

RESERVED
on 03.02.2014

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 10th DAY OF March 2014)

PRESENT:

**HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER - J
HON'BLE MR. U.K. BANSAL, MEMBER - A**

ORIGINAL APPLICATION NO. 971 OF 2006
(U/s, 19 Administrative Tribunal Act.1985)

Gama Ram a/a 59 years, s/o Late Ram Prrasad Ram, R/o 1-B/3/1, Sarai Maswanpur, Kanpur-19, Ex Supervisor, Sale Office, Ordnance Factory, Kanpur.

.....Applicant

By Advocate: Shri R. Verma

Versus

1. Union of India through the Secretary, M/o Defence, D/o Defence Production and Supply, Govt. of India, New Delhi -11.
2. The Secretary/Chairman, Ordnance Factory Board, 10-A Shaheed Khudi Ram Boase Road, Kolkata-1.
3. The Senior General Manager, Ordnance Factory, Kalpi Road, Kanpur-9.

..... Respondents

By Advocate : Shri N.P. Shukla

ORDER

BY HON'BLE MR. U.K. BANSAL, MEMBER - A

Through this O.A, the applicant Shri Gama Ram has sought the following relief(s):-

"(i) To issue an order order/direction in the nature of certiorari quashing the removal order dated 30.09.2005 passed by the Disciplinary Authority i.e. Sr. General Manager, Ordnance Factory (respondent No.3) (Annexure 24 to the Compilation No.1) and the Appellate Order dated 26.04.2006 passed by the Secretary/Chairman,

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**Ordnance Factory Board (respondent No.2)
(Annexure No. 26 to the Compilation No.1).**

(ii) To issue an order/direction, directing the respondents to reinstate the applicant in service with immediate effect with all consequential benefits".

2. The applicant was working on the post of Supervisor (Sales) in the Ordnance Factory, Kanpur. On 21.08.2000, the applicant was detected while attempting to commit theft of two bundles of copper strips which were recovered from his Scooter, while he was going out of the Factory. A case under section 379/409 IPC was registered on 3.07.2001 at Case Crime No. 33/01 at P.S. Armapur, Kanpur Nagar. He was subsequently arrested and bail order was issued on 13.09.2001. He was removed from service by an order dated 30.09.2005 passed by the Disciplinary Authority namely Senior General Manager, Ordnance Factory, Kanpur.

3. Departmental proceedings were held against the applicant after issuing a memorandum of charge dated 30.08.2000. As a result of these proceedings, the Disciplinary Authority passed the impugned order dated 30.09.2005 removing him from service. The applicant filed an Appeal against this order with respondent No.2, which was also dismissed on 26.04.2006.

4. The learned counsel for the applicant has argued that there were major infirmities in the conduct of the

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departmental enquiry and the entire episode was a fabricated story to implicate the applicant in a false case.

5. In the rejoinder affidavit filed by the applicant, it has been ^{stated} argued that statements of some of the witnesses at the time of recovery of stolen items were contradictory. The Inquiry Officer was changed in the year 2002, to prejudice the outcome of the enquiry. It was argued that his confessional statement was obtained by the respondents under coercion. Since a criminal case was already registered against the applicant on identical charges, he requested that the departmental enquiry may be deferred. However, this request was not conceded by the respondents and hence the applicant filed a Writ Petition before the Hon'ble High Court, which was disposed of by an order dated 04.01.2002 with a direction that the applicant may prefer a representation before Senior General Manager, Ordnance Factory, Kanpur, which should be decided by the respondents. Consequently, the applicant made such a representation before the respondents, which was rejected vide an order dated 4.2.2002. The applicant filed an appeal against this order of the respondents, which as alleged, has not been replied to. It was argued that the respondents continued with the departmental enquiry without addressing this basic issue which was raised in the "appeal" of the applicant mentioned above.



6. It was further argued by the learned counsel for the applicant that one of the witnesses (Shri Mohar Singh) was not produced for examination or cross examination even though he was mentioned as a witness in the memo of charge-sheet. Further the seized material was never produced during the course of enquiry and hence confiscated material could not be examined by the applicant or the witnesses. It was also mentioned that the applicant was not provided reasonable opportunity to defend himself during the course of enquiry and he was being victimized since he was a member of Scheduled Caste.

7. During the hearing, the learned counsel for the applicant also argued that further enquiry was ordered from the stage when an irregularity was discovered, by the Disciplinary Authority on 30.12.2002. Also, one of the prosecution witnesses Shri Mohar Singh was not examined, and hence his evidence cannot be taken into account during the enquiry. The learned counsel for the applicant further cited following judgments:-

(a) *Anil Kumar Vs. Presiding Officer and Ors. in Civil Appeal No. 4692 (NL) of 1984 reported in 1985 Supreme Court Cases (L&S) 815.*

(b) *Hon'ble Supreme Court in State of Uttar Pradesh and Ors. Vs. Saroj Kumar Sinha reported in (2010) 1 Supreme Court Cases (L&S) 675.*

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8. The learned counsel for the respondents narrated the sequence of events involving the attempt to steal copper strips from the Ordnance Factory, Kanpur involving the applicant. It was mentioned that the applicant did not cooperate with the enquiry process and represented that the departmental enquiry should be stayed till the finalization of the criminal case. Since there is no legal bar to the two enquires/investigations going on simultaneously, the Disciplinary Authority did not accept this request. When this issue was taken by the applicant before the Hon'ble HIgh Court, Allahabad, the Court did not give any specific direction to stay the proceedings but left the decision to the Departmental Authorities. Subsequently enquiry was completed with the verdict of guilty of the charges levelled against him.

