

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 04<sup>th</sup> DAY OF DECEMBER 2012)

PRESENT:

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J  
HON'BLE MS, JAYATI CHANDRA, MEMBER -A**

**ORIGINAL APPLICATION NO. 604 OF 2007**  
(U/s, 19 Administrative Tribunal Act.1985)

1. Arun Kumar son of Shri Krishna Lal aged 42 years, resident of 3/49 Adarsh Nagar, Shukla Ganj, Unnao.
2. Sudarshan Lal son of Late Devi ulam aged 48 years resident of House NO. C-622, Vishwa Ban K Barra, Kanpur Nagar.

.....Applicants

By Advocate: Shri K. Lal

Versus

1. Union of India through Secretary, Ministry of Defence Production Government of India, Ministry of Defence South Block, New Delhi.
2. The Secretary, Ordnance Factories Board, Govt. of India, Ministry of Defence, 10-A Saheed Khudi Ram Bose Road, Calcutta-700001.
3. The General Manager, Ordnance Equipment Factory, Kanpur Nagar 208001.
4. The Addl. D.G.O.F OEF Group Fys. Hqrs. G.T. Road, Kanpur.

..... Respondents

By Advocate : Shri V.K. Pandey

**O R D E R**

**BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J**

By means of present Original Application filed under section 19 of Administrative Tribunals Act, 1985, the applicant seeks to quash the impugned orders dated 12.11.2006, 17.4.2007 and 16.4.2007 passed by the respondents.

2. The facts are to be noticed first:-

*J. Chandra*

M/s India Rubberising and Allied Industries Pvt. Ltd. Kanpur offered a quantity of 25,000 meters of Calico Cotton White Bleached 91 cms for which a team was deputed under the supervision of Shri Israr Ahmad and the applicants for inspection of the material at firm premises on 19.12.2005. It was clearly directed by the Higher Authority not to accept any sub-standard and spotted material under any circumstances and only to accept good quality material irrespective of whatever quantity was found acceptable during the bulk inspection. On 22.12.2005, Team Leader/Shri Israr Ahmad told his Superior Officer i.e. Joint GM/QC on telephone that approx. 13,000 meters of the aforesaid consignment was found acceptable and the rest was having yellowish patchy marks. Team Leader was again instructed to close the inspection with the accepted quantity and not to consider the patchy marked material. Said inspection was completed on 24.12.2005 and when the team submitted the inspection report on 26.12.2005, it was seen that a quantity of 24,400 (approx) of the consignment had been accepted against 25,000 meters offered. This was contrary to what Shri Israr Ahmad had told in his telephonic discussion with Joint GM/QC on 22.12.2005. Joint GM/QC ordered for random checking of said consignment by two officers, who submitted their reports for defect in cloths with yellow and black stains and holes at a number of places. Competent Authority rejected the report submitted by team, who deputed for inspection of Calico Cotton White Bleached 91 cms. Based on report of Joint GM/QC dated 27.12.2005, applicants were placed under suspension w.e.f. 28.12.2005. On 12.02.2006,

*J. Chandra*

chargesheet was served to both the applicants. They submitted reply on 21.02.2006 denying the charges levelled against them. Inquiry Officer was appointed and submitted his report on 08.08.2006 to the Disciplinary Authority and Disciplinary Authority imposed the punishment for reversion from the post of Examiner/MCM to Examiner/HS. Applicants preferred appeal which was rejected on 17.4.2007, hence this O.A.

3. We have heard Shri K. Lal counsel for the applicant and Shri V.K. Pandey counsel for the respondents.

4. Learned counsel for the applicant attacked the impugned order on two counts:-

(i) Firstly that only the applicants have been charge-sheeted for the alleged misconduct whereas the team leader under whose supervision the team was constituted has not been charge-sheeted. He has further alleged that even in the departmental proceedings, the applicants were not given chance to cross examine Israr Ahmad for which a specific request was made to the Enquiry Officer, which has been declined.

(ii) He further submitted that even as per Indian Standard Specification for Cotton Calico, copy of which has been appended as SRA-2, under the heading 2.2.3, it is to be seen that cloth shall be reasonably free from spinning, weaving and processing defects. Since the allegation against the

*J. Chandra*

applicants are that they are overlooked the defects and applicants have been negligent in performing the duty for which they have been punished. In support of contention, the learned counsel for the applicants has placed reliance on the judgment of Hon'ble Supreme Court reported in **2009 (2) SRJ 336- *Union of India and Ors. Vs. Prakash Kumar Tandon*** to the effect that when the team has been constituted then the team leader will be responsible for any negligence or discrepancy caused.

