

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 14TH day of SEPTEMBER 2005.

Original Application No. 967 of 2002.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Jai Kishore, S/o Late H.S. Sharma,
R/o 110- Block 'A' Vikas Nagar,
Kanpur City, Posted as Chargeman Grade I (Mech),
Yard- Section in Field Gun Factory Kalpi Road,
KANPUR.

.....Applicant

By Adv: Sri S. Agarwal & Sri S.K. Mishra

V E R A U S

1. Union of India though the Secretary,
Ministry of Defence, Deptt. Of Defence
Production and Supply,
NEW DELHI.
2. The Secretary, Ministry of Defence,
Govt. of India,
NEW DELHI.
3. The Chairman, Ordnance Factory Board,
10-A Shahid Khudiram Bose Marg,
KOLKATA.
4. The Additional Director General,
Ordnance Factory/Member (Appellate Authority),
Ordnance Factory,
10-A Shahid Khudiram Bose Marg,
KOLKATA.
5. Deputy Director General,
Ordnance Factory Board,
10-A Shahid Khudiram Bose Marg,
KOLKATA.
6. The General Manager,
Field Gun Factory, Kalpi Road,
KANPUR.

.....Respondents

By Adv: Sri V.V. Mishra.

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92

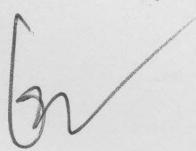
O R D E R

By K.B.S. Rajan, JM

Challenge in this OA is against the order dated 13.4.2000 passed by the Dy. Director General, Ordnance Factory Board, Kolkata, whereby under Rule 16 of CCS (CCA) Rules 1965, the applicant has awarded minor penalty of censure. Challenge is also against the Appellate Authority's order dated 03.08.2000 whereby the aforesaid minor penalty order passed by the Disciplinary Authority was confirmed and appeal preferred by the applicant dismissed. It is stated that a review petition was filed by the applicant and the same is still pending.

2. The brief facts of the case are that at the material point of time the applicant was functioning as Chargeman Grade I and one of the rotational duties attached to the applicant was to supervise the locking of various rooms and Godown in the office premises at the close of the office hours. As on a particular day, it was found, as alleged by the respondents, that one godown was not duly locked by the applicant, the respondents had issued charge sheet under Rule 16 of the CCS (CCA) Rules 1965 vide OM dated 22.1.2000 and the charge reads as under:

"That on 15.5.99 Shri Jai Kishore, CM-I/MT/FGK was detailed on closing duty on MT Godown. Said Shri Jai Kishore failed in his duties and did not lock M.T. Godown properly. On 16.5.99 (Sunday) at about 1736 hrs. during Security round, the lock

A handwritten signature consisting of a stylized 'b' and 'w'.

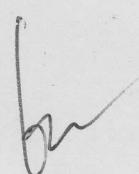
of MT Godown was found in loose/unlocked condition.

The above negligent act of Shri Jai Kishore, CM-I(T)/MT/FGK constitute Gross Misconduct."

3. The applicant had promptly replied the said charge and denied the charges leveled against him and also stating that he has preformed this duty sincerely and lock being older one, it was worn out and levers could not resist the jerk and resulted into dislock. He has stated that it was one Mr. Karim who had been looking after the godown with assistance of Mr. Hashim the godown keeper and Sri Karim closed the godown as was the regular practice under the supervision of the applicant. The applicant had questioned as to how the cause of the event goes to fix up the witness in the inquiry, the event fallen beyond the scope of his duty could be earmarked to him and how could he be charged with no evidence of document and witness.

4. The Disciplinary Authority vide his order dated 13.4.2000 has held as under:

"The undersigned has carefully examined and considered the written statement of defence dt. 28.1.2000 of Shri Jai Kishore, Ch'man I (T), FGK quoted under referenced at (ii) above which is found to be not convincing and satisfactory. Therefore based on the evidence on record the undersigned holds the said Shri Jai Kishore, Ch'man Gr. I (T) FGK guilty of the charges framed against him vide FGK memo



dt. 22.1.2000 mentioned under reference at
(i) above.

