

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 5th day of December, 2001.

Q U O R U M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. C.S. Chadha, Member- A.

Orginal Application No. 1033 of 1994.

S.N. Mishra a/a 57 years, s/o Late Chhedi Lal
R/o 67/4, Vijay Nagar, Kanpur, Formerly employed as
Machinist, Highly Skilled Grade- II. Ticket No.
406/NSM, Ordnance Factory, Kanpur.

.....Applicant

Counsel for the applicant :- Sri N.K. Nair
Sri M.K. Upadhyay

V E R S U S

1. Union of India through the Secretary,
M/o Defence, Department of Defence Production,
Govt. of India, New Delhi.
2. Chairman, Ordnance Factory Board/ Director
General, Ordnance Factories, 10 A- Auckland Road,
Calcutta.
3. General Manager, Ordnance Factory,
Kalpi Road, Kanpur.

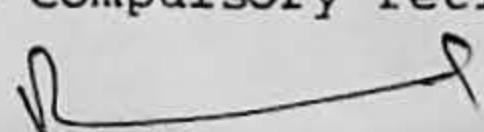
.....Respondents

Counsel for the respondents :- Sri S.C. Tripathi

O R D E R (Oral)

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

By this application under section 19 of the
Administrative Tribunals Act, 1985, applicant has
challenged the order dated 28.12.1992 by which on
conclusion of disciplinary proceedings, applicant was
awarded penalty of compulsory retirement from the



post of Machenist H.S. Gr. II, Ordnance Factory, Kanpur. The aforesaid order was challenged in appeal. The appeal was dismissed by order dated 28.04.1994, which has also been challenged.

2. The facts of the case are that the applicant was served with memo of charge dated 17.04.1987 with allegation that the applicant committed gross misconduct of theft of Government property on 25.02.1987 at about 0600 hours, when he was found taking away 12 pieces of rejected copper band weighing approximately 2Kg wrapped in hand glove, hidden under the seat cover of his bicycle. The applicant denied the charge and filed his reply. The enquiry officer as usual proceeded with the enquiry and filed enquiry report on 02.04.1990. Applicant filed his representation against the enquiry report mainly on the ground that he was denied the opportunity of cross examination of witnesses. The representation of the applicant dated 30.05.1990 was accepted and the disciplinary authority directed the enquiry officer to ~~re~~ conduct the enquiry denovo. Enquiry Officer proceeded a-fresh with the disciplinary proceedings and submitted his enquiry report on 24.01.1992. The last paragraph of the report is being reproduced below :-

" CONCLUSION

From the study of the proceedings during second phase of enquiry, it is revealed that the findings as intimated vide my confidential letter No. 1210/COMP/VIG/IE/46/WM/PL dated 02.04.1990 stands as such (copy of the same is enclosed once again)."

3. From the aforesaid conclusion, it is clear that the enquiry officer, who was directed by the disciplinary authority to hold the denovo enquiry, ~~was~~ submitted the enquiry report with the earlier findings instead of fresh



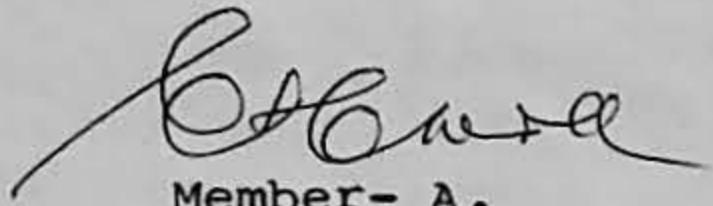
findings. It may be mentioned here that the grievance of the applicant was that three witnesses were examined but he was denied opportunity to cross examination of the witnesses as defence assistance was not provided and he was him-self not able to conduct the cross examination. The representation of the applicant was accepted and the report of the enquiry officer was set-aside. When the denovo proceedings started, only one witness Bhaggan (wrongly mentioned as Bhagwan Das) turned up. remaining two witnesses could not be available as they were transferred to other places. The question is whether the findings recorded by the enquiry officer on the basis of ~~statements~~ ^{of} ~~findings~~ of three witnesses, could now be legally used in the denovo proceedings for awarding punishment to ^{in which only one witness has been examined,} the applicant. However, this material aspect of the case has escaped the notice of disciplinary authority as well as appellate authority.

4. Before the appellate authority, appellant had challenged that he has been denied the opportunity to cross examination of the witness Sri Bhaggan as defence assistance was not available. In his memorandum of appeal, applicant has assailed the enquiry report in paragraph No. 9,10 and 11 but the appellate authority has not examined the grievance of the applicant in the light of his submission made in memo of appeal. In our opinion, these two aspects require consideration by the appellate authority. As the proceedings are very old, it is also necessary that appellate authority may decide the appeal expeditiously.

5. For the reasons stated above, this O.A is partly allowed. The order of the appellate authority dated 28.04.1994 (annexure A- 2) is quashed. The appeal filed by the applicant shall stand restored

to its original number before the appellate authority. The appellate authority shall consider and decide the appeal of the applicant afresh after giving opportunity to the applicant and in the light of observation made above. The appeal shall be decided within a period of six months from the date a copy of this order is filed before the appellate authority.

6. There will be no order as to costs.



Member - A.



Vice-Chairman.

/Anand/