

(3)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

O.A./T.A. /GCA No. 1433 of 2003

Date of decision 14. 3. 06

R.V.S. Sengar

Applicant(s)

Sri D.P.S. Chauhan & Sri P. Chandra Counsel for the applicant(s)

Versus.

Union of India & Ors

Respondents(S)

Sri A. Mohley

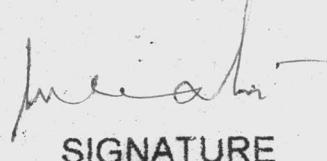
counsel for the respondent(s)

CORAM

Hon'ble Mr. Justice Khem Karan V.C./Member()

Hon'ble Mr. P.K. Chatterjee Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?


SIGNATURE

Manish/-

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of March 2006

Original Application No. 1433 of 2003

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Sri R.V.S. Sengar, S/o Late Lal Bahadur Singh, R/o
 74/106, Dhankutti Kanpur

. . . Applicant

By Adv: Sri D.P.S. Chauhan & Sri P. Chandra

V E R S U S

1. The Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chairman/Joint Director Vigilance, Ordnance Factory, 10-A, Auckland Road, Calcutta.
3. General Manager, Field Gun Factory, Kalpi Road, Kanpur.

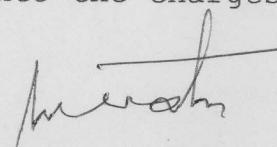
. . . Respondents

By Adv: Sri A. Mohiley

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The present OA is against the order dated 23.10.2003 passed by respondent No. 3 i.e. the Appellate Authority, by which the applicant has been compulsorily retired from service (Annexure 1). The applicant was earlier proceeded against for major penalty by the respondents. The applicant was proceeded against vide charge sheet dated 27.03.1989 (Annexure 7). The applicant denied the charges, where upon an enquiry was conducted into the charges

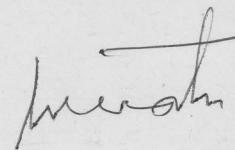


and the Inquiry Officer submitted a detailed report on 05.05.1992. Thereafter, by means of an order dated 10.10.1992 (Annexure 11) the applicant was dismissed from service.

2. He filed an appeal dated 20.11.1992 before the Chairman, Ordnance Factory Board, Kolkata. However, this was rejected on 05.12.1994. The applicant filed OA No. 1436 of 1997. On consideration of the OA the Tribunal quashed the impugned order dated 05.12.1994 by its judgment dated 01.07.2003.

3. The relevant portion of the judgment of the Tribunals is as follows:

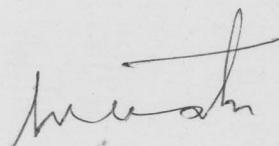
"From the perusal of the aforesaid finding, it is clear that observation of the appellate authority are absolutely general. There is factual mistake, though other charges were found proved against the applicant, but charge No. 2 and charge No. 6, both were not found proved against the applicant, has also been found proved. In the circumstances, the order suffers from manifest illegality. The appellate authority has shown general agreement with the finding of the disciplinary authority without scrutiny. It is clear that no finding has been recorded. He simply agreed with the enquiry officer. Where major punishment is warded. The law creates an obligation on the appellate authority to consider the matter analytically from all angles and then come to just conclusion so that injustice may not be done to the delinquent employee. In the present case the charges which were found proved are regarding maintenance of stores. There may be negligence on the part of the applicant, but they could not be justified extreme penalty of dismissal from service. If the applicant was not cooperating in the surprise checking of Godown, why the immediate action had not been taken against him by the authorities. The allegation is that the surprise check was taken on 1.3.1988 whereas incident took place between 21.5.1988 and 23.5.1988 i.e. after about more than two months. There is no explanation on record why the action had not been taken against the applicant immediately in our opinion all these angles required consideration by the appellate authority, hence, matter may be sent back to the appellate authority for fresh decision.



For the reasons stated above, the OA is allowed in part. The order dated 5.12.1994 (Annexure 4) is quashed. The appeal of the applicant before the appellate authority shall stand revived and appellate authority shall consider and decide the case in accordance with law and in the light of observations made by the Tribunal, within 3 months from the date, a copy of the order is filed. If the applicant prays for personal hearing, he may be afforded opportunity."

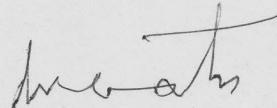
4. The Appellate Authority, in pursuance of the order of the Tribunal reexamined the appeal dated 20.11.1992 with reference to the relevant records of the case. The Appellate Authority, thereafter, modified the penalty upon the applicant to that of compulsory retirement from service from dismissal from service which was imposed earlier. It is this order of the Appellate Authority which has been challenged by the applicant in this OA.

5. I have perused the appellate order with reference to the order issued by the Tribunal in OA 1436 of 1997. The Tribunal had observed that the law created an obligation on Appellate Authority to consider the matter analytically and then come to a just conclusion, but the Appellate order was devoid of such analytical consideration. The Tribunal went on to stay that the observation of the appellate Authority were absolutely general and it had failed to take note that certain charges against the applicant were not proved. It said that the Appellate Authority had not applied its mind to the matter in depth.



6. A perusal of the order impugned in this OA shows that the appellate authority has discussed the matter at length. It has refuted the allegation that the applicant was not given reasonable opportunity of hearing during enquiry by stating that all documents which were relied upon in the charge sheet were supplied to him and he was also allowed to cross examine the witnesses. The Authority reasoned that though Article 2 and 4 were not established, yet the applicant could not be absolved from the other charges. Accordingly to it, the applicant deserved punishment although it need not be as severe as dismissal from service. The Appellate Authority has modified the penalty to that of compulsory retirement.

7. It may be stated here that Court/Tribunal are not appellate bodies to reassess and reevaluate material evidence in a disciplinary proceedings. It is also not supposed to decide the quantum of punishment in such proceedings unless the same is shockingly disproportionate to the guilt proved. In this OA we find that after intervention of the Tribunal in the first instance, the Appellate Authority considered the matter analytically by proper application of mind. After such consideration it also decided to reduce the quantum of punishment. In our view the requirements for disciplinary proceedings as laid down have been duly

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complied with. Whether the punishment of compulsory retirement is just and appropriate punishment is a subjective matter and may be open to question. However, such authority has been vested upon the departmental authority. We have satisfied ourselves that they had not exceeded their authority. For these reasons we are unable to find any merit in this OA which is therefore, dismissed. No cost.



Member (A)


14.3.07

Vice-Chairman

/pc/