

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ORIGINAL APPLICATION NO. 01 OF 1999

ALLAHABAD, this the 23rd day of August, 2007.

C O R A M:

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. P.K. CHATTERJI, ADMINISTRATIVE MEMBER

Mahfujuddin Ansari, Aged about 42 years, S/o Late Sri Bholi Bux Ansari, R/o 406, J-Block, Vishwas Bank Colony, Gujaini, Kanpur.

.....Applicant

VERSUS

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Senior General Manager, Ordnance Factory, Kanpur.
3. The Chairman, Ordnance Factories Board, 10-A Auckland Road, Calcutta.

.....Respondents

Present for the Applicant: Sri Rakesh Verma.
 Present for the Respondents: Sri P. Mathur.

ORDER
BY DR. K.B.S. RAJAN, JUDICIAL MEMBER

The applicant challenges Annexure A-1 penalty order dated 26-12-97 whereby penalty of compulsory retirement was inflicted upon the applicant and Annexure A-1A appellate order dated 11-06-99 communicated through order dated 12-01-2000, whereby the appeal stood dismissed.

2. Brief facts of the case as per the OA are as under:-

- (a) The applicant, while working as labourer (SS), was kept under suspension for a contemplated disciplinary proceedings. Annexure A-II Charge sheet was issued to him on 22-12-1994 which contains the following charges:-

Article I

That the said Shri Mahfoojuddin Ansari T. No. 454/NAPS while functioning as Lab (SS) during the period of his employment is charged with gross misconduct in that at about 10 AM on 3-12-94 while on duty, he unauthorizedly kept concealed 3 Nos of Drills of the following description belonging to the factory in the water drain of Bldg No. 136:-

- 1) Drill No. TA-27891 type H 41.5 HSS - 01 No.
- 2) Drill No. TA 34191 38 HSS - 01 No.
- 3) Drill No. T.A. 27891 Type H 41.5 HSS - 01 No.

Article II

Shri Mahfoojuddin Ansari T. No. 454/NAPS is further charged with gross misconduct in that at about 1900 hours on 3-12-1994 during the round carried out by the security staff of the factory outside the Fy's perimeter wall ahead to Labour Gate and by the side of Bldg. No. 136, he was found in unauthorized possession of 3 Nos. of Drills as enumerated in Article - I above pertaining to this Factory.

Article III

Shri Mahfoojuddin Ansari is further charged with gross misconduct in that at about 1900 hrs. on 3-12-1994 outside the Fy's perimeter wall ahead to Labour Gate and by the side of Bldg. No. 136 he was caught red-handed by the security staff on duty while attempting to take out from the water drain of Bldg No. 136 3 Nos. of Drills as enumerated in Article - I above belonging to this factory with malafide intention to steal the govt. material.

The aforesaid acts on the part of Shri Mahfoojuddin Ansari are in violation of CCS(Conduct) Rule, 1964.

(b) The applicant had filed his written statement to the charge sheet in which he contended that the entire action of the respondents was based on a complaint by three individuals who were inimical to the applicant. The three individuals compelled the applicant to sign some papers as well as got affixed his thumb impression on blank papers. Written complaints were made by the applicant to the authorities, including the General Manager. Police complaint was also lodged by the applicant and cases were on against the three individuals. No recovery was made.

(c) The Inquiry Officer, who had conducted the inquiry after examination of the witnesses and after hearing the defence side, rendered his finding to the effect that the three charge were proved, vide Annexure A-IX.

(d) Applicant was supplied with a copy of the inquiry report and he had

✓

made representation vide Annexure A-10.

(e) The Disciplinary Authority, after going through the entire documents held that the applicant has committed the misconduct and accordingly, the applicant was compulsorily retired from service vide Annexure A-1.

(f) Being aggrieved, the applicant moved the appellate authority, vide Annexure A-XI.

(g) The appellate authority had considered the same but affirmed the decision of the Disciplinary authority, vide impugned Annexure A-1(a).

3. Respondents contested the OA and their version is that the charges framed against the applicant were duly proved and the penalty was duly awarded. All the reasonable opportunities were granted to the applicant. The punishment was commensurate with the nature of proved charges. The version of the applicant is against the records.

4. In the rejoinder the applicant had reiterated his earlier points raised in the O.A.

5. Arguments were heard and documents perused. Judicial review of disciplinary proceedings is to confine itself to the legality in the decision making process and in this regard, the Apex Court has in *Union of India v. Dwarka Prasad Tiwari*, (2006) 10 SCC 388, referred to the following earlier decisions :-

1. (2006) 6 SCC 794 : 2006 SCC (L&S) 1568 : (2006) 6 Supreme 389, *Union of India v. K.G. Soni*.
2. (2005) 10 SCC 84 : 2005 SCC (L&S) 567, *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain*.
3. (2001) 2 SCC 386 : 2001 SCC (L&S) 1039, *Om Kumar v. Union of India*.
4. (1999) 4 All ER 860 : (2000) 1 WLR 1855 (CA), *R. v. Lord Saville, ex p A*.

