

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 1069/1999

ALLAHABAD, THIS THE ^{April} ~~11th~~ DAY OF FEBRUARY, 2007

CORAM:

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE MR.A.K.SINGH, ADMINISTRATIVE MEMBER

S.M. Mishra,
S/o. Ram Charit Mishra,
Resident of Village Chandraha,
Post Office Misrauli,
District Sultanpur : 228 119

... Applicant.

By Advocate : Shri B.k. Narain & Sri Vinod Prasad.

Versus

1. Union of India, through Secretary,
Ministry of Defence (Production),
Govt. of India, New Delhi.
2. Additional Director General,
Directorate General Ordnance Factories,
Ordnance Equipment Factories Group,
Headquarters, G.T. Road, Kanpur-208 013.
3. General Manager, Ordnance Equipment Factory,
Kanpur.

... Respondents.

By Advocate : Shri S. Singh

ORDER

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

By this OA , the applicant has sought the following reliefs:-



"(i) Quashing and setting aside of the order dated 18.02.1999 whereby he was compulsorily retired w.e.f. 30.06.1996.;

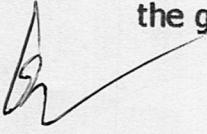
(ii) Quashing of the order dated 22.07.1998 whereby his appeal has been rejected;

(iii) A direction to the respondents to pay him arrears of salary alongwith the emoluments to which the applicant is entitled, including the retirement benefits, pension, gratuity etc. as if the applicant was in service."

2. This is third round of litigation by the applicant. Applicant was charge-sheeted on 30.04.1981 on the following allegations:-

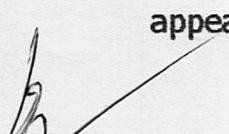
"The said Shri S.N. Mishra, Store Keeper O.No. 20/S(L) Section, D.E.F.C. While he was functioning as Supervisor 'B' is charged with misconduct, wilfully suppressing the fact of shortage in consignment of leather chrome tanned side black Jug grain supplied by M/s. Malik Co. on 26.12.1980 with ulterior motive to manipulate for pecuniary gain thereby causing loss to the State to the extent of Rs. 14042.387/-."

Findings were submitted by the Enquiry Officer on 29.09.1984 holding therein the charge is not proved. The disciplinary authority imposed the punishment of compulsory retirement vide order dated 25.02.1985, which was challenged by the applicant by filing Writ Petition in the Hon'ble High Court, which was transferred to the Tribunal and numbered as O.A. No 1026/1986. The first O.A. was allowed vide judgment dated 29.04.1988 on the ground of lack of jurisdiction. Accordingly, the matter was remitted back



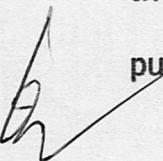
to authorities. The authorities once again imposed punishment of compulsory retirement on the applicant, which was challenged by the applicant in appeal but the appeal was challenged by the applicant in appeal but the appeal was also dismissed. Therefore, applicant filed second O.A. bearing O.A. No.1525/1992. This O.A. was also allowed on 29.08.1997 (Pg.53 at 64). This time the O.A. was allowed because the disciplinary authority did not give disagreement note to the applicant, accordingly, the matter was remanded back to the authorities for taking up the matter from the stage where the defect was found. Therefore, the disciplinary authority was directed to issue disagreement notice along with intention of his mind, so that the applicant may be in a position to explain why report of the enquiry report should be accepted by the disciplinary authority. It was further provided that applicant shall be deemed to be under suspension from the said date under Rule 10(4) of CCS CCA Rules 1965 till the final order is passed by the disciplinary authority of his suspension is revoked by the competent authority.

3. The disciplinary authority thereafter gave him show cause notice on 17.02.1998 along with disagreement memorandum dated 23.08.1991. Applicant gave his reply (Pg.73) but the disciplinary authority once again imposed punishment of compulsory retirement on applicant w.e.f. 30.06.1996 vide his ordered dated 22.07.1998 (Pg.43). Applicant filed an appeal which too was rejected on 22.02.1989 (Pg.48).



4. It is these two orders, which have been challenged by the applicant now in the present O.A. Counsel for the applicant submitted that disciplinary authority could not have given the disagreement note dated 23.08.1991 as that disagreement note was already not accepted by the Tribunal. Therefore, it was incumbent on the part of the present disciplinary authority who had been changed in the meantime to give his own reasons of disagreement along with proposed punishment so that applicant could have defended himself in a mere effective manner. He also submitted that applicant should have been given a personal hearing and since no personal hearing was given to him, he has been denied the right to defend and principles of natural justice have been violated.

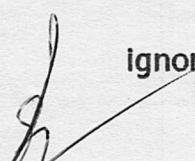
5. Respondents on the other hand have submitted that while allowing the O.A.No.1225/92 this Tribunal had remitted the matter with a limited scope in as-much-as disciplinary authority was directed to take up the enquiry from the stage after giving notice and reasons of the disagreement note to the applicant. Since disagreement note was already on the file but the same had not been communicated to the applicant, the disciplinary authority gave the said disagreement note to the applicant so that applicant could represent on that and this opportunity was duly given to the applicant by the disciplinary authority. It was only thereafter that the punishment order was issued by the disciplinary authority after considering



the points raised by the applicant. Therefore, there was no need to give personal hearing to the applicant. Counsel for the respondents have explained that even otherwise applicant was due to retire on 30.06.1996, therefore, he was compulsorily retired w.e.f. the said date. He has been paid all the retiral benefits as well. They have thus, submitted that O.A. may be dismissed.

