

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
CIRCUIT SITTING AT NAINITAL

Original Application No. 1357 of 1995

Nainital this the 21st day of October 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Shri Vijay Lal Sharma, Son of Sri Late B.L. Sharma,
Ex-Labour T.No.09/CS Opto Electronics Factory,
Dehradun.

By Advocate Shri V.K. Goel

Applicant

Versus

1. The Union of India through the Secretary to
The Govt. of India, Ministry of Defence, Raksha
Bhawan, New Delhi.
2. The Chairman/Director General, Ordnance Factories
Ordnance Factories Board, Directorate General of
Ordnance Factories, 10 A Auckland Road, Calcutta-1.
3. The General Manager, Opto Electronics Factory,
Dehradun.

Respondents

By Advocate Shri K.M. Sadan Na Srivastava

O_R_D_E_R (Oral)

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

By this Original Application under Section
19 of the Administrative Tribunals Act, 1985, the
applicant has challenged the order dated 20.08.1994
(Annexure-1) by which the applicant has been dismissed
from service on conclusion of disciplinary proceedings.

2. The facts of the case are that the applicant-Vijay Lal Sharma, the ex-service man, was re-employed in C.S.Section of Opto Electronics Factory, Dehradun as unskilled labour. On 16.07.92 some filters were to be shifted in 3rd service floor of E-24 Building from East Side to West Side under the supervision of Shri R.K. Singh, Supervisor(T) of M.S. Section. The filter shifting team saw some brass material lying at the left hand side of the same service floor. Shri R.K. Singh, Supervisor (T) informed Foreman/M.S about lying of brass material there. When AWM/MS and Foreman/MS reached the spot, the material containing Bross rods and Brass tubes was found kept at two places. The AWM/MS instructed Shri R.K. Singh, Supervisor(T) and Shri Anil Kumar Storekeeper to be present there till arrival of Shri Ratan Prakash DGM/A Opto Electronics Factory. When lunch time i.e. 1.00 p.m. was approaching on the same day(16.07.92) , with a view to have further instructions about presence at the spot, Shri R.K.Singh Supervisor(T) and Shri Anil Kumar, Storekeeper decided to phone and obtain orders. When they were coming down Security squad met them enroute and they took the squad at the place where brass material was lying. On arrival at the spot, S/Shri Anil Kumar and R.K.Singh noticed that the brass material lying there was comparatively short than earlier. On searching in the presence of security squad, some brass material was found hidden here and there. The material was hidden during the short absence (5 to 10 minutes) of Shri R.K. Singh and Shri Anil Kumar when they left the place and went to C.S. Section to have a telephonic call. At the same time one man was found

there by Security squad and his identity card was taken from him. As per letter dated 17.07.92 exactly at 01.05 p.m. the man found at the exact location was identified / named Shri Vijay Lal, ^{there}fore, the said Shri Vijay Lal Sharma, Labour had hand in unauthorised removal of brass items from room no 110 of E.24 building and in ambushing brass items at exteme corner in 3rd service floor of E.24 building with ultimate intention to take them out surreptitiously. On the basis of aforesaid charge, the applicant was served with a memorandum of charge dated 19.12.1992 As usual, the Inquiry Officer was appointed, who submitted his report on 21.09.93 and found the charges against the applicant proved. Copy of the inquiry report was given to the applicant. He submitted his explanation on 25.11.1993. The disciplinary authority agreed with the findings of the Inquiry Officer and awarded the punishment of dismissal by the impugned order dated 20.08.1994. Against the aforesaid order of punishment, the applicant filed an appeal dated 21.08.1994, which was forwarded to the appellate authority namely General Manager, Opto Electronics Factory, Dehradun. The appellate authority twice informed the applicant to appear before him for personal hearing but the applicant did not respond. Thus, the appeal remained pending. The applicant filed this O.A. before the Tribunal on 19.12.1995. Even during the pendency of the earlier appeal, the applicant filed another appeal on 13.12.1995, which has also not been decided.

appearing for the respondents has submitted that as the appeal of the applicant is pending, the respondents may be directed to decide the appeal in accordance with law. With reference to para-25 of the counter-reply, it is stated that the delay in deciding the appeal was on account of no interest shown by the applicant as he failed to appear before the appellate authority on the dates fixed.

4. We have considered the submissions of the learned counsel for the respondents.

5. As already noticed, this O.A. was filed on 19.12.1995 and more than six years have passed. Normally the O.A. itself should have been decided, but difficulty before us is that nobody has appeared on behalf of the applicant to place his case before us. From the memo of charge and the report of the Inquiry Officer, we find that there are missing links which was necessary to connect the applicant ^{with} for the misconduct, for which he was charged. Even the Inquiry Officer in his report has observed heavily against the security personals. The relevant para of the report is being reproduced below;

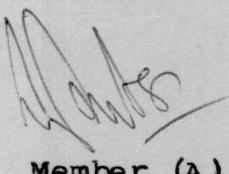
"It looks there is a serious lapse on the part of the security after reaching the spot on the day of incident i.e. 16.07.92. Even after noting that somebody rushed away from the scene(as recorded in 2nd hearing from FM security) no attempt was made by security to catch hold of the person. Also nearly after more than one and half hours only(after getting the information)

::5 ::

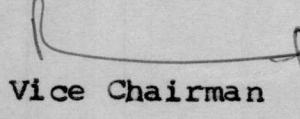
security
General staff could reach the spot. Many things
can happen during this time and the lack
of most vital information in the present
case is due partially to the delayed action
by security. "

6. From the narration of the facts stated
above, it is clear that there was no overt action
on the part of the applicant on which basis he could
be implicated in the present case that doubt has been
expressed by the Inquiry Officer in the aforesaid
paragraph. The disciplinary authority passed the
order without considering the aforesaid aspects of
the case, and awarded extreme penalty. In our opinion,
this aspect of the case requires a thorough and critical
examination of the entire ~~documents~~ ^{material} available on record,
for which the appellate authority can be the best
person.

7. Under the above circumstances, in our opinion,
the ends of justice require that appeal of the applicant
may be directed to be decided by the appellate authority
within a period of 4 months from the date of receipt
of a copy of this order. It is made clear that the
applicant shall be given notice fixing a date for
hearing of the appeal, and if he does not appear, it
shall be open to the appellate authority to decide
the appeal in accordance with law in the light of
the observations made above. The O.A. is accordingly
disposed of. No order as to costs.



Member (A)



Vice Chairman

/M.M./