

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 8th day of Oct 2010

Original Application No. 1155 of 2006

Hon'ble Mr. S.N. Shukla, Member (A)

V.K. Jindal, S/o Late Lekhraj Jindal,
R/o 14, P.D. Tandan Marg, Dehradun [Uttaranchal]

..... Applicant

By Advocate: Sri A. Srivastava

VERSUS

1. Union of India through its Secretary, Department of Defence Production, New Delhi.
2. Addl. Director General, Armoured Vehicles Headquarters, Avadi, Chennai-600054.
3. General Manager, Opto Electronics Factory, Raipur, Dehradun.

..... Respondents.

By Advocate: Shri R.D. Tiwari

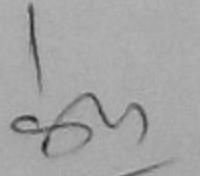
ORDER

Briefly stated the facts of the case are that the applicant has made a complaint against his supervisor namely Shri P.K. Jain to the respondent no.2 i.e. Additional Director General, Armoured Vehicles Headquarters, Avadi, Chennai for some alleged mis-behaviour. Thereafter the applicant was charge sheeted under Rule 16 of CCS(CCA) Rules 1965. The applicant demanded certain documents on the basis of which the allegations were made which were denied to him have been considered as unnecessary. Another request was made by the applicant to provide a copy of complaint made against him by Shri P.K. Jain which was also denied to him as having been considered unnecessary. Thereafter the applicant submitted a reply denying the

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charges leveled against him. Subsequently a punishment in the nature of reduction of pay by three stages from Rs.3200/- to Rs.2975/- in the time scale of pay was awarded for a period of three years with effect from 18.09.2002. In appeal the penalty was modified to be effective from 30.10.2002. Further appeal to respondent no.1 was also rejected and he was advised to file a revision petition instead of a second appeal. The revision petition was submitted to the Secretary, Ministry of Defence, Government of India, New Delhi which was also dismissed.

2. Since the Appellate order dated 08.08.2003 as also the Revisional order dated 28.04.2006 were passed during the pendency of the original application at the relevant time as such instead of amending the pending original application, fresh original application has been filed which is subject matter of this OA.
3. Vide order dated 9.8.2010 the learned counsel for the applicant was requested to file written submissions if any, an option has not been availed of, hence this OA is being decided on the basis of the oral arguments of the learned counsel for the applicant on the same date and on the basis of material available on the record. For respondents Shri Firoz Ahmad brief holder of Shri R.D. Tiwari is present.
4. Annexure A-11/compilation-II is a copy of charge sheet. Broadly speaking the charges were in the nature of attempt to physically assault Shri Pradeep Jain, threatening Shri Pradeep Jain of dire consequences outside the factory and further that the applicant has deliberately not repaired a vehicle as directed by his superior on one pretext or the other.



5. After taking into consideration the facts of the case penalty order for reduction in the pay this order was amended vide another order dated 1.10.2002 placed at Annexure A-14. Thereafter subsequent orders were passed as has been already narrated in the foregoing paras. The main argument on behalf of applicant is placed as per para 4.1 of the OA which seeks to rely upon the Department of Personnel & Training instructions dated 28.10.1985 wherein it is stated that in case a Government Servant moves an application for holding a detailed enquiry, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed enquiry and form an opinion whether the enquiry is necessary or not. The relevant text of the Government of India instructions sought to be relied upon the applicant is reproduced below:-

“(1) Holding of an inquiry when requested by the delinquent:

Instructions-The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS(CCA) Rules, 1965, had suggested that Rule 16(1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

(2) The above suggestion has been given a detailed consideration. Rule 16(1-A) of the CCA(CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) *ibid* leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or mis-behaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government

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servant, the Disciplinary Authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

[G.I., Dept. of Per. & Trg., O.M. No. 11012/18/85-Estt.(A), dated the 28th October, 1985.]

(2) Inspection of document may be permitted. - Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, does not make it incumbent on the part of the Disciplinary Authority that it should give the accused official an opportunity to inspect the relevant records, provided no formal enquiry is considered necessary by the Disciplinary Authority. If, however, an accused officer in such a case makes a request for permitting him to inspect the relevant records to enable him to submit his defence, the Disciplinary Authority may grant the necessary permission."

