

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 15th day of April 2005.

Original Application No. 623 of 1999

Hon'ble Mr. D.R. Twiari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

P.N. Mishra, S/o late Deen Dayal,
R/o 61/7, Darde, Colony, Station Road,
Agra Cantt-282001

... Applicant

By Adv : Sri U.S. Bhakuni & Sri K.P. Singh

VERSUS

1. Union of India through Secretary,
Ministry of Defence,
New Delhi.
2. Scientific Advisor to Raksha Mantri &
Director General Research & Development,
DHQ PO New Delhi.
3. Director,
Aerial Delivery Research & Development (ADRDE)
51, Station Road,
Agra.

... Respondents

By Adv : Sri A. Sthalekar

ORDER

By K.B.S. Rajan, MEMBEFR-J

In this application , the applicant has
challenged the following orders:

- (a) Order dated 6.10.1997 (Annexure 13)
- (b) Order dated 8.6.1998 (Annexure-1)

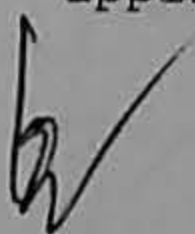
By the former order, the applicant was inflicted a
penalty of reducing the basic pay to the minimum of
the Scale for a period of three years and that



during these three years, the applicant will not earn any further increment and further that future increment will start at the end of three years and this will have the effect of postponing of future increments. By the later order, the appeal preferred by the applicant was dismissed.

2. The capsulated facts of the case are as under:-

- (a) According to the applicant, there was a difference between and his immediate superior and when the latter threatened the applicant and had also slapped on the face of the applicant. The applicant made a complaint and instead of the authority taking suitable action on the complaint, the applicant was suspended. Thereafter, the applicant was issued with a charge sheet dated 22.8.96 and inquiry commenced. And the applicant denied the charges vide his statement dated 23.9.1996. The applicant further contends that sufficient opportunity for engaging Defence Assistant was denied to him and the inquiry report was submitted on 30.4.1997, the finding being that the applicant was found guilty of charges contained in the charge sheet. Against the said inquiry report, which was forwarded to the applicant, the applicant had made a



representation on 26.8.1997. The disciplinary authority had passed the impugned order on 16.10.1997.

- (c) The applicant challenged the order of the disciplinary authority vide appeal dated 29.11.1997, which was, however, rejected by the impugned appellate order dated 8.6.1998.
- (d) The applicant contended that in the grounds that the charge sheet is illegal, arbitrary and discriminatory'; that he was not supplied with the requisite documents; the I.O. has failed to hold the inquiry in accordance with the instructions contained in the Rules; reasonable opportunity has been denied to the applicant; the entire act smacks vindictiveness, bias as the applicant is a JCM member; service of the Defence Assistant was denied; the letter dated 14.7.1997 reflects that the presenting Officer had acted on behalf of the disciplinary authority, which is illegal and there is clear breach of article 14,16 and 311 of the Constitution of India. The applicant has, therefore, sought the relief of quashing of the impugned orders and for a direction for the



respondents with speaking orders to restore his wages and make him full payment.

3. The respondents have contested the O.A. While flatly denying the contention of the applicant about the alleged difference between the applicant and his immediate superior, in so far as the main merit of the case is concerned, it has been averred that the inquiry was performed legally and lawfully and adequate opportunity was given for engaging the Defence assistant, which was not availed by the applicant and, therefore, there was no other option to the I.O. when the applicant abruptly left the inquiry, save to proceed with the inquiry ex-parte. The respondents have further contended that the report dated 30.4.1997 is based on evidence on record and the same is perfectly legal. The respondents have further submitted that there is no legal lacuna in the decision making process and the penalty order was never as a consequence of any vindictiveness as alleged and is perfectly legal and that the order of the appellate authority, which is a speaking order is fully legal and valid. Therefore, the respondents have prayed for dismissal of the O.A.

4. The applicant has filed his Rejoinder Affidavit denying those points which varied from the contents of the application and reiterated all those points which are contained in the Application.

5. The counsel for the parties were heard. It has been contended on behalf of the applicant that the principle of natural justice had been made a causality in this case and that bias is staring upon the entire action. It has also been contended that the order of the disciplinary authority is not speaking and it has not taken into account the various legal flaws.
6. The respondents have for their part, argued that no violation of principle of natural justice could be observed in the entire case and that the impugned order being based on proper inquiry, the same deserve to be upheld and the application is liable to be dismissed.
7. The rival contentions of the parties have been considered and the entire pleadings have been perused. The charge as per the charge sheet reads as under:-

"You were served an Internal Note No. ADRDE/SEC/DRS/1 dated 18 July'96 with the view that you would prepare temporary estimate of future work orders under the supervision of Sri A.D. Sharma and would also note work details at the time of giving estimates and tacking back estimates as well as note the time of work completion.

