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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 18th day of May 2001.

Original Application no. 991 of 1994.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman

Hon'ble Maj. Gen KK Srivastava, Administrative Member

Hans Raj, S/o Shri Meghu Ram,
R/o Mohalla Golaghat, P.O. Chetnath,
Ghazipur.

... Applicant

C/A Shri Rakesh Verma

Versus

1. Union of India through Secretary,
Ministry of Finance and Revenue,
New Delhi.

2. Manager, Govt. Opium & Alakaloid Works,
Ghazipur.

3. The General Manager, Govt. Opium &
Alakaloid Works,
Ghazipur.

... Respondents

C/Rs Km. Sadhana Srivastava

... 2/-

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ORDER (Oral).

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

This OA has been filed challenging order dated 14.08.1992, by which the applicant has been awarded punishment of compulsory retirement from service on conclusion of the disciplinary proceedings. The applicant has also challenged order dated 21.1.1993 by which the appeal of the applicant has been dismissed by the appellate authority.

2. The facts in short giving rise to this OA are that on 25.1.1985, one Chandra Deo, another employee of the Govt. Opium & Alakaloid Works, Ghazipur was arrested with one **plastic** packet containing Opium taken out from the factory. He was arrested by C.I.S.F. personnel while running with the packet. Chandra Deo in his written statement accepted that ^{"Sent out of factory"} said stolen packet of opium was ~~set~~ by Hans Raj, the applicant through nali. He also named two other persons. On the information received from Chandra Deo the inquiry was made from the applicant. In his statement recorded on 29.1.1985, the applicant admitted ^{"Pending out of"} his role in the opium factory. On the basis of the aforesaid material, the applicant was served with a memo of charge dated 20.02.1985. The charge is being reproduced below :-

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" ARTICLE - I.

That the said Shri Hansraj, S/o Maghoo Ram while functioning as Un-skilled Worker in Abkari Section of this factory on 25.1.85 between 8.30 to 11.00 Hrs. is alleged to have shown gross misconduct by taking opium from Shri Parmeshwar, S/o Sunder and pushing the same through the drain going out of the compound wall from the Abkari. He is also alleged to have come out of the factory on an out pass no. 269678 dated 25.1.85, issued at 11.50Hrs. and informed Shri Siri Ram, S/o Bhutti to take the opium from the outside the drain near the inner security wall."

3. The inquiry officer after completing inquiry submitted a joint report dated 16.10.1987. The disciplinary authority agreed with the report and passed the order of compulsory retirement. The applicant was serving in the opium factory as sweeper. Against the order of punishment the applicant filed an OA 423 of 1993 in this Tribunal, which was allowed on 05.12.1991 on a technical ground that report of the inquiry officer was not served on the applicant, though it was obligatory in view of the judgment of the Hon'ble Supreme Court in a case of Union of India & Others Vs. Mohd. Ramzan Khan AIR 1991 SC 471. The disciplinary authority was given liberty to proceed against ~~st~~ from the stage after serving inquiry report on the applicant. In pursuance of the order of this Tribunal, the disciplinary authority served inquiry report and passed a fresh order dated 14.8.1992 which has been confirmed by appellate authority. Aggrieved by the aforesaid order the applicant has approached this Tribunal.

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4. Learned counsel for the applicant has submitted that the report of the inquiry officer was common against the applicant and another co-delinquent Shree Ram. It is also submitted that both the applicant and Shree Ram were implicated in the case on the basis of the statement of Chandra Deo. The evidence against both ~~was~~ ^{was} same. Learned counsel for the applicant has submitted that this Tribunal in OA 140 of 1986 filed by Shree Ram has taken a view that the inquiry report was based on no evidence and the OA was allowed by order dated 17.05.1991 and the order of the compulsory retirement was set aside. Learned counsel for the applicant has submitted that this fact was brought to the notice of the appellate authority as well as to the disciplinary authority, but they failed to appreciate order of this Tribunal passed in ^{in case of} Shree Ram and have illegally passed the order of punishment against the applicant. Another submission of learned counsel for the applicant that, in this case Chandra Deo ^{was} the main witness and on the basis of his statement the applicant was involved, however, Chandra Deo has not been examined in disciplinary proceedings and thus a serious prejudice has been caused to the applicant.

