

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No.02 of 1994

Dated: 27 April, 1995

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. J.S. Dhaliwal, Member(J)

S.P. Bhatia, Ticket No. 237/ Barrel Section
aged about 50 years, son of late Shri Hari
Chand Bhatia, R/o D/50 Adarsh Vihar,
Near Natraj Cinema, Govind Nagar,
Kanpur. ... Applicant.

(By Advocate Sri R. Verma)

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. The General Manager, Sma.. Arms
factory, Kanpur.
3. The Chairman/D.G.O.F. Ordnance
Factories Board, 10-A Auckland
Road, Calcutta. ... Respondents.

(By Advocate Sri A. Mohiley)

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(By Hon. Mr. S. Das Gupta, Member(A))

This application has been filed under Sec.
19 of the Administrative Tribunals Act, 1985 challenging
the order dated 9.1.1993 (Annexure- A 1) by which the
respondent no. 2 imposed ~~reduced~~ the penalty of reduction
of pay of the applicant by two stages from Rs. 1380/-
p.m. to Rs. 1320 p.m. for a period of 2 years with
a direction that he will not earn increments of pay
during the aforesaid period of reduction and that
on the expiry of the aforesaid period, the reduction
will have the ~~effect~~ of postponing his future

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increments of pay. He has also challenged the appellate order dated 23.2.1994(Annexure- A 1(a)) by which the appellate authority has rejected the appeal preferred by the applicant against the impugned order dated 9.1.1993.

2. The applicant was working as a Highly skilled Grade-I Machinist. By an order dated 22.8.1981, he was ~~served~~ ^{placed} under suspension with immediate effect by the respondent no.2 and thereafter on 4.10.1981, he was served with a charge-memo. There were two articles of charge. One alleged that the applicant had told the Foreman of the section that he ~~was~~ would assault Sri A.K. Agrawal, Dy. Manager, if the applicant was not put on night shift. The other article of charge alleged that the applicant threatened Sri A.K. Agrawal of physical assault when his demand for being put on night shift was rejected by the former. The inquiry was ordered on 27.12.1981. The inquiry officer completed the inquiry ex-parte and found the charges against the applicant as established. The disciplinary authority agreed with the findings of the inquiry officer and imposed a penalty of reduction of pay to the minimum of the scale by an order dated 28.8.1984. Against this order, the applicant preferred an appeal to the respondent no. 3 but before the same was decided, he filed the suit before the court of Munsif ^{which was} subsequently transferred to this

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Tribunal and registered as T.A. No. 1121 of 1986. The said T.A. was disposed of by the Tribunal on 13.9.1991 with a direction to the respondents to supply a copy of the inquiry report to the applicant and to provide an opportunity to him to make representation against the same and thereafter to pass suitable orders.

In compliance with this direction, the respondent no. 2 cancelled the order of penalty dated 28.8.1984 and served on the applicant a copy of the inquiry report giving him an opportunity to represent against the findings. The applicant submitted his representation dated 16.12.1991. The applicant's case is that without taking into account the contents of the representation dated 16.12.1991 and without applying its own mind, the disciplinary authority passed a non-speaking order which is the impugned order dated 9.1.1993 imposing the penalty aforesaid. The appeal preferred against this order was also rejected by the impugned order dated 23.2.1994. This has led the applicant to file this application for the reliefs aforesaid.

3. The applicant has alleged that he submitted an application dated 2.11.1982 to the respondent no. 2 requesting that the inquiry officer be changed on the ground of his being biased and prejudiced. He also requested that the inquiry be kept in abeyance till the disposal of the said representation. It is alleged that the respondent no. 2 did not pay any heed to the said application and the inquiry officer proceeded with the inquiry without waiting for the disposal of the said representation. It is further

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alleged that during the course of inquiry on 31.1.1984, the applicant informed the inquiry officer that since his representation dated 2.11.1982 was yet to be decided he would not be in a position to participate in the inquiry. He further requested that the inquiry be kept in abeyance till the disposal of his representation. The inquiry officer, however, proceeded with the inquiry ex parte and submitted its report to the disciplinary authority holding the charges as proved. This action on the part of the inquiry officer, the applicant contends, is arbitrary and illegal and is violative of the principles of natural justice. The applicant has alleged that he was not afforded reasonable opportunity of being heard.

