

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 14th day of March 2002.

QUORUM : HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

HON. MR. S. DAYAL, A.M.

O. A. No.1625 of 1994.

Kedar Singh Bhadauria a/a 55 years s/o Late Kalyan Singh
Bhadauria r/o Kachchi Jhopari, Govind Nagar, Kanpur, presently
employed as Labour (S.G.), Ticket No.1256/QM, Field Gun
Factory, Kanpur..... Applicant.

Counsel for applicant : Sri M.K. Upadhyay.

Versus

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

2. Chaiman, Ordnance Factory Board/Director General of
Ordnance Factories, 10-A, Auckland Road, Calcutta.

3. General Manager, Field Gun Factory, Kanpur.

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..... Respondents.

Counsel for respondents : Sri Ashok Mohiley.

O R D E R (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed with the prayer
for setting aside the order of disciplinary authority dated
27.10.93, the order of appellate authority dated 16.6.94,
regarding forfeiture of pay and allowances over and above
during the period of suspension and disallowing leave,
increments, pension and earned leave during this period.

2. The applicant was serving as labour (SG) in the
store section of Field Gun Factory, Kanpur when he was
proceeded against under charge-sheet dated 2.5.91 for gross
misconduct and on account of money lending at usurious inte-
rest ra-tes also on account of money lending inside the
factory during working hours who was also charged on^{of} conduct
~~of~~ in violation of rule 3(i)(iii) of the CCS (Conduct) Rules
1964. Charges No.2 and 3 against the applicant were^{taken as} proved
by the Enquiry Officer. The applicant was imposed the

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penalty of reduction of pay to the minimum of time scale of Rs.800-1150 with cumulative effect for the period of three years w.e.f. 28.10.93. The appeal filed by the applicant was turned down by order dated 16.6.94 after which order dated 24.8.94 was passed regarding forfeiture of his pay etc. The applicant has challenged the above orders on various grounds.

3. We have heard the arguments of Sri M.K. Upadhyay for applicant and Sri Ashok Mohilay for respondents and considered the pleadings on record.

4. Counsel for the applicant has contended that the charges framed against the applicant are vague in so much as it has not been mentioned as to how many persons were lent^l money at usurious interest rates and how the business was being carried on by the applicant in the premises of the factory. Counsel for the applicant has also contended that no evidence has been recorded against the applicant in the form of statements of those who were alleged to have been lent^l money by the applicant and yet a finding of the charge having been proved has been given by the enquiry officer. Counsel for the applicant has also mentioned that the defence of the applicant regarding the money in his possession has not been considered by the respondents and the applicant has been imposed punishment without any evidence of his guilt.

5. We have considered the submissions of counsels for the parties. Counsel for the respondents has stated that statement of imputations clearly shows how the business was being carried out by the applicant who is the charged employee in this case. He has mentioned that chit issued by Sri A.L. Tiwari which was addressed to Sri Bhadauria for lending Rs.800/= on interest was found in the possession of Sri Bhadauria. It is also stated in the statement of imputation that a larger sum of Rs.5552/= was found in the possession of Sri Bhadauria.



6. We find that in response to the averments of the applicant that the sole ground on which the enquiry officer took the charges as partly proved was the statement of the applicant recorded by the enquiry officer. No other witnesses were examined and no documents, which were produced in the departmental enquiry, were proved by calling the witnesses. This averment has not specifically been denied by the respondents in the counter reply. We find that the respondents had named six witnesses for proving the charges against Sri Bhadauria which included Sri A.L. Tiwari. ^{Moreover} ~~However~~, Sri Devendra Kumar, who was said to have been given money by Sri Bhadauria was neither listed as witness nor examined.

7. We find that the respondents have considered the slips recovered from the possession of Sri Bhadauria at the time of search as the sole basis on which it has been taken as proved that Sri Bhadauria has lend Rs.500/= to Sri Devendra Kumar on recommendation of Sri A.L. Tiwari and that Rs.800/= were to be recovered from Sri Devendra Kumar for the advance given. The applicant has filed a representation addressed by Sri Devendra Kumar to the General Manager, Field Gun Factory, Kanpur in which he had mentioned that he required money for treatment of his child who was injured and he had approached Sri A.L. Tiwari, who gave a slip for Sri Bhadauria but neither Sri Tiwari nor Sri Bhadauria advanced any money to him. He has also stated that he had taken Rs.800/= in place of Rs.500/= and stated that he was taking the amount for a period of four months. This statement of Sri Devendra Kumar was furnished by the applicant to the General Manager along with his reply and representation dated 28.10.93 in response to the conclusion of the enquiry officer. The respondents have not denied this averment of the applicant.

8. The defence given by the charged employee regard-




ing large sum of Rs.5552/= found in Almirah was verified by the enquiry officer who found that the applicant had actually withdrawn Rs.4000/= from the Cooperative Society on 10.4.91, and that he believed that the amount found in the Almirah of Sri Bhadauria included this Rs.4000/= along with the balance of the salary of applicant. The enquiry officer has also mentioned that no documentary proof was available regarding rate of interest charged by the applicant.

9. After examining the pleadings on the record, we are of the view that the recommendations of the enquiry officer are based on surmises and conjectures and the case is of no evidence as far as the charges against the applicant are concerned. We, therefore, set aside the order of punishment dated 27.10.93 and order of appeal dated 16.4.94 as also the order dated 24.8.94 regarding forfeiture of the salary of the applicant. The applicant shall be entitled to all consequential benefits.

There shall be no order as to costs.


A.M.


V.C.

Asthana/
16.3.02