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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHBAD BENCH**

(THIS THE 6th DAY OF April 2011)

Hon'ble Dr. K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 1460 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

V.K. Gautam, S/o Late Shri O.P. Gautam,
Aged about 40 years, r/o 1, Moti Enclave
P.O. Aurangabad, Mathura.

.....Applicant.

Present for Applicant: Shri O.P. Gupta, Advocate

VERSUS

1. Union of India through Secretary
Ministry of Defence, Production & Supplies
Govt. of India, Nirman Bhawan Post Office
New Delhi.
2. The Director General Quality Assurance
Deptt. of Defence Production (DGQA),
Nirman Bhawan Post Office,
New Delhi.
3. The Director Quality Assurance (Armament)
Department of Defence Production (DGQA)
H Block, New Delhi.
4. The Senior Quality Assurance Officer,
Senior Quality Assurance
Establishment (Armament) Armapore
Post Office, Knpur.

.....Respondents


Present for Respondents: Shri S.C. Mishra, Advocate

ORDER

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

In his written arguments, the counsel for the applicant contended that the findings of the inquiry officer are contrary to the statement of witnesses recorded during the inquiry. Again, statements of defence witnesses have totally been disregarded and the same vitiates the entire inquiry as held in the case of *Moni Shankar vs Union of India* (2008 (3) All India Service Law Journal 325) vide para 22 thereof which reads as under:

The Tribunal was entitled to consider the question as to whether the evidence led by the Department was sufficient to arrive at a conclusion of guilt or otherwise of the delinquent officer. While reappraisal of evidence is not within the domain of the Tribunal, an absurd situation emanating from the statement of a witness can certainly be taken note of.

2. The statements of Witnesses, which would prove the finding of the I.O. incorrect, are - A-4 to A-6. A-12 to A-15. And the defence statements of like nature are Annexure 1 to 5 along with the Supplementary Rejoinder Affidavit.

A look at the articles of charge at this stage would be appropriate:

Article I

Shri V.K.Gautam CM-II, while working as Incharge Technical Library at SQAE (A), Kanpur refused to allow the Board Members, of annual stock taking Board ordered vide DO Part-I No.14 dated

24.1.2000, to proceed with the stock checking on 6 Mar & 10 March and questioned the issue of Show Cause Notice No.Admin/16042 dated 16.3.2000 calling for his explanation in the matter, exhibiting insubordination.

By his above act, the said Shri Gautam has acted in a manner unbecoming of a Govt. servant and thereby contravened Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

Shri V.K.Gautam CM-II, while working in shop floor at SQAE (A) Kanapur on 29.9.99 misbehaved with Ordinance factory Kanpur employees namely S/Shri PK Das, CM-1 and PK Dey, JWM by shouting at them, threatening and trying to manhandle them and used intemperate and filthy language against Shri AK Sharma, WM/MS-II

By his above acts, the said Gautam has acted in a manner unbecoming of a Govt. servnt and thereby contravened Rule 3(1)(iii) of CCS (Conduct) Rules 1964.

Article III

Shri V.K.Gautam, CM-II SQAE (A) Kanpur, misbehaved with Shri IS Dubey, F/M on 10.4.2000 by shouting at him and using insulting language.

By his above act, the said Sri Gautam has acted in a manner unbecoming of a Govt. servant and thereby contravened Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article IV

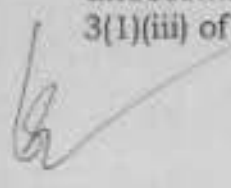
Shri VK Gautam, CM-II SQAE(A) Kanpur, misbehaved with Shri Ram Pukar, Carpenter on 6.7.2000 using abusive language.

By his above act, the said Sri Gautam has acted in a manner unbecoming of a Govt. servant and thereby contravened Rule 3(1)(iii) of CCS (Conduct) Rules 1964.

Article V

Shri VK Gautam, CM-II SQAE(A) Kanpur, is an incorrigibly indisciplined Govt. servant who has not shown any improvement despite being penalized in the past vide order No.A/97401/239/DGQA (Vig.cell) dated 1.10.96.

