CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 21st DAY OF MAY, 2001

Original Application No. 1734 of 1993

CORAM:

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

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

Narbadeswar Singh,a/a 44 years,
Son of Late Jagdish Singh, presently
posted as Supervisor 'B' Technical
Ordnance Factory, Kanpur.

... Applicant

(By Adv: Shri K.K.Misra)

Versus

1. union of India through the Secretary
Ministry of Defence, New Delhi.

2. The Chairman Ordnance Factory Board
10-A Auckland Road, Calcutta

3. The Ordnance Factory Board
10-A, Auckland Road, Calcutta

4. The General manager, Ordnance
Factory, Kanpur.

5. The Deputy General Manager 'A'
Ordnance Factory, Kanpur.

6. Sri Rajiv Agrawal, Dy.General
Manager,(Admn), Ordnance Factory,
Kanpur.

7. Smt.Minakshi Seth, Dy.General Manager(Admn)
C/o General Manager, Ordnance Factory
Kanpur.

8. Sri A.K.Rastogi, General Manager
Ordnance Factory Kanpur.

... Respondents

(By Adv: Shri Amit Sthalekar)

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 order dated 23.1.1993 by which, on conclusion of the disciplinary proceedings, applicant was awarded punishment by reducing him by three incremental stages from 1560-1470 in the time scale of pay of Rs.1320-30-1560-EB-40-

-2040 for the period of 3 years with cumulative effect with effect from the date of the order. The order further directed that the applicant will not earn increment of pay during the period of reduction. Against the said order applicant filed appeal before respondent no.2. Memo of appeal dated 13.2.1993 has been filed as Annexure 37. Appeal of the applicant was dismissed by order dated 10.1.1994, a copy of which has been filed as Annexure 9 to the CA.

Appellate order has not been challenged by the appellant. The learned counsel for the applicant submitted that it is not necessary to challenge the appellate order in view of the provisions contained in sub-section 4 of Section 19 of the Act. Learned counsel for the applicant has challenged the order of punishment on the following grounds.

That the disciplinary authority was annoyed with the applicant as he had lodged the complaint against him for not giving promotion to the applicant for which he was duly selected.

It has also been submitted in this connection that Rsx applicant challenged the order of suspension in this Tribunal which also annoyed him.

The second submission of the learned counsel for the applicant is that the proceedings against the applicant were in violation of principles of natural justice as documents demanded by him were not supplied.

The third submission of the applicant is that under Rule 15 of CCS(CCA) Rules Disciplinary Authority in case of disagreement with the Inquiry officer should have remitted the case for fresh inquiry.

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Lastly it has been submitted that the case against the applicant was concocted and it has not been proved by any legal evidence.

Learned counsel for the applicant has placed reliance in case of :Purushottam Sadashiv Kakirde Vs. Union of India and Ors

2) Dhanwant Singh Vs. Union of India & Ors (1998) 37 ATC 288

3) Yoginath D. Bagde Vs. State of Maharashtra & Ors.(1999) 7 SCC-739

4) Union of India and Ors Vs. K.A.Kittu and Ors (2001) 1 SCC- 65

Shri Amit Sthalekar learned counsel for the respondents on the other hand has submitted that the Disciplinary Authority under Rule 15(2) of CCS(CCA) Rule in case of disagreement with the opinion given by Inquiry Officer, could proceed with the conclusion of inquiry after serving a memo of disagreement on the applicant and giving him an opportunity of explanation. It is submitted that it is not necessary to remit the case ~~through~~ to the Inquiry officer for fresh inquiry in every case. Learned counsel for the respsondents has ~~then~~ also submitted that the disciplinary authority has passed the order after dealing in detail with the evidence oral and documentary and the order does not suffer from any error of law. The learned counsel has further submitted that so far documents are concerned applicant was entitled for only those which were mentioned in the memo of charge and were relied by the Disciplinary Authority. The Inquiry cannot be termed as vitiated merely on the ground that applicant

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demanded certain papers and they were not supplied. He has to establish how the documents demanded were relevant in the matter and to what extent prejudice has been caused to him. Lastly it has been submitted that as the applicant has not challenged the Appellate order he is not entitled for any relief. it is also submitted that the punishment awarded for the proved misconduct is justified and no interference is called for by this Tribunal.

We have carefully considered the submissions of the learned counsel for the parties.

