(RESERVED ON 13.05.2013)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(THIS THE 3rd DAY OF July, 2013)

PRESENT:

HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER-J
HON'BLE MR.SHASHI PRAKASH, MEMBER-A

ORIGINAL APPLICATION No. 1178 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

Raj Kumar Yadav, aged about 40 years, son of Shri Ram Harakh Yadav, R/o Q.No. 7/8, Type-I, OEF Colony, G.T. Road, KANPUR.

. . . . . .Applicant

By Advocate: Shri R.K. Shukla.

Versus

1. Union of India through the Secretary, Ministry of Defence, Deptt. of Defence Production & Supplies, Govt. of India, "G. Block", NEW DELHI-11.

2. The Addl. D.G.O.F., Ordnance Equipment Fys., Group HQrs., "Ayudh Upaskar Bhawan", G.T. Road, KANPUR.

3. The General Manager, Ordnance Equipment Factory, KANPUR.

. . . . . Respondents

By Advocate: Shri V.K. Pandey.

ORDER

(DELIVERED BY:- HON'BLE MR. SHASHI PRAKASH, MEMBER-A)

The present OA has been filed for quashing the impugned order of punishment dated 20.08.2005 passed by Respondent No. 1, appellate order as well as the revisional order(s) passed on 19.07.2006 and 24.07.2007 respectively. He has also prayed for payment of all deducted amount by way of reduction of pay and full pay and allowances for the period of suspension.

2. The facts of the case as stated in the OA are that the applicant who has been posted as a Tailor (Semi-skilled) since 1997, received a suspension order dated 03.04.2003 contemplating disciplinary action against him. Thereafter, he was served with a charge sheet dated 06.04.2003 for violating Rule 3 & 7 of CCS (Conduct) Rules, 1964. The applicant denied all the charges. Subsequently by an order dated 17.05.2003, decision was taken for conducting common proceedings under Rule 18 of CCS (CCA) Rules 1965 against applicant and 4 other employees charged with the same misconduct and Presenting officer and Inquiry Officer were duly appointed. Inquiry Officer submitted the inquiry report on 16.05.2005 proving all the charges against the applicant. A copy of the inquiry report was sent to the applicant by letter dated 14.06.2005 and the applicant submitted his representation on 04.07.2005, highlighting various irregularities and illegalities in view of inquiry report. It is averred in the OA that the Disciplinary Authority without taking into account the issues raised in the reply of the applicant and without recording any reason for non-consideration of the same, imposed by order dated 28.12.2005 the penalty of reduction of pay by one stage for a period of two years with direction as to not earn any increment during the period of reduction and also effecting postponement of his future increments by the order dated 28.12.2005.

3. Shri R.K. Shukla, counsel for the applicant argued that the action of the respondents is irregular and illegal as it has been passed by denying the opportunity of explaining the facts and

circumstances leading to the evidence against the applicant as provided under Rule 14 (18) of the CCS (CCA) Rules, 1965. He also said that the penalty inflicted on the applicant cannot be imposed for the indefinite period. The learned counsel challenged the impugned orders on the following grounds:-

(i) The component of the penalty giving effect to withholding of two increments which would have a cumulative effect on grant of his future increment is violative of Rule 11 Sub Clause 5 of CCS (CCA) Rules.

(ii) The action of the respondents being against the principle of natural justice as the applicant was denied the opportunity of explaining the facts and circumstances leading to evidence against him laid down provided under Rule 14 (18) of CCS Rules 1965.

(iii) Awarding of deferential punishment to the persons against whom charges were proved in the common proceedings. He submitted that while in the case of female employees involved in the common proceedings, lesser penalties were imposed in the case of the applicant, the penalty imposed was harsher. This amounted to hostile discrimination by the respondents.

(iv) The order of the applicant treating his period of suspension as non duty amounted to enhancement of the punishment already imposed by the Disciplinary Authority which is outside the competence of the

Appellate Authority. In this regard he relied upon the order of this Tribunal passed in OA No. 979/1998 dated 22nd September, 2008.

4. Concluding his argument, the counsel for the applicant vehemently pleaded that on account of the facts and grounds stated above, it is quite clear that the action of the respondents in passing the impugned orders suffers from legal infirmity and the impugned orders deserve to be set aside.

