

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 789 of 1993

Allahabad this the 8th day of March 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. C.S. Chadha, Member (A)

On Prakash Bajpai, Son of Sri Ramesh Chandra Bajpai,
Store Keeper, O.F.T.I., Ordnance Factory, Kanpur,
Resident of House No.10/88, Khalasi Line, Kanpur.

Applicant

By Advocate Shri G.S. Bhatt

Versus

1. The Union of India through the Secretary,
Ministry of Defence, (Department of Production),
South Block, New Delhi.
2. The Chairman, Ordnance Factories Board, 10-A,
Auckland Road, Calcutta-1.
3. The General Manager, Ordnance Factory, Kalpi
Road, Kanpur.

Respondents

By Advocate Shri Prashant Mathur

O R D E R

By Hon'ble Mr. C.S. Chadha, Member (A)

This O.A. has been filed under Section
19 of the Administrative Tribunals Act, 1985 by
Shri Om Prakash Bajpai who worked as a Storekeeper
in the Ordnance Factory, Kanpur, where a penalty
of reduction by two stages in the pay scale of

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[Signature]

Rs.950-1500/- was awarded to him vide the impugned order dated 23.09.91, thus reducing his pay from Rs1150/- to Rs1110/-. The penalty was awarded because the disciplinary authority held the applicant guilty of not depositing the keys of the almirahs (in which certain costly materials were kept) at the main gate, which act, according to the disciplinary authority, facilitated the theft of such articles amounting to Rs.46,925.26 on the morning of 15.08.84.

2. It has been alleged that the keys of such almirahs ought to have been kept at the main gate of the factory as required by the prescribed procedure whereas the applicant, Storekeeper, had hidden them inside the godown itself at a place of his own choice. It was, therefore, felt that this resulted in the thieves finding the keys inside the godown leading to a big theft. On the other hand the applicant's contention is that it was the normal practice to deposit the keys in a hidden place inside the godown itself and he was never directed to deposit them at the main gate. Further, the theft was seen to have been committed after breaking the lock of the main door of the godown and therefore, the Watchman should have been ^{held} guilty as without his negligence the main door lock of the godown could not have been broken and the thieves could not have entered the godown at all. It is also the contention of the applicant that the Enquiry Officer held him to be not guilty of the charges against him. The report of the Inquiry Officer dated 29.6.1989 (annexure A-21) is very clearly in favour of the applicant. The Enquiry Officer has

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stated in his report that the Presenting Officer Foreman had neither given any specific instruction regarding depositing the keys in the "proper place", nor was any irregularity noticed by him regarding depositing the keys. The Presenting Officer also clearly never raised any objection regarding the procedure adopted by the Storekeeper in depositing the keys at a place of his choice. The I.O. also depended on the statement of the Foreman that the possibility of opening of the almirahs by duplicate keys could not be ruled out and, therefore, he came to the conclusion that "In view of the foregoing, the charges against the accused cannot be established."

3. When the inquiry report was received by the disciplinary authority he disagreed with the findings of the I.O. and awarded the penalty on 27.08.90 without giving any specific reasons for disagreeing with the I.O.. The memo dated 27.08.90 recorded by the Disciplinary Authority in this regard merely repeated the allegations contained in the charge-sheet without giving reasons why he disagreed with the I.O.'s finding that it- was never a specific instruction to the applicant to keep the keys at the main gate or that no objection was ever made by the applicant's superior regarding the procedure adopted by him in keeping the keys at a place of his choice.

4. In such cases it is of greater importance for this Tribunal to examine the legality of the ...pg.4/-

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procedure adopted in the disciplinary proceedings rather than go into the nitty-gritty of the facts of the charges. The applicant has pointed out several irregularities in the holding of the inquiry itself such as adding prosecution witnesses during the course of the enquiry without their mention being made in the charge-sheet and list of witnesses provided to him, non-furnishing of certain documents etc., in addition to the fact that an F.I.R. was lodged regarding the same theft and the applicant's house was searched by the Police and yet the Police closed the case against him as not proved. These infirmities in the case against the applicant pale into insignificance when we see the major illegality committed by the disciplinary authority, i.e., not serving a show-cause notice on the applicant clearly giving reasons for differing with the findings of the I.O., which considered the applicant to be not guilty. Merely for this illegality the impugned order deserves to be quashed. We are also not convinced that the applicant had departed from any well-accepted procedure of keeping the keys of the almirahs at main gate because even his superior accepted that he had neither given any such instructions to the contrary, nor had he ever objected to the procedure adopted by the applicant. There seemed to be no complicity of the applicant in the theft specially when it was committed after breaking open the main lock of the godown and also in face of the finding of the I.O. that the lock of almirahs could have been opened by duplicate keys.

