

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 30th day of July 2004.

Original Application no. 775 of 2003.

Hon'ble Mr. A.K. Bhatnagar, Member J
Hon'ble Mr. S.P. Arya, Member A

K.S. Sharma, s/o Sri B.S. Sharma,
R/o 111/455, Bramha Nagar,
Kanpur Nagar.

... Applicant

By Adv : Sri S.K. Om

V E R S U S

1. Union of India through Secretary,
Ministry of Defence, Department of Defence,
Production and Supplies,
D.H.Q.P.O. New Delhi.
2. Additional D.G.O.F./Member,
Appellate Authority, Govt. of India,
Ministry of Defence, Ordinance Factory Board,
10-A, Saheed Khudi Ram Bose Road,
Kolkata.
3. The General Manager, Small Arms Factory,
Kanpur Road, Kanpur.
4. Sri R.K. Pandey,
Inquiry Officer/Works Manager,
P.L. Small Arms Factory, Kalpi Road,
Kanpur.

... Respondents

By Adv : Sri N.C. Nishad

...2/-

2.

ORDER

By S.P. Arya, Member-A.

The applicant while working with respondent no. 3 was caught gambling by the security team at about 1410 hrs on 11.9.1998. Thereafter, he was placed under suspension. The suspension order was revoked on 29.6.2000. He was served with the charge sheet alongwith the report of the security team. An enquiry was conducted. The Enquiry Officer found him guilty of both the articles of charge. The Disciplinary Authority vide order dated 30.06.2000 punished the applicant by reducing his pay to minimum of the time scale for a period of one year with cumulative effect. An appeal filed was rejected by order dated 12.02.2001 by the Appellate Authority. The revision by order and in the name of the president was also rejected by order dated 10.03.2003. The applicant by this OA seeks for quashing the order of punishment, order of Appellate Authority and the Revisional Authority and also for directions to the respondents not to reduce the salary of the applicant and refund the salary on the ground that the report of the Enquiry Officer was based on no evidence ; statements made in Suraksha Prativedan which was made the basis for proving the charges could have been procured by intimidations or any other undesirable means. The statement of Defence witnesses was not appreciated and the illegality and irregularity committed in the enquiry was not considered.

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

3. The team of security men consisted of eight persons. They found the applicant gambling in the Parting shop. A raid was conducted and according to the version of the applicant himself he was caught and arrested. The version of the applicant that he was there for repairing the machine

3.

which broke down on 10.09.1998 was not accepted as such by the Enquiry Officer did not believe the versions of the applicant. Therefore, it cannot be said that the applicant was not available on the spot when the raid was conducted. The prosecution witnesses were examined and they were cross-examined by the Defence Assistant. It can, therefore, not be said that the applicant was denied the opportunity to cross-examine the prosecution witnesses.

4. From the record it is clear that the applicant was supplied the Suraksha Prativedan ~~along~~^{with} the statement of witnesses alongwith the charge sheet which was served on him. The statements of witnesses in the preliminary enquiry were mere statement of fact and such statement were made available to the applicant. The learned counsel for the applicant has placed reliance on State of UP and others Vs. C.S. Sharma reported in AIR 1963, Alid Pg 94 wherein it was held that there was no guarantee that the witnesses making the statements before in the first preliminary enquiry, which was recorded behind the back of the charged officer were read out and relied upon and might have been obtained by cajolery, coercion or any of the undesirable methods. The prosecution witnesses have made reference to the earlier statements and verified the earlier statement. The learned counsel for the applicant has argued that on this count alone the report of the Enquiry Officer cannot be relied upon. We find from the record that the Defence Assistant did ~~not~~^{not} cross-examine the prosecution witnesses and on the analysis of the documentary and oral evidence the Enquiry Officer found the presence of the applicant at the place of occurrence. It is note-worthy that hundred rupees were also recovered from the place of gambling. Therefore, it cannot be said that the Enquiry Report was

...4/-

4.

based on preliminary statement of the prosecution witnesses and they were not examined as was expected in a departmental proceedings. This view was upheld by the Apex Court in Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra & Ors reported in 1997 (2) SLJ 91 (SC) wherein it was held that the preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After fulfilled enquiry was held, the preliminary enquiry had lost its importance, ~~SLP dismissed.~~ ⁴

5. It has also been stated by the applicant that two persons constituting of team of securitymen had illwill against him and the applicant was implicated in this disciplinary proceedings on their instance. We, however, do not find any such convincing evidence ^{on record &} that the applicant was falsely implicated in the present disciplinary proceedings. This point was also raised before the Enquiry Officer and the Enquiry Officer has given a definite finding thereon.

6. It is submitted by the applicant that his work and conduct is through out very satisfactory. It has been controverted by the respondents through annexure which shows that the applicant was warned several times and was given punishments.

7. No procedural irregularities have been pointed out. It is not a case of no evidence. Adequate ^{reasonable &} opportunity was given to the applicant to defend himself. The Court of Enquiry report is well considered and discussed. The points raised in appeal have been duly considered by the Appellate Authority. The revision has been disposed of with a speaking

...5/-

5.

order. We, accordingly find no infirmity in the conduct of the Disciplinary proceedings, the findings of the enquiry report or the orders of the Disciplinary Authority, Appellate Authority or Reviewing Authority.

8. In view of above discussions, we find no merit in the OA and it is accordingly dismissed.

9. There shall be no order as to costs.

ANB
Member-A

M
Member-J

/pc/