OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.686/2000

THURSDAY, THIS THE 24th DAY OF AUGUST, 2006

HON'BLE MR. JUSTICE KHEM KARAN ... VICE CHAIRMAN

HON'BLE MR. P.K. CHATTARJI ... MEMBER (A)

Shri M.C. Das,
Aged about 50 years,
S/o Late Shri K.N. Das,
R/o 591-A, Barra 6,
Kanpur. ... Applicant

(By Advocate Shri Rakesh Verma)

Vs.

1. Union of India,
through the Secretary,
Ministry of Defence,
New Delhi.

2. The General Manager,
Ordnance Factory,
Kanpur.

3. The Chairman/Additional Director General,
Ordnance Factory,
Ordnance Factories Board,
10-A, Auckland Road,
(Shahid K. Bose Road),
Calcutta – 700 001. ... Respondents

(Counsel on record Shri Prashant Mathur,
but argued by Shri Saumitra Singh Sr. Central Govt. Standing Counsel)

ORDER

Hon'ble Mr. Justice Khem Karan, Vice Chairman :

The applicant was dismissed from service vide order dated 16.12.1996, passed by Respondent No.2, after having been subjected to formal disciplinary proceedings under CCS (CCA) Rules, 1965 (hereinafter referred to as the "Rules of 1965"). He preferred a departmental appeal and that too was dismissed vide

order dated 12.07.1999. Now, he has come to this Tribunal against the above mentioned two orders saying that both the orders are bad in law and deserve to be quashed.

2. The brief facts giving rise to this O.A. are that, while working as Auto Fitter (Skilled) with Ticket No.12/M, under the control of Respondent No.2, the applicant was served with a charge sheet dated 15.04.1992 (Annexure-3), under Rule 14 of the said Rules of 1965. The charges against the applicant were that he was trying to illegally take out certain materials as mentioned in the charge sheet. The applicant gave a written reply denying the charges. There followed an inquiry and after necessary inquiry, a report was submitted to the Disciplinary Authority. The Inquiry Officer found the charges proved. But, the Disciplinary Authority had some reservation as regards the procedure adopted by the Inquiry Officer. So, it recorded its own opinion on that point, sent that opinion together with the copy of the inquiry report to the applicant and after considering all these facts, remitted the matter back to the Inquiry Officer vide order dated 10.02.1996. It appears that after about 8-9 months, after the matter was remitted back to the Inquiry Officer for further inquiry, the applicant gave an application on 04.06.1996, for change of Inquiry Officer. The inquiry report was submitted on 24.06.1996. And after giving a copy of it to the applicant and receiving his reply thereto, the Disciplinary Authority passed the impugned order dated 16.12.1996, imposing the punishment of dismissal from service.

3. The departmental appeal also remained unsuccessful. The respondents have tried to resist the claim of the applicant by saying that formal disciplinary inquiry was concluded as per Rules giving all reasonable opportunity of hearing to the applicant. It has been stated that as the Disciplinary Authority was of the view that certain procedural irregularities were committed by the Inquiry Officer while submitting his first report, that he recorded that view and thereafter passed

the order remitting the matter back to the Inquiry Officer and he was fully justified in doing so in view of Rule 15 (1) of the Rules of 1965. Attempt has also been made to say that earlier representations for change of Inquiry Officer have been dealt with and orders passed and representation dated 04.06.1996 for change of Inquiry Officer was made at a very advanced stage of the matter and after the Inquiry Officer has disclosed his mind in his earlier report. So, that was not a good ground to change the Inquiry Officer or to stay the proceedings.

4. Shri Rakesh Verma, has submitted that recording of finding by the Disciplinary Authority on the basis of the first inquiry report before remitting the case back to the Inquiry Officer for further inquiry was the circumstance which prejudiced the Inquiry Officer against the applicant. He says that it was not possible for the Inquiry Officer to take a view different to the one taken by the Disciplinary authority. Shri Verma wants to say that the subsequent conclusion given in the second inquiry report by the Inquiry Oficer were therefore vitiated for that reason and the punishment order deserves to be quashed on this ground alone. The learned counsel for the respondents, has tried to say that when the Disciplinary Authority has been given power under Sub-rule (1) of 15 of the Rules of 1965, to remit the matter back to the Inquiry Officer, it could impliedly be inferred that he has the power to express his views on one point or the other. His second argument is that there is nothing on record to show that the Disciplinary Authority had disclosed his mind as regards the proof or dis-proof of misconduct and if he entertained some doubt as regards the procedure adopted by the Inquiry Officer and in case he thought it proper to get it rectified by remitting the matter back to the Inquiry Officer, then, it is difficult to say that he was unjustified in doing so.

