

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad, this the 9<sup>th</sup> day of Dec 97.

O.A. No. 567 of 1993

Yashwant Singh, son of Sri Nyader Singh, aged about 39 years, resident of villate Jalalpur, Post Office Muradnagar, District Ghaziabad.

By Advocate Shri A.V. Srivastava

Applicant

versus

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

2. Director General of Ordnance Factory, Park Street, Calcutta.

3. General Manager, Ordnance Factory, Muradnagar, Ghaziabad.

By Advocate Km. Sadhna Srivastava.

Respondents.

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

O R D E R (RESERVED)

HON. MR. JUSTICE B.C. SAKSENA, V.C.

The applicnt in this O.A. challenges the punishment order dated 7.5.92 removing the applicant from service. He also challenges the appellate order dated 20.4.93 and seeks consequential relief of a direction to be issued to the respondents to treat the applicant to be continued in service with all consequential benefits, arrears of pay, seniority and further promotions etc.

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2. The facts may be noted in brief. The applicant was working as Fitter grade B in the Ordnance Factory at Muradnagar. A charge sheet dated 25.2.93 was issued to him levelling the allegations of recovery of 3 hand tools from the hand bag of the applicant, when a search was made at the Gate on the 5th Feb., 92 while the applicant was going out of the factory after performing night shift duty. The enquiry officer held the applicant guilty in his findings dated

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17.10.83. The disciplinary authority, agreeing with the findings of the enquiry officer, by an order dated 31.10.83, imposed upon the applicant the penalty of removal from service. The appeal against the said order of removal was dismissed by the appellate authority by an order passed on 30th April, 1984. The applicant thereafter, preferred a review petition before the authority concerned but evoked no response. He then filed a civil suit No. 370/85 in the court of Munsif Ghaziabad and the said suit was transferred to this bench and registered as T.A. No. 137/1987.

3. The said T.A. was decided by a judgment and order dated 22.8.90. The suit was decreed and the punishment order dated 31.10.83 as also the appellate order dated 30.4.84 were quashed. It was however, provided in the operative part of the order in T.A. that "the respondents are however, at liberty to proceed against the plaintiff for the alleged misconduct in accordance with law, if they are so advised, after his reinstatement as above. This suit which is being proceeded with an application under section 19 of the Administrative Tribunals Act, in terms of sub section 4 of section 29 of the above Act, is decreed accordingly...."

4. After the said decision the applicant was reinstated in service by an order passed on 25.9.90 and initially though the consequential benefits were not given to the applicant, but the same were given after <sup>a</sup>the contempt petition was filed and notices were issued.

5. The applicant, by Memo dated 17.11.90 was furnished with the copy of enquiry officer's report dated 17.10.83 and his representation against the same was invited. The applicant submitted his representation and after consideration of the same, the disciplinary authority by a letter dated 31.1.91 supplied to the applicant the copies of the statment of the witnesses recorded during the preliminary enquiry. The Disciplinary authority thereafter, passed an order of punishment dated 7.5.92 and the appellate authority rejected the appeal.

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6. We have heard the learned counsel for the parties and have been taken through the pleadings on record. At the hearing the learned counsel for the applicant mainly submitted that after an order passed in T.A. no enquiry was held by the enquiry officer and the disciplinary authority passed the order of punishment on a consideration of the earlier enquiry officer's report, the representation dated 5.12.90 submitted by the applicant in reply to the said enquiry officer's report.

7. The learned counsel for the respondents in reply to this submission pointed out that in the order passed by a Division Bench of the Tribunal in the T.A. had quashed the punishment order on the ground that the copy of the enquiry report had not been furnished to the charged official before the disciplinary authority finally passed the order. The appellate order was also quashed because some infirmities were found in the said order. The learned counsel for the respondents' submission was that since liberty was given to the respondents to proceed against the applicant, in accordance with law, the proper course for the respondents was and it has been followed, was to furnish the copy of enquiry officer's report to the applicant, call for his explanation and even he was furnished with the copy of the statement of witnesses recorded during the preliminary enquiry. Thus, no further enquiry was required to be held, the disciplinary authority could have proceeded to pass the order for punishment. We find force in the submission made by the learned counsel for the respondents.

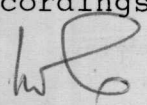
8. The learned counsel for the applicant then submitted that the enquiry officer had induced the applicant to accept his guilt with the assurance that if he does so, he will be exonerated of the charges levelled against him. He submitted that on this inducement the applicant's confessional statement was recorded, which the applicant alleges had been dictated by the enquiry officer. He submitted that solely on the basis of this confessional statement, the enquiry officer in his findings dated

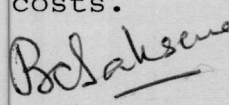
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17.10.83 had held the charges proved against the applicant and had held him guilty. In the appeal the applicant had taken the plea that the confessional statement had been recorded after the inducement having been given to the applicant and the appellate authority should have atleast applied its mind to the question whether the confession was on account of inducement.

9. In support of this submission the learned counsel for the applicant cited a decision of the Madras Bench of the Tribunal in G. Vishwanathan vs. Chief Executive Heavy Water Board, Bombay and another reported in (1992) 20, A.T.C., 824. No doubt the said decision in the first flush appears to support the submission of the <sup>learned Counsel for the</sup> applicant. <sup>Be</sup> From the appellate order dated 20.4.93, we find that the appellate authority has referred to this plea of the applicant in paragraph 2 of his order. In paragraph 3 of the order, the appellate authority has dealt with the said plea and held that the applicant in his representation with reference to the enquiry report, nor in his appeal has adduced any supportive evidence from which his allegation of having been induced to make the confessional statement could be substantiated. The appellate authority, therefore, cannot be said as being remiss in not giving ~~the~~ consideration to the said plea. The decision in G. Vishwanathan supra is therefore, fully unhelpful to the applicant. No other point has been urged.

10. In view of the discussions hereinabove, no case for grant of relief prayed for is made out. The O.A. is accordingly dismissed. Parties shall bear their own costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Allahabad; dated: 9.12.97

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