

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 1049 of 1994.

this the 7th day of November 2002.

HON'BLE MR. S. DAYAL, MEMBER(A)

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Smt. Bhoori Devi, W/o late Sri Tej Singh Ticket No. 299,

Ex Maxdoor COD, Agra R/o Nai Abadi Nagla Bhawani Singh,

Behind 509 Army Base Workshop, Bundu Katra, District Agra.

Applicant.

By Advocate : Sri A.K. Jaiswal for Sri A.P. Srivastava.

Versus.

1. Union of India through the Secretary of Ministry of Defence, New Delhi.
2. Director General, Ordnance Services MGO Branch, Army Headquarter, DHQ, New Delhi.
3. The Commandant, Central Ordnance Depot, Agra.
4. Smt. Urmila Bhammi, UDC, Personal No. 6959777 SMO Branch COD, District Agra.

Respondents.

By Advocate : Sri Ashok Mohiley.

ORDER (ORAL)

MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., the applicant has challenged the orders dated 25.3.94 (page 14) and 22.9.1993 (page 16) whereby she was dismissed from service in the Army Ordnance Corps/COD, Agra, w.e.f. the date this order was served on her.

2. The applicant's case, in short, is that she was appointed as Mazdoor on compassionate grounds in the year 1978 and had been working with the entire satisfaction of his superiors. However, on 8.9.90 she was suspended and given a chargesheet dated 8.11.90. After the chargesheet, an enquiry was held wherein the Enquiry Officer gave his findings holding therein

that the charges against the applicant stands proved. A copy of the report was sent to the applicant to give a representation. The applicant gave her representation, which was considered by the disciplinary authority and after recording the reasons, he dismissed her from service. Being aggrieved, the applicant filed an appeal, but the same was also rejected upholding the penalty imposed by the disciplinary authority. The applicant's counsel has pressed for the following contentions:

(i) The authorities have already made their mind to punish the applicant even at the time of chargesheet because they have worded the charges in a fashion which showed that she had already admitted a mis-conduct. Therefore, according to the applicant's counsel, this vitiates the entire enquiry and the orders passed on the basis of such chargesheet are liable to be quashed.

(ii) The Enquiry Officer had acted as a prosecutor as well as Judge inasmuch as he had cross examined the defence witnesses which he could not have been done, therefore, the entire enquiry gets vitiated.

(iii) The Enquiry Officer was biased and since the applicant had requested for change of the Enquiry Officer, he was biased against the applicant and had relied-upon the extraneous consideration or material for giving his findings, which is not permissible.

(iv) The Enquiry Officer had not followed the Rule 14(18) of CCS (CCA) Rules, even though it is mandatory in nature. Therefore, the entire enquiry gets vitiated.

(v) The appellate authority had relied-upon the admission made by the applicant on 15.12.97, even-though this document was never relied-upon at the time of chargesheet, nor during the course of enquiry. Therefore, the order based on the so-called admission dated 15.12.97 is not sustainable in the eyes of law.

(vi) Lastly, he has submitted that the documents annexed with the Counter was never produced by the department in the enquiry, therefore, no reliance can be placed on the such

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documents.

3. The respondents have opposed the contentions raised by the applicant and have stated that the Enquiry Officer had not relied-upon any of the documents which formed ^{part} ~~the~~ of the preliminary enquiry or was taken ^{at the} ~~back~~ of the delinquent. On the contrary, he has invited our attention to the Original Enquiry File, wherein in para AS of the findings at page 128, it is stated by the Enquiry Officer categorically as follows:

"T No. 299 Smt. Bhoori Devi submits that the Administration has obtained statements under threat in the past, so there evidence are not reliable (Inquiry Officer submits that no evidence which had been recorded earlier at preliminary stage has been taken notice of. All the statements have been recorded in the presence of the accused Smt. Bhoori Devi, her defence assistant SCM Sri A.K. Jaiswal and the presenting officer COL Shri P.R. Sharma.)"

He has further invited our attention to page 109 of the Original Enquiry File, wherein in para 58, it is specifically recorded by the Enquiry Officer that the Presenting Officer was asked to produce Smt. Bhoori Devi, the accused to give her defence statement. Smt. Bhoori Devi submitted through her defence Assistant SCM Sri A.K. Jaiswal, a written statement in English duly signed by her defence assistant and with her thumb impression, which has been attached as Exhibit 'R'. The actual defence statement is placed at page 136. He has further invited our attention to page 111 ~~in~~ para 64 wherein it was recorded, "At this stage the accused T.NO. 299 Smt. Bhoori Devi was asked through her defence assistant SCM Sri A.K. Jaiswal in case she wish to bring out anything or seeks any clarification on any issue relating to the conduct of the proceedings so far and both of them deny the same. Immediately after this paragraph Sri A.K. Jaiswal, Defence Assistant as well as Smt. Bhoori Devi have put their signature and thumb impression respectively. It is, therefore, submitted by the respondents' counsel that the proceedings clearly show that full opportunity was given to the delinquent as well as Defence Assistant to say anything which they wish ^{to} ~~or~~ ^{by way of} ask any clarification with regard to conducting of the proceedings, but they had nothing to ask with regard to the conduct of the proceedings. The respondents'

