

(16)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 859 OF 2002

ALLAHABAD THIS THE 3rd DAY OF June, 2008

**HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN
HON'BLE MR. N.D. DAYAL, MEMBER-A**

Diwakar Mishra, S/o Sri Ram Nagina Mishra, R/o Q. No. 13/6 Golf Course Colony Cantt. Kanpur.

.....Applicant

By Advocate Shri R.K. Shukla

V E R S U S

1. Union of India through Secretary, Ministry of Defence, Department of Defence Production, Govt. of India, New Delhi.
2. Additional DGOF, Ordnance Equipment Fys. Group HQrs, "Ayudh Upaskar Bhawan" G.T. Road, Kanpur.
3. General Manager, Ordnance Equipment Factory Kanpur.

.....Respondents

By Advocate: Sri S. Singh

O R D E R

PER N.D. DAYAL, MEMBER (A)

The applicant having completed apprenticeship and passing the requisite test was appointed as Tail semi skilled in Group 'D' Industrial post, in Ordnance Equipment Factory, Kanpur. Subsequently, he was appointed as Tailor skilled grade.

2. The applicant was placed under suspension vide order dated 26.02.1999 and was served with a charge

(17)

sheet dated 27.02.1999 containing six charges as under:

"Article I

The said Sri Diwakar Mishra, T. No. 1933/HT, OEFC while functioning as Tailor/S in OEFC is charged with gross misconduct of : Interfering in the bonafide duties of security in that on 19.2.1999 at about 15.30 Hrs. Sri Diwakar Mishra alongwith the other office bearers of his Union reached main gate unauthorisedly and created disturbances.

Article II

The said Sri Diwakar Mishra, T. No. 1933/HT, OEFC while functioning as Tailor/S in OEFC is charged with gross misconduct of : creating nuisance/chaos in gate by instigating employees in that on 19.02.1999 at about 15.30 Hrs, Sri Diwakar Mishra, T. No. 1933/HT, alongwith other members of his union and employees created nuisance/chaos in the gate which was resulted serious disturbances at Gate.

Article III

The said Sri Diwakar Mishra, T. No. 1933/HT, OEFC while functioning as Tailor/S in OEFC is charged with gross misconduct of : Manhandling/beating Sri Tejveer Singh, Supervisor/security office on duty in that on 19.2.1999 at about 15.30 Hrs. Sri Diwakar Mishra T. No. 1933/HT accompanied by other office bearers of his Union reached main gate and indulged in manhandling/beating Sri Tejveer Singh, Supervisor/security office on duty.

Article IV

The said Sri Diwakar Mishra, T. No. 1933/HT, OEFC while functioning as Tailor/S in OEFC is charged with gross misconduct of : Breach of discipline in that on 19.2.1999 at about 15.30 Hrs., Sri Diwakar Mishra No. 1933/HT indulged in beating/manhandling Sri Tejveer Singh, Supervisor/security office and created serious disturbances at main gate.

Article V

The said Sri Diwakar Mishra, T. No. 1933/HT, OEFC while functioning as Tailor/S in OEFC is charged with gross misconduct of : Unauthorised entry in security office forcible from back door and allc other employees to enter unauthorisedly by opening the front closed entrance in that on 19.2.1999 at about 15.30 Hrs., Sri Diwakar Mishra T. No. 1933/HT forcibly entered into the security office unauthorisedly through back door and opened the front door by force and allowed the mob of employees to enter into the security office which resulted in beating/manhandling Sri Tejveer Singh, Supervisor/security office.

Article VI

The said Sri Diwakar Mishra, T. No. 1933/HT, OEFC while functioning as Tailor/S in OEFC is charged with gross misconduct of : leaving the place of duty unauthorisedly in that on 19.2.1999 at about 15.30

7

(18)

Hrs., Sri Diwakar Mishra T. No. 1933/HT left his place of duty, reached main gate and created disturbances by instigating other employees.

By the above act, the said Sri Diwakar Mishra, T. No. 1933/HT OEEC exhibited lack of devotion to duty and indulged in conduct unbecoming of a Government servant, thereby violated 3 (1) (ii) and (iii) of the CCS (Conduct) Rules 1964."