5. (1999) 3 All ER 400 : (2000) 2 AC 115 : (1999) 3 WLR 328 (HL), *R. v. Secy. of State for Home Deptt., ex p Simms.*
6. (1997) 7 SCC 463 : 1997 SCC (L&S) 1806, *Union of India v. G. Ganayutham.*
7. (1996) 1 All ER 257 : 1996 QB 517 (CA), *R. v. Ministry of Defence, ex p Smith.*
8. (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44, B.C. Chaturvedi v. *Union of India.*
9. (1994) 6 SCC 651, *Tata Cellular v. Union of India.*
10. (1993) 2 SCC 299, *U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd.*
11. 1993 AC 534 : (1993) 1 All ER 1011 : (1993) 2 WLR 449 (HL), *Derbyshire County Council v. Times Newspapers Ltd.*
12. (1991) 3 SCC 91, *G.B. Mahajan v. Jalgaon Municipal Council.*
13. (1991) 1 AC 696 : (1991) 1 All ER 720 : (1991) 2 WLR 588 (HL), *R. v. Secy. of State for the Home Deptt., ex p Brind.*
14. (1990) 1 AC 109 : (1988) 3 All ER 545 (HL), *Attorney General v. Guardian Newspapers Ltd. (No. 2) (Spycatcher case).*
15. (1989) 4 SCC 187 : 1989 SCC (L&S) 569, *Supreme Court Employees Welfare Assn. v. Union of India.*
16. (1987) 4 SCC 611 : 1988 SCC (L&S) 1, *Ranjit Thakur v. Union of India.*
17. 1987 AC 514 : (1987) 1 All ER 940 : (1987) 2 WLR 606 (HL), *R. v. Secy. of State for the Home Deptt., Ex p Bugdaycay.*
18. (1985) 1 SCC 641 : 1985 SCC (Tax) 121, *Indian Express Newspapers Bombay (P) Ltd. v. Union of India.*
19. 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL), *Council of Civil Service Unions v. Minister for the Civil Service.*

After referring to the above decisions, the Apex Court has held as under:-

"15. The common thread running through in all these decisions is that the court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case 2 the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

6. On the touch stone of the above dictum of the Apex Court, the case is considered.

7. In the instant case, the inquiry authority has rendered his findings vide Annexure A-9 and relevant portion is extracted below:-

(a) "Here, pre-ponderance of probability of leaving the factory by Shri Mahfoojuddin Ansari alongwith others after putting the material in the Nala on the said date cannot be ruled out. Accordingly, the Article I of the Charge against Shri Ansari is sustained."

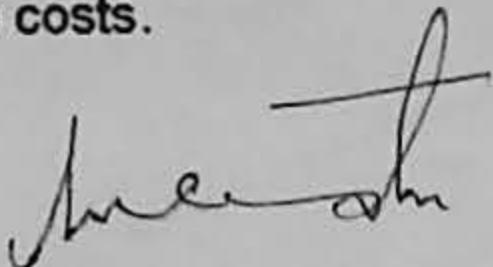
(b) "Here it is worthmentioning that Shri Mahfoojuddin Ansari was caught by the Security Durwans with the materials during the deposition of PWs before enquiry. In the confessional statement dated 3-12-94, Shri Ansari has himself admitted this fact. Regarding bring rope or bag etc., to carry out the confiscated materials, there is a possibility that Shri Ansari might have hidden the same as per his pre-plan for carrying out the material. Further, all the PWS have categorically deposed before the enquiry that the material, so confiscated, pertains to this factory. Regarding non production of section report on the missing/theft of this material, it is stated that the point raised by the defence is not tenable and irrelevant. The fact remains that in this vast factory, there are two types of the materials i.e. (i) serviceable and (2) non-serviceable. Though record is maintained for serviceable items for its accountability, whereas no such record is readily available for unserviceable items. Such unserviceable items are even kept in open space in a scattered manner. However, no employee can take out/pilfer such unserviceable materials for his personal use as has been done by Shri Mahfoojuddin Ansari . As such, the charge as contained in Article II is upheld."

(c) "On enquiry, it is obvious that Shri Ansari was caught red-handed while attempting to take out the Drills enumerated in Article I of Memorandum of Charge sheet dated 22-12-1994 and there is no deviation in the statement of PWs who deposed before inquiry in this respect. During his examination by the undersigned on 22-5-97, Shri Ansari has himself admitted that he was let off after getting his signature countersigned by the Orderly Officer on 03-12-94. As such, the charge as contained in Article III is sustained."

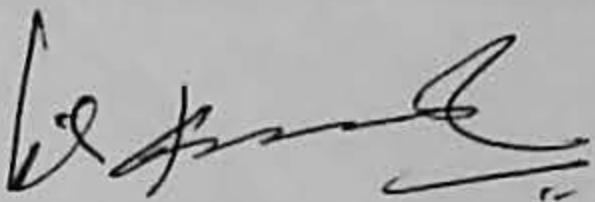
8. There is no legal lacuna in the conducting of the enquiry. No discrepancy could be traced in the order of the Disciplinary Authority. The appellate authority too has considered the appeal, itemizing the grounds and stated that "On careful examination of the relevant records of the case, it has been revealed that none of the above points are valid. Action was initiated on specific report of the security. Point No. (ii) does not lead to prove that he did not conceal the material. No enmity could be proved by him during enquiry. Natural justice has not been

violated at any stage. The penalty was imposed after applying mind by the Disc. Authority. Penalty was imposed based on evidence on record. Hence, the contention of the appellant is baseless and afterthought." The quantum of penalty appears to be commensurate with the gravity of the proved misconduct. Thus, the applicant has failed to make out a case. Hence, the OA is dismissed.

No costs.



(P.K. CHATTERJI)
ADM. MEMBER



(DR. K.B.S. RAJAN)
JUDICIAL MEMBER