counsel further submitted that since the proceedings indicate themselves that full procedure was followed, there was no irregularity in conducting of the enquiry. He has also submitted that since the findings were based on the oral evidence, that was recorded in the presence of the delinquent, it is wrong to say that the Enquiry Officer had relied on any extraneous material. He has invited our attention to pages 13 and 26 of the Original Enquiry File wherein the statement of Smt. Urmila Bhammi and Sri Satish Chandra were recorded. The respondents' counsel has submitted that so-long there is some evidence available on the file, that the Tribunal cannot re-appreciate the evidence as held by the Hon'ble Supreme Court, nor cannot go into the question of sufficiency of the evidence. Apart from it, he also invited our attention to page 2 of the Inquiry file wherein the delinquent had admitted her guilt without any pressure and put her thumb impression under the statement wherein she had requested for excused. As per the relied upon statement of 17.8.90, ^{in the chargesheet} was very much a relied-upon document, which is evident ~~at~~ ⁱⁿ page 33 of the Counter affidavit. He has, therefore, submitted that since the reliance has been placed by the Enquiry Officer only on the documents which were referred to in his findings alongwith the chargesheet, no case has been made-out by the applicant for interference by the Tribunal and the case is liable to be dismissed. He has further submitted that since the applicant had specifically admitted her guilt, there was no requirement of carrying-out of any inquiry. However, the inquiry was carried-out and since the charge was proved on the basis of record, the orders passed by the authorities are absolutely in accordance with law.

4. Alongwith the chargesheet, the respondents have relied on the admission made by the delinquent on 17.8.90. We have seen the said statement made by the delinquent, which is duly verified by the delinquent by affixing her thumb impression under the said statement. ^{To be B} More precise, it reads

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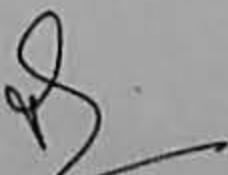
as under :

"मुझसे गलती हो गयी कि मैंने दो प्रियमेटिक कम्पास अपने अंडरवियर में छिपा कर ले जाने की कोशिश की जो तलासी के समय श्रीमती भम्मी ने पकड़ लिया और आई0एस0ओ0 साहब को रिपोर्ट किया मुझे माफ किया जाय यह बयान मैं बगैर किसी दबाव के दे रही हूँ । । ।

5. The counsel for the applicant admitted that ~~he submitted~~ ⁸ the thumb impression was that of the applicant, but ~~it was~~ wrong to say that the contents of the same was written by the applicant. Therefore, he is not aware of what was written on the said papers, but it is relevant to point-out here that the person who had written the said statement, namely Shri Amar Singh had made a counter note alongwith the said statement stating therein that the statement was got written by Smt. Bhooari Devi and she had affixed her thumb impression and the same was duly attested by the official as well. Not only this, we have seen the letter which is addressed to the Commandant, COD, Agra, at page 34 dated 15.12.90 and in that the delinquent had given all the details as to how she was made to carry compasses. The counsel for the applicant has submitted that since this letter was never relied-upon in the chargesheet, no reliance can be placed on the same. Even if, we accept the contention of the applicant's counsel and ignore this letter, yet there ~~is~~ ¹ number of other documents wherein the applicant had admitted her guilt. We have also seen that Smt. Urmila Bhammi had appeared as witness in the presence of the delinquent and the delinquent had not given any suggestion to the said witness to the effect that no such recovery was made from her, even though number of ~~other~~ ¹² questions were put ~~by~~ ^{to} the said witness, but they were ~~search~~ ^{for} with regard to conducting of the ~~enquiry~~ ^{enquiry}. The Enquiry Officer had relied-upon all the evidence which was produced by these two witnesses namely Smt. Urmila Bhammi and Sri Satish Chandra. Even otherwise, once the delinquent had admitted her guilt

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there is no question of any inquiry as held by the Hon'ble Supreme Court in the case of Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution vs. The Education Appellate Tribunal & Another reported in 2000 (3) AISLJ SC 128 wherein the Hon'ble Supreme Court has held that there was no need for holding any enquiry once the guilt was admitted by the delinquent. We are bound by the law laid down by the Hon'ble Supreme Court and in the instant case since the delinquent did admit her guilt in her statement given to the authorities on 17.8.97, we hold that there is no need for any inquiry, yet the respondents have given full opportunity to the delinquent to defend herself, but since the evidence was enough before the Enquiry Officer, he rightly came to the conclusion that the charge~~s~~ against the delinquent was proved. As far as the Enquiry Officer being biased, we have seen that the delinquent was given a proper reply by letter dated 1.11.92 by the Commandant wherein it was specifically stated that there is nothing on record to show that the Enquiry Officer is biased. Therefore, the request of the delinquent to change the Enquiry Officer was rejected and in the said letter it was reiterated that the delinquent was already given all the relied-upon documents. As far as violation of Rule 14(18) is concerned, as alleged by the applicant, we have seen that the Enquiry Officer had given full opportunity to the delinquent to ask any clarification or to put any question with regard to conducting of the ^{but they didn't raise any objection.} inquiry. Therefore, in our considered opinion, since the findings are based on the evidence, which came on record, no interference is called-for by this Tribunal in view of the law laid down by the Hon'ble Supreme Court that even if there is some evidence, the Tribunal should not interfere in the matter. Since the orders ^{are} ~~are~~ based on ~~the~~ evidence, the same are found to be in accordance with law and no irregularity is found therein.



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6. In view of the above discussion, the O.A. is devoid of merit and the same is dismissed without any order as to costs.

MEMBER (J)

MEMBER (A)

GIRISH/-