You had shown your intention of not doing the work by writing on this note and wrote comments on 18 July'96 on this note with the intention of giving excuse to purposely avoid work. Hence you have violated CCS (Conduct) Rule 3 (1) (ii) (iii) and 3(24) of acts and omissions rule (1)."

B. You were called through Shri Hari Shanker Tech. asstt. 'B' for handing over Advisory Note No. ADRDE/PFW(M)/Sec/DIS/1 dated 23 July'96 . There were following three points in the Advisory Note:

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1. You were advised to reply on a separate sheet of paper and writing on the same note is against standard norms.

2. You were given to prepare the estimates under the supervision of Sri A.D. Sharma till you learn to do the work yourself.

3. You were advised not to link office work with personal liking or disliking of an individual because it obstructs the office work.

You had returned the above note to Sri M.L. Bindra after reading and using uncivilized language heralded vulgar abuses and by crossing limits of a Government servant you had charged on Sri M.L. Bindra's facts with Chappal. By this objectionable act you have violated CCS (Conduct) Rule 3 (1) (iii) and 3 (24) act and conduct (8) and 3(24) act and omissions 4 rule."

8. The I.O. as contained in the proceedings and the report, has systemically indicated the sequence of events which show that adequate opportunity was given to the applicant to get the present the nominated Defence Assistant the case was adjourned at least on three occasions and it is only after the applicant had failed to produce the Defence Assistant and made a walk out from the enquiry, that the I.O, had per forced conduct the inquiry ex-parte. The inquiry report clearly shows that the same has been made by clearly reflecting the charges, relevant evidences, the assessment of evidence and finally the findings. The last paragraphs of the inquiry report is a recommendation holding that the charges against the applicant are proved.

9. The Disciplinary Authority on his part had given a detailed order in coming to the conclusion of awarding the penalty. He had

itemized meticulously all the points referred to in the representation of the applicant. Adequate opportunity had been given to the applicant to defend his case and the fact thereof has also been reflected in the order of the Disciplinary Authority. Of course a small error could be located in para 7.9 of the disciplinary authority order wherein it was stated that letters in regard to arranging Defence Assistant nominated by the applicant were made by writing letters on various dates including one on 17.6.1997. Such letter written on 9.5.1997 and 17.6.1997 could be of little assistance as the inquiry report preceded the date of these two letters. Nevertheless, this error cannot be fatal to the disciplinary authority's order.

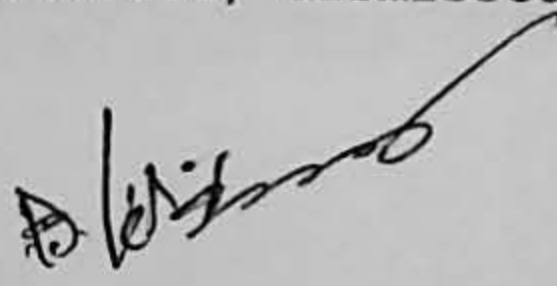
10. The order of the Appellate authority is also equally exhaustive and the appellate authority has taken into account " each point of submission made by Sri P.N. Misra, T.A. in his appeal". And it is thereafter that the appellate authority has come to the conclusion that the order of the disciplinary authority is correct and hence confirmed.

11. In so far as the grounds that the P.O. has acted in place of D.A. vide letter dated 14.7.1997 (Annexure 16) as referred to in ground no. 5.7 of the O.A., the same does not hold water in view of the fact that after the inquiry report is submitted, just as the I.O. becomes *functus*

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Offico, the P.O. also becomes functus and the said letter dated 14.7.1997 was issued by Sri Devi Singh in his capacity not as the P.O. , but as the Administrative Officer, and, all that he did was to forward a copy of the inquiry report calling for the reaction of the application to the inquiry report prescribing a time schedule therefor. This act on the part of the Admin. Officer cannot be in any way be held to vitiate the proceedings.

12. In view of the above, the impugned orders are fully legal and the applicant has failed to establish any legal flaw in the decision making process. As such the application is bereft of merits and is, therefore, dismissed . No costs.


MEMBER-J


MEMBER-A

GIRISH/-