By his above act, the said Sri Gautam has acted in a manner unbecoming of a Govt.,servant and thereby contravened Rule 3(1)(iii) of CCS (Conduct) Rules 1964.



3. The statements that are stated to be in favour of the applicant as contended in the written arguments are as under:-

Annexure A-4:

2. The Court proceeded to examine Shri R.K. Dubey CM I, after being duly warned as follows:-

Q4. Was there any hinderence from the said of the Incharge library Sh.VKGautam, CM-II or his staff during the conduct of this stock verification?

Ans: No, there was no hinderence from either the incharge technical library or his staff during the stock verification. I could complete my job satisfactorily.

2. During the course of ASTB activity there was a verbal clarification sought for by one of the members of the said board Sri R.S. Sharma, DAQAO, as well as by the incharge of technical library, Sh.VK Gautam CM-II, separately, about the conduct of the ASTB. The clarification sought was whether the complete board should visit the section where ASTB is to be carried out or even a single member can undertake the job of stock taking. As a Stores Officer, I advised Sh.R.S. Sharma DAQAO, and Sh VK Gautam, Incharge Technical Library that the Officer Incharge of the board along with the member members who are going to conduct the ASTB should visit the relevant section once and thereafter even a single member can proceed with the ASTB. I do not remember/recollect the exact date on which the advice was sought.

Q2. Are you sure that Sh.R.S. Sharma DAQAO was given advice between 6 March 2000 to 10 March 2000 as stated by you?

Ans. Sh.RS Sharma, DAQAO, visited me only once for seeking advice on the matter. I cannot recollect the exact date of the same. However, he was advised as stated by me above.

Q3. Did Sh.VK Gautam use filthy or abusive language to anybody during the above episode as narrated by you?

Ans. No.

Q3. Where these same jobs about the discrepancies of which Sh.VK Gautam had sent a message to you?

Ans. These were a part of bulk in which these were jobs with discrepancies about which Sh VK Gautam had sent a message to me.

Q4. Was any advice for rectification of these jobs given by Sh.VK Gautam to Sh.PK Das and Sh.KC Srivastava?

Ans. Yes, he told them to get the packing of these jobs done properly.

Q5. Are you very sure that this advice was given in a very friendly manner?

Ans. Yes, there was nso hot talk/discussion.

Q4. Was Sh.SS Mishra gives a copy of the said memo?

Ans. Yes.

Q5. Did you come to know of any incident that took place between Sh.VK Gautam, CM II and OFC Personnel, in AC Room, on 29 Sep.99?

Ans. No.

Q3. During this episode, did Sh.VK Gautam, CM II misbehave or abuse any of the OFC Personnel?

Ans. No. As it is we had got scared after seeing so many OFC personnel.

Q4. Did Sh.VKGautam misbehave with the OFC Personnel including the chargemen during the incident which you have narrated or abuse them?

Ans. No. We came back together.

Q5. When you came on duty on 30 Sep.99, did any incident take place in NAPS Shop?

Ans. When I came on duty on Sep.30,99, I found a number 30 mm BMP shells lying in our QA Bond-approx.400-500 in numbers. I asked Sh.Kanhaiya Lal, Examiner, of my Section as to why were they lying there. He replied that the examiner during the night shift had kept them there and he did not know the details. In the meantime Sh.PK Das and Sh KC Das, chargemen along with 30-35 workers came there and started taking the jobs away. I told Sh.Kanhaiya Lal that they

were taking away the jobs. Sh.Kanhaiya Lal informed Sh.VK Gautam who in turn asked them as to why they were taking away the jobs. The OFC Personnel replied "Ye tumhare baap ka maal jisko tumhe roak liya". Sh.Gautam told them that it was kept by Sh.SK Yada who was there in the night shift. They after said "Tum apne aap ko bad quality wale samjhte hon, ye BMP shells tumahre andar ghuseddenge" There after they took the shells and went away

Q1 Are you aware of any incident regarding packing of 30 mm BMP sheets which took place on 29 Sep.99, when you were posted in QA(NAPS) Section?