9. The learned counsel for the respondents also emphasized that ample opportunity was given to the applicant before passing of the order by the Disciplinary Authority and principles of natural justice were followed at all stages.

10. The learned counsel for the respondents drew our attention to the confessional written statement of the applicant dated 21.08.2000 where it has been clearly stated that the said property was recovered from the scooter of the applicant and was sealed in his presence. In this statement, the applicant has clearly mentioned that he is giving the statement of his own free-will and without any extraneous

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pressure or coercion. Notably this statement was recorded immediately after the detection of the attempt of theft at the gate of Ordnance Factory. Similarly, statements of witnesses namely Naib Subedar Mohar Singh, Sushil Kumar and others, which were recorded on the day of incident immediately after the discovery of the attempted theft, were quoted by the learned counsel for the respondents as most reliable being first in point of time. It was mentioned that the applicant did not cooperate with the enquiry on grounds that a criminal case was also pending trial in the Courts and hence he would not like to disclose his defence during the course of the enquiry. Hence, despite an opportunity being given to the applicant at every stage of the enquiry, the applicant did not produce any evidence in his defence.

11. The learned counsel for the respondents also pointed out to the order issued by the Senior General Manager dated 30.12.2002 (Annexure 15). Through this order, respondent No.3 has pointed out the shortcomings in the enquiry report dated 16.10.2002, submitted by the earlier Inquiry Officer and has remitted the enquiry back to the Inquiry Officer with the direction to conduct the enquiry from the stage of irregularity as mentioned in that order. He has further directed that sufficient opportunity should be given to the charged employee to defend himself and reasonable opportunity should be given to produce defence witnesses, if any.

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12. This order is comprehensively valid as per Rules on the subject and cannot be faulted. Since the enquiry had not been completed and had been remanded back, there was no occasion to give a copy of the first enquiry report to the applicant. It has also been clarified by the learned counsel for the respondents that on the completion of enquiry, a copy was duly made available to the applicant.

13. After careful examination of the pleadings and careful consideration of the arguments presented on both sides, it is amply clear that there are no procedural or other infirmities in the departmental enquiry conducted against the applicant. The changes of the Inquiry Officer were necessitated due to the transfers of the incumbent. The representation filed by the applicant after orders in his writ petition was disposed off as per law and the applicant did not approach the Hon'ble High Court again on this subject. The averments of the applicant that there were contradictions in the statements of witnesses have not been clarified as to what were the contradictions and examinations of these statements do not reveal the same. The order of removal of the applicant from service and the order of the Appellate Authority are detailed and reasoned and the charge by applicant that he is being victimized on grounds of his caste have not been established hence they cannot be treated as tenable in this case.

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14. A perusal of case laws cited by the applicant's counsel, as mentioned earlier relates to a case where an Inquiry

Officer did not apply his mind to the evidence and did not discuss the evidence but merely recorded it to conclude that the charges are proved. In that case, the Hon'ble Supreme Court found that the enquiry report itself did not show adequate reasons for drawing the conclusion. However, we find that the present case is quite distinguishable from this cited case as the enquiry report in this case has adequately discussed the evidence collected during the course of enquiry in order to arrive at the conclusion. The second cited case is also similar in laying down the law that the evidence before the Inquiry Officer should be examined thoroughly to arrive at a conclusion that the charges are proved. As mentioned above, the present case is distinguishable in this regard as is clear from the perusal of the enquiry report.

15. The non-appearance of one witness Mohar Singh for examination and cross examination has been discussed by the Inquiry Officer in his report, clearly mentioning that this witness was later discharged from service and efforts to contact him, had failed. The charges were however established by the testimony of other prosecution witnesses. As regards the non-inspection of confiscated material, the same was lodged at Police Station Armapur under seal and hence opening of the seal and its examination was not possible without orders of the Civil Court, Kanpur Nagar. However, the Inquiry Officer went to extent of obtaining an order from the Metropolitan Magistrate to allow inspection of the confiscated material but on the said date, the applicant

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did not turn up though the said material was inspected by the Prosecution Witnesses and the Defence Assistant of the party charged, in the presence of the Inquiry Officer. It is also well established in law that there is no bar to proceed with the departmental enquiries when a criminal case is simultaneously going on.

16. Following the order in the writ petition of the applicant in the Hon'ble High Court his representation was rejected by the respondents vide order of 4.2.2002. The "appeal" against this order has no legal status (para 5 of this order) and need not have been replied to by the respondents.

17. The only point which remains is whether in the departmental action matter and the criminal case, the charges were identical and the witnesses were the same, and whether the Departmental enquiry should have been proceeded with in such a case. Here it is noteworthy that the applicant raised this objection before the Hon'ble High Court vide Writ Petition No. 44299 of 2001 and the Hon'ble High Court did not expressly prohibit the continuation of the departmental enquiry. Further a perusal of the FIR in this matter indicates that it relates to the misappropriation of property from the stores of the Ordnance Factory and the charges are not identical to those in the departmental enquiry. Hence there is no legal restriction on the continuation of the departmental enquiry or action.

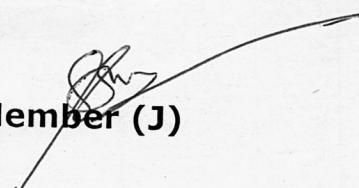
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18. We, therefore, find no merit in the present Original Application, which is dismissed on grounds stated above. No order on costs.



Member (A)

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Member (J)