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(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 06th day of November, 2001.

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

Original Application No. 648 of 1994.

Jai Narain Srivastava S/o Late R.N. Srivastava  
R/o 4/252, Purana Kanpur, P.O. Nawabganj, Kanpur.

.....Applicant.

Counsel for the applicant :- Sri S. Chandra

V E R S U S

1. Union of India through the Secretary of Defence,  
New Delhi.
2. Additional Director General, Ordnance Factories,  
Directorate General, Ordnance Factories,  
Ordnance Equipment Factories Group Headquarters,  
G.T. Road, Kanpur.
3. General Manager, Ordnance Equipment Factory,  
Kanpur.
4. Sri B.B. Singh S/o Sri Kund Singh  
R/o 34-A, Gandhi Gram, Chakeri, P.S. Chakeri,  
Distt. Kanpur.


.....Respondents

Counsel for the respondents:- Km. S. Srivastava

Order (Oral)

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

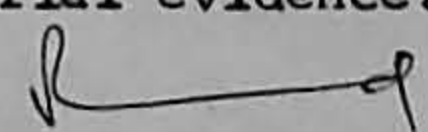
Applicant J.N. Srivastava by filing this O.A  
under section 19 of the Administrative Tribunals Act,  
1985, has challenged the order dated 07.01.1993 by



which on conclusion of disciplinary proceedings, punishment of dismissal from the service was awarded by disciplinary authority. In appeal, the aforesaid order has been upheld by the appellate authority by order dated 15.07.1993.

2. The facts in short giving rise to this application are that the applicant after serving in Military for more than 15 years, he joined as Civilian Motor Driver Grade-II on 10.12.1979 in Ordnance Equipment Factory, Kanpur. Applicant was served a memo of charge dated 12.11.1991 alleging that on 13.10.1991 at about 1010 hours applicant was trying to pass out of the factory unauthorisedly, nearly 2.850 grm. of Aluminium Scrap (Government Material) kept in a hand bag held by him was recovered from his unauthorised possession. As usual the disciplinary proceedings were initiated against him. Enquiry Officer submitted his report on 30.10.1992. A copy of the enquiry report was served on the applicant and he was asked to submit his written representation which was submitted on 30.11.1992. Disciplinary authority agreed with the findings of the Enquiry Officer and passed the <sup>order of</sup> punishment as stated above, which has been confirmed in appeal.

3. Learned counsel for the applicant has challenged the order on the ground that Sri B.B. Singh, respondent No.4 was furious against the applicant due to the reasons of not supplying the liquor to him. It is also stated that he had <sup>u</sup>lodged complaint against Sri B.B. Singh before the insident in question but no action was taken. This plea has been examined by the appellate authority in detail but no such complaints, lodged by the applicant, were available in the <sup>department</sup> ~~document~~. He could not <sup>support</sup> ~~sustain~~ his defence, by any material evidence.





4. The second submission of learned counsel for the applicant is that at the time of <sup>incident</sup>, statement of the applicant was got recorded under force but copy of this statement was not supplied to the applicant. Learned counsel for the applicant has submitted that the defence of the applicant certainly prejudiced <sup>for none</sup> supply<sup>ing</sup> of the evidence and enquiry proceedings ~~was~~ stand vatiated.

5. We have carefully considered this plea, raised by the learned counsel for the applicant. It is true that applicant demanded this document at the time of enquiry. However, in para-17 of the CA, it has been catagorically stated that defending side after examinig the documents, affirmed that the copies of all documents so produced by the Inquiry Officer were already available with the AGS and no other document was demanded or objected. It appears that either applicant <sup>was</sup> subsequently supplied all these documents and he was allowed to <sup>inspect</sup> ~~accept~~ the same, hence he <sup>did not</sup> raise this plea at the appellate stage. It is settled principle <sup>that</sup> if an important plea of present nature ~~to be waived and not~~ is taken up at the appellate stage, it can not be allowed to be raised at this stage. We have perused the appellate order as well as memo of appeal but we do not find that any such plea for supply<sup>ing</sup> of the documents was raised there. In the circumstances, we do not find any substance in this submission of learned counsel for the applicant. The charge against the applicant has been proved by the evidence on record and so far as mis-conduct is concerned, we do not find any material on which basis interference by this Tribunal may be called for.

6. Learned counsel for the applicant then submitted that punishment awarded is harsh and is not commensurate to the charge levelled against the applicant. He has



also submitted that applicant before joining the Ordnance Equipment Factory had served the Army for over 15 years. During the entire service in the Ordnance Equipment Factory, No serious mis-conduct was noticed. Learned counsel has also submitted that after this incidence, applicant met with an accident and he is now handicapped person, as he has lost 50% of his ability of the body as certified by the C.M.O, Kanpur dated 07.10.1998. Considering the past services and the present position of the applicant, learned counsel has submitted that this Tribunal may interfere with the punishment awarded to the applicant and ~~remand~~<sup>remmit</sup> the matter to the authority for re-consideration. Learned counsel has also submitted that in similar circumstances, the punishment of compulsory retirement has been awarded. Learned counsel for the respondents on the other hand has submitted that the punishment awarded is justified as the charge against the applicant was serious and there was no mitigating circumstances.

7. We have considered the submissions for learned counsel for the parties. However, we are of the opinion, that in the present case, the appellate authority has mainly taken the ground that applicant was found guilty of mis-conduct in earlier case also. But there is nothing to show about the nature of allegation against the applicant, and finding of the appellate authority. The order dated 21.05.1987 passed by the ~~disciplinary~~<sup>appellate</sup> authority was as under :-

" The enquiry report aforesaid has been carefully examined by the undersigned and taking the entire proceedings into consideration it has been held that the said Sri Jai Narain Srivastava, CMD failed to check the scooter before leaving the Section though it was his prime duty to check the vehicles as per the existing instructions in this regard. Therefore the undersigned has come to the conclusion





that the said Sri Jai Narain Srivastava is guilty of negligence."

8. On the aforesaid conclusion, applicant was imposed penalty of Censure for above negligence. In our opinion, mis-conduct in 1987 was of mild nature and was not so serious that <sup>in</sup> ~~of~~ <sup>in</sup> favourable circumstances <sup>in</sup> ~~against~~ the applicant in the present case could be ignored. Applicant has also filed <sup>in</sup> before us some orders in which, in similar circumstances, punishment of compulsory retirement was awarded to one Sri Durga Singh vide order dt. 12.07.1990. The allegetions against him were also similar. Another order was against Mohd. Abbas who by order dated 24.12.1988 was also awarded punishment of compulsory retirement for the previous mis-conduct. If the disciplinary authority was of the view that applicant could not be <sup>retained</sup> ~~reinstated~~ in service, he could be awarded punishment of compulsory retirement and in this <sup>in</sup> manner, he could be able to live his life with honour after retirement. After considering the facts <sup>in</sup> that applicant has been rendered handicaped as he met with an accident and almost, he has lost his one leg, we think <sup>it is</sup> most appropriate to remit the case to appellate authority for re-consideration of quantum of punishment only. For the reasons stated above, this OA is partly allowed. Though the orders of disciplinary authority and appellate authority holding the applicant of guilty of mis-conduct are maintained, <sup>in</sup> The order of punishment of dismissal from the service is quashed and the matter is being remitted to appellate authority for passing fresh order in accordance with law in the light of above observations.

9. There will be no order as to costs.

/Anand/

Member - A.

Vice-Chairman.