

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 7th day of Oct. 2003.

Original Application no. 268 of 2003.

Hon'ble Maj Gen K K Srivastava, Member (A)
Hon'ble Mr. A K Bhatnagar, Member (J)

S.D. Pandey, S/o late B.L. Pandey, Ex-Store Supdt.
of Ordnance Depot, Allahabad and resident of Vill.
Matpur, P.O. Manauri, Distt. Allahabad (UP).

... Applicant

By Adv : Sri S Lal

Versus

1. Union of India through its Secretary,
Ministry of Defence,
NEW DELHI.
2. Director General Ordnance Services (OS-8C),
Army Headquarters, BHQ P.O.,
NEW DELHI.
3. Officer Incharge A.O.C. Records, Trilulgheri P.O.
Secunderabad - 21.
4. Commandant, Ordnance Depot, Fort,
ALLAHABAD.

... Respondents

By Adv : Sri N C Nishad

ORDER

By Maj Gen K K Srivastava, Member (A).

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the punishment order dated 30.1.2001 by which he has been compulsory retired and also for quashing the appellate order dated 8.3.2002 rejecting the appeal of the applicant. The applicant has further prayed that the operation of the order dated 30.1.2001 be stayed with direction to the respondents to pay full pay and allowances from the date

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of suspension till he is taken on duty or till the date of superannuation with all consequential benefits.

2. The facts, in short, are that the applicant was appointed as storeman on 10.11.1965 in Ordnance Depot (in short OD) Fort Allahabad. He was, in due course of time, promoted as store supdt on 21.8.1997. The applicant was working in Traffic Branch of OD at Allahabad since February 1995 as an Incharge of that section. The applicant was placed under suspension vide order dated 21.10.1997 w.e.f. 22.10.1997 which was confirmed by AOC Records order dated 05.11.1997. The applicant was served with major penalty charge sheet dated 6.1.1998. The enquiry was held and after completion of disciplinary proceedings the punishment order was passed by the Disciplinary Authority. The applicant challenged the same by filing appeal before the Appellate Authority which has been rejected by the impugned order dated 8.3.2002.

3. Sri S Lal, learned counsel for the applicant submitted that the punishment order as well as appellate order are illegal and without application of mind. The charges against the applicant are fake and frivolous. The enquiry was conducted by Maj C.P. Balakrishnan, who was biased. The Inquiry Officer (in short IO) in the enquiry report has not stated regarding each charges whether the same is proved or not, which is required under Rule 14 subrule 23 (d) of CCS(CCA), Rules 1965.

submitted that the applicant

4. Learned counsel for the applicant demanded the copies of preliminary investigation report which were not supplied to him as the IO decided that since the preliminary investigation report did not form part of statement of allegations, the same was not required. Thus there is a violation of

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principles of natural justice. The learned counsel for the applicant has placed reliance on the judgment of CAT Cuttack Bench in case of Jagannatha Behera Vs.

Union of India & Ors, ATR 1989 (1) CAT 451. He has also placed reliance on the judgment of this Tribunal in case of Smt. Kamla Devi Vs. Union of India & Ors, 1996 (1) ATJ 28.

5. The learned counsel for the applicant further submitted that a common enquiry was conducted under Rule 15 of CCS (CCA) Rules 1965 and as per order dated 4.4.1998 (Ann 6) Brig R D Singh, Officer Incharge AOC records was appointed as Disciplinary Authority for the purpose of common proceedings and was competent to impose the penalty, but the punishment order has been passed by another officer Brig M.S. Moorjani Officer Incharge AOC records. Therefore the punishment order dated 30.1.2002 is illegal and is liable to be set aside. Learned counsel for the applicant submitted that the punishment awarded is ^{not} commensurate to the charges.

6. Resisting the claim of the applicant, Sri N.C. Nishad, learned counsel for the respondents invited our attention to para 14 of counter affidavit and submitted that the applicant is a habitual offender and had been punished many times for loss of stores in 1994, 1995 and 1998. The enquiry was conducted as per Rule 14 of CCS (CCA) Rules 1965. The points raised by the applicant in his appeal have been considered by the Appellate Authority and, therefore, the contention of the applicant that the Appellate order has been passed without application of mind is fallacious and not correct. The IO found the applicant guilty of all charges and the applicant being over-all incharge of stores, he was responsible for safe custody of the stores items of the defence. He has failed in his duty and, therefore, the

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punishment of compulsory retirement awarded to the applicant is commensurate to the charges which are proved against the applicant.

7. We have heard learned counsel for the parties, considered their submissions and perused the record.

8. The contention of the applicant is that the appellate order dated 8.3.2002 has been passed without application of mind. We have perused the appellate order and perusal of the same does not leave any doubt in our mind that it is a detailed and reasoned order. The contention of the applicant that the charges are fake and frivolous. We do not agree with this. The safe ^{defence} custody of the stores is of paramount importance and the applicant who was working as Store Supdt. was responsible for their loss. The charges are of very serious nature.

9. The applicant has alleged bias on the part of IO, but the applicant has failed to establish any ground of bias. Even the IO has not been impleaded as one of the respondents. Therefore, we outrightly reject this contention of the applicant.

10. Another point raised by the applicant is that the IO has not given his findings on each charge, ^{he} therefore, the enquiry report is vitiated. The IO has given his findings ^{he} as under :-

"In view of the foregoing and covering all aspects, it is found that all the charges framed in Annexure I of memo No. 6955634/Discp/as/110/CA-6 dated 06 Jan 98 against No. 6955634/SS/SD Pandey are proved."


Perusal of the above leaves no doubt that all the charges

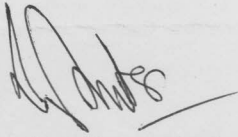
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against the applicant were proved and it would have made no difference, if the IO had written that charge Nos.1, 2 and 3 & 4 are proved. The applicant has relied upon the two judgments which are easily distinguishable and will not be helpful to the applicant.

11. Learned counsel for the applicant raised the point that instead of Brig R.D. Singh, Officer Incharge AOC records the order of punishment has been passed by Brig M S Moorjani, Officer Incharge AOC records. We have perused the order dated 4.4.1998 (Annexure A-6) which is the order regarding appointment of Disciplinary Authority for common proceedings is appointment of disciplinary authority by the office unless provided otherwise. Brig R D Singh was the Officer Incharge, AOC records at the time the order dated 4.4.1998 was issued. The order has been issued appointing him as the Disciplinary Authority and when the punishment order was passed it was Brig M S Moorjani who was holding the post of Officer Incharge AOC records. Both the Officers are of equal rank and in our opinion no prejudice has been caused nor has there been violation of Article 311 of Constitution of India. The applicant was given full opportunity and in our opinion there is no violation of principle of natural justice and, therefore, we do not find any illegality in the orders of the Disciplinary Authority dated 30.1.2001 and also the appellate order dated 8.03.2002. There is no good ground for interference.

12. In the facts and circumstances and our aforesaid discussions, the O.A. is bereft of merit and is accordingly dismissed with no order as to costs.


Member (J)


Member (A)

/pc/

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Hon Mr. HK. Bhulaggar. J.M.

Judgment Signed and pronounced
in open court to day. judgment on
record.

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