The first submission of the learned counsel for the applicant is that Disciplinary Authority was annoyed with the applicant as he had lodged the complaint against him for not giving promotion to the applicant for which he was duly selected. It has also been submitted that as the applicant challenged the order of suspension in this Tribunal Disciplinary Authority felt annoyed. However, we do not find any substance in the submission. It is difficult to accept that Disciplinary Authority may feel annoyed with the applicant, merely on his claiming promotion and on challeging the order of suspension. Such proceedings and claim are normally raised by the employees but higher rank authority like General Manager cannot be accepted to have annoyance on these grounds. The contention is accordingly rejected.

The second submission of the applicant is that the proceedings were inviolation of principles of natural justice as documents demanded were not supplied to him. Learned counsel has ~~while drawing~~ during arguments, neither mentioned

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the documents which were demanded by the applicant nor has made any effort to show that such documents were relevant for his defence or for the purposes of arriving at the right conclusion during inquiry. He has also not shown as to how the applicant has suffered any prejudice for non supply of the documents. It is not denied that the documents mentioned in the memo of charge were supplied to the applicant. It appears that the documents demanded by the applicant were not shown in the memo of charge. The legal position in this regard is well settled that it is not open to the delinquent employee to demand for any documents. ~~He~~ has to establish that the document is relevant and non supply of the document resulted him ~~in~~ prejudice in the inquiry. In the present case both the aforesaid necessary ingriedients are missing. In the circumstances, the submission that inquiry was in violation of principles of natural justice cannot be accepted.

The third submission of the learned counsel for the applicant is that as the Inquiry Officer did not find that the charges against the applicant are proved. If the Disciplinary Authority disagree with the conclusion of the Inquiry officer the ~~inquiry~~ case should have been remitted for fresh inquiry to the Enquiry Officer. On the ~~other~~ Other hand, the counsel for respondents submitted that under Rule 15(2) of CCS(CCA) Rules 1964 in case of disagreement both the courses were open to the Disciplinary Authority. He could after serving a memo of disagreement on the applicant proceed with the inquiry after giving opportunity of hearing to the applicant or could remit the case for

fresh inquiry. Decision has to be taken by the Disciplinary Authority on the basis of the facts of each case. In the present case Disciplinary Authority after perusal of the evidence decided to proceed with the inquiry. No illegality has been committed. In our opinion, the submission of the learned counsel for the respondents has force. The Disciplinary Authority could disagree with the conclusion of the Enquiry officer and pass an order of punishment after serving a memo of disagreement on the delinquent employee and passed orders and after giving him opportunity to file his explanation. thus, it cannot be said that the procedure adopted by the Disciplinary Authority in any way suffered from illegality so as to vitiate the inquiry.

Learned counsel for the applicant placed reliance in a case of Union of India Vs.K.A.Kittu and Others,(2001) 1 Supreme Court Cases 65. In this case Hon'ble Supreme Court examined the power of judicial review of Central Administrative Tribunal and held that while exercising power of judicial review Tribunal may examine and consider the contradictory findings of Enquiry officer's, ~~findings~~ that they were how based on no evidence and also intances where there are ~~any~~ clear findings. No such discrepencies have been pointed out by the learned counsel for the applicant in the present case so as to invite this Tribunal to reappreciate the findings of fact recorded by the authorities below. The case cited does not help applicant in in any way.

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The second case relied on by the learned counsel for the applicant is judgement of Hon'ble Supreme court in a case of ' Yoginath D Bagde Vs. State of Maharashtra and Another (1999) 7 SCC-739. In this case Hon'ble Suopreme court clearly held in para 28 as uncer:-

"In view of the provisions contained in the Statutory rule extracted above it is open to the disciplinary authority either to agree with the findings recorded by the inquiring authority or disagree with those findings. If it does not agree with the findings of the inquiring authority, it may record its own findings. Where the inquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings,there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those case in which the inquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recordded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the

delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not given an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established,"an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded."

Thus, from the above view expressed by the Hon'ble Supreme court the only requirement is that in case of disagreement disciplinary authority should record finding and give opportunity to the delinquent employee. In the present case, Statutory rule specifically provide to give opportunity to the delinquent employee and opportunity has been given to the applicant. The proceedings do not suffer from any

error of law.

