

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

MISC. APPLICATION NO. 3385 OF 2002

IN

DIARY NO. 3402 OF 2002

ORIGINAL APPLICATION NO. 966 OF 2003
ALLAHABAD THIS THE 14TH DAY OF AUGUST, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

Jai Kishore
A/a 52 years
son of Late Hari Shanker Sharma
Resident of 110-Block 'A' Vikas Nagar,
Kanpur City,
posted as Chargeman Grade-'I' (Mech.)
Yard Section in Field Gun Factory,
Kalpi Road, Kanpur.Applicant

(By Advocate Shri S.K. Misra & Shri S. Agrawal)

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
Department of Defence
Production and Supply,
New Delhi.
2. The Chairman/Secretary,
Ordnance Factory Board,
10-A Shaheed Khudiram Bose Marg,
Kolkata.
3. The Additional Director General,
Ordnance Factory/Member (Appellate Authority)
Ordnance Factory,
10-A Shaheed Khudiram Bose Marg,
Kolkata.
4. Dy. Director General,
Ordnance Factory Board,
10-A Shahid Khudiram Bose Marg,
Kolkata.
5. The General Manager,
Field Gun Factory,
Kalpi Road,
Kanpur.Respondents

(By Advocate Shri V.V. Mishra)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this D.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the punishment order dated 22.07.2000 (Annexure A-2) and the Appellate order dated 14.03.2001 (Annexure A-1). The applicant has prayed that both the above orders be quashed and respondents be directed not to give effect to the orders dated 14.03.2001 and 22.07.2000.

2. The facts of the case, in short, are that the applicant was working as Chargeman Grade-I in M.T. Section Field Gun Factory, Kanpur. He was served with a minor penalty chargesheet on 23.03.2000 for committing gross mis-conduct ^{Under Section 11} — in ~~case~~ ^{case} of duty by not depositing the keys of M.T. Godown at Main Gate on 26.07.1999 and 14.08.1999 after closing of day shift. The applicant submitted his reply on 28.03.2000. The Disciplinary Authority passed the punishment order dated 22.07.2000. The applicant filed an appeal before the Appellate Authority and the Appellate Authority by order dated 14.03.2001 rejected the appeal of the applicant.

3. Learned counsel for the applicant submitted that the appellate order is a non-speaking order. The Appellate authority has not applied his mind and has not considered the various points raised by the applicant in his appeal dated 15.01.2001 (Annexure-5 page 39). The learned counsel for the applicant submitted that in the Appellate order there is a mention about the award of penalty of 'censure' imposed on the applicant in past. ⁱⁿ This shows that the Appellate Authority while deciding the appeal kept this punishment in view which



is not at all linked with the present case.

4. Further the learned counsel for the applicant submitted that the omission on the part of the applicant by not depositing the keys does in no way constitute misconduct. In view of the judgment of Hon'ble Supreme Court in the case of Union of India Versus Jamil Ahamed, A.I.R. 1979 SC 1022 which is reproduced in para 23 of the O.A., the respondents have committed error of law.

"It is very difficult to believe that lack of efficiency or attainment of high standard in discharge of duties attached to the public office ex-facto constitute misconduct. There may be negligence in performance of duty and lapse in performance of duty or error in judgment in evaluating the developing situation may be negligence in discharge of duties, but would not constitute misconduct....."

5. The learned counsel for the applicant also argued that the applicant is working with 50% staff and was overburdened and this aspect has been ignored by Disciplinary as well as Appellate Authorities.

6. Opposing the claim of the applicant the learned counsel for the respondents submitted that the punishment awarded to the applicant is ^{commensurate} to the charge levelled against him. The applicant was posted in Entry Section and was responsible for closing the gate of M.T. Godown. The applicant was required to deposit the keys at the Main Gate of the Factory after closing the M.T. Godown, but he failed to deposit the keys of the M.T. Godown on the Main Gate of the Factory on two occasions i.e., 26.07.1999 and 14.08.1999. On earlier occasion also the applicant on 15.05.1999 did not properly lock the M.T. Godown which was detected on 16.05.1999 during the security round and for that mis-conduct the applicant was awarded penalty of



Censure. The Disciplinary Authority as well as the Appellate Authority have considered all the aspects of the case and only then passed the orders. The applicant was given an opportunity to defend himself which he did by filing his reply to the chargesheet and also by filing his appeal after the punishment order was passed. No illegality has been committed by the respondents.

7. Heard the counsel for the parties, considered their submissions and perused records.

8. The main ground taken by the applicant is that he was not given appropriate opportunity to defend himself. There has been no loss and the applicant has been punished without holding any enquiry. The learned counsel for the applicant has also argued that he was not shown the documents to defend himself. I do not agree with the contention of the learned counsel for the applicant because the applicant has not denied at any stage that he did not deposit the keys. The main ground taken by him is that it has been an omission on his part due to being over worked and also ^{there has been} ~~his~~ no realisation of/past work. These are not the extenuating circumstances, justifying the omission/negligence on the part of the applicant in not depositing the keys of the M.T. Godown at the Main Gate. Closing of gate of a Godown is an important function in any defence establishment. The applicant has failed to discharge his duties in this regard and, therefore, I do not find that any illegality has been committed by the respondents. The applicant's counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of Jamil Ahmad (Supra). The case law cited by the applicant is

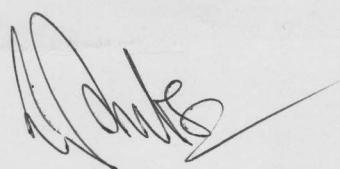


easily distinguishable and will not help the applicant. In a defence establishment not depositing the keys after closing the Godown would certainly amount to mis-conduct and will not merely fall into the category of negligence/lapse in performance of duty. The overall security of the defence establishment is of paramount consideration in deciding whether a particular act is a mis-conduct or not.

9. In my opinion, it is a serious lapse on the part of the applicant that he did not deposit the keys at the Main Gate after closing the M.T. Godown. The applicant also cannot take the plea of being over-burdened as depositing the keys after locking a particular office/Godown/Store is an essential duty. Such type of lapses mis-conduct cannot be over looked.

10. Another point raised by the applicant's counsel is that there has been no enquiry. In such cases, the enquiry is uncalled for unless requested by the Charged official. The plea of enquiry has been raised by the applicant only in his appeal dated 15.01.2001.

11. For the aforesaid reasons, the O.A. is devoid of merits and is liable to be quashed. The O.A. is accordingly dismissed with no order as to costs.



Member-A

/Neelam/