5. Shri V.K. Pandey, counsel for the respondents argued that the point raised in the OA are untenable. Perusal of inquiry report clearly indicates that the procedures as laid down in CCS (CCA) Rules with regard to the major penalty were duly followed. He stated that the applicant along with 4 others employees indulged in the gross acts of indiscipline by instigating and inciting employees of the factory and assaulting of officers of the department and keeping them under gherao. Among the 5 persons involved in the agitation, 3 persons including the applicant are union leaders/office bearers of the union. Consequent to the incident an inquiry into the incident was ordered to be carried out by the security officer. Based upon the findings of the inquiry report, 5 employees who had instigated and created disturbance, were prima facie found to be involved. Keeping in view the findings of the aforesaid report, charge sheets were issued to the 5 concerned employees on the charges of wasting man hours, missing from place of duty, violating factory

discipline, instigating other factory employees to gherao and forceful/illegal confinement of senior officers, thereby disturbing the working atmosphere of the factory. The inquiry was conducted as per the procedure as laid down in CCA and CCS Rule and the inquiry report was submitted by the inquiry officer on 16.05.2005 and the 5 charges levelled against the delinquent employees were held to be established. Also every opportunity was provided to the charged officer to present their defence. After careful consideration of the inquiry report, the applicant along with two others male charged employees was imposed the penalty as contained in the impugned order.

6. The learned counsel for the respondents further submitted that the argument relating to difference in the punishment imposed upon the male and the female employees is based upon certain justifiable factors. He drew our attention to the written submission submitted by him wherein he has brought out that while the 3 the male charged officers had been subjected to some kind of penalty based upon disciplinary proceedings in the past, the charged female employees at no stage in their past had been subjected to any penalty. Taking this fact into account, the competent disciplinary authority made a marginal reduction in the penalty imposed on the charged female employees. He further submitted that the 3 male employees being member of the Union/Office bearers of the Union were expected to act with greater sense of responsibility and provide leadership to the employees. However, by their acts these persons acted in the manner that was

totally unbecoming of the conduct of office bearers of the union. Hence the charge of hostile discrimination made out by the counsel for the applicant is non-sustainable.

7. Heard counsel for both the parties and perused the pleadings. We propose to deal with each of ground taken by the counsel for the applicant in sequential order.

8. So far as the first ground taken by the counsel for the applicant relating to withholding of the two increments on a permanent basis as being violative of Rule 11 (5) of CCA and CCS Rules is concerned, the issue is required to be considered in the light of the specific provisions contained in the relevant Rules. Rule 11 (v) of CCA and CCS Rules reads as under:-

> ***"(v) Save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;***

9. It is clear from the above provision that the disciplinary authority has the power to reduce the pay of the concerned employee to a lower stage in the time scale for a specified period with further direction relating to the extent to which such a reduction will or will not have effect for postponing the future increment of his pay. It is seen from the impugned order that the

reduction to a lower stage in time scale has been done for a period of two years with further order that he will not earn any increment of pay during the period of reduction and the reduction will have the effect of postponing the future increments. The wording of the impugned order are inconformity with the provision of Rule 11 (v) and have been passed within the competence vested with the respondents on the subject. Therefore, there does not appear any illegality in the order, as averred by the counsel for the applicant.

10. With regard to ground No. 2 the action of the respondents has been assailed on the ground that the inquiry was conducted against the principle of natural justice as no opportunity was given to the applicant to explain the facts and circumstances leading to evidence against him. On this point the respondents have made a categorical assertion that the relevant procedure as laid down in CCS and CCA Rules were fully followed and there was no breach of principle of natural justice, and opportunity, as required to be given to the applicant, was provided. It is seen from the charge sheet, served on the applicant, that there is reliance at least on the 9 documents which include report of different officers and employees regarding the incident and also include the name of 13 witnesses to be produced at the time of inquiry to aduce evidence against the applicant. In this regard, it may be relevant to refer to the representation submitted by the applicant against the evidence of the inquiry report (Annexure A-IX). It is evident from the representation dated 04.07.2005 of the applicant itself that he had participated in the

inquiry and also that witnesses were examined both on the defence and prosecution side, though he seems to have questioned the procedure followed by the inquiry officer. In his representation, the applicant has further stated that he had expressed his non-confidence in the inquiry officer and had requested for a change in this regard but this request was not heeded to. On this point in the counter reply, the respondents have brought out that it is only at the closing stage of the inquiry when the applicant found that the evidence(s) were going against him that he expressed the charge of bias against the inquiry officer on the ground that he had not allowed him access to certain additional documents, as asked by him. It is the case of the respondents that the documents asked for by the applicant were unlisted and un-related to the charges and therefore, these documents were not allowed by the inquiry officer. It is also stated that all the listed documents in the charge sheet were allowed to be inspected by applicant and the inquiry officer arrived at his findings after appropriate analysis of the facts of the case. It is at the closing stage of the inquiry when the applicant having failed to prove his innocence during the inquiry that he resorted to lame reasons to seek to invalidate action of the inquiry conducted against him. In this connection it may be relevant to refer to the observations of the Apex Court in the case of ***Chandrama Tewari Vs. U.O.I. & Ors. (1987) Supp. SCC Page 518*** as produced below:-