The another judgement relied on by the applicant in case of 'Punjab National Bank and others Vs. Kunj behari Mishra (1998) 7 Supreme Court cases 84. In this case opportunity of hearing was not given by the disciplinary authority though he disagreed with the findings of the inquiring authority. The court disapproved the course of disciplinary authority which passed the order of punishment without giving opportunity of hearing to the delinquent officer. Thus, the view expressed was entirely in different set of facts and does not help the applicant in any way. In present case the charge against the applicant was that he arranged the fake railway tickets and cash receipts of Tourist buses for many factory employees and taking commission illegally for his personal gain, in obtaining the LTC advances, the charges have been fully established by the oral and documentary evidence on record. It is not correct to say that the case was concocted against the applicant and it is not being proved by legal evidence.

The last question which requires determination by this Tribunal is whether this OA is liable to be dismissed on the ground that applicant has not challenged the appellate order dated 10.1.1994 by which appeal of the applicant was dismissed. The submission of the counsel for applicant is that in view of the provisions contained in Sub section 4 of Section 19 the appeal could not be entertained and the order is void and it is not necessary to challenge in this OA. On the other hand, the submission of the learned counsel for the respondents is that the order of the disciplinary authority has merged in the order of the appellate authority and as the order has not been

challenged applicant is not entiled for any relief.

Before we enter into the merits of the aforesaid question, it is necessary to mention certain facts. The order of punishment against the applicant was passed on 23.1.1993 he filed appeal on 13.2.1993 addressed to respondent no.2 Chairman Ordnance Factory Board, a copy of the memo has been filed as (Annexure 37). This appeal was dismissed on 10.1.1994. Order sheet of the case shows that the OA was admitted on 26.11.1993 and notices were issued to the respondents no.1 to 5 on 7.12.1993. On 5.1.1994 a report has been made by the office that neither reply nor undelivered cover have been received so far. Thus it was not clear that notice was served on respondent no.2 on or before 10.1.1994. Counter affidavit was filed on 26.10.1994. A copy of the appellate order was annexed with the counter reply as (Annexure 9). the applicant then filed misc. application no.2863/95 on 21.11.1995. By this application he prayed for necessary amendments in the OA so as to challenge the appellate order. On 19.12.1995 this application came up for hearing, Objection was raised by counsel for respondents that the relief sought by amendment application against order of the appellate authority dated 10.1.1994 is highly time barred and application is liable to be rejected on the ground of limitation. On this learned counsel for the applicant sought time to make application for condonation of delay. On 25.1.1996 when the case was again taken up, the counsel for the applicant made a statement that the misc application no.2863/95 may be dismissed as withdrawn. The application was accordingly dismissed. Thus, the

factual position is that the order of the appellate authority is not under challenge before us. The question for determination is what is the effect of the order of the appellate authority in the present case in view of the provisions contained in Section 19(4) of Administrative Tribunals Act 1985 which reads as under:-

> "(4) where an application has been admitted by a Tribunal under sub-section(3), every proceedings under relevant service rules ~~has~~ to redressal of grievances in relation to subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

From perusal of sub section 4 of Section 19 mentioned above, it is clear that the Departmental Authority hearing appeal or representation has been prohibited from entertaining the appeal or representation in case application filed u/s 19 has been admitted. In our opinion, the prohibition contained under sub-section(4) can operate only when the Departmental Authority has knowledge of the fact that application against the order under challenge before it has been admitted by the Tribunal. In the present case there is no material on record to show that Appellate Authority, respondent no.2 was aware of the fact that the application has been admitted by the Tribunal before 10.1.1994. In such circumstances, it cannot be said that the order

was passed by the Appellate Authority was void ~~ab~~ ab initio nullity and was not required to be challenged before the Tribunal. Applicant made an application to challenge the order of Appellate Authority but subsequently got it dismissed as withdrawn. The order of the Appellate Authority was communicated to the applicant alongwith letter dated 31.1.1994 and a copy was sent to him. Thus, it was necessary for the applicant to challenge the order passed by the Appellate Authority. The order of the Disciplinary Authority ~~is to be~~ stood merged with the order of Appellate Authority. For this reason also the applicant in our opinion is not entitled for any relief.

For the reasons stated above, this application has no merit and is accordingly dismissed. There will be no order as to costs.

MEMBER(A) VICE CHAIRMAN

Dated: 21 ~~July~~ May, 2001

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