5. Learned counsel for the respondents, on the other hand submitted that the inquiry officer submitted a common report in respect of the applicant and Shree Ram. But it is not correct to say that the role assigned to the applicant was also similar in case of theft of opium on 25.1.1985 from the factory. It is submitted

that Hans Raj, the applicant, has been assigned a positive role of putting the packet of opium in the nali that it alongwith drain could go out side the factory and was collected by Chandra Deo. It is submitted that the role assigned to Shree Ram was only that he was standing out side the factory alongwith Chandra Deo and Chandra Deo from that point went to collect the packets. However, when CISF person challenged, Shree Ram ran away and Chandra Deo was arrested with the packet on the spot. Learned counsel for the applicant has also submitted that Chandra Deo was not named as witness in the memo of charge. It is also submitted that the proceedings were initiated on the basis of other material mentioned in the memo of charge with statement of Parmeshwar. Learned counsel for the respondents has also stated that the order of punishment does not suffer from any error of law and the applicant is not entitled to any sympathetic consideration as the misconduct is very serious.

6. We have carefully considered the submissions made by learned counsel for the parties. We have also minutely examined the charges against the applicant and Shree Ram and we have no doubt that allegations against both were entirely different. The applicant has been assigned a positive role of putting the opium packets in the nali which could be flow alongwith water out side the factory and there it was collected by Chandra Deo. Whereas the role assigned to Shree Ram

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was that he was seen alongwith Chandra Deo, out side the factory and on arrival of police he ran away and Chandra Deo was arrested. ^{From} ~~From~~ the above it is clear that roles assigned were not similar. Chandra Deo was an employee of the factory and Shree Ram was also an employee of the factory, they could be ^{together} seen near factory premises. It is merely on the basis of that the Tribunal did not find itself in ^{an assessment} ~~accepting~~ ^{a misconduct} that any ~~mistake~~ was proved. However, in case of the applicant, the same ^{Reach} ~~settled~~ took a different view and allowed the OA only on technical ground of non service of inquiry report. Though the inquiry report was common in respect of both, The inquiry officer ^{was} dealt ^{with} with the allegation ^{against} against them separately. In our opinion the appellate authority and disciplinary authority have taken a correct view, as the ~~mistake~~ has been proved against the applicant, on the basis of his own admission and other material on record. The second submission of learned counsel for the applicant, that non examination of Chandra Deo, prejudiced the ~~case~~ ^{of} defence of the applicant, can also not be accepted. Chandra Deo was not mentioned as witness in the memo of charge. ^{As} disciplinary proceedings against the applicant were initiated on the basis of statement of the applicant and Paremashwar and Shree Ram who all admitted their involvement in the case, they ^{on} ~~on~~ subsequent stage of inquiry ^{They} ~~resisted~~ form the same. Thus non examination of Chandra Deo could not vitiate the ~~settled~~ inquiry. In our opinion the applicant

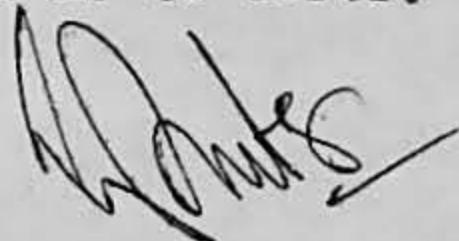
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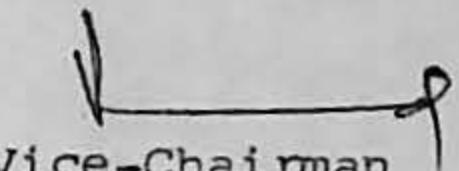
is not entitled for the relief. In the facts and circumstances, the punishment awarded is justified.

7. For the reasons stated above, we do not find any merit in this OA and the same is accordingly dismissed.

8. No order as to costs.



Member-A



Vice-Chairman

/pc/