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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application No.1417 of 2000.

alongwith

Original application No.1489 of 2000.

Allahabad this the 19th day of August 2004.

Hon'ble Mr.D.R. Tiwari, Member-A.

Nageshwar Pandit,
S/o Shiv Pandit,
aged about 57 years, working
as Labour B, Ticket No.1353/LT.,
Personal No.103210 in Ordnance
Equipment Factory, Kanpur.

.....Applicant.

(By Advocate : Sri M Lal)

Versus.

1. The Union of India
through Additional Director General,
Ordnance Factories O.E.F. Group Head
Quarters, G.T. Road, Kanpur.
2. The General Manager
Ordnance Equipment Factory
Phool Bag, Kanpur.

....Respondents

(By Advocate : Sri Saumitra Singh)

WITH O.A. No.1489/00

Chhiddo aged about 48 years
S/o Sri Jangali working as Labour A,
with Ticket No.15/L.T and Personal
No.102942 Ordnance Equipment Factory,
Kanpur.

.....Applicant.

(By Advocate : Sri M Lal)
Versus.

1. The Union of India
through Additional Director General
Ordnance Factories O.E.F Group Head
Quarter, G.T. Road, Kanpur.
2. The General Manager
Ordnance Equipment Factory
Phool Bag, Kanpur.

....Respondents:

(By Advocate : Sri Saumitra Singh)

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It is proposed to dispose of the O.A. No.1417 of 2000 and O.A. No.1489 of 2000 by a common order as the facts and reliefs sought in these O.A.s are similar in nature. O.A. No.1417 of 2000 will be ~~the~~ leading case in this regard.

2. By this O.A. filed under section 19 of the Administrative Tribunals Act 1985, the applicant has prayed for quashing of punishment order dated 17.05.2000 and the appellate order dated 13.09.2000 by which the applicant has been awarded the penalty of reduction of pay by three stages i.e. from Rs.3510/- to Rs.3300/- in the time scale of pay of Rs.2650-65-3300-70-4000 for a period of two years without cumulative effect which has been upheld by the Appellate Authority (Annexure A-1 and A-2). He has further prayed for restoration of all financial benefits which have been forfeited as a result of impugned orders.

3. The facts of the case in a nut-shell are that, at ~~the~~ relevant time, the applicant was working in the Cotton Godown of L.T. Section in the Ordnance Equipment Factory, Phool Bag, Kanpur. Disciplinary Proceeding under Rule 16 of C.C.A (C.C.S) Rules 1965 was initiated against the applicant and he was served with charge memo dated 04.09.1999 (Annexure A-5). Statement of Imputation of misconduct or misbehaviour on which action is proposed to be taken against Sri Nageshwar Pandit, T. No.1353/L.T No.103210 as under:-

"It has been reported that there was a scuffle between Shri Chhiddo T. No.15/LT and Shri Nageshwar Pandit on 26-04-1999 at 0815 hr in Tape Tracing Shop of LT section. In the process Shri Nageshwar sustained injury and he had to be shifted to Combined Hospital. Fighting with co-workers on the work spot is gross violation of discipline.

The above act on the part of the said Shri Nageshwar Pandit, T. No.1353/LT. P. No.103210 Desig. Labourer 'Un-skilled', OEC is conduct unbecoming of a government servant in contravention

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of Rule 3 (i) (ii) of CCS (Conduct) Rules 1964 and he is guilty for the gross misconduct of (i) Fighting with a co worker during duty hours, (ii) Breach of section discipline and (iii) wasting of government time".

4. The applicant denied the allegations made in the charge memo. After considering the reply of the applicant and other documents on record, the disciplinary Authority imposed the penalty of reduction of pay by three stages in time scale for a period of two years without cumulative effect by order dated 17.05.2000, (Annexure A-1). The applicant preferred an appeal to the Appellate Authority and his appeal was rejected and penalty of disciplinary authority was maintained.

5. Aggrieved by the above orders, the applicant has filed this O.A. and assailed the impugned orders on following grounds:

- (a) The impugned orders are vitiated because no scuffle took place on the relevant date in the section.
- (b) There was no complaint.
- (c) No fact finding enquiry was held before the charges were framed against the applicant.
- (d) On the denial of charges, a full fledged enquiry should have been ordered to prove the charge.
- (e) Impugned orders are violative of principles of natural justice and suffer from procedural irregularity.