Ans. I am not aware since I was deputed on Crack/pressure test Sh.Shiv Narain was deputed in NAPS section that day on packing of 30 mm BMP shells.

Q1. Could you please tell us as to when exactly were you posted to QA(NAPS) Section?

Ans. I do not remember.

The L.O. has in respect of the defence has observed as under:-

Art.1: CO in his case does not produce any tangible evidence to negate the charges, through the depositions of DW 1 to DW 6.

Art. II: Absolutely no reference to Defence witnesses.

Art. III: Again no reference to the defence.

Art. IV:Maximum PWs of the designation of Examiners/Labourers have turned hostile during the proceedings. Some not even agreeing to have given the statement available (This charge has been held not proved)



Art. V: Shri Gautam had earlier been penalized vide order No. A/97401/239/DGQA (Vig Cell) dated 01 Oct 96 on the charge of being under the influence of alcohol in office. Despite the said penalty, Sh. Gautam has not improved and continued to indulge in repeated misconducts as brought out above under Articles of Charge I to III. It does show that he is amenable to indulging in cases of indiscipline and has not shown any improvement.

4. The question is whether the above findings hold water, especially when scanned through the law laid down by the Apex Court in the case of Moni Shankar.

5. Preponderance of probability is the standard prescribed for arriving at a finding whether the charges levied are proved or not. This would certainly not mean that the depositions and evidences of one side are disregarded and that of other side alone are taken into account. That would amount to fixing the target (to render a finding that the charges remain proved) and means searched thereafter.

6. The inquiry officer is expected to give equal weight to the evidences of both the sides and arrive at a conclusion whether the charges are proved. The benefit of doubt as available in criminal proceedings is not so available in departmental proceedings but preponderance of probability takes its place. The scale is not that nice and finer in departmental proceedings.

7. In the instant case, Art. V seems to have been added only to add buffer weight to the other charges for, for the past conduct of the applicant, the applicant was once penalized. Thus, the said charge could be easily declared proved. But while past conduct is taken into account, there must be some nexus with the past conduct and the present misconduct. Had the applicant earlier been penalized for such misbehaviour (of use of abusive words etc., as in Art. I to IV) the same could be taken into account here. That was in a different context. The individual was found under the influence of intoxication and there was no charge of he having misbehaved or used abusive words.


8. Thus, this is a classic case of end having been prescribed and means searched for and when means are not so congenial to prove the charges, unfavourable means are given a go bye. This kind of inquiry cannot be sustained. Hence, the OA is allowed and the impugned orders as hereunder are quashed and set aside:-

- (i) Orders of Compulsory Retirement Order 9.3.2004 (Annexure A-1)
- (ii) Appellate order dated 5.6.2006 (Annexure A-2)
- (iii) Respondents shall reinstate the applicant in service at his own post with immediate effect.
- (iv) The Respondents shall grant him seniority for the intervening period, treating the applicant in continuous service of the respondents.

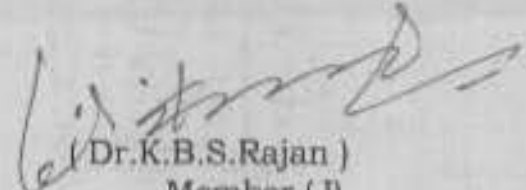
9. Respondents are directed to pass an order for reinstatement of the applicant back to service. The period between the date of penalty order till the date of reinstatement shall be treated as per

the existing rules. The applicant shall not, however, be entitled to any back wages. He shall be entitled to the pay on the basis of notional increment and fixation of pay under the Revised Pay Rules and actual pay shall be available to him from the date of reinstatement or 01-07-2011 whichever is earlier. If there be any delay in joining which could be attributed to the applicant, then the pay would be admissible from the date of his joining.

Under the circumstances, there shall be no orders as to cost.



(D.C. Lakha)
Member (A)



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

Uv/