5. On the other hand, Shri V.K. Pandey learned counsel appearing for the respondents submitted that applicants have been granted full opportunity in the enquiry and since the applicants have prepared the joint note and submitted to the Higher Authority, therefore, the applicants have been charge-sheeted and not the team leader i.e. Israr Ahmad. No other point has been raised.

6. We have given our thoughtful consideration to the submission advanced by the learned counsel for the parties and perused the entire pleadings. The applicants have been charge-sheeted by order dated 12.2.2006 for the following charges:-

## “अनुच्छेद 1

श्री अरुण कुमार ने फर्म द्वारा सप्लाई किये जाने वाले कैलिको क्लाथ काटन हाइट ब्लीच्ड 91 सेमी० स्टोर को निर्धारित स्पीशीफिकेशन की अवहेलना करते हुए निम्न मानक के माल को पास किया जो अनुशासन विरोधी कार्य,

J Chaudhury

सत्यनिष्ठा मे कमी, कर्तव्य निष्ठा मे कमी, एवं सरकारी कर्मचारी से अपेक्षित आचरण के प्रतिकूल व्यवहार है जो केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम 3 (1) के (i) (ii) एवं (iii) का स्पष्ट उल्लंघन है।

#### अनुच्छेद 2

श्री अरुण कुमार ने फर्म द्वारा सप्लाई किये जाने वाले कैलिको क्लाथ काटन हाइट ब्लीच्ड 01 से 0मी0 के निरीक्षण में क्वालिटी से समझौता किया तथा निर्माणी के रक्षा उत्पादन को प्रभावित किया जो अनुशासन विरोधी कार्य, सत्यनिष्ठा मे कमी, कर्तव्य निष्ठा मे कमी, एवं सरकारी कर्मचारी से अपेक्षित आचरण के प्रतिकूल व्यवहार है तथा जो केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम 3 (1) के (i) (ii) एवं (iii) का स्पष्ट उल्लंघन है।

#### अनुच्छेद 3

श्री अरुण कुमार ने फर्म द्वारा सप्लाई किये जाने वाले कैलिको क्लाथ काटन हाइट ब्लीच्ड 91 से 0मी0 को निज लाभ पाने के लिए माल की क्वालिटी से समझौता किया जो अनुशासन विरोधी कार्य, सत्यनिष्ठा मे कमी, कर्तव्य निष्ठा मे कमी, एवं सरकारी कर्मचारी से अपेक्षित आचरण के प्रतिकूल व्यवहार है तथा जो केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम 3 (1) के (i) (ii) एवं (iii) का स्पष्ट उल्लंघन है।

#### अनुच्छेद 4

श्री अरुण कुमार ने आपूर्ति करने वाले फर्म को अवांछित लाभ पहुँचाने के लिये फर्म द्वारा सप्लाई किये जाने वाले कैलिको क्लाथ काटन हाइट ब्लीच्ड 91 से 0मी0 के क्वालिटी से समझौता किया एवं सरकार को नुकसान पहुँचाया 'अनुशासन विरोधी कार्य, सत्यनिष्ठा मे कमी, कर्तव्य निष्ठा मे कमी, एवं सरकारी कर्मचारी से अपेक्षित आचरण के प्रतिकूल व्यवहार है तथा जो केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम 3 (1) के (i) (ii) एवं (iii) का स्पष्ट उल्लंघन है।

#### अनुच्छेद 5

श्री अरुण कुमार ने वरिष्ठ अधिकारियो के दिशा निर्देशो की अवहेलना करने हुये फर्म द्वारा सप्लाई किये जाने वाले सब स्टेन्डर्ड दाग धब्बे युक्त कैलिको क्लाथ काटन हाइट ब्लीच्ड 91 से 0मी0 को स्वीकार किया जो अनुशासन विरोधी कार्य, सत्यनिष्ठा मे कमी, कर्तव्य निष्ठा मे कमी, एवं

