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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL Bench

ALLAHABAD

Dated: This the 6 day of January, 1997

Coram ; Hon'ble Mr. Justice B. C. Saxena VC
Hon'ble Mr. S. Das Gupta AM

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ORIGINAL APPLICATION NO. 606 OF 1993

Ajai Kumar Singh son of.....

resident of House No. 31,

Shafipur II, Harjinder Nagar,

Kanpur Nagar. --- Applicant

C/A Sri B. N. Singh

Versus

1. Union of India through Addl. Director, General,
Ordnance Factory, Group Headquarter,
Sarvodaya Nagar, Kanpur.

2. General Manager,
Ordnance Equipment Factory,
Kanpur. Respondents

C/R Sri Amrit Sthalkar

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ORDER

By Hon'ble Mr. S. Das Gupta AM

The applicant was working as a skilled tailor in the Ordnance Equipment Factory, Kanpur. By an order dated 4.3.1989, he was placed under suspension and thereafter a charge memo dated 21.3.1989 was served on him for imposing ~~of~~ major penalty. It was alleged in the charge sheet that he, ~~alongwith~~ other workers, had instigated co-workers to boycott the work and generated ~~general~~ agitation in the Workshop on 4.3.1989. Two other persons were also charge sheeted alongwith him for similar misconduct. They were Brij Mohan and Sanjay Kumar Dubey. An Enquiry Officer was appointed to hold a joint enquiry. At the out set of the enquiry, Brij Mohan and Sanjay Kumar Dubey admitted their guilt and thereafter enquiry was proceeded in respect of the charges against the applicant only. The ~~Enquiry~~ ^{Enquiry} Officer found the charges against the applicant as established and agreed with the findings of the Enquiry Officer, The Disciplinary authority issued the impugned order dated 23.9.1991 (annexure A-7), imposing penalty of reduction of pay to the minimum of the time scale with commulative effect. On appeal, the aforesaid penalty was moderated by the impugned order dated 19.6.1992 (annexure A-10) to that of reduction of pay by two stages for a period of two years with commulative effect. Challenging both the orders and also the order dated 28.11.1991 (annexure A-8) by which the Disciplinary authority had restricted the pay and allowance to be paid during the period of suspension to subsistence allowance already paid to him, the applicant has filed this O.A.606/93 praying that

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all these orders be quashed and direction^{be} issued to the respondents to pay full salary for the period of suspension and to grant promotion due to him withheld as a result of the impugned orders. The main grounds of challenge to the disciplinary action are that the Enquiry Officer was neither fair nor impartial and that the applicant was not provided ~~any~~ reasonable opportunity to defend himself. It has also been pleaded that the findings of the Enquiry Officer are perverse and the enquiry report and the order of Disciplinary Authority and the Appellate order are misconceived and not reasoned.

2. In support of the pleas taken by the applicant that the Enquiry Officer was biased and he did not afford adequate opportunity to the applicant to defend himself, the applicant has averred that when the applicant appeared before the Enquiry Officer and submitted an application, nominating one Shri S.K.Chaturvedi as his Defence Helper, the Enquiry Officer directed the applicant to produce 'No Objection' Certificate from the Head of the Department in respect of Sri S.K.Chaturvedi, which both the applicant and Sri Chaturvedi failed to obtain. It is further stated that his request that he be allowed to appear in the enquiry through a Counsel or the Head of the Department in respect of Sri Chaturvedi be advised by the Enquiry Officer to release him for enquiry was rejected by the Enquiry Officer. In support of the allegation that the Enquiry Officer was biased, the applicant has further averred that the Enquiry Officer refused to postpone the enquiry on 18.1.1991, when he requested for such postponement on the ground that his Defence Assistant

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was out of station and recorded evidence of prosecution witness and that the Enquiry Officer also rejected the request of the Defence Assistant that the statement of those witnesses be recorded afresh. It is also alleged that the applicant was not allowed to produce Defence witnesses nor to submit his defence statement.

