

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No. 1099 of 1999

ALLAHABAD, THIS THE 13th DAY OF March 2007

C O R A M :

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. A. K. SINGH, ADMINISTRATIVE MEMBER**

Prem Singh Chauhan,
Aged about 41 years,
Son of Late Ramesh Singh Chauhan,
Resident of NT-II/220, Armapur Estate,
Kanpur, Presently employed as Machinist (Skilled),
T.No. 66/MS-III, Ordnance Factory,
Kalpi Road, Kanpur.

..... Applicant

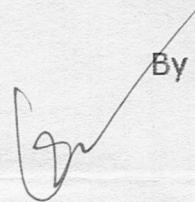
By Advocate : Sri M.K. Upadhyay & Shri N. K. Nair

Versus

1. Union of India, through the
Secretary, Ministry of Defence,
Department of Defence Production,
Government of India,
New Delhi.
2. The Chairman, Ordnance Factory Board/
Director General of Ordnance Factories,
10-A Shaheed Khudi Ram Bose Road,
Calcutta-1.
3. The Senior General Manager,
Ordnance Factory, Kalpi Road,
Kanpur.

..... Respondents

By Advocate : Sri A. Sthalekar



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has challenged the following orders:-

- (a) Order dated 28-01-1995 (Annexure A-1) of the Disciplinary Authority whereby the applicant was visited with the penalty of reduction of pay from Rs 1,250/- to the minimum in the scale of Rs 950 – 1500/- for a period of 5 years with cumulative effect with further direction that the applicant would not earn increments of pay during the period of reduction and on the expiry of currency of penalty, the reduction would have the effect of postponing the future increments.
- (b) Order dated 29-05-1997 (Annexure A-2) whereby the applicant's appeal dated 12-12-1995 (Annexure A-10) was rejected.
- (c) Order dated 07-08-1998 (Annexure A-3) whereby his review application dated 22-08-1997 (Annexure A11) stood rejected.

2. Brief Facts as contained in the OA : The applicant was working as Skilled Machinist in Ordnance Factory, Kanpur. During the material point of time, the Management was required to calculate piece rate wages at a particular rate which having not been done, some Trade Union Leaders resorted to agitation on 30-04-1991 including "gherao" of the office. Applicant could not perform his duties and he left the office after duty hours, while the Gherao continued till 10.00 p.m. Management took action by filing criminal complaint against some Trade Union Leaders and these were also kept under suspension. The applicant was neither suspended nor was there any complaint against him. However, while taking disciplinary action against the various trade union Leaders, the applicant was also proceeded against



vide Charge Sheet dated 30-10-1991 (Annexure A-4). The said charge sheet contained as many as 9 articles of charges as extracted hereunder were framed against the applicant:-

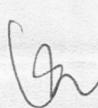
Article I: That the said Shri P.S. Chouhan, T.No. 412 /SM while functioning as Machinist (s) during the period of his employment is charged for gross misconduct in that on 30.4.91, he was unauthorisedly missing from his place of work in the whole of day shift despite being present in the factory.

Article II: The said Shri PS Chouhan, T.No. 412/SM is further charged for gross misconduct in that in conspiracy and connivance with S/Shri Kamaruddin, T.No. 83/SM, Shambhoo, T.No. 302/SM, Bhrigu Nath, T.No. 189/SM and Ram Darash, T.No. 255/SM instigated the workers of SM shop not to work thus disrupting production causing loss of manhours in shop on 30.4.91 in both day and night shifts.

Article III: The said Shri P.S. Chouhan, T.No. 412/SM is further charged for gross misconduct in that in connivance with his supporters as named in Article II above, further instigated the workers of SM shop in both days and night shift to leave their work sports and thereby assemble near shell Machine Office which is prejudicial to public orders and subversive of discipline.

Article IV: The said Shri PS Chouhan, T.No. 412/SM is further charged for gross misconduct in that in connivance with his supporters as named in Article II above and with support of other workers kept Foreman and staff mentioned below in illegal confinement in the office of Foreman/SM and staff room:-

1. S/Shri P.K. Dey, Foreman/SM
2. " O P S Verma, Forman/SM
3. " Fateh Bahadur Singh, CM/SM
4. " D.K. Srivastava, Asstt. F/SM
5. " P.K. Ghosh, CM-I/SM
6. " Ram Kishore, CM-I/SM
7. " KS Kamalvanshi, CM-I/SM
8. " RN Tripathy, CM-II/SM.



9. " M. Larence, CM-II/SM
10. " Atar Singh, CM-II/SM
11. " K Mishra, CM-II/SM
12. " BC Saha, Sup/SM

Article V: The said Shri Chauhan is further charged for gross misconduct in that in connivance with his supporters as named in Article II above, prevented Foremen and staff of Shell Machine shop from performing their legitimate official duties.

Article VI: The said Shri PS Chouhan is further charged for gross misconduct in that in connivance with his supporters as named in Article II above, while continuing with the illegal confinement of Foreman and staff in the Shell Machine Office Building tortured and harassed them by cutting of power supply for long hours.

Article VII: The said Shri PS Chouhan is further charged for gross misconduct in that in connivance with his supporters as named in Article II above, instigated workers to shout inside the factory premises towards the Foremen and staff of Shell Machine section.

Article VIII: The said Shri PS Chouhan is further charged for gross misconduct in that though he was deployed in day shift from 7.45 AM to 6.00 PM on 30.4.91, he unauthorisedly overstayed in the factory upto 23.00 hours on that day.