5. We have considered the respective submissions and we are of the view that in the facts and circumstances of the case, the learned counsel for the

respondents is perfectly justified in saying that recording of certain finding as regards the procedure adopted by the Inquiry Officer did not tend to prejudice the mind of the Inquiry Officer. There is nothing on record to say that the Inquiry Officer was in fact, prejudiced by the so called finding of the Disciplinary Authority. Sub-rule (1) of Rule 15 of the Rules of 1965, empowers the Disciplinary Authority to remit the matter back to the Inquiry Officer in certain cases. This power has been given with certain object. We are of the view that even if such express power was not there under the said Rules, even then, it would not have been very easy to say that the Disciplinary Authority lacked that power. In case the Inquiry Officer submits the report without making any oral inquiry as envisaged in the Rules or in case the Inquiry Officer bases his finding on uncross-examined testimony of a witness, and in case, he takes into consideration any material which was off the record, the Disciplinary Authority will be well within his powers to ask him to submit the report by holding the inquiry as per Rules. So, what we want to say is that by recording his own view after getting the first report, the Disciplinary Authority was not precluded from remitting the matter back to the Inquiry Officer, if he was satisfied that such remand was just and proper. So, this argument does not help Shri Rakesh Verma in attacking the punishment order. It is difficult to say that any finding by the Disciplinary Authority has prejudiced the Inquiry Officer in submitting the second report. The applicant had already been given opportunity to meet not only the conclusion drawn in the first inquiry report, but, also the order of the Disciplinary Authority pointing out the illegality/irregularity in the inquiry. So, all the material was before the applicant. So, we find it difficult to accept the first contention of Shri Rakesh Verma.

6. The next argument is that the applicant gave his representation in writing on 04.06.1996 that the Inquiry Officer to be changed. But, no such change was ordered and so the inquiry report and the punishment order based on such

inquiry report are vitiated in law and deserve to be rejected. Shri Verma has brought to our notice certain instructions issued by the Government of India vide O.M. No.39/40/70 Estt., dated 09.11.1972 under Rule 14 of the Rules of 1965, which provide that whenever such a request for change of the Inquiry Officer is made on the ground of bias, the proceedings should be stayed till orders are passed by the competent authority on such request. The learned counsel for the respondents has submitted that each and every case has to be seen in the light of the facts and circumstances of the case before it and whether the request for change of Inquiry Officer was bonafide in nature or was simply with a view to get rid of otherwise inconvenient person. He says that it has been clearly averred in the reply that such requests were earlier made and disposed of and he has said that since the Inquiry Officer has disclosed his mind against the applicant in his first inquiry report and since the matter was being remitted back again, therefore, the applicant entertained an apprehension that the net result might go against him and so he made that request at a very late stage of about 8-9 months after remitting the matter back to him. The learned counsel says that there is no statutory rule providing that whenever a request for change of Inquiry Officer is made, the proceedings should necessarily be stayed. The learned counsel says that this request was not made where the inquiry was at a preliminary stage, but was a request made after the remitting the matter to the Inquiry Officer and that too after about 8-9 months of same. In the circumstance, we are of the view that neither the second inquiry report nor the punishment order based thereon can be said to be vitiated on the ground that the request dated 04.06.1996 for change of Inquiry Officer was not dealt with or acceded to. It appears that the applicant was in the habit of giving such representations for change of Inquiry Officer and he made a last effort by giving such a request dated 04.06.1996, knowing well that the Inquiry Officer had already disclosed his mind on merits against him. So, the inquiry report or the

punishment order cannot be said to be vitiated for that reason. So, this argument advanced by Shri Verma may not help him in getting rid of the punishment order.

7. The last submission is that the Appellate order dated 12.07.1999, is vitiated in law for want of personal hearing in view of the law laid down by the Apex Court in Ram Chander Vs. Union of India & Anr. 1986 SCC (L&S) 383. It has clearly been held by the Apex Court that in cases of major penalty like dismissal or removal, the Appellate Authority should afford opportunity of personal hearing to the delinquent official before passing final orders in appeal. The respondents' counsel has tried to say that view was expressed keeping in view the peculiar facts and circumstances appearing in that case and that should not be treated to be a precedent to be followed in all the cases where such appeals are being dealt with. He has also said that the administrative authorities hearing such appeals may not be knowing the view of the Apex Court as the relevant rules have not accordingly been amended so as to make it mandatory for the appellate authority to give a personal hearing to the applicant.

8. We are of the view that even the obiter dicta of the Apex Court has a binding force and it cannot be skipped on the ground that it is not in the knowledge of one or the other. That is the law of the land. There is no option, but, to follow the same and we are of the view that since the Appellate Authority has not given personal hearing to the applicant, before passing the appellate order, the order is vitiated for that reason and deserves to be quashed. We are not examining as to whether the Appellate Authority has passed a reasoned order or not and we do not express our opinion on that point and it deserves to be quashed on the ground that the Appellate Authority has not afforded a person hearing on the applicant. So, this O.A. is partly allowed and partly dismissed. The relief for quashing the punishment order is rejected, whereas,

the relief for quashing the Appellate order dated 12.07.1999 is allowed and the Appellate Authority is directed to dispose of the appeal as per Rules within a period of three months from the date a certified copy of this order is produced before him, after affording an opportunity of personal hearing to the applicant. No order as to costs.

(P.K. CHATTARJI)
MEMBER (A)

(JUSTICE KHEM KARAN)
VICE CHAIRMAN

psp.