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5. In the circumstances discussed above, we come to the conclusion that the disciplinary authority seriously erred in law in awarding the penalty to the applicant vide the impugned order dated 23.9.91, without assigning any specific or logical reasons for differing with the findings of 'not guilty' recorded by the Inquiry Officer. The impugned order is, therefore, quashed,

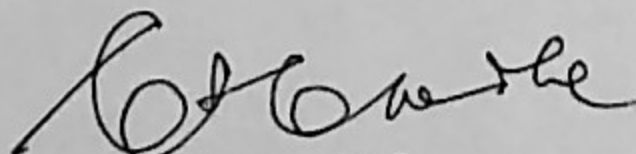
6. The applicant had filed an appeal against the impugned order but was not informed about its outcome until the filing of the OA. However, the copy of the appellate order dated 31.12.92^{was} filed as Annexure CA-III alongwith counter reply. But it was an order passed against O.P.Agnihotri. When this mistake was noticed, the counsel for respondent Shri Prashant Mathur filed M.A 3857 of 2001 supported by an affidavit annexing therewith copy of appellate order dated 31.12.92. Thus the appellate order has come on record.

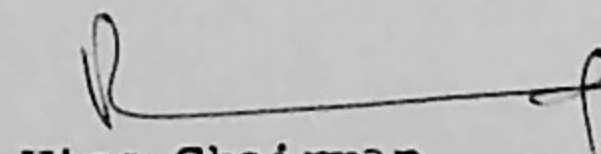
7. A perusal of the appellate order shows that it **merely** repeats what the disciplinary authority has stated. The appellate authority did not apply its mind to the shortcoming in the order of the disciplinary authority i.e. of not assigning any logical and cogent reason for differing with the findings of the Inquiry officer and also of not informing the applicant of such reasons. Thus the appellate authority failed to appreciate the gravity of the failure of the disciplinary authority in not affording any opportunity to the applicant to rebut the reasons, if any, for not agreeing with the Inquiry officer. Further, we find that the appellate authority took the same decision as the disciplinary authority ^{by saying that} ~~because~~ the applicant "was ~~afforded~~ reasonable opportunity in the departmental enquiry to prove his innocence and he was supplied with the copy of dissenting findings but he failed to prove his innocence." We

find this conclusion of the appellate authority highly erroneous for two reasons. First, although a copy of the "dissenting findings" was made available, it contained no logical reasons for differing with the finding of the Inquiry Officer that according to the well accepted practice (which was also never objected to, by the foreman) the keys were never required to be kept at the main gate. There were other findings of the Inquiry Officer as well, which were also not rebutted in such "dissenting findings." Secondly, and perhaps more importantly the applicant did not have to prove himself innocent, but it was the department, which had to prove the applicant guilty beyond doubt. We, therefore, cannot agree with the appellate authority and as such its order dated 31.12.92 is also quashed.

7. The applicant shall therefore be entitled to all consequential benefits in pay/promotion as if the impugned order as well as the appellate order of 31.12.92 had never been passed. These directions will be carried out within three months from the receipt of this order.

8. There shall be no order as to costs.


Member (A)


Vice Chairman

/M.M./

O/R

M.A. NO 3395/02 with
Affidavit has been
filed by Sri P. Mathur,
Advocate, Counsel for
respondents.

Submitted for
order on 12-9-02.

T.A.
B.9.02

O.A.No.789/93.

12.09.2002.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Dayal, A.M.

Sri. P.K. Dubey, counsel for the applicant.

Sri P. Mathura counsel for the respondent.

This M.A. 3395/02 is for time to implement the order dated 8.3.02 passed in O.A. No 789/93. This M.A. was filed on 27.8.02. Considering the facts 3 months time is allowed for implementation of the order subject to the consideration. No further time shall be granted, application is dismissed.

A.M.

V.C.

Manish/-

12.09.2002.

O.A.No.789/93.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Dayal, A.M.

Sri. P.K. Dubey, counsel for the applicant.

Sri P. Mathura counsel for the respondent.

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A.M.


V.C.

Manish/-