3. The respondents have filed counter affidavit in which it has been stated that the applicant as well as Brij Mohan and Sanjay Kumar Dubey were responsible for instigating the workers to stop work on 4.3.1989 to protest against the Sunday working. All the three were charge sheeted. Thereafter, joint enquiry was convened. Brij Mohan, ^{and S.K. Dubey} having accepted the charges against them, were awarded penalty of reduction in pay by two stages. Enquiry, however, was continued against the applicant as he denied the charges and proceedings were held, having given him sufficient opportunity to defend himself, and following the procedure laid down in the CCS (CCA) rules 1965. After considering the report of the Enquiry Officer and also the representation of the applicant, the Disciplinary Authority imposed penalty of reduction of pay to the minimum of pay scale for two years with commulative effect on the applicant. On appeal, the penalty was moderated to that of reduction of pay by two stages for two years with commulative effect. The applicant, thereafter submitted a review application, which is still pending.

4. The respondents have specifically denied the contention of the applicant alleging bias on the part of the Enquiry Officer. They have also denied the

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allegation that the applicant was not given adequate opportunity to defend himself. ^{Specifically} subsequent with regard to the insistence on the part of the Enquiry Officer on production of No Objection Certificate from the Controlling authority in respect of S. K. Chaturvedi, It has been stated by the respondents that the said Sri Chaturvedi was Defence Assistant in another enquiry also and in that enquiry, he had adopted dilatory tactics and keeping that experience in mind, the Enquiry Officer insisted on production of No Objection Certificate from the Controlling authority of the Defence Assistant so that he could not subsequently delay the proceeding on the pretext of official business. As regards recording of findings on 18.1.1991, it has been stated that the applicant was given sufficient opportunity to produce his Defence Assistant and since ~~the latter~~ ^{he} did not appear, the Enquiry Officer proceeded with the enquiry in presence of the applicant, who, however, refused to cross examine the witness in the absence of his Defence Assistant. It has also been pointed out that the applicant was given opportunity to give a list of his witnesses and also to submit his defence statement, but he and his Defence Assistant declined to do so, stating that the enquiry should first be adjourned so that they could submit an application to the Disciplinary Authority alleging violation of the provisions of Article 311 of the Constitution of India.

5. ~~The~~ applicant has filed rejoinder affidavit which is merely in the form of denial of the specific averments made in the counter affidavit.

6. We have heard the learned counsel for both the parties and carefully perused the records.

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7. In order to ascertain the extent of validity of the allegations made by the applicant that the Enquiry Officer had conducted the enquiry in a biased manner, we went through the enquiry report carefully and we have found that the enquiry was repeatedly adjourned to give opportunity to the applicant to produce his Defence Assistant alongwith No Objection Certificate from the latter's Controlling Authority. However, when such certificate could not be obtained, the Enquiry Officer finally allowed Sri Chaturvedi to act as Defence Assistant of the applicant. We have also seen that on 11.1.1991, the applicant sought an adjournment on the ground that he could not contact his Defence Assistant. While adjourning the proceedings, the Enquiry Officer specifically stated that the proceedings cannot be adjourned indefinitely on the same ground and, therefore, he should nominate other person as his Defence Assistant, but if he fails to appear on the next date, the enquiry may be held ex-parte. Thereafter, on 18.1.1991, applicant again took the plea that he could not meet the Defence Assistant and requested for further postponement. This request was refused by the Enquiry Officer, who proceeded to record the evidence of one of the witnesses namely Jagdish Prasad, Foreman/TM. The applicant was allowed to cross examine this witness, but the applicant declined to do so with the plea that in absence of his Defence Assistant, he would not cross examine any witness. It is thus clear that the enquiry was not held ex-parte on 18.1.1991 and the applicant was given opportunity to cross examine the witness and if he had not cross examined the witness, he cannot now say that he was denied any opportunity.