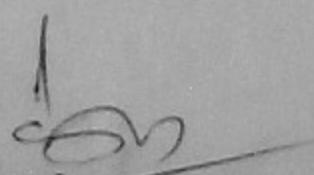
Further in support of his case the learned counsel for the applicant relied upon 2002 SCC (L&S) 188 in the case of O.K. Bhardwaj Vs. Union of India and Others relevant extract of which is reproduced below:-

"Departmental enquiry-Natural justice-Audi alteram partem-Whether could be dispensed with in case of minor penalties-Supreme Court agreeing with High Court's first proposition that withholding increments of pay with or without cumulative effect is a minor penalty but declining to accept its second proposition that giving an opportunity of hearing to the delinquent employee in case of minor penalties is not essential-Opportunity of being heard, held, could not be dispensed with even in case of a minor penalty-Though respondent contending that the compliance with the principles of natural justice was adequate but since High Court for disposal with due regard to the principles of natural justice-Administrative Law-Natural Justice-Audi alteram partem-Opportunity of being heard, held essential even in case of minor penalties."

The relevant extract of Revisionary order dated 28.4.2006 at Annexure A-2 is reproduced below:-

" 4. AND WHEREAS, after careful consideration of the points raised by Shri Jindal in his Revision Petition, the President is fully satisfied with none of the points as raised by Shri Jindal in the preceding paras are tenable since:-

(i) That the petitioner had preferred the so-called 1Ind appeal dated 28.8.2003, which was forwarded to Appellate Authority and Appellate Authority had



Further forwarded to Revisioning Authority. Revisioning Authority has opined that nothing about second appeal had been mentioned in Rule 24 of CCS(CCA) Rules and therefore the DGS may prefer a Revision Petition, if desire. The petitioner was accordingly advised vide factory letter dated 8.1.2004, but no response from individual was received till the instant petition.

(ii) That the contents of this para are baseless and misleading. No superior authority of the organization ever given any assurance to the petitioner. In fact the petitioner was conveyed the instructions of Revisioning Authority vide letter dated 8.1.2004 to prefer a Revision Petition if desire. Now after a gap of about 1 year and 10 months, the Revision Petition has been preferred by DGS. However, it was the discretion of Revisioning Authority to consider the time gap. It is not denied that the petitioner has submitted a Revision Petition dated 1.9.2005, but since this was not addressed to appropriate authority, the same was returned to him to address the same to the appropriate authority and in response the instant revision petition has been preferred. The other issue, which is not connected to the present one, raised by the petitioner in this para is regarding Cadre Restructuring of IEs. Probably, the petitioner considered himself to be promoted under the said instruction to higher post but for the imposition of penalty upon him. However, it is reiterated that no assurance of any kind was given by any superior authority either for considering his instant case or promoting him under the said instructions. These are his own notion.

(iii) That in this para again, the petitioner has referred his so-called IInd appeal dated 28.8.2003 and Appellate Authority order. No comments are needed.

(iv) The review appeal petition mentioned in this para is of dated 1.9.2005 and not dated 1.9.2004. The said petition was returned to the petitioner vide letter dated 4.10.2005, for proper address to the Revisioning Authority. However, there was no new points brought out in the contents of the said petitioner either.

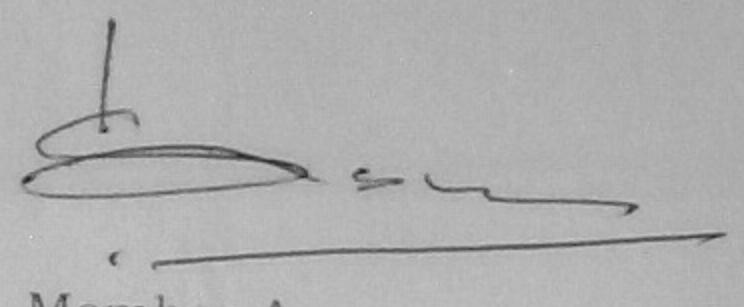
(v) That it could be seen from the perusal of instant Revision Petition submitted by Shri Jindal that he failed to bring any fresh substantial points in the instant petition for consideration. In fact, the petitioner has only referred his earlier applications, appeal and so on, which have already been considered by the Authority(s) and have been disposed of with conscious decisions."

From reading of the extract of the text it is abundantly clear that the disciplinary/appellate/Revisional authority have considered all aspects of the case on the findings of the enquiry officer who in turn did not

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receive cooperation from the applicant, due to dilatory tactics adopted by him and lateron sought to take advantage of his own recalcitrance before this Tribunal.

6. There is no infirmity/illegality noticed in the impugned orders and hence this OA is dismissed. No Costs.

A handwritten signature consisting of a stylized oval shape with a vertical line extending from its top, followed by a series of curved and straight lines to the right.

Member-A

/ns/