6. *Per contra*. Respondents have contested the contention of the applicant and have submitted that an incident of quarrel between two employees of the factories which took place on 26.04.1999, was reported by the Joint General Manager and on that basis the applicant was chargesheeted. They have further argued that no principle of natural justice has been violated and they have sufficient reason to chargesheet

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the applicant and there has been a documentary evidence to prove that during the scuffle the applicant and the victim sustained injuries for which they were treated in the combined hospital and the medical slip for their treatment is available in the record of hospital.

Respondents have attached the report of Joint General Manager which is available at C.A.1 of the counter affidavit.

7. I have heard Sri M Lal learned counsel for the applicant and Sri Saumitra Singh learned counsel for the respondents at length. I have considered very carefully the rival contention of learned counsel for the parties and perused the records.

8. During the course of arguments, learned counsel for the applicant has relied on the following decisions:-

(i) O.K. Bhardwaj Vs. Union of India and others (2002) Supreme Court Cases (L&S) 188.

(ii) I. Jebaraj Vs. Union of India and others (C.A.T. Madras) (1998) 37 Administrative Tribunals Cases 38.

9. Learned counsel for the applicant has argued that the moment the charges were denied by the applicant it was incumbent on the disciplinary authority to hold the regular enquiry under Rule 14 of C.C.S (C.C.A) Rules 1965. There is no doubt that Rule 16 (i) (b) also provides that in case it is decided to impose minor penalty, it is for the Disciplinary Authority to form opinion whether the enquiry under Rule 14 is necessary or not. Thus, we find that even for minor penalty the enquiry under Rule 14 is possible under the provisions of Rule 16, of-course it is for the disciplinary authority to form an opinion. The formation of opinion should be based on certain facts. I get support of my view from the decision ⁷ I. Jebaraj (Supra). Learned counsel for the respondents has argued that the regular enquiry for imposing

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the minor penalty is the discretion of the disciplinary authority and in this case in the facts and circumstances, the Disciplinary Authority has exercised the discretion and did not think it proper to hold a detailed enquiry.

10. Now crucial question which falls for consideration is whether it is necessary to hold a detailed enquiry under Rule 14 of C.C.S (C.C.A) Rules 1965 and none holding of enquiry would result in violation of principles of natural justice as delinquent employee is deprived of opportunity of hearing. The Hon'ble Supreme Court in the case of O.K. Bhardwaj has held that if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is minimum requirement of the principles of natural justice and the said requirement cannot be dispensed with. In this case, charges have been denied and in view of the decision of the Hon'ble Supreme Court it was incumbent for the disciplinary authority to hold a detailed enquiry.

11. The second contention of the counsel for the applicant is that the exercise of discretion as provided under Rule 16(i) (b) of the Rules is not absolute and the Disciplinary Authority has to apply its mind to the question of holding enquiry immediately on receipt of applicant's representation.

12. Learned counsel for the applicant during the course of argument has very forcefully submitted that decision of the Disciplinary Authority on the basis of records available and on the basis of report of Joint General Manager which was prepared behind the back of the applicant is violative of principles of natural justice. The applicant has not been provided any opportunity to rebut the report. It is a settled ~~law~~ ^{of} principles

of natural justice that whenever a decision is taken in the disciplinary proceeding on the basis of some record, it is necessary for the Disciplinary Authority to supply such report to the delinquent employee so as to provide him an opportunity to prove his innocence. In these cases also the report of Joint General Manager has been taken into account to prove the charge. As a matter of fact this should have been supplied to the delinquent employee and opportunity should have been afforded to him for cross examining the maker of the report.

13. In view of the facts and circumstances mentioned above, both the O.As are allowed. The punishment order dated 17.05.2000 and the appellate order dated 13.09.2000 of O.A. No.1417 of 2000 are quashed similarly the punishment order dated 17.05.2000 and appellate order dated 24.09.2000 of O.A. No.1489 of 2000 are quashed. The liberty is given to the respondents to initiate the disciplinary proceeding de novo in accordance with rules, if they are so advised.

No costs.

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Member-A.

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