The undersigned however considering all the aspects and taking a lenient view hereby imposed the penalty of CENSURE on Shri Jai Kishore, Ch'man Gr. I (T), Field Gun Factory, Kanpur."

5. The applicant has preferred an appeal on 1.5.2000, against the aforesaid order of censure. The Appellate Authority viz Member, Ordnance Factory Board, Kolkata had considered the appeal and stated, "his averments in the appeal have been carefully examined; the appellant has been found guilty of the misconduct of negligence/dereliction of duty, by the Board of enquiry". On the basis of the above order, the penalty of censure had been confirmed by the Appellate Authority.

6. Against the aforesaid order of the Appellate Authority the Review Petition was filed by the applicant on 14.9.2000 is stated to be pending.

7. Heard learned counsel for the parties. Learned counsel for the applicant has stressed that the legal lacuna in the proceeding could be summarized as under:

a. The Board of Enquiry report referred to in para 8 of the counter affidavit had not been made available to the applicant and according to the said report the applicant was found guilty of the misconduct. He has, therefore, contended that decision has been

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arrived beyond his back or at least without holding the principles of natural justice.

- b. The Disciplinary Authority has not expressed his opinion whether holding of enquiry under Rule 14 as provided for in Rule 16 (1) (b) is essential in particular case.
- c. The applicant is not the lone person who was entrusted with the duty of locking the godown and there were two more persons involved in the matter and they should have been examined.
- d. The Appellate Authority's order was not a speaking order.

8. I have given my anxious consideration to the fact of the case on the basis of the material available on record. In so far as the expresses opinion by the Disciplinary Authority about holding a regular inquiry under Rule 14 of the CCS(CC&A) Rules, 1965 is concerned, the decision to proceed under Rule 16 confirms that the decision was not to enlarge the scope of enquiry as major penalty and the same is well within the discretionary power which cannot be questioned.

9. So far as non availability of the report of Board of enquiry, which, according to the respondents themselves, had held the applicant being found guilty of the misconduct, it is to be seen whether the same has prejudiced to the applicant.

b/✓

Appellate Authority's order was clearly spells out that the applicant was found guilty of the misconduct 'by the Board of Enquiry'. In other words the decision of the Appellate Authority is sufficiently influenced by the report of Board of Enquiry copy of which has not been made available to the applicant. This is a serious lacuna as same had deprived the applicant of his vital right of defence.

10. A perusal of the order of the Disciplinary Authority also goes to show that there has been no discussion about the contention raised by the applicant in his reply to the charge sheet and in a mono syllable term, the Disciplinary Authority holds, "the undersigned has carefully examined and considered the written statement of the witnesses dated 28.1.2000 which is found to be not convincing and satisfactory". Thereafter, the Disciplinary Authority goes to record that **based on the evidences on record**, the undersigned holds the said Jai Kishore Chargeman GI (T) FGK guilty of charge framed against him. It is not known what were the evidence on record on the basis of which the applicant was found guilty of the misconduct by the Disciplinary Authority. It can be safely presumed that the report of the Board of Enquiry also forms

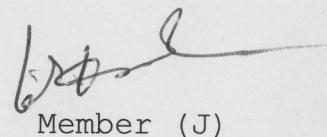
62

part of the record since the same was made available to the Appellate Authority also.

11. Considering the above facts it is clear that the respondents have violated the principles of natural justice in passing the order of minor penalty of censure and the same vitiates entire proceedings.

12. In view of the above the OA is allowed. The impugned orders dated 13.4.2000 and 3.8.2000 are hereby quashed and set aside. If the respondents had by virtue of these order disabled the applicant from any of the benefits which otherwise could have accrued to him had there been no penalty imposed upon him, they should review the same and pass suitable orders in this regard.

13. Under the above circumstances, there shall be no order as to costs.



Member (J)

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