4. Another ground taken by the applicant is that even in ex parte inquiry, the charges must be proved with cogent evidence. The report of inquiry must, therefore, be a speaking one and should ~~not~~ ^{contain} contend the reasons supported by evidence. The applicant alleges that the report of the inquiry officer is a non-speaking one. Yet another ground taken by the applicant is that the impugned order of the disciplinary authority is a non-speaking one and his conclusions are not supported with reasons. The order of the appellate authority has been challenged on the ground that the said authority has not considered all the points

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raised by the applicant in his appeal.

5. The respondents have filed a detailed counter affidavit. Giving the back ground of the case leading to the suspension and charge-sheeting of the applicant, it has been stated that the applicant was given full opportunity to defend his case, but he deliberately avoided attending the proceedings and, therefore, the inquiry officer had to proceed ex-parte, after the applicant was informed explicitly to appear on 18.5.1984 failing which the inquiry would be conducted ex-parte. It has been stated that the said application was rejected and the inquiry officer was asked to continue with the inquiry.

5. The applicant has filed a rejoinder affidavit in which the contents of the Original Application have been reiterated.

6. We have heard the learned counsel for the parties and have carefully gone through the pleadings of the case.

7. We have gone through the summary of the proceedings which is enclosed to the Original Application. We find therefrom that the applicant was given an opportunity to appear before the inquiry but the applicant did not attend the inquiry for no valid reasons. It has also been seen that the disciplinary authority had rejected the applicant's request

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for change of the inquiry officer and asked the inquiry officer to continue with the proceedings.

This fact was communicated by the inquiry officer during the inquiry proceedings to the applicant and yet the applicant refused to cooperate with the inquiry. We, therefore, find that the action of the inquiry officer in proceeding with the inquiry ~~ex parte~~ was fully justified and the applicant cannot complain that he was denied of the adequate opportunity to defend himself.

8. So far as the findings of the inquiry officer are ^{concerned} considered, we find nothing on record to come to a conclusion that such findings are perverse or based on no evidence.

9. The applicant has sought reliance on the decisions of Hon'ble Supreme Court in the case of Anil Kumar Vs. Presiding Officer and others, 1985, S.C.C.(L&S) 815 and also on the decision of the Hyderabad Bench of the Tribunal in the case of C. Rama Rao Vs. Divisional Commercial Superintendent, South Eastern Railway, Waltair and others, (1990) 12 ATC 99. These decisions have been relied upon to contend that the report of the inquiry officer must be speaking one.

10. As we have already mentioned, we do not

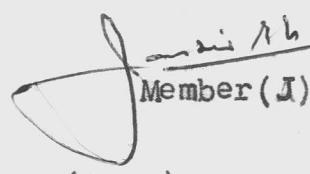
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agree with the view that the inquiry officer's report is a non-speaking one. It is clear from the Annexure- A 2 that the findings are based on certain proceedings copies of which have not been enclosed either by the applicant or by the respondents. It is not the case of the applicant that no witness was examined in support of the charges. In the absence of the recorded evidence of the witnesses, we cannot, in any way, conclude that the conclusion reached by the inquiry officer are not based on proper evidence.

11. It is seen from the impugned order dated 9.1.1993 that it specifically states that the representation dated 16.12.1991 made by the applicant against the findings of the inquiry officer have been carefully considered. Since the disciplinary authority had accepted the findings of the inquiry officer, there is no duty cast on him either statutorily or based on the principles of natural justice elaborately indicates the reasons why he agreed with the findings. Such duty is cast only when the disciplinary authority disagrees with the findings of the inquiry officer. The impugned order dated 9.1.1993 does not indicate any non-application of mind or non-consideration of the representation dated 16.12.1991.

12. So far as the appellate order is concerned, we find that the same is a speaking order giving the reasons why the appellate authority rejected the appeal.

13. In view of the foregoing, we find that the application has no merit and it is accordingly dismissed. There will be no order as to costs.


Member (A)
(n.u.)


Member (A)