

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 31st DAY OF March 2011)

Hon'ble Dr.K.B.S.Rajan, Member(J)
Hon'ble Mr.S.N.Shukla, Member (A)

Original Application No.859 of 2003
U/S 19, Administrative Tribunal Act, 1985)

1. Mangal Das, Son of Shri Nanhe Ram
Resident of 177/10, Chidde Ka Nagla,
Langre ki Chauki, Agra.
- 1/2 Smt.Savitri Devi, w/o Late Mangal Das
- 1/3 Hemant Kumar, S/o Late Mangal Das
- 1/4 Arun Kumar, S/o Late Mangal Das
- 1/5 Km.Bharti, d/o Late Mangal Das
- 1/6 Km.Malti, d/o Late Mangal Das

All resident of 31/277/53/10 Valmiki Basti Langre
Ki Chauki, Agra.

.....Applicants

Present for Applicant: Shri. S.Mukherji, Advocate

VERSUS

1. The Union of India through the Secretary
Ministry of Defence, Govt. of India,
New Delhi.
2. The Director General of E.M.E
Army Head Quarter, D.H.Q
P.O. New Delhi.
3. Brigadier Commandant Disciplinary/Appointing
Authority, 509, Army Base Work Shop,
Agra Cantt., Agra.

.....Respondents

Present for Respondents: Shri S.N.Chatterjee, Advocate.

ORDER

(Delivered by Dr.K.B.S.Rajan, Member (J))

1. Vide order dated 08-01-2002 in OA 745 of 1994, the appellate authority was directed to consider the appeal of the applicant against the penalty order of dismissal from service and give the reasons thereof for his decision. Accordingly, the appellate authority has passed the impugned order dated 27-04-2002 against which the applicant has preferred this OA seeking the following relief(s):-

a) To issue a suitable order or direction to call for the original service record of the applicant and quash the impugned order dated 27.4.2002 (Annexure No.1 to this application with compilation No.1) and order dated 20.12.1993 (Annexure No.2 to this application with compilation No.1) and 3 imposing deterrent punishment of dismissal from service to the applicant along with stigma cost restraining applicant from future employment under the Government concerned.

b) To issue a suitable order or direction, directing and commanding the respondent not to give effect to the impugned dismissal of applicant from service treating the same has never been passed in accordance with law and applicant is entitled for reinstatement in service with entire arrear of salary back wages and fixation of pension and all consequential benefit as provided under the law.

(C) To issue a suitable order or direction to grant reasonable amount of compensation at least Rs.5 lacs

treating that the applicant was illegally and wrongly held disqualified and restrained for future government employment by the respondents causing severe irreparable loss and injuries to the applicant and his dependents family members.

- (d) Any other relief with cost to which this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. After the filing of this OA, the applicant having died, his legal heir has been substituted in this O.A. vide order dated 22-07-2010 (For the purpose of reference, the original applicant would be termed as 'the applicant' in this O.A.)

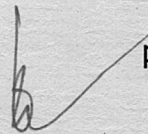
3. Briefly stated the applicant, the applicant was serving as Store Keeper in the 509 Army Base Workshop, Agra, and on 16-04-1993, he was asked by the of Mustering Out Duty Officer at the main gate of the Factory of the Respondents to move to the search room for search, but the applicant went back to his work place. The duty officer then followed him, saw the applicant taking out a packet from his bag, and kept the same on the table. The Officiating C./A.S.O. also arrived there, picked the packet from the table, and went to the Security office with the applicant, where the packet was opened and inside the packet were found twenty numbers of MC 33031. The act of the applicant being one of theft of government stores, exhibiting lack of integrity and an act unbecoming of the Government servant the applicant was first suspended and then proceeded against under the CCS (CC&A) Rules, 1965 by issue of a charge sheet dated 26-06-1993. Charges having been denied, inquiry was conducted and the inquiry authority held the charges as proved and the disciplinary authority

after following the procedure passed the order of dismissal from service, vide order dated 19-11-1993. Appeal filed was also dismissed and the applicant approached the Tribunal in OA No. 745 of 1994, which was however, partly allowed by remitting the matter back to the appellate authority for issue of fresh order after considering the appeal and giving out the reasons for his conclusion. Accordingly, the appellate authority passed the impugned order dated 27-04-2002 and thus this OA became to be filed by the applicant.

4. Respondents have contested the OA and stated that the charges remain fully proved for the misconduct of the applicant who is in fact a habitual offender and thus justified the quantum of penalty as well.

5. Counsel for the applicant argued that there were various irregularities and contradictory statements of the witnesses and as such, the inquiry report was vitiated. Principles of natural justice have been violated. The applicant was on the verge of retirement and as such, the penalty was disproportionate.

6. Counsel for the respondents who had submitted written arguments justified the dismissal stating that the applicant was earlier also involved in the theft of Govt. stores for which he was punished, vide para 11 and 12 of the counter.



7. Arguments were heard and the written argument and the documents perused. The Charge sheet reads as under:-

Article of Charge 1

In that, he on 14 Jun.93 at about 15.45 Hrs. during Mustering out has asked by duty officer EME O (Civ) Sri Hans Raj to go to search room for search. Instead of going to search room he went to R & I section. He was followed by duty officer Sri Hans Raj who saw that he removed one package from his bag and kept on the table. In the meantime Offg CASO Capt. Ajit Singh picked up the packet from the table and opened it in the presence of Major H.V.Kaushal, EME O (Civ) Sri hans Raj and LM (NT) Sri Bhaktawar Singh and found quantity twenty IC No.M.C.3303 L.

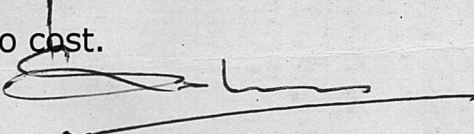
Thus, Store Keeper Sri Mangal Dass committed an offence 'Theft of Govt. Stores' and exhibited lack of integrity and an act as unbecoming of a Govt.servant thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1965.

8. The applicant gave his version that the parcel was meant for handing over to a section called LP section and as some hands were on leave at the material point of time, while all the documents were prepared with the parcel intact, the same was kept on his table for delivery the next day. It was a concocted story that the parcel was in his bag; in fact, the bag was too small to contain the big parcel. Again, a person who intends to take away some items would do so only the items and not with the huge wooden parcel. All these were disbelieved by the Court of Inquiry and the applicant was found

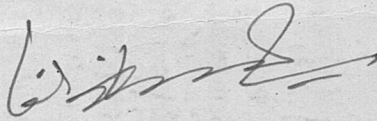
guilty by the I.O. The disciplinary authority as well as the appellate authority gave a personal hearing. The Appellate authority dealt with all the points of appeal and came to the conclusion that the penalty order passed is commensurate with the gravity of offence.

9. As the Tribunal's power is only to the level of ensuring that there is no legal lacuna in the decision making process and not to sit in appeal over the order of the administrative authorities on points of fact, and as we do not discern any such legal lacuna to upset the decision of the authorities, this O.A. is dismissed.

10. No cost.



(S.N. SHUKLA)
Member (A)



(Dr.K.B.S.RAJAN)
Member(J)

Uv/