> "4. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant

documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relief upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principle of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

11. Taking into account the above view expressed by the Court, this ground taken by counsel for the applicant does not have any force. Particularly due to the fact that the applicant has singularly failed to establish that the non-supply of the documents asked by him caused prejudice to him. Moreover, so far as the allegation of bias against the inquiry officer is concerned, as per the extant Rules on the matter, the applicant ought to have made a request to change the inquiry officer at the initial stage of inquiry itself. Such a request cannot be considered at the closing stage of the inquiry. Even when such a request is received it is left to the discretion of the disciplinary authority to take a view in the matter. Hence this argument on behalf of applicant is not sustainable.

12. The third ground taken by the applicant is regarding the difference in punishment meted out to the female employees on similar charges. The learned counsel argued that two female employees who were also charged in the common proceedings for same set of charges were given a lesser punishment than that of the applicant which amounted to hostile discrimination. On this point, the respondents have stated that the marginal difference in the punishment imposed on 3 male employees and 2 female employees was due to the following factors:-

(a). The male employees were either union leaders or office bearers of the union and were expected to display a higher level of responsibility in discharge of their duties. The female employees charged in the case did not have any such membership.

(b) All the 3 male employees including the applicant had been subjected to imposition of same kind of penalty on earlier occasions. In fact, the applicant was imposed a penalty of censure on the charges of misconduct of gherao of a non-gazetted officer at his work place by the order dated 30.01.2002. The female employees on the other hand who were involved in the incident of the instant case did not have any such antecedent. It due to this reason that the respondents considered to imposed a less harsher punishment on the female employees. Based upon this factor we feel that the basis for awarding differential punishment on the two sets of employees is for sufficient reasons. It is an accepted assumption that union leaders and office bearers of the union shoulder greater responsibility of ensuring a conducive working

environment in an organization to whose union they belong. Therefore, any action on their part that is contrary to this objective is to be condemned and severely dealt with. In the instant case, the applicant along with other male employees appears to have acted in the manner totally contrary to the spirit and intent of office they were holding. Moreover, it is seen that it is not only in the present incident that they created trouble but also in the past they had resorted to similar kind of action causing disruption in the functioning of the office on account of which they were subject to imposition of penalty. In the case of female employees, though it is true that they also participated along with their male counter parts in the incident in question, they appear to have been egged on and seem to have acted in the heat of the moment. Moreover, they did not have any past record in causing/participating in similar nature of incidents. Accordingly, the decision of the respondents who imposed a lesser penalty on the female employees appears to be based on justifiable grounds. In the circumstances, the charge of hostile discrimination advanced by the applicant's counsel stands controverted. His reliance on the order passed in OA No. 2428/2005 dated 05th September, 2007 CAT, by the Principal Bench, New Delhi and OA No. 1378 of 1999 dated 17th August, 2004 CAT, of Allahabad Bench, Allahabad, do not seem to apply in the instant case as they relate to case involving similarly circumstanced employees and where no extenuating circumstances for imposition of differential penalty ~~exite~~d. existed.

13. The forth point raised by the counsel for the applicant related to the order dated 20.08.2006 passed by the G.M. relating to deciding as to what status is to be ~~accordial~~ accorded to the period of suspension of the applicant from 03.04.2003 to 08.04.2003. The learned counsel argued that this order by G.M. is illegal and without competence as it amounts to enhancement of punishment already awarded to the applicant. A perusal of the order, which is placed at Annexure A-14 of the OA reveals that it is merely an order determining the status of the suspension period of the applicant and its effect on the pension. In this regard a show cause notice had been issued to applicant and after considering his reply, the aforesaid order was passed treating the period from 03.04.2003 to 08.04.2003 as non duty with the stipulation that the applicant would be paid subsistence allowances for the period. It was also ordered that this period of 4 days would not be counted as qualifying service for the purposes of pension. It is to be noted here that this order is not in nature of a penalty order. It is an order merely to define and regularize the status of the period of suspension of the applicant. The penalty order and the order(s) regarding regularization of the suspension period of the applicant are mutually exclusive to each other and to draw inference that the order dated 20.08.2002/06 is an enhancement of the punishment is absolutely misplaced. Moreover, it is a settled rule that in case where the period of suspension is followed by imposition of a major penalty, the suspension period has to be treated as non duty.

In the context of facts stated hereinbefore, this argument of the counsel for the applicant is also untenable.

14. Taking into account in the foregoing facts and circumstances of the case we do not find any reason to interfere with the impugned order and the OA is accordingly, dismissed. No costs.

MEMBER (A)

MEMBER (J)

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