3. The applicant denied the charges and court of enquiry was constituted to enquire into them. The Enquiry Officer submitted his report on 31.8.2000 holding articles of charge [I], [IV] and [VI] as established whereupon a copy of his report was sent to the applicant by letter dated 5.9.2000 and he gave a written representation dated 22.9.2000. The disciplinary authority vide order dated 13.11.2000 having considered material on record imposed the penalty of "Reduction of pay by two stages i.e. at Rs. 3650/- from Rs. 3800/- in the time scale of pay Rs. 3050-75-3950-80-4590/- for a period of two years with cumulative effect" w.e.f. the date of issue of the order. It was further ordered that the applicant will not earn annual increments of his pay during the period of penalty. The applicant preferred an appeal, which was rejected by the appellate authority order dated 18.5.2001. From the Revisional order dated 22.5.2002, it is seen that the Revision Petition was also rejected.

4. Thus aggrieved the applicant is before us seeking quashing of punishment order dated 13.11.2000, appellate order dated 18.5.2001 and Revisional order dated 22.5.2002. The respondents have contested the

Y

(14)

claim of the applicant in their Reply, to which the applicant has filed Rejoinder.

5. We have heard learned counsel for both sides and perused the pleadings.

6. The applicant has taken the following grounds in support of his prayer.

{i} There is no assessment of evidence by the Enquiry Officer for holding the three Articles of charge I, V and VI proved against the applicant.

{iii} The documents sought by the applicant were refused by the disciplinary authority vide letter dated 24.4.1999, which handicapped him in his defence and was against the principles of natural justice.

(iii) Prosecution witnesses PW-I, 2, 3, 4 and 5 did not give any statement before Enquiry Officer, but confirmed a pre-written statement produced during the enquiry as having been written by them. Therefore, the applicant has been prejudiced because such statement was recorded at his back.

(iv) Neither any document nor prosecuti
witnesses confirmed that the applicant le
his duty place un-authorisedly or that he brought any office bearers of the union and instigated them to create disturbance.

(v) The disciplinary authority did not record any dissent note on charges, which were found not proved by the Enquiry Officer and did not record his own findings on each

7

(20)

article of charge, which makes the penalty order illegal.

- (vi) The charge memorandum dated 27.2.1999 has been signed by the Deputy General Manager (Admn.) who was not competent authority and no post-facto sanction from the competent authority was obtained, which makes the charge-sheet void ab initio.
- (vii) Before an appeal could be filed the applicant's period of suspension was declared as not spent on duty and pay and allowances over and above subsistence allowance stood forfeited, which was also illegal.
- (viii) The penalty was confirmed by Appellate authority and Revisional authority without considering the points raised in appeal dated 22.9.2000 and revision petition dated 6.10.2001.
- (ix) Other employees on similar charges have been awarded minor penalties whereas the applicant got a major penalty.

7. The respondents in their Counter Affidavit have supported the enquiry report as reflecting all aspects of the case, oral as well as documentary and also the defence brief. Enquiry Officer found only three of the charges as proved viz. Article nos. I, V and V. Penalty was awarded after careful consideration of petitioner's representation, enquiry report, documents on record etc. It has been contended that the documents demanded by the applicant are neither listed in the charge-sheet nor were considered relevant by the disciplinary authority and as such there has been no violation of natural justice. No dissent note was required to be recorded in respect of Articles of charge that were held not established by the Enquiry Officer because disciplinary authority accepted his

(21)

report. The charge-sheet clearly states that 'for General Manager' and is, therefore, valid as it was issued with due approval of the competent authority. The applicant has been afforded ample opportunity to prove himself not guilty during enquiry and the averment that other employees on similar charges were given minor penalty, whereas he has been given major penalty, only reflects the admission of his guilt/misconduct by implication. Award of punishment is the discretion of the disciplinary authority, which may differ on the basis of merit of each case and quantum of punishment may also vary.

