

(Reserved on 15.05.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 1st day of June, 2012

Present:

HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER-A

ORIGINAL APPLICATION NO. 86 of 2007

Virendra Kumar Singh, aged about 59 years, S/o Late Narain Singh, R/o Q. No. H/8-B, Golf Course Colony, Kanpur Cantt.
.....Applicant.

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, Deptt. Of Defence Production & Supplies, New Delhi-11.
2. The Additional Director General, Ordnance Factories OEF Group HQrs. Ayudh Upaskar Bhawan, G.T. Road, Kanpur Nagar.
3. The General Manager, Ordnance Equipment Factory, Kanpur.

..... Respondents

Present for the Applicant: Sri R.K. Shukla

Present for the Respondents: Sri V.K. Pandey

O R D E R

By Hon'ble Mr. Sanjeev Kaushik, JM

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for following relief/s: -

"a). To issue a writ, order or direction in the nature of certiorari quashing the impugned order of punishment dated 26.08.2006 reducing the pay of the petitioner by one

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stage and directing as not earn any increment during the period of reduction and also having the effect of postponing future increments (Annexure A-I) and the appellate order dated 1.12.2006 rejecting the petitioner's appeal (Annexure A-II) and thereby confirming the penalty order.

b). To issue a writ order or direction in the nature of Mandamus directing the respondent No. 3 to restore the petitioner at same pay & stage from which he has been reduced and also order to refund back the reduced amount with all consequential benefits."

2. The facts are not in disputed, the applicant was served the Memorandum of charges on 10.03.2005. He submitted his reply on 17.03.2005 denying the allegations in the charge sheet. Being not satisfied with the reply of the applicant the Disciplinary Authority appointed the Inquiry Officer. After conducting inquiry the Inquiry Officer submitted his report, a copy of which was forwarded to the applicant on 13.07.2006. The applicant submitted his defence on 29.07.2006. Acting upon the inquiry report the Disciplinary Authority passed the order on 26.09.2006 inflicting the punishment of reduction of pay of the applicant by one stage with further stipulation that he will not earn any increment during the period of reduction and also having the effect of postponing future increments. Against the above order the applicant filed statutory appeal,

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which too was rejected on 03.10.2006 (Annexure A-VIII) hence the O.A.

3. Pursuant to the notice the respondents resisted the claim of the applicant by filing detailed Counter Affidavit wherein they have supported the impugned order on the ground that on receipt of a complaint dated 06.01.2005 from National Commission for SC/ST, Lucknow against the applicant, the matter was investigated by ALWC/OEFC where prima facie the applicant was found guilty of misconduct. Based upon report of ALWC/OEFC dated 24.01.2005, the applicant was served with a Show Cause Notice to which the applicant submitted his reply on 10.02.2005. As the reply of the applicant was not found to be satisfactory he was served with a charge sheet under rule 14 of CCS (CCA) Rules 1965 on 10.03.2005. A due procedure was adopted and finally based upon the inquiry report the order of punishment was passed, which was upheld by the Appellate Authority. It is alleged that no Government servant is to lend money or to indulge in money lending business as per CCS (Conduct) Rules 1964 and the Article of Charge I, II and IV relate to these prohibited activities. It is further submitted that the above act of the applicant is also violative of Rule 3(1)(iii) and Rule 16 of CCS (Conduct) Rules 1964.

4. The applicant filed Rejoinder denying all the averments made in the CA.

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5. We have heard Shri R.K. Shukla, learned counsel for the applicant and Shri V.K. Pandey for the respondents.

6. Learned counsel for the applicant vehemently argued that the impugned order inflicting the punishment of reduction of pay by one stage with further stipulation that he will not earn any increment during the period of reduction and also having the effect of postponing future increments is based upon the inquiry report which itself is totally illegal as the inquiry proceeding has not been conducted in a fair manner. Firstly, neither the applicant was afforded opportunity to say any thing nor the Inquiry Officer asked any question relating to the proceeding and secondly, although the Inquiry Officer permitted the Presenting Officer to cross examined the applicant but did not summon the prosecution witness No. 1 to cross examine. He further urged that the respondent No. 3 has imposed the major penalty of reduction of pay at the verge of retirement and that too without taking into his past service record. Lastly he submitted that the inquiry report itself is vitiated and perverse, therefore, same cannot be relied upon and consequently the order of punishment is liable to be set aside.

7. On the other hand learned counsel for the respondents reiterated what has been stated in the Counter Affidavit.

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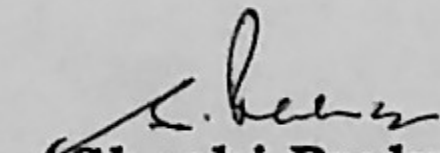
8. We have considered the rival submissions and have gone through the pleadings on record.

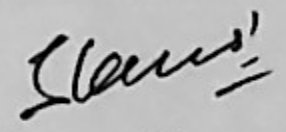
9. From perusal of charge sheet dated 10.03.2005 (Appended at Annexure A-III) it is clear that the applicant has been charge sheeted for gross misconduct under rule 14 of CCS (CCA) Rules 1965. We have also gone through the inquiry report (Appended at Annexure A-V) from where it is evident that a full fledged inquiry was conducted in which the applicant was afforded reasonable opportunity of hearing and finally Inquiry Officer held the applicant guilty of charge Nos. 1, 2 and 4 whereas charge No. 3 was not found proved. Based upon the inquiry report the Disciplinary Authority has inflicted the penalty of reduction of pay by one stage with further stipulation that he will not earn any increment during the period of reduction and also having the effect of postponing future increments. We find though the applicant was served with major penalty charge sheet for gross misconduct under rule 14 of CCS (CCA) Rules 1965 but have inflicted the penalty, which is minor penalty in nature. Thus we find no illegality in the action of the respondents. It is the law of land that the court cannot sit as an Appellate Authority over the orders passed by the authority imposing penalty except the delinquent employee proves that the conclusion drawn by the authority imposing penalty is based upon no evidence. Our view has been supported by the judgment reported in **AIR 1963 (SC) 1723 - State of Andra**

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Pradesh & Ors. Vs. S. Sree Rama Rao and 1996 (3) SCC 364
- State Bank of Patiala and Ors. Vs. S.K. Sharma.

10. In view of the above discussions, we find no good ground for interference with the impugned order. Accordingly, the O.A is dismissed with no order as to costs.


(Shashi Prakash)
Member-A


(Sanjeev Kaushik)
Member-J

/Anand/