

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 443 of 2002

Tuesday this the 10th day of July 2007

**Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Qavi Mohammad, aged about 42 years S/o Late Shri Lal Mohd
R/o 89/197 A, Basumandi, Kanpur.

Applicant

By Advocate Sri R.K. Shukla

Versus

1. Union of India : Through – Secretary, Ministry of Defence,
Department of Defence Production Government of India,
New Delhi.
2. Chairman Ordnance Factory Board 10-A, S.K. Bose Road,
Kolkata.
3. General Manager Field Gun Factory, Kanpur.

Respondents

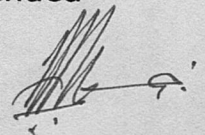
By Advocate Sri Saumitra Singh

ORDER

By Ashok S. Karamadi, Member (J)

This application is filed for setting aside the Order passed by the Appellate Authority dated 27.05.2000. By the said order, the applicant was imposed penalty of compulsory retirement w.e.f. 27.05.2000.

2. Learned counsel for the applicant based on the pleadings contends that the Order impugned and the Appellate Authority's Order are not in accordance with Rule 15 and the procedure prescribed therein. Even though the applicant has contended



many grounds in the O.A. in support of his contention but he has based the arguments mainly on the rule position and the procedure followed by the authority concerned while passing the impugned orders. He has invited our attention towards Rule 15 and sub rule 15 (2-A). The other ground he has stated is that even though the applicant has approached the Revisional Authority and filed the Revision before the authority but the Revisional Authority has not passed any order on the Revision filed on 26.02.2001 hence, he has filed the present O.A. He has also stated that till date no decision has taken on his revision, therefore, it can be presumed that there is no order passed on the revision.

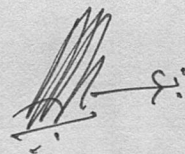
3. On notice, the respondents have filed the counter affidavit, contending that the Disciplinary Authority as well as the Appellate Authority has passed the appropriate orders. It is stated that the Disciplinary Authority while agreeing with the report of the Inquiry Officer, has properly applied his mind and has passed the Order of compulsory retirement. The same stand is taken for the Order of Appellate Authority that he after applying his mind, has passed an appropriate order. Having regard to the above Orders, they have prayed for dismissal of this O.A.

4. We have heard the learned counsel for the applicant and the respondents, perused the pleading and material available on record.

5. As the learned counsel for the applicant has submitted that the Order dated 27.05.2000 passing the Order of compulsory retirement suffers from procedure and application of mind by the authority concerned and to appreciate this contention of learned counsel, it is just and proper to quote the Rule 15 (2-A): -

"Rule 15 (2-A)

The disciplinary authority shall consider the representation, if any, submitted by the Government servant and records its findings before proceeding further in the matter, as specified in sub rule (3) and (4).

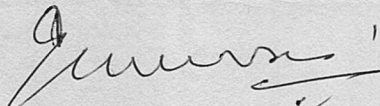


By reading the aforesaid Rule, it is clear, on the admitted facts that the applicant has submitted his representation dated 20.10.1999 and inspite of the representation received by the authority concerned, the authority has stated in one sentence that "the undersigned, therefore, agrees with the findings of the Inquiry Officer and holds that the article of charges are proved fully as framed against Sri Qavi Mohd."- the applicant. This reasoning of the Disciplinary Authority accepting the finding recorded by the Inquiry Officer, in our considered view is no application of mind. It appears that the representation dated 20.10.1999 is before him and the contention of the said representation or the grounds urged therein have not taken into account by the Disciplinary Authority while passing the Order of compulsory retirement. In that view of the matter, the action taken by the Disciplinary Authority is arbitrary and therefore its order cannot be sustained. As such, consequently the Appeal filed by the applicant the Appellate Authority has also passed in the same fashion, therefore, the Appellate Order also cannot be sustained. In absence of application of mind by Appellate Authority in his Order as well as consideration of grounds urged by the applicant in the representation, the Appellate Authority's Order amounts to miscarriage of justice. Accordingly, the contention of learned counsel for the applicant is acceptable that the Disciplinary as well as Appellate Authority have not considered the case of the applicant properly. Accordingly, contention of learned counsel for the respondents that the Orders passed by the Disciplinary as well as Appellate Authority are well reasoned and speaking order, is not accepted. Having regard to the same, we have left with no option but to say that the Orders impugned here in this O.A. are arbitrary and illegal and passed without application of mind, as such, both the Orders are liable to be set aside as they are contrary to Rule 15 and 15 (2-A).


6. In view of the above, the O.A. is allowed and the impugned order dated 27.05.2000 passed by the Disciplinary



Authority and the order dated 31.10.2000 passed by the Appellate Authority are set aside and the respondents are directed to consider the case of the applicant and pass appropriate order within a period of 3 months from the date a certified copy of this Order is produced before them. There will be no order as to costs.



Member (A)



Member (J)

/M.M./