6. We have heard the counsel and perused the pleadings. Admittedly, this Tribunal had directed the disciplinary authority to start the enquiry from the stage after giving notice and reasons of disagreement note to the applicant. Therefore, all that was required was to give disagreement note to the applicant so that he could respond to it. The applicant had given a detailed representation to the said disagreement note and it was only after considering the said representation, that disciplinary authority imposed the punishment of compulsory retirement on applicant. Therefore, to this extent we find there was full compliance of the directions given by the Tribunal.

7. Counsel for the applicant next argued on merits of the case by submitting that admission was taken from the applicant under coercion and since respondents had not counted all the bundles, they could not have come to the conclusion that any pecuniary loss was caused to the government. He further submitted that the enquiry officer as well as disciplinary authority ignored the evidence which was favourable to the applicant namely Board of



Officer's report which had given a finding that there was no shortage. He further submitted that respondents ought to have examined the officers who had enquired about the shortage of Bundles.

8. On this aspect, it is seen that when applicant had approached this Tribunal earlier in Iind O.A. this Tribunal had given a detailed judgment wherein two points raised by the applicant were rejected on merit viz (i) applicant had contended that the charge was vague and there was no evidence in support thereof. After considering the same and discussing everything, Tribunal had categorically observed that it does not subscribe to the idea that the charge framed against the applicant was vague (ii) Counsel for the applicant had submitted it is a case of no evidence therefore, order of punishment is not sustainable. On this point also the contention was dealt with in extenso and it was held that witnesses whose names were given in the judgment had categorically stated about the factum of shortage. Applicant had himself also admitted the shortage, therefore, in these circumstances, it was observed that it would not be proper to call it a case of no evidence. It was, therefore, held, that court does not find any legitimate ground to interfere with the contention. Therefore, this ground was also rejected. Now once this Tribunal had already recorded a finding that there was some evidence on record and it could not be said to be a case of no evidence, counsel for the applicant cannot be now allowed to re-agitate the same point all over again, as we cannot sit in appeal over the findings

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already recorded by a coordinate bench. If applicant was aggrieved by this finding, he should have challenged the said judgment in Hon'ble High Court of Allahabad. The judgment given in O.A.No.1525/92 is deemed to have been accepted by applicant. We, therefore, now cannot look into the merits of the case at all. Counsel for the applicant has relied on a judgment given by Hon'ble Supreme Court in the case of **STATE BANK OF INDIA VS. GIRISH CHANDRA DAS** reported in 2000(1) UPLBEC 684. Perusal of same would show that in the said case, matter was remanded by the High Court to the Tribunal, therefore, it was in those circumstances, that Hon. Supreme Court observed that once the matter was remanded by the High Court, entire question should have been kept open for decision by the Tribunal. It was a case, which was decided on facts of that particular case and no principle was laid down by the Hon'ble Supreme Court, therefore, the said judgment cannot advance the case of applicant. In the instant case, we have already narrated above, how the Tribunal had rejected the other contentions raised by the applicant on merits and the matter was remanded back on a technical ground only because disagreement note was not given to the applicant. Therefore, now we only have to see whether the technical illegality, which was earlier committed by the respondents has been made good or not. Since admittedly disagreement note was given to the applicant, we do not find any ground to quash the order of penalty or the appellate order by which the penalty has been upheld. Counsel for the applicant submitted strenuously that the disciplinary authority should have given his mind with regard to the

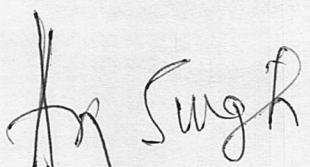
proposed penalty as well, but this contention cannot be sustained as this right has already been done away with by the 42nd amendment, which is referred to in the judgment given by Hon'ble Superme Court in the case of PUNJAB NATIONAL BANK AND ORS. V/s. KUNJ BEHARI MISRA reported in 1998(3) UPLBEC 2320. Therefore, this contention of the applicant's counsel has to be rejected.

9. There is however, one aspect on which we think some directions need to be given to the respondents. Even though there was no such averment made by the applicant in the body of the O.A. but in the relief clause he has prayed for pension and gratuity etc. Counsel for respondents submitted that they have no objection and are in fact willing to pay the dues which are admissible to the applicant but the pension could not be paid because applicant has still not filled up the forms. They are willing to make the said payment provided the applicant completes the formalities. Applicant who was present in court submitted that he is not even permitted to enter the gate of Factory, therefore, he cannot be blamed for not completing the formalities. Since both the sides were trying to put blame on each other, we think it would be better if this matter is solved by giving proper directions in this connection. Now that counsel for the respondents has admitted that they are willing to make the payments to the applicant, which are admissible to him under law, we direct the applicant to approach General Manager the respondent No.3 on 23.12.2004 along with a copy of this order and



respondent No.3 is directed to get all the paper formalities completed from the applicant in his office so that PPO may be issued in favour of applicant with effect from the date of his compulsory retirement. It goes without saying that applicant would be entitled to get all the dues which he is entitled to in law along with arrears with due and drawn statement which shall be paid to the applicant within a period of 3 months after he completes all the formalities. Respondent No.3 shall consider whether applicant is entitled to any other payments apart from pension and in case any other amounts are payable to the applicant, that shall also be paid to the applicant within the above said stipulated period otherwise he should be informed about it by a speaking order.

10. With the above directions, this O.A. is disposed off with no order as to costs.



A.K.SINGH
ADMINISTRATIVE MEMBER



DR.K.B.S.RAJAN
JUDICIAL MEMBER

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