

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

ORIGINAL APPLICATION NO. 641 OF 2002.

THIS THE 29TH DAY OF SEPTEMBER, 2005.

**HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A**

Om Prakash Singh, S/o Sri Ram Laut Singh, Ex-Store
Keeper, R/o 765 Mahabir Puri, Shiv Kuti, Allahabad.

By Advocate : Sri S. Lal Applicant.

Versus.

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Director General Ordnance Services (OS-8C), Army Headquarters, P.O. DHQ, New Delhi.
3. Officer In-charge, AOC Records, Trimulgherry, P.O. Secunderabad.
4. Commandant, Ordnance Depot, Fort, *Allahabad* Respondents

By Advocate : Sri S. Singh.

ORDER

By K.B.S. Rajan, Member-J

The applicant has challenged in this O.A. the order of the Disciplinary Authority 13.6.2001 whereby he was awarded compulsory retirement on account of certain charges having been held "proved" by the Inquiry Authority. The order dated 8.3.2002 whereby appellate authority has affirmed the order of compulsory retirement has also been challenged in the present O.A.

2. Briefly the charges leveled against the applicant are as under:-

"ARTICLE OF CHARGE-IGross Negligence of Duty:-

That the said Shri Om Prakash Singh, while functioning as Storekeeper in piece receipt Area in Traffic Branch of OD Allahabad during the period Jun 97 to Aug 07 committed an act "Gross Negligence of Duty" causing delay in dispatch of Govt. stores. Thus, the said Sri Om Prakash Singh Committed an act of "Gross Negligence of Duty".

ARTICLE OF CHARGE-IILack of Absolute Integrity and Devotion to Duty:

That the said Shri Om Prakash Singh while functioning as Storekeeper in Piece Receipt Area in Traffic Branch of OD Allahabad avoided escorting with the vehicle going to MTSSD loaded with 92 Pkgs. He did not make any effort to find out the cause of delay in dispatching the stores of 92 Pkgs which were lying in Traffic Branch since his arrival in Traffic Br. Thus, the said Shri Om Prakash Singh Committed an act unbecoming of a Govt. servant by showing lack of absolute integrity and devotion to duty.

ARTICLE OF CHARGE-IIITheft of Govt. stores:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Om Prakash Singh connived with Sri S.D. Pandey, Store Supdt. And Sri R.P. Ram Storekeeper to commit theft of 1151 qty of item no. LV 7/NSN 2920-00022 sparking plug 14 mm amounting to Rs. 60427.50 paisa. Thus, the said Sri Om Prakash Singh Committed an act of theft causing loss to the Government."

3. The applicant had denied the charges consequent to which the enquiry was conducted. As two more individuals were involved in the act of the alleged misconduct, by order of the Disciplinary Authority dated 4.4.98, the AOC had passed an order under Rule 18(2) of the CCS (CCA) Rules, 1965 appointing



himself as the disciplinary authority in respect of all the cases. The enquiry officer had furnished its report holding that all the charges framed against the applicant are proved.

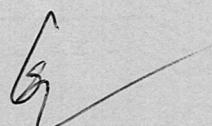
4. On receipt of the copy of the said report, the applicant had preferred a representation wherein he has raised the following legal issues:

"9. That while preparing the assessment report by the Inquiry officer in para 12 at page 41 of Typed Inquiry Proceedings in the later part of the para has illegally, wrongly and malafide stated that "SK OP Singh is involvement in the theft of some salvage stores for which a case is already Enquiry officer then going on." These facts are not available any where in the Inquiry proceedings. The Inquiry Officer deliberately added the above facts in his assessment report, which proved his biasness also. In addition to the facts stated in applicant's ground of bias against the Inquiry Officer."

5. The applicant has filed this O.A. on various grounds including the competence of the disciplinary authority and that extraneous matters have influenced the enquiry officer in rendering his findings that the charges remained proved.

6. The O.A. was contested by the respondents by filing a detailed Counter.

7. Rejoinder and supplementary Counter have also been exchanged.

A handwritten signature in black ink, appearing to read 'G' or 'GJ'.

8. Heard the counsel for the parties and the pleadings have been perused.

9. The following are the legal issues raised by the counsel for the applicant:

(a) Vide order of the Disciplinary Authority dated 4.4.98 when Brig. R.D. Singh, AOC, was designated as disciplinary authority, whereas the penalty order was passed by the Brig. A.K. Jyoti. This is a serious legal lacuna.

(b) Vide para no. 11 and 12 of the enquiry report (page no. 79-80), the enquiry authority had fairly relied upon the Presenting Officer's submissions that in another theft case of some salvage store a case was going on against the applicant. This is beyond the articles of charges and as such the enquiry report is vitiated as the findings of the Enquiry Officer have been influenced by these extraneous materials.

10. The counsel for the respondents per contra retorts the above two legal issued as under:-

(a) Though Brig. A.K. Jyoti passed the penalty order the fact remains that he was the AOC at the material point of time and as such was competent to pass the penalty order. In this regard, he has invited our attention to the order of the Disciplinary Authority dated 7.10.2003, passed by this Tribunal in O.A. no. 268 of 2003 wherein the same issue was raised. In that case, also while Brig. R.D. Singh In-charge AOC records was



designated as the disciplinary authority Brig. M.S. Moorjani, who was holding the post of officer In-charge AOC Records had passed the penalty order. This Tribunal observed "both the officers are of an equal status and in our opinion no pre-judge has been caused, nor has there been any violation of the Article 311 of the Constitution of India." We respectfully agree with the above observations. Thus, the first point of law as raised by the counsel for the applicant cannot be sustained.

