanjiv Kumar and submitted that the department failed to prove by any evidence that applicant had

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entered inside the house of the complainant. Learned counsel has submitted that the entire story was cooked up after two days of the alleged incident only to harass the applicant who had gheraoed Raghubir Singh alongwith other factory employees from 10 a.m. to 2 p.m. Learned counsel has submitted that the inquiry report is based on no material and punishment awarded cannot be sustained.

Ms.sadhna Srivastava learned counsel for the respondents on the other hand submitted that this OA is liable to be rejected as the Appellate order by which appeal of the applicant has been dismissed, ^{it} have ^{it} not been ~~finally~~ challenged by amending the relief clause of the OA and as the order of punishing authority stands merged with the order of the appellate authority, which has not been challenged this OA is liable to be dismissed. Coming to merits learned counsel has submitted that the identity of the applicant was fully established by Smt.Satyawati, the complaint and identity of the applicant was not questioned at any stage of the proceedings. He has also placed the statement of Smt.Satyawati in support of the submission. ^{it} The order of the Appellate Authority is of 29.4.1994 which has been filed on 17.8.2000 i.e. after six years. There is no explanation for this delay.

We have carefully considered the submissions of the learned counsel for the parties. It is true that care has not been taken by the applicant to challenge the appellate order by amending relief clause. However, the copy of the appellate order was filed alongwith affidavit dated 17.8.2000. In affidavit para 4, it has been stated that by letter dated 25.5.1994 the Disciplinary Authority has communicated to the applicant that appeal dated 13.7.1993 has been decided on 29.4.1994. It has been requested in para 5 that ^{it} is expedient in the interest of justice that the order dated 29.4.1994 may be quashed otherwise applicant may suffer irreparable loss. Thus, the prayer has been made to quash the order. Though nothing has been said about the delay, but in our opinion, the delay in filing the copy of the appellate order in

these proceedings will not render the OA as time barred which has already been admitted for hearing after perusal of the order of the Disciplinary Authority.

In the facts and circumstances of the case and keeping in view the ends of justice we are taking the affidavit on record and in our opinion, the challenge against the ^{order of} Appellate Authority cannot be thrown out on the grounds mentioned by the counsel for the respondents.

On perusal of the statements of J.K.Singh and Sanjiv Kumar, a serious question arose about the identity of the person who entered inside the house of Raghubir Singh on 20.6.92 at 2.15p.m. Smt. Satyawati in her report dated 20.6.92 did not disclose the name of the person who allegedly entered inside the house. Her husband Raghubir Singh on the same date made a report naming the applicant. However in the report he failed to disclose as to how he gathered the name of the applicant. He has not claimed that before making report he contacted any of the witnesses mentioned in the memo of charge. We put a specific question to Ms.Sadhna Srivastava learned counsel appearing for the respondents, ^{whether} as to any preliminary inquiry was conducted in this case to ascertain the identity of the person who allegedly entered inside the house on the given date and time. However, Ms.Sadhna Srivastava stated that no preliminary inquiry was conducted in this case. The witnesses J.K.Singh and Sanjiv Kumar in their statements have clearly said that they did not see applicant going inside the house. If their statements are accepted, it could only indicate that he was seen in the lane passing through nearby blocks 6, 7, 8 & 9. In these facts and circumstances the only evidence, ^{was} which left for consideration, was the statement of Smt.Satyawati. In her statement recorded on 26.8.1992 in reply to question no.5 Smt.Satyawati stated that the person who is sitting in front of you on left side he had come. The

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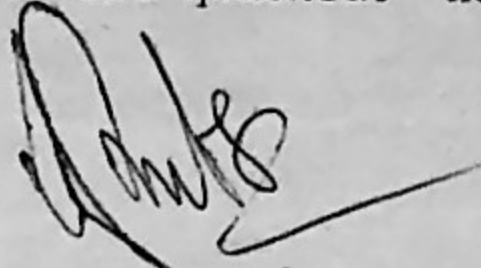
The Enquiry officer thereafter has not recorded that the person who was pointed out by Smt. Satyawati was applicant. A similar question was again put ^{by} question no.6. In reply to question no.6 she stated that 'yes he is present here and is sitting at the end infront of I.A. Questions no.5 and 6 and their replies on perusal do not lead to any conclusion as the Enquiry officer failed to record that the person pointed ^{out} by Smt.Satyawati was applicant. This failure on the part of the Enquiry Officer rendered the statement of Smt. Satyawati useless as she has not herself named the applicant, and he has not been named by inquiry officer to connect him with her statement. Considering the entire facts and circumstances we are of the considered view that identity of the applicant could not be connected with the person who allegedly entered inside the house of Raghubir Singh on 20.6.1992 at 2.15 p.m. This vital aspect of the case was unfortunately over looked by the Disiplinary Authority as well as by the Appellate Authority.

~~This~~ is yet another aspect of the matter which gave rise to serious doubt against the correctness of the allegations made against the applicant. The incident was of 20.6.1992. The report was lodged on 22.6.1992 i.e. after 2 days. Though husband of the complainant had, as said by Smt. Satyawati, was informed about the incident at 2.30 p.m. This delay has not been explained by any material on record.


For the reasons stated above, in our opinion as the identity of the applicant could not be established that he actually committed the alleged misconduct, the orders of punishment cannot be sustained. The incident is about 10 years old. It is also not of very serious nature. From the report of Smt. Satyawati it is clear that the threat was against her husband and nothing was said against the honour of lady. In the circumstances, we do not think it a fit case to be kept open for fresh inquiry.

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The OA is accordingly allowed. The impugned orders dated 22.4.1993 and 29.4.1994 are quashed. However, there will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

April 18th, 2001

Uv/