

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 21st day of December, 2001.

Q U O R U M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Original Application No. 1148 of 1993.

Ginnilal S/o Sri Gurudin, R/o House No. 20/203,
Chatai Mohal, Kanpur, presently employed as Leather
Worker (Skilled), P. No. 104362, Ticket No. 18/BP
(old T. No. 194/BP), Ordnance Equipment Factory,
Kanpur.

.....Applicant

Counsel for the applicant :- Sri N.K. Nair
Sri M.K. Upadhyay

V E R S U S

1. Union of India through the Secretary,
M/o Defence, Department of Defence Production
Government of India, New Delhi.
2. Additional Director General, Ordnance Factories,
O.E.F. Group, Head Quarters, G.T. Road, Kanpur.
3. General Manager, Ordnance Equipment Factory,
Kanpur.

.....Respondents

Counsel for the respondents :- Km. Sadhna Srivastava

O R D E R (Oral)

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

This original application under section 19 of the
Administrative Tribunals Act, 1985 has been filed



challenging the order of punishment 17.03.1992 by which applicant was awarded penalty of reduction of pay to the minimum scale for the period of three years with cumulative effect w.e.f 17. 03.1992, on conclusion of disciplinary proceedings. The appeal filed by the applicant was dismissed on 02.12.2992 and punishment awarded was maintained which has also been challenged in this O.A. The applicant was served with memo of charge dated 14.04.¹⁹⁷⁷~~1997~~. The allegation against the applicant was that he remained absent unauthorisedly from duty from 20.11.¹⁹⁷⁶~~1996~~ to 02.04.¹⁹⁷⁷~~1997~~ without applying for the leave. The applicant denied the charge and submitted his reply. The enquiry officer proceeded in usual manner and submitted his report on 22.12.1991 with the conclusion that the charges against the applicant are proved. The disciplinary authority agreed with the enquiry report and passed the punishment order as stated above which has been confirmed in appeal.

2. Learned counsel for the applicant has submitted that the applicant has no knowledge of the English language and the entire disciplinary proceedings were conducted in English. The statement of the witnesses were also recorded in English. He was not in position to cross examine and thus, in fact, the opportunity of defence is totally denied in this case. It is also submitted that this question was raised before the disciplinary authority and the appellate authority but they did not consider it in the right aspect. It is submitted that the orders cannot be sustained and are liable to be quashed on this ground.

3. Learned counsel for the respondents on the other

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hand has submitted that this plea was not raised at the appropriate stage and the appellate authority was justified in rejecting this plea of the applicant. It is also submitted that the applicant filed his representation against the enquiry report in English Language which shows that he has knowledge of English and no prejudice has been caused.

4. We have carefully considered the submissions made by learned counsel for the parties.

5. In para- 4 of the O.A, applicant has stated that the enquiry was conducted in English language with which the applicant was not conversant and he could not defend himself. Reply has been given in para- 8 of the counter reply wherein it has been admitted that the enquiry proceedings were conducted in Hindi but recorded in English language by the enquiry officer and before submission of defence side, the delinquent employee was asked as to whether he wants to bring any defence assistant, he had replied in negative. Thus it is admitted fact that the record of the enquiry ~~report~~ ^{proceedings} was prepared in English. The applicant made an application on 05-07-1980 (annexure A- 4) to the General Manager (disciplinary authority) to the effect that the enquiry officer conducted entire enquiry proceedings in English language which he could not understand. According to his direction, he had signed papers. He ultimately prayed that this enquiry may be quashed and fresh enquiry may be directed. This letter was written by him in respect of the letter dated 02.07.1980. Thus it could not be said that this plea was not raised before the disciplinary authority. In his objection filed on 21.12.1991 against

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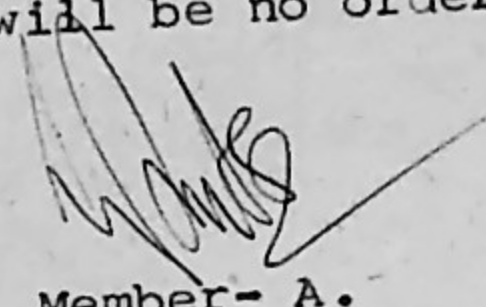
the report of the enquiry officer again in para- 3, he raised this objection that he did not know the English language and the entire enquiry was conducted in English and he has been prejudiced and could not defend him-self. It is also stated that he could not cross examine the witnesses as the statements were recorded in English. In para 7- B, again applicant raised this plea that he was not conversant with what was being recorded nor was in a position to defend him-self properly. The appellate authority has noticed this plea of the applicant in the appellate order but he said that he ^{did} ~~was~~ not raised this plea before the ^{authorities at} appropriate stage, therefore, it could not be taken in to account. The appellate authority should ^{have} ~~gone~~ into details of each and every fact as to whether the applicant has ~~actual~~ knowledge of English or not. It was very serious issue in the disciplinary proceedings. If the applicant has no knowledge of English, ~~thus~~ the proceedings were vitiated, as he could not availed the services of the defence assistant in ~~these~~ disciplinary proceedings.. In our opinion, the appellate authority has not given ^{due} ~~any~~ care and attention to this plea of the applicant. It was not difficult for the appellate authority to record the findings on the basis of the service record of the applicant, as to what was the educational qualification of the applicant. The appellate authority could ascertain this fact before passing the order. As this serious issue has not been decided, the applicant is entitled for the relief and the order of the appellate authority can not be sustained.

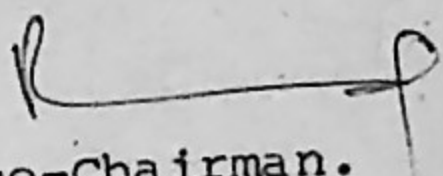
6. For the reasons stated above, this O.A is allowed in part. The order of the appellate authority

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dated 02.12.1992 (annexure A- 2) is quashed. The appeal of the applicant before appellate authority shall stand restored and shall be considered and ~~decided~~ ^{recorded} in accordance with law, in the light of observations made above. As the charge against the applicant was with regard to the year ~~1997~~ ¹⁹⁹⁷, the appeal shall be decided within a period of four months from the date a copy of this order is filed.

7. There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/