

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 6TH DAY OF JUNE, 2002

Original Application No.1074 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.C.S.CHADHA, MEMBER(A)

B.R.Kishore, a/a 50 years
Son of late M.D.Srivastava, resident
of 317, 'C' Block, Adarshpuram, Panki
Kanpur, presently employed as UDC, New
Tool Room Section, Small Arms Factory,
Kanpur.

... Applicant

(By Adv: Shri M.K.Upadhya)

Versus

1. Union of India through the
Secretary, Ministry of Defence
Department of Defence Production
Government of India, new Delhi.
2. Chairman, Ordnance Factory Board/
Director General of Ordnance Factories
10-A, Auckland Road, Calcutta
3. General Manager, Small Arms
Factory, Kanpur.

... Respondents

(By Adv: Shri Ashok Mohiley)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the order of punishment dated 13.3.1994(Annexure 1) by which the applicant has been awarded penalty of reduction of pay by two stages from Rs 1600/- to Rs 1530/ per month in the time scale of pay of Rs 1200-2040/- for a period of 2 years w.e.f. 13.3.1994 and further directing that the applicant will not earn increments of pay during the period of reduction and reduction will have the effect of

appeal. In short the pay has been reduced by two

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of postponing the future increment of the pay of the applicant. In short the pay has been^u reduced by two stages, with cumulative effect. The order of punishment has been passed on conclusion of the disciplinary proceedings. The applicant challenged the aforesaid order in appeal which was dismissed by Ordnance Factory Board on 15.2.1996. The allegation against the applicant was that while he was serving as UDC in Small Arms Factory, Kanpur, while entering into the office of the Incharge at about 11.30 a.m on 4.7.1991 placed an application before Shri G.C.Singh, Asstt. Foreman and asked him in an indisciplined/insolvent manner to forward the same. When the applicant was subsequently advised by the Incharge at 11.30 a.m regarding forwarding of his application, the applicant got annoyed and manhandled Shri G.C.Singh, inflicted violent blows on him and tore out his shirt and forcibly snatched away the sacred thread/photo pass etc, a conduct unbecoming of the Govt. servant. As usual inquiry officer was appointed who submitted his report on 6.1.1993, with a finding that on the basis of the evidenc^e adduced the charges framed against him stand proved. The Disciplinary Authority agreed with the report and awarded punishment as mentioned above which has been maintained in appeal. The counsel for the applicant has submitted that applicant had^u also lodged complaint that in fact he was beaten by the Foreman G.C.Singh and he only defended himself. But this plea of the applicant has not been considered while awarding punishment. It is submitted that the Disciplinary Authority took a one-sided view and passed the order of punishment without considering the defence of the applicant. The Appellate Authority also has not applied its mind while rejecting the appeal vide order dated 15.2.1996. It is submitted that applicant had also received injuries, a copy of the

~~In~~jury report has been filed as (Annexure 4). It is also stated that applicant was hospitalised for treatment and he remained in the hospital for some days. The counsel for the applicant has submitted that the punishment awarded in the circumstances is excessive and not commensurate.

Shri Ashok Mohiley learned counsel for the respondents on the other hand, submitted that the charges against the applicant ~~has~~^{have} been proved by evidence and the punishment awarded is commensurate and does not call for any interference by this Tribunal.

We have carefully considered the submissions of the counsel for the parties. We have also perused the appellate order. Para 3 of the Appellate order dated 15.2.1996 contains the total finding, which is being reproduced below for better appreciation:

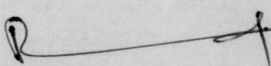
"Anxious considerations have been placed on the different grounds of his appeal and has oral submissions during the personal hearing in the background of the fact of the case evidenc-es on record. It would appear, appellant could not give any satisfactory explanation during the personal hearing when he was asked why he was beaten up and disciplinary action initiated against him. On the other hand, the imputation of charges were proved in the departmental inquiry conclusively. Whatsoever grievances in his mind against the management the appellant cannot take the law in his own hand by way of act committed by him. The grounds raised in his oral submission and his appeal do not lead to ~~any~~^{any} interference from which it would be concluded that the charges brought against the appellant were unsupported by evidence on record. There are no merits in the appeal. The appeal is hereby rejected."

From the aforesaid finding it is clear that Appellate Authority has not applied its mind towards the quantum of punishment. ^{an} Though Appellate Authority if not fully

but partially appears to be convinced that the applicant was also beaten but the view has been taken that he could not take law in his own hand and ~~assault~~^{assault} the person who attacked him. In our opinion, this approach is not correct. Every person has right of self defence and in exercise of this defence may cause injury to such an extent which is necessary to defend himself from harm. The fact, that the applicant also received injuries, ~~as~~^{as} is clear from the material on record. The Appellate Authority has also not disputed this aspect. In the circumstances, the aggressive posture adopted by the applicant could only be by way of his defence and if the whole episode is considered ^{in the light of above facts} ~~like this~~, if the applicant is not entitled to be exonerated, atleast quantum of punishment should be minimised.

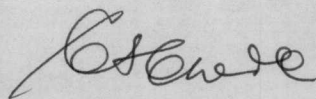
We have heard the counsel for the parties on quantum of punishment. As the matter ^{is very} ~~of being~~ old, it would not be in the interest of justice to remand this matter again for this purpose. On hearing both the counsel for the parties in our opinion, the ends of justice will be served if the punishment already awarded to the applicant by the Disciplinary Authority is made without cumulative effect.

The OA is allowed partly. The order of the Disciplinary Authority dated 13.3.1994 and confirmed by the Appellate Authority vide order dated 15.2.1996, shall stand modified to the extent that the punishment of reduction of pay by two stages awarded to the applicant shall not have the effect of postponing his future increments of pay. In other words, the reduction of pay

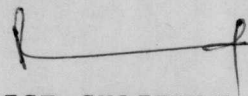


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shall be without cumulative effect. However, there will
be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: 6th of June, 2002

Uv/