

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 04th day of February, 2002.

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. 949 of 1994.

Uma Shankar Singh Chandel S/o Sri Ram Din Singh
Chandel, T. No. 526/NSM/Mechinist (Skilled) OFC.
R/o Qr. No. 169/11, Vijai Nagar, Kanpur- 5.

.....Applicant

Counsel for the applicant :- Sri R.K. Saxena
Sri A.K. Gaur

V E R S U S

1. Union of India through the Secretary,
M/o Defence (Defence Production), New Delhi.
2. The Chairman/Secretary, Ordnance Factories Board,
10- A, Auckland Road, Calcutta.-1.
3. The General Manager, Ordnance Factory Cawnpore,
Kalpi Road, Kanpur- 9.
4. The Dy. General Manager (Rajiv Agarwal)
Ordnance Factory Cawnpore, Kalpi Road, Kanpur- 9.
5. The Dy. General Manager, (A.K. Shukla, Enquiry
Officer), Ordnance Factory Cawnpore,
Kalpi Road, Kanpur- 9.

.....Respondents

Counsel for the respondents :- Sri Amit Sthalekar

O R D E R (Oral)

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

By this O.A under section 19 of the

Administrative Tribunals Act, 1985, applicant has challenged the order dated 10.05.1994 passed by the General Manager, Ordnance Factory, Kanpur (respondent No.3) by which he has removed the applicant from service on conclusion of disciplinary proceedings.

2. The facts in short giving rise to this application are that the applicant joined Ordnance Factory, Kanpur on 29.08.1977 as Machinist. He was served with the memo of charge dated 13.11.1981 (annexure A- 10). The charge against the applicant was that he committed gross mis-conduct in that he suppressed the facts of his previous services at Vehicle Factory, Jabalpur at the time of his appointment in Ordnance Factory, Kanpur in August, 1977. Applicant ~~has~~ submitted his reply to this memo of charge on 23.11.1981, a copy of which has been filed as annexure A- 13, whereⁱⁿ he mentioned the facts in detail and the circumstances in which the ^{order of removal} order was passed. In para- 9 of his reply, he also submitted that by letter dated 10.12.1979, applicant was advised that he has been reinstated and direction was given to join duty immediately. However, as the applicant ^{had} already joined at Kanpur, he did not join duty in response to the letter dated 10.12.1979. During this proceeding, respondents also received letter dated 21.09.1981 which was confidential report about service and ^{other} ~~present~~ particulars of the applicant, sent by the Vehicle Factory, Jabalpur to the General Manager, Ordnance Factory, Kanpur. This report also contained full facts about the disciplinary action taken against the applicant, his removal from service and his reinstatement under the orders of Ordnance

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Factory Board. After receiving the reply of the applicant, the enquiry was closed.

3. However, a fresh memo of charge dated 27.11.1991 (annexure A- 2) was served on the applicant. It contained similar allegations that the applicant committed gross mis-conduct in that he suppressed the facts of his previous services at Vehicle Factory, Jabalpur at the time of his appointment in Ordnance Factory, Kanpur in August, 1977. The second charge against the applicant was that he suppressed the facts of his stay in Jabalpur for more than one year ~~at a time~~ at the time of appointment in Ordnance Factory, Kanpur in August, 1977. The third charge was that applicant suppressed the facts of his prosecution/ conviction by the Sessions Court, Jabalpur on 17.06.1975 under section 147, 149, 332, 333 I.P.C and his conviction and sentence which was subsequently set aside by the Hon'ble High Court, M.P on 16.11.1978 convicting him under section 143 of I.P.C and directing ~~him~~ to release him under section 4 of the Probation of Offender Act. Applicant submitted his reply to this memo of charge on 06.01.1992 (annexure A- 14). In his reply, applicant specifically raised that the memo of charge was served in 1981 and the memo of charge dated 27.11.1991 is repetition of the same. However, it appears that after submission of his reply, applicant did not appear before the enquiry officer. Enquiry report was submitted on 10.08.1993 and, thereafter order of removal dated 10.05.1994 was passed.

4. From the persual of the enquiry report, it is clear that enquiry officer has not taken into account

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the facts stated by the applicant in his reply. He has not even taken care to notice that the memo of charge dated 13.11.1981 and memo of charge dated 27.11.1991 were for similar charge, except charge No.2 and charge No.3 which were also with regard to the same incident. This fact was stated in the first paragraph of the reply. Enquiry officer, in his report, has submitted that the applicant was given five opportunities to attend the said enquiry but he failed to appear on any occasion. We have perused the record of the enquiry to ascertain as to whether the applicant deliberately absented himself from the enquiry or he had, in fact, no knowledge of the date. The notices which were sent by the registered post could not be served on the applicant and ^{were} returned back every time with remark that the applicant was not available. Enquiry officer ^{had} also stated that the notice was also sent to the applicant by hand. One such notice was accepted by the applicant and on other occasions, he refused to accept. The notice for service by hand is admitted which was for the date 11.05.1993. The case of the applicant is that on that date, applicant was required to appear in a criminal court in connection with the case and, therefore, he could not attend the enquiry and sent a letter for adjournment. The another date was fixed for 03.06.1993 according to enquiry report but the applicant has said that this date was not communicated to him.

5. Considering the facts and circumstances of the case, in our opinion, on question of service, it is difficult to accept that after 11.05.1993 applicant

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had knowledge of any date fixed by the enquiry officer. After that Presenting Officer submitted his view, which was sent by the enquiry officer on 09.07.1993 for service on the applicant by registered post, ~~which~~^{it} was also received back un-served. In these circumstances, we are of the opinion, that the applicant deserves an opportunity to contest these disciplinary proceedings. We are not satisfied that the enquiry officer examined the whole matter analytically and considered all the facts mentioned by the applicant in his reply. Even in absence of the applicant, enquiry officer could have considered the impact of the earlier proceedings against the applicant with regard to the same allegation and which was dropped. But the inquiry officer just ignored this material aspect of the case. The disciplinary authority also has passed the order of removal without considering the explanation submitted by the applicant. Before passing an order of major penalty, extra care is required to be taken so that injustice may not occur. Such orders do not effect only the person concerned but also the dependents of such person. The applicant filed an appeal against the impugned order which has not been decided and is still pending. The stand of the department/respondents is that no such appeal was filed by the applicant. We need not enter into this controversy and the allegations and counter allegations in this regard, as the appeal even if filed has not been decided. In the facts and circumstances narrated above, we are of the view that the applicant is entitled for the relief.

6. The OA is accordingly allowed in part. The impugned order dated 10.05.1994 and enquiry report

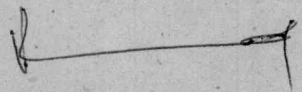
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dated 10.08.1993 are quashed. The proceedings shall commence a fresh against the applicant from the stage of applicant submitting his explanation to the memo of charge. As the matter is very old, the disciplinary authority shall appoint enquiry officer at the earliest, and shall conclude the ^{disciplinary} ~~enquiry~~ proceedings within a period of six months from the date of communication of this order. As the order of removal is being quashed, the applicant shall be treated under suspension from today and shall be paid subsistence allowances. So far as the period from 10.05.1994 to 04.02.2002 is concerned, for this period decision shall be taken by the disciplinary authority after conclusion of the enquiry and as per the nature of the order, passed in conclusion of proceedings, ^{and/or} as per the extant rules.

7. There will be no order as to costs.



Member- A.



Vice-Chairman.

/Anand/