8. In his Rejoinder, the applicant has reiterated the grounds already taken. He states that Board of Enquiry's report carried out at the preliminary stage was not supplied and, therefore, the same cannot be relied upon by the Court. It is, however, not clarified as to how the same was relied upon during the enquiry by respondents and in what manner/aspect it should be ignored by the court if at all it is under consideration. The applicant says that he was not involved in the manhandling of Sri Tejveer Singh, but then it is not clarified as to whether it formed part of any of the articles of charge held to be established by the Enquiry Officer.

9. A perusal of the charge memo dated 27.2.1999 reveals that the very first sentence is "the General Manager/OITC, OEFC propose to hold an enquiry again". It is signed by the Dy. General Manager (Adm...), for General Manager. Evidently, the charge memo carries the stamp of approval of the General Manager. Even where a charge memo has been issued by a lower authority, it is not vitiated as it only sets the process of inquiry into motion and is different from imposition of penalty as held by Hon'ble High Court of Andhra Pradesh in FA&CAO (WST) SCR Secundrabad and

Y

(22)

Others Vs. V.C. Janardhan Rao reported in 2006 (2) ATJ 50.

10. A reading of the letter dated 24.4.1999 by which documents sought by the applicant were declined to be provided shows that the findings of the Board of Enquiry and on duty gate passes and register etc. were not listed documents in the Charge Memo and on duty gate passes were not considered relevant. It was however, mentioned that torn baniyan etc. may be produced by the Presenting Officer. On the part of the applicant, there is no explanation as to how and in what manner prejudice was caused to him & as such when there is no denial of justice no interference by us is called for on this account as per Apex Court's observation in para 26 of their judgment in the case of A. Sudhakar Vs. Postmaster General Hyderabad and Another reported in 2006 (4) SCC 598.

11. An examination of inquiry report shows that inquiry was conducted on various dates and applicant was given opportunity to cross-examine the witnesses. He produced oral evidence and stated his defence at the close of the prosecution evidence by the statement dated 12.6.2000. His general examination by Inquiry Officer was recorded in proceedings of 17.7.99. The assessment of the Inquiry Officer shows that applicant was taking active part in the crowd at gate where many office bearers of Union had accumulated. There was possibility that some degree of manhandling of Tejveer Singh may have taken place. The applicant himself confirmed that he is an Office bearer of a recognized Union and he got into the crowd. The evidence of prosecution witnesses made clear that applicant was present at the site at the time of incident. The applicant has in his statement of 12.6.2000 said that the crowd was very agitated and situation could be controlled only by intervention of senior officers. The prosecution witnesses identified the applicant as

(23)

being on the scene and participating with others including interaction with Tejveer Singh. The respondents would contend that it is not tenable to say that there was no assessment of evidence, or that the applicant had not left his duty place to go to the gate, or that he was not a part of the crowd there which included other Union Officer bearers and which was indulging in disturbance. There is no material on record to which our attention has been drawn whereby the applicant could be said to have left his duty place with permission to go to the gate. Further, appreciation of evidence to establish if charges are proved, is exclusive domain of disciplinary authority as per observation in para 12 of the judgment of Hon'ble High Court of Madras in the case of DSP Sriperumbudur Vs. W.D. Sekarai and Another reported in 2006 (1) ATJ 324. Moreover, if there is evidence to support some of the charges, no intervention would be called for.

12. In so far as pre recorded statements had been introduced in the inquiry and accepted by the prosecution witnesses as recorded by them earlier, it is noteworthy that the applicant has cross-examined them on it and even the reason for such statements having been made on the date following the incident has been got clarified by Inquiry Officer. To make a bald statement that prejudice has been caused thereby to the applicant makes no impression in these circumstances as the statements relied upon by prosecution were listed documents in Annexure III to Charge Memo and evidently available to the applicant and utilized by him for cross-examination.

13. A perusal of GOI instructions (7) under Rule 15 of the CCS (CCA) Rules, 1965, which is DOP&T O.M. dated 27.11.1995, shows that where the enquiry officer holds a charge as not proved and Disciplinary authority takes a contrary view, the reasons for

disagreement are to be communicated. Such a situation does not exist in the present case as the Disciplinary Authority has agreed with the findings of the Enquiry Officer.