Article IX: By the aforesaid acts, the said Shri PS Chouhan, T.No. 412/SM has behaved in a manner unbecoming of Government servant thereby violating Rule 3(I)(i)(ii)(iii) and 7 of CCS (Conduct) Rules, 1964.

3. The applicant denied all the charges and a common inquiry was conducted against the applicant and others as per order dated 14-10-1992.

According to him, the charges were all baseless and without any evidence.

The Inquiry Officer found that all the charges were proved vide Annexure

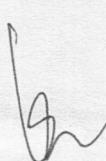


A-7 report, in which the I.O. has reported as under:-

"So far as the brief of the Presenting Officer is concerned, it is correct that Presenting Officer in his brief has not indicated as to how he has proved each articles of charges. It would have been better, if the Presenting Officer would have given the details. Nevertheless, the defence also has not given any comments on each articles of charges and by giving a general remark that the charges levelled against DGS' are not correct, the defence cannot absolve themselves from the charges."

4. The applicant was furnished with a copy of the report and he had filed a representation against the same, vide Annexure A-9. The Disciplinary Authority had imposed the above mentioned penalty of reduction to the minimum in the scale for a period of 5 years with cumulative effect vide Annexure A-1. Against the said order, the applicant preferred appeal dated 12-12-1995 (Annexure A-10) and the appellate authority, vide Annexure A-2 order dated 29-05-1997 rejected the same. The Review application filed by the applicant vide Annexure A-11 was also rejected by the Annexure A-3 order. It is against the said orders of penalty, appeal and review that the applicant has filed this O.A.

5. Respondents have contested the O.A. They have denied any violation of principles of natural justice as alleged by the applicant. They have also contended that such a contention was not raised either before the Disciplinary authority, or the Appellate or Reviewing authority. There was no perversity in the Inquiry Report. It has been stated that all the charges



were proved as per the provisions of the Rules. Hence, they have prayed for rejection of the O.A.

6. Rejoinder, reiterating the contentions as contained in the OA was filed. It was also mentioned therein that in so far as raising the legal objections before the Tribunal is concerned, there is no bar in so raising the genuine points before this Tribunal for the first time.

7. Counsel for the applicant emphatically argued that Art. I is disproved by the very fact that the security report did not include the name of the applicant while the names of the Office Bearers were included, vide Annexure A-6. Similarly, the Inquiry Report clearly shows that the Presenting Officer has not indicated as to how has proved each charge. Thus, according to the applicant's counsel, the inquiry is suffering from very many legal infirmities and hence, the impugned orders are liable to be quashed and set aside.

8. On the other hand, counsel for the respondents has argued that there is absolutely no deviation from the prescribed procedure in holding the inquiry and thus, there being no legal infirmity in the decision making process, the impugned orders successfully pass the legal tests.

9. Arguments were heard and documents perused. Scope of judicial interference in disciplinary proceedings is confined and defined. The Apex

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Court has, in the case of *Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10*, held as under:-

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad v. State of Bihar it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain and Bharat Iron Works v. Bhagubhai Balubhai Patel. In Rajinder Kumar Kindra v. Delhi Admn.⁶ it was laid down that where the findings of misconduct

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are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilt is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny."

10. It is to be seen whether there has been any legal lacuna in the decision making process and not in the decision by the Authorities, as held by the Apex Court in the case of ***State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276*** -

"23. In *V. Ramana v. A.P. SRTC(2005) 7 SCC 338* this Court upon referring to a large number of decisions held: (SCC p. 348, para 11)

11. 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(1948) 1 KB 48* 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 for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

11. Keeping in view the above law laid down by the Apex Court, this case has to be viewed, as to whether any of the above deficiencies could be



discerned from the proceedings conducted.

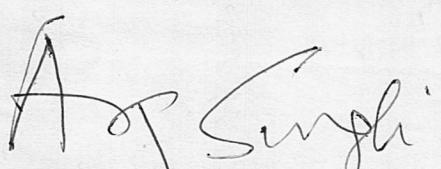
12. Though the applicant has contended that principles of natural justice have been violated, from the records which had been perused it cannot be stated that principles of natural justice have been violated. Though Art. 1 was held to be proved on the basis of the statements, the applicant was to some extent right when he has stated that none of the witnesses stated that the applicant was not present in the office on 30-04-1991. The cross examination conducted by the applicant did elicit the fact that the applicant was not seen in the crowd which was shouting slogans. However, that alone was not the charge. Cumulatively, if the entire charge sheet and the inquiry report are gone into the same reflects that the I.O. has arrived at correct conclusion. That he has narrated that the Presenting officer did not prove charge by charge, which has been relied upon by the applicant's counsel, also does not mean that the charges have not been proved. The I.O. places his conclusion on the analysis of the evidences and not the presenting officer's brief. Hence, the I.O's report cannot be faulted with.

13. In the appeal, the applicant has contended the very same thing which ^{he} ~~had contended~~ ^{before} ~~to~~ the Disciplinary authority in retort to the inquiry report. Where did the Disciplinary authority go wrong has not been reflected in the appeal. Likewise, where did the appellate authority go wrong was not indicated in the review application. Both these authorities had considered

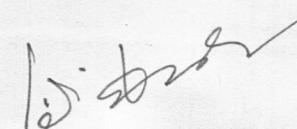
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the contents and contentions of the respective representations and arrived at their conclusion in accordance with law. Hence, no fault could be found in the decision making process. Nor could the inquiry report be held to be perverse.

14. Taking into account the above factors, in our considered view, the applicant could not make out a case and the O.A. is dismissed. No costs.



A.K. SINGH
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER