

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH: ALLAHABAD.

ALLAHABAD, THIS THE 4th DAY OF August, 2006.

QUORUM : HON. MR. A.K. BHATNAGAR, J.M.

HON. MR. P.K. CHATTERJI, A.M.

ORIGINAL APPLICATION NO. 69/99 OF 1999.

Munnu Lal, aged about 56 years, Son of, Shri Buddha Lal, Resident of, 130/19 L, Bakarganj, Kanpur..... Applicant.

Counsel for applicant : Shri B.P. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chairman Ordnance Factories/Director General of Ordnance Factories, Calcutta.
3. Assistant Labour Commissioner (Central), Swaroopnagar, Kanpur.

..... Respondents.

Counsel for Respondents : Sri A. Mohiley.

O R D E R

HON. MR. P.K. CHATTERJI, A.M.

In this O.A. No.69/99, the applicant Munnu Lal has challenged the order of removal from service dated 8.10.1992 (Annexure A-1) and the order of the Appellate Authority dated 30.9.1992 (Annexure A-2) upholding the order of removal. The facts of the case, briefly, are that the applicant was initially appointed as Darban in Field Gun Factory, Kalpi Road, Kanpur

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in April, 1976 and had been serving in the same establishment for sometime. He stated to have retired as Darban and re-employed as a Labour in the Yard section of the Field Gun Factory.

2. On 4.1.1991, the Security Officer Shri R.K. Mishra made a complaint against the applicant, as stated by the applicant in the O.A. The applicant also filed a complaint against him but nothing happened. Thereafter, the applicant was suspended from service on 4.1.1991 and on 19.1.1991, he was served with a memo of charges. The statement of imputation of misconduct is as follows :-

"Article of Charge-I

Gross Misconduct: Wasting Valuable time by sitting idle & gossiping near Yard Building on 4.1.91 at about 0815 Hrs.

Article of Charge-II

Gross Misconduct: Indulged in abusing/assaulting/beating Shri R.K. Mishra, CNM/SO/FGK at about 0815 Hrs. on 4.1.91 inside the Fy. Premises near Yard Building causing injuries to Shri Mishra.

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Article of Charge-III

Gross Misconduct: Repeatedly indulging in assaulting /manhandling Fy. Employee inside the Fy. Premises during working hours.

Article of Charge-IV

Gross Misconduct: Conducting unbecoming of a Govt. Servant and in violation of Rule 3(i)(iii) of CCS(Conduct) Rules, 1964."

3. An Inquiry Officer was appointed under the provisions of the CCS(CCA) Rules, 1965, and the Inquiry Officer Shri Vinod Kumar, Works Manager submitted the report of inquiry in which he made the following observation regarding the main article of charge i.e. assault on Shri R.K. Mishra :-

Charge 1. Sri Munnu Lal Lab B Tno.9/Yard was outside of his section & warming himself"

Charge 2. Though the charge is not fully established straight way by statements of P.Ws, but the incidence of manhandling of Sri R.K. Mishra by Sri Munnu Lal, Lab B T No.9/Yard seems to have happened as assessed by the court.

Charge 3. This charge is established in view of the assessment above & with reference to his previous case stated in charge sheet.

Charge 4. In view of above, the charge of misconduct is established."

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4. On the basis of the inquiry report, the Disciplinary Authority issued the order of removal from service against the applicant vide order No.1562/09/91/MM/Vig. Dated 8.10.1992.

5. After receiving the order of removal from service, the applicant made an appeal against the aforesaid order of removal, addressed to the Director General, Ordnance Factory Board, and on 30.9.1993, the Appellate Authority issued its order rejecting the appeal and upholding the punishment issued by the Disciplinary Authority. In this O.A., the applicant has impugned these two orders on the following grounds :-

- i) The applicant was not given adequate opportunity to defend his case and the statement of the witnesses, previously recorded, were not supplied to him and as a result of that he could not effectively cross-examine the witnesses.
- ii) The authority should not have decided his case when the applicant's petition under Industrial Dispute Act was pending with Assistant Commissioner, Swaroopnagar.
- iii) The punishing authority has issued a non-speaking order and as such, it is in contravention of the relevant provisions of CCS(CCA) Rules.
- iv) The pleas made by the applicant in his appeal was also not adequately considered.

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6. On the grounds, the applicant has sought the following reliefs :-

- "a) That a declaration may issue to declare the removal order dated 8.10.1992 (Annexure A-1) and its appellate order dated 30.9.1993 (Annexure A-2) as null and void."
- b) That a declaration may issue to direct the opposite parties to deem the petitioner as in continuous services and to accord him all the benefits and privileges of continuity in service."

7. The respondents submitted the Counter Affidavit refuting all the allegations made by the applicant in the O.A. and affirming that the inquiry was conducted in proper manner in keeping with the relevant provisions of CCS(CCA) Rules, 1965.

8. At the hearing stage, learned Counsel of the applicant dwelt mainly upon the inadequacy of the findings of Inquiry Officer. The points made by the learned counsel was that out of the five witnesses, whose statements were cited as records in proof of the charge two later denied having made the statement. In other words, they retracted from their earlier statement. The learned counsel submitted that though the other witnesses had stated that the assault by the applicant indeed, took place, but there were certain discrepancies between the statements of these witnesses.

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9. Learned counsel went on to further claim that the Inquiry Officer did not come to any definite conclusion. On the other hand, his finding was somewhat vague as would be evident from the following statement :-

"Though the charge is not fully established straightway by statement of P.Ws., but the incidence of manhandling of Shri R.K. Mishra by Shri Munnu Lal in the Yard seems to had happened as assessed by the court."

10. It is this finding of the Inquiry Officer, which the learned counsel for the applicant particularly assailed by saying that no person should be convicted or declared to be guilty of the charge on the basis of suspicion. In this connection, he cited from the Apex Court in the Union of India Vs. H.C. Goel (AIR 1964 SC 364) (V-51-C-46). The learned counsel cited the following extract from the judgment:-

"(27) Now, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated, as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straight-forward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption

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from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney-General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No.8 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established."

11. Learned Counsel for the applicant did not, however, speak about any other deficiency in the disciplinary proceedings even when he was asked by the Tribunal.

12. During his argument, learned counsel for the respondents first took up the matter of limitation. He was of the view that his case is barred from admission by limitation as a long 7-years has passed since the appellate decision was issued. To support his contention, he cited the Apex Court Judgment in the case of Ramesh Chandra Sharma Vs. Udhamp Singh, 2000 SCC ATC 635 and this Tribunal decision in O.A. No.605/98 dated 11.5.2004.

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13. Learned counsel also cited copiously from the relevant Judgments of the Apex Court in favour of the following two points :-

- a) The Tribunal would not function as a Court of appeal but was to examine only whether the manner in which the decision was made is consistent with the relevant provisions and there was no arbitrariness, irrationality and illegality. It is not supposed to perform the role of a Court of inquiry and to sift the evidence or the records nor arrive at a conclusion regarding the charges.
- b) Rule of evidence would not be strictly applicable in the case of departmental proceedings.

14. The learned Counsel cited relevant extract from Judgment from B.C. Chaturvedi Vs. Union of India and others (JT 1995 Vol.8 P 65).

15. We have considered carefully the points made in the O.A. as well as the Counter Affidavit. We have also applied our mind extensively to all the issues. The point, which assumes maximum importance in our view, is whether the report of the Inquiry Officer is adequate in arriving at the conclusion as has been done by the Disciplinary Authority and the Appellate Authority. We have given much thought on the point made by the learned Counsel for the applicant that the Disciplinary

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Authority should not arrive at a conclusion of guilt on the basis of suspicion as decided by the Apex Court in the Judgment of Union of India Vs. H.C. Goel. At the same time, we have also taken into account the fact that in the departmental proceedings, decision need not have to be taken on the basis of clear proof, but it would be sufficient if on the basis of preponderance of probability the conclusion is made. We have examined the points made by both the parties as well as the report of inquiry. It is true that two of the prosecution witnesses retracted from the statement given by them earlier but barring the little discrepancy between the statements of the others, it is reasonable if someone come to a conclusion that the assault had, indeed, taken place. Our inquiry was also directed to elicit whether the statement of the present assault i.e. Shri R.K. Mishra was taken into account, and we found that although it was not included as a prosecution document, it has been referred to by the Inquiry Officer in his finding. We have examined the medical report of the Doctor, who examined Shri Mishra after the assault, and our attention was particularly drawn to the following two observations :-

- a) Contusion around left side of the abdomen.
- b) Multiple contusion wound with bleeding from nose.

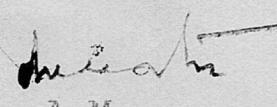
16. From the above evidence, which in our view, are not questionable, there seems to be a

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Preponderance or probability of the assault actually having taken place. On this ground, we are of the view that the conclusion and the decision of the Disciplinary Authority are reasonable. We do not agree with the points made by the learned Counsel of the applicant that decision was arrived at mainly based on suspicion. Therefore, the ratio of the Judgment Union of India Vs. H.C. Goel (Supra) would not apply. On the other hand, this is supported by the Judgment *encl M Paul Anthony v Bharat Gold Mines (1999) 3 SCC 679* which deals with the aspect of preponderance of probability in departmental inquiry.

17. We have also carefully examined the appeal against the decision of the Disciplinary Authority. We are satisfied that the Appellate Authority has carefully considered all aspects of the case and issued a detailed, reasoned order. The O.A. is, therefore, not allowed and is dismissed.

No costs.


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