14. The penalty order dated 13.11.2000 recounts the procedure followed in the inquiry proceedings and no infirmity is noticeable. The grounds taken by the applicant have been described, result of inquiry has been taken note of and having agreed with the same, the disciplinary authority has discussed the salient findings thereof, inter-alia emphasizing that the six charges levelled against the applicant were individual charges. The gravity of the offence has been noted in the present case where an employee and Union Office bearer is charged with misconduct directed against the security staff in an Ordnance Factory. In this background the penalty has been imposed. The order dated 18.5.2001 of the Appellate Authority mentions the grounds taken by the applicant before finding no merit and rejecting the appeal. The Revisionary Authority has expressed its decision to reject the petition in general terms but after recording that the points raised by the applicant and other facts and circumstances had been carefully considered and the penalty imposed and upheld in appeal was warranted by the evidence on record and no new point had been made for consideration.

15. As far as the treatment of suspension period as not spent on duty forfeiting pay and allowances over subsistence allowance before decision on appeal is concerned, no rule or law in this regard has been brought out nor is there any specific prayer in this regard by the applicant in the relief sought in the O.A.

16. The applicant has raised a grievance that other employees on similar charges have been awarded minor penalty, whereas the applicant got a major penalty. We

7

are inclined to agree with the respondents that penalty awarded by disciplinary authority may differ on the merits of each case. A perusal of the judgment passed by Hon'ble Supreme Court in the case of A.N. D'silva Vs. U.O.I.& Ors reported in AIR 1962 SC 1130 shows that the Court had observed that Civil Service Rules do not provide for specific punishment for different misdemeanour. The proper punishment is left for selection at the discretion of the punishing authority having regard to the gravity of misdemeanour. The Apex Court in Akhilesh Kumar Singh Vs. State of Jharkhand and Others reported in 2008(2) SCC 74 was dealing with the case of an appellant whose grievance was that even though he and his colleagues were found guilty of similar misconduct but in his case more strict penalty was awarded. However, it was found that there were differences between the proved misconduct in their cases. The Court held that if charges are identical, it is desirable to deal with delinquent officers, similarly, but the quantum of punishment depends upon several factors such as their conduct and nature of the charges which are proved. The applicant in the present case appears to have provided no adequate details by which his arguments could be appreciated keeping in view the law in the matter.

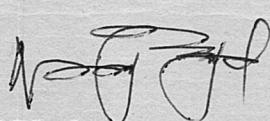
17. The learned counsel for the applicant argued that the penalty imposed stands vitiated being a combination of major and minor penalties which is not envisaged in law. We find that the enquiry has been held following Charge memo issued for major penalty proceedings under Rule 14 and as such major penalty was evidently intended to be awarded and is found to be in conformity with the Rules. The expression 'with cumulative effect' which is part of the penalty order signifies that the loss of increments not earned during penalty period would be suffered for the whole career. The corresponding minor penalty in Rule 11

(26)

(iii) (a) is prescribed to be without cumulative effect. A reading of the punishment awarded alongwith G.O.I. Instructions (12) under Rule 11 of the CCS (CCA) Rules 1965 and FR 29 (1) as well as G.O.I. order (2) under FR 29 does not reveal any infirmity or illegality.

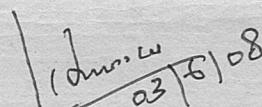
18. The learned counsel for the applicant relied on a decision of the Apex Court in U.O.I. and Another Vs. S.C. Parasher, 2006 SCC (L&S) 996 and decision of CAT Bombay Bench (Circuit at Nagpur) in the case of Y.M. Raut Vs. U.O.I. & Ors., 2006 (2) ATJ 487. In S.C. Parasher (supra) the penalty imposed was an amalgam of minor penalty and major penalty by including minor penalties of loss of seniority and recovery which is not the case here as only major penalty has been awarded. In Y.M. Raut (supra) the Enquiry Officer had not followed the provisions of Rule 14 (17) and (18) of the CCS (CCA) Rules, but in the present case the applicant is said to have stated his case after prosecution evidence and his general examination was also conducted.

19. In view of the above discussion, we do not find any merit in the O.A. which is dismissed. No costs.



MEMBER-A

GIRISH/-



VICE CHAIRMAN

03/08/08