

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 1288 OF 1994

Allahabad, this the 26th day of April, 1999.

CORAM : Hon'ble Mr. S.K. Agrawal, J.M.
Hon'ble Mr. G. Ramakrishnan, A.M.

Harihar Prasad Tiwari, Son of Late Sri
A.P. Tiwari, R/o. Staff Quarter,
V.C. Lodge, Chandra Shekhar Azad Agricultural
University, Kanpur.

.....Applicant

(By Shri O.P. Gupta, Advocate)

Versus

1. Director Quality Assurance (Stores),
Bharat Sarkar, Raksha Mantralaya,
Raksha Utpadan Vibhag, Gunta Ashwathan,
Maha Nideshalaya, D.H.Q. P.O. New Delhi.
through Sr. Quality Assurance Establishment (G.S.)
P.B.No. 307, Kanpur-208004.
2. Director General Quality Assurance,
Bharat Sarkar, Raksha Mantralaya,
Raksha Utpadan Vibhag, Gunta Ashwathan,
Maha Nideshalaya, D.H.Q. P.O. New Delhi.
3. Union of India through Secretary,
Ministry of Defence, Govt. of India, New Delhi.
4. The Secretary (D.P. & S.) Govt. of India,
Ministry of Defence Production Department,
(D.H.Q. P.O.) New Delhi.

.....Respondents.

(By Shri N.B. Singh, Advocate)

O R D E R

(By Hon'ble Mr. S.K. Agrawal, J.M.)

In this original application applicant makes
a prayer :-

- 1) to quash the order of removal dated

30-9-93 and earlier order dated 10-5-94.

(2) to reinstate the applicant in service with all consequential benefits, and

(3) to pay the applicant the arrears of salary.

2. In brief facts of the case as stated by the applicant are that the applicant while working as Chargeman Grade-II was served upon a charge sheet on 12-12-89. The allegation against the applicant was that he submitted false and forged experience certificate purported to be issued by Shyam Chemical Company, Kanpur. Applicant denied the charge. Enquiry was conducted and the applicant was held guilty. Thereafter Disciplinary authority issued impugned order of removal dated 30-9-93. Applicant preferred an appeal which was also rejected vide order dated 10-5-94. It is stated that no evidence was produced by the department before Enquiry Officer, therefore, decision of Enquiry Officer to hold the applicant guilty is based on no evidence. The Enquiry Officer mainly relied upon a letter dated 26-7-89 purported to have been received from Sri S.K.Agrawal which was not proved during the enquiry. It is also stated that applicant produced three witnesses in defence and letters dated 7-7-92 and 14-10-92, but the defence evidence was disbelieved without any reason or rythem. Therefore the order of removal as well order passed by Appellate Authority are illegal and bad in law. Hence applicant prayed for the relief as mentioned above.

3. Counter was filed. It was stated in the counter that the experience certificate produced

by the applicant purported to be issued by firm Shyam Chemical Company was found false and forged and the Enquiry Officer has rightly held the applicant guilty for the said charge. It is also stated that appeal of the applicant was also rejected after application of mind by speaking and reasoned order, therefore this original application devoid of any merit and liable to be dismissed.

4. Rejoinder was filed reiterating the facts stated in the original application.

5. Heard the learned lawyer for the parties and perused the whole record.

6. It is submitted by the learned lawyer for the applicant that it is a case of no evidence. Department has produced no evidence to support the charge against the applicant. It was the duty of the respondents department to prove the charge against the applicant with convincing and supporting evidence. This argument was objected by the learned lawyer for the respondents and submitted that there is sufficient evidence in record to hold the applicant guilty for the charge.

7. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

8. On the perusal of enquiry report it appears that the charge against the applicant was held to be proved only on the basis of letter purported to have been



written by Shri S.K.Agrawal on 26-7-89 one of the Partner of the firm Shyam Chemical Company. The contents of this letter are admittedly not proved by the department. Learned lawyer for the applicant during the course of arguments has stressed that prosecution should stand on its own legs for proving the charge against the applicant, therefore it is a case of no evidence and order of removal passed on the basis of such a report can not sustain in the eye of law. Consequently order passed by Appellate Authority also liable to be quashed.

9. In B.C.Chaturvedi Vs. UOI, 1995 (6) SSC 749(3) the Apex Court held that the High Court or Tribunal while exercising the power of judicial review cannot normally substantiate its own conclusion on penalty and impose some more other penalty. If the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charge for High Court or Tribunal, it would be appropriately moulded to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent reasons in support thereof.

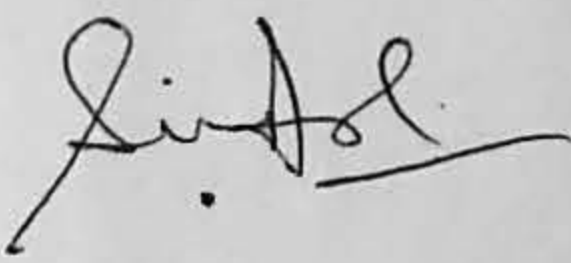
10. The similar view was also taken in Indian Oil Corporation Vs. Ashok Kumar Arora (1997) (3) SSC 72 and it was held that the High Court in such cases of departmental inquiry and findings recorded therein does not exercise the power of appellate court/authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic inquiry is vitiated by non-observance of



the principles of natural justice :- (2) denial of reasonable opportunity, if findings are based on no evidence (3) punishment is disproportionate to the proved misconduct of the employee.

11. In K.Oli Vs. UOI 38 Central Administrative Tribunal, Madras 171 it was held by the Central Administrative Tribunal, Madras Bench that it was not for the applicants to prove that certificate produced by them are bogus. It is for respondents to prove by acceptable evidence that the certificates produced are bogus. Unit Officer who is said to have given the certificates could have been examined to prove that such certificate was not given, but it was not done; as such respondents cannot rely upon the report taken behind the back of applicants and terminate their services. Hence impugned orders evashed.

12. In the instant case the letter dated 26-7-89 purported to have been is aed by Sri S.K.Agrawal one of the partner of the firm must have been proved by examining Sri S.K.Agrawal, partner of the firm or any other person of the perso n so as to give an opportunity to cross examine the applicant. But in this case only on the basis of the letter dated 26-7-89 purported to have been written by Sri S.K.Agrawal the charge against the applicant was held to be proved, which is against the settled principles of law.


 13. On the basis of foregoing discussions we are of the opinion that instant case is no evidence case and charge against the applicant on such an evidence cannot be said to have been proved. Therefore, order of Disciplinary authority on the basis of such enquiry report


is bad in law, consequently the order of appellate authority also can not sustain in the eye of law.

14. We, therefore, allow this original application and :-

- 1) Quash the order of removal dated 30-9-93 and order of appellate authority dated 10-5-94.
- 2) Direct the respondents to reinstate the applicant in service forthwith, and
- 3) The applicant is also entitle to back wages from the date of removal to the date of reinstatement, as per Fundamental Rules.

15. No order as to costs.


MEMBER(A)


MEMBER(J) 26/4/99

satya/