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~~Now say that he was denied any opportunity.~~

8. Sofar as the question of denial of opportunity to the applicant to produce his Defence Assistant and to submit his defence statement is concerned, we have seen from the enquiry report that on completion of the examination of the prosecution ~~of~~ witnesss, he asked the Defence Assistant to submit statement of defence and also produce defence witness. However, the Defence Asstt: ~~XXXXXX~~ stated that he wanted to appeal against the alleged infringement of Article 311 of the Constitution ~~to~~ by the Disciplinary authority and if such appeal was disallowed, then only he would produce defence witness and till such time, the enquiry be postponed. This request was not accepted by the Enquiry Officer, who stated that while he had no objection to the Defence Assistant filing a representation to the Disciplinary authority in this regard, pending a decision thereon, defence witnesses be produced and defence statement be recorded. The applicant or his defence assistant did not, however, produce the defence witnesses nor submitted any defence statement. In such a situation, we can ^{not} come to the conclusion that the applicant was not allowed opportunity to produce his defence witnesses or to submit his defence statement.

9. As regards insistence on the part of the Enquiry Officer on production of No Objection Certificate from the Controlling Authority in respect of the Defence Assistant, we have seen that there is a circular ^{No.61/3/67-c dt: 3.1.1968} issued by the Government of India, which clearly states that although the charged government servant can nominate any other government servant as his Defence Assistant, it would

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be necessary for the latter to obtain the permission of the Controlling Authority to absent himself from the office in order to assist the charged government servant during the enquiry. If, therefore, the Enquiry Officer insisted on production of such No Objection Certificate, we do not consider that he committed anything wrong. Particularly, in the ^{background} ~~veracity~~ of past history of alleged ^{the} dilatory tactics on the part of ~~same~~ Defence Assistant as specifically averred in the counter affidavit and not effectively rebutted in the rejoinder affidavit, the Enquiry Officer was perfectly justified in insisting on such a certificate. In any case, the Defence Assistant was finally allowed to appear in the enquiry.

10. As regards the findings of the Enquiry Officer, we have carefully perused the reasons given by the Enquiry Officer in coming to the conclusion that the charges against the applicant had been established. He has believed the evidence of some of the witnesses and arrived at his conclusion. It is settled law that the court or the Tribunal do not exercise appellate jurisdiction in disciplinary matters. They cannot reassess the facts and come to a different conclusion than what had been arrived ^{at} by the Enquiry Officer or the Disciplinary authority unless the conclusions ^{are} of the Enquiry Officer are based on no evidence or ^{are} wholly perverse. We have seen that there is some evidence in support of the charges against the applicant, which, if believed, could lead to the conclusion that the charges stood established. It is, therefore, neither a case of no evidence nor is the conclusion based on such evidence in any way perverse.

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11. Lastly we find no merit in the allegation that the order of the Disciplinary authority of the appellate authority are non speaking or in any way arbitrary. The very fact that the appellate authority had moderated the penalty shows that such authority had applied its mind to the facts of the case.

12. The learned counsel for the applicant during course of argument cited before us several decisions in support of the case of the applicant. These are :-

- (a) 1967, LLJ page 537 N.K.G. Menon
V/s S.E. Vellore Electricity System
& another (Madras High court)
- (b) 1987 (54) Onkar Singh V State of U.P.
(Alld. H.C.L.B.)
- (c) 1978 LIC 1312 Zonal Manager, L.I.C.
Versus Mohan Lal (Jammu and Kashmir H.C.)
- (d) 1967 LLJ page 46 Northern Railway
Cooperative Credit Society Versus I.T.
Jaipur and another
- (e) 1996, ESC. 526 Mahesh Kumar Pandey
V/s Upper Pradhan Prabandhak(DGM)
U.P.S.R.T.C., Bareilly and others
(Alld. High court)
- (f) 1996, LLR. page 308 A.B.Singh
V/s Chairman, Dena Bank and others
(Madhya Pradesh High court)

We have carefully gone through these decisions. We do not see anything in these decisions, which advances the applicant's case.

12. No other point has been urged before us. We are, therefore, satisfied that no cas^e has been made out by the applicant for our inter~~fer~~ference. The application is accordingly dismissed, leaving the parties to bear their own costs.

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