11. As regards the next issue, the counsel for the respondents had invited our attention to para 5 (g) of the penalty order which Inquiry Authority as under:-

"5(g) The argument of the delinquent official that the Inquiry officer in his report has illegally wrongly and malafide stated that "SK Sri O.P. Singh's involvement in the theft of some salvage stores for which a case is already Enquiry Officer going on" is agreed. The Inquiry officer has made the above endorsement in his assessment based on the brief of the Presenting officer. However, no cognizance of this endorsement has been taken while arriving at a conclusion for holding him guilty or awarding the punishment."

12. We have considered the case and given our anxious considerations to the entire matter. No doubt, it is settled law that no extraneous points of which the charged officer has not been kept informed can influence either in the E.O. in

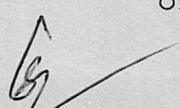


rendering his findings or the disciplinary authority in arriving at the conclusion regarding penalty or for that matter the appellate authority in arriving at the conclusion. At the same time, it is equally settled unless such extraneous points have changed the entire colour of the findings of the Inquiry Authority the inquiry report cannot be held to be vitiated. The disciplinary authority had indeed agreed to the contention of the applicant that the Enquiry Officer has taken into account the involvement of the applicant in the theft of the some salvage stores for which a case was already Enquiry officer going on. He has, however, held that "no cognizance of this endorsement has been taken while arriving at the conclusion for holding him the guilty or awarding the punishment."

13. A look of para 11 and 12 of the Enquiry report would show some light whether the Enquiry report was influenced by any extraneous matters and if so, to what extent. Para 11 and 12 of the Enquiry Officer's Reports reads as under:

"11. Notwithstanding above, as per the brief submitted by the Presenting Officer (Exhibit-Q) SK OP Singh is also involved in another theft case of some salvage stores and a case for the same is going on against him.

12. Charged officer SK OP Singh in his defence brief stated that none of the prosecution witnesses said anything against the delinquent official SK OP Singh through none of the prosecution witnesses said anything against the delinquent official SK OP Singh through none of the prosecution witnesses specifically mention of the name of SK OP Singh the involvement



of the individual alongwith SS SD Pandey and SK RP Ram in the whole affair is conclusively confirm , with the documents action of the individual and circumstantial evidences bearing to conclusion of his involvement more over, SK OP Singh's involvement in the theft of some salvage stores for which a case is already."

14. The following words in the aforesaid paras are crucial.

(b) *Notwithstanding above appearing in the first sentence in para 11.*

(c) *More-over S.K. O.P. Singh involvement in the theft of some salvage store for which a case is already thereon, is also a register towards the habitual involvement of O.P. Singh with regard to Government stores."*

15. The words 'notwithstanding' has its own significance. It is a non-obstante clause and it does have sufficient influence in the final findings of the I.A. but at the same time, this observation was only with reference to Article 3 of the Charge-sheet which is independent of other two articles. Hence, the influencing factor would have its sting only with reference to the findings in regard to Article 3 and it has no impact upon the findings in respect of Article 1 & 2. This is evident from the fact that while discussing about the charge of theft in Article 3 the I.O. had observed " habitual involvement of O.P. Singh with regard to Government stores".

16. From the above, it is ~~Enquiry Authority~~ that the findings of the I.A. with regard to Article 1 & 2 is uncorrupted, while finding on article 3 has been maligned with an external influence. This remarks do not affect the findings in respect of the other two charges nor would have influenced the I.O.

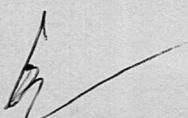


while arriving at the findings in respect of the first two charges.

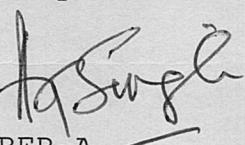
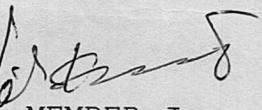
17. The question now is whether the entire penalty proceedings gets vitiated on accounts of the above situation. The Answer is 'No'. Since the penalty imposed is based on the three articles of charges, as no fault can be found with reference to findings on Article 1 & 2 the entire penalty proceedings cannot be said to be vitiated. Even in respect of Article 3, the I.O. report is not as if on the basis of the earlier involvement, he had rendered his findings on preponderance of probability. It is only after discussing about Article 3 and only before conclusion that he had added the aforesaid words and as such even findings on article 3 cannot be said to be completely influenced by his observation about the previous theft. Nevertheless, that particular article having been influenced irrespective of the degree of influence, in the interest of the justice, the same has to be held as not proved.

18. It is now for the disciplinary authority to consider to what quantum of penalty would be justified in respect of misconduct under article 1 & 2. This Court cannot substitute the penalty, much less would suggest in this regard. Of-course, the order of compulsory retirement has to be quashed, but with full liberty top the disciplinary authority to consider the entire case afresh from the stage of considering the inquiry report and the representation of the applicant.

19. In the end, the O.A. is partly allowed. The order Disciplinary Authority dated ~~16.3.2001~~^{13.06.2001} and of the appellate authority dated 8.3.2002 are quashed and set aside. The respondents shall consider afresh the Inquiry Report alongwith the representation of the applicant and pass suitable



orders treating that finding against article 3 have been vitiated on account of extraneous matters having been taken into account by the Inquiry Authority. Since the earlier punishment no longer subsists, the applicant is to be reinstated in service, but without any back wages and the Disciplinary Authority may pass suitable orders as stated above in respect of the charges. Needless to mention that the applicant shall have further statutory remedy available to him under the CCS (CCA) Rules, as well as the legal remedy, if he is aggrieved that the order may be passed by the Disciplinary authority. No costs.


MEMBER-A
MEMBER-J

GIRISH/-