1. *Arun Kumar*

सरकारी कर्मचारी से अपेक्षित आचरण के प्रतिकूल व्यवहार है तथा जो केन्द्रीय सिविल सेवा (आचरण) नियावली 1964 के नियम ३ (1) के (i) (ii) एवं (iii) का स्पष्ट उल्लंघन है।

### उपबन्ध 2

उपबन्ध 1 में दिये गये आरोपों के सम्बन्ध में श्री अरुण कुमार, इक्जामिनर एम० सी० एम० टि० सं० ५७/क्य०० सी० वै० सं० १०५८२७ आयूध उपस्कर निर्माणी, कानपुर के द्वारा किए गये दुराचरण/दुर्व्यवहार का विवरण:-

### अनुच्छेद 1.2 एवं 3

इण्डिया स्वराईजिंग एण्ड एलाइड इन्डस्ट्रीज प्राइवेट लिमिटेड, कानपुर को आपूर्ति आदेश संख्या पी०सी०/एल० पी०/२००४१२७२/टेक्स १५ दिनांक ०७.०२.२००५ के तहत कैलिको क्लाथ काटन हाइट ब्लीच्ड ९१ से० म० की मात्रा १,२२,५७७.०० मीटर की सप्लाई के लिए आपूर्ति का आदेश किया गया था।

उक्त फर्म ने दिनांक २८.११.०५ को २५,००० मीटर आपूर्ति का परीक्षण हेतु आफर चालान दिया। उक्त आपूर्ति किए जाने वाले माल की जाँच हेतु श्री अरुण कुमार, इक्जामिनर एम०सी०एम० टि०सं० ५७/क्य००सी० कौ० सं० १०५८२७ के साथ इण्डिया स्वराईजिंग एण्ड एलाइड इन्डस्ट्रीज प्राइवेट लिमिटेड, कानपुर भेजा गया। श्री अरुण कुमार के द्वारा निम्न मानक माल को पास कर देने के उपरान्त फर्म ने अपने चालान संख्या १७/०५-०६ दिनांक २४-१२-०५ के द्वारा निर्माणी को उक्त स्टोर सप्लाई किया। उक्त स्टोर निर्माणी एम०आई०जी०पी० संख्या २००५०७७४५ दिनांक २४.१२.०५ को प्राप्त हुआ। श्री अरुण कुमार को उक्त माल को निर्दिष्टीकरण के अनुसार जाँच करके पास करने की जिम्मेदारी सौंपी गयी थी और उन्हे फर्म में निरीक्षण के लिए भेजा गया। श्री अरुण कुमार ने उक्त माल को बिना ठीक प्रकार से जाँच किये, तथा गलत तरीके से निज लाभ जाने हेतु निर्दिष्टीकरण की अवहेलना करते हुए पास किया।

इस सम्बन्ध में उक्त स्टोर के बोल्ट संख्या १४० एवं १८५ की आकस्मिक जाँच की गयी। जिसे श्री एस० एस० डोइफोडे, कार्य प्रबंधक/टेक्स १ एवं श्री एस० मजूमदार, क० का० प्र/क्य००सी० द्वारा सयुक्त रूप से निष्पादित किया गया और उक्त स्टोर को उत्पादन के लिए निष्प्रिष्ट स्पीशलिफिकेशन आई० एस० १५४४-१९७३ के अनुरूप नहीं पाया गया और उसमें तमाम कमियाँ पायी गयी जैसे त्रुटिपूर्ण बिनायट वाला, छेदो वाला एवं उस पर काले पीले धब्बे होगा। श्री अरुण कुमार द्वारा उक्त स्टोर की पास करने में सम्बन्धित अधिकारियों ने अनियमितता पायी तथा उस स्टोर के उपरोक्त बोल्टों को सील किया गया।

J. Chaudhary

## उपबन्ध 3

श्री अरुण कुमार, इकजामिनर एम० सी० एम० टी० सं० 57/क्यू०सी० वै०सं० 105827ए आयुध उपस्कर निर्माणी, कानपुर पर उपबन्ध 1 में लगाये गये आरोपो एवं उपबन्ध 2 में दिये गये विवरण को प्रमाणित करने के लिए निम्न अभिलेखों को प्रस्तुत किया जाने का प्रस्ताव है:

1. सप्लाई आर्डर संख्या पी०वी०/एल०पी०/20041272/ टी 1 दिनांक 07.02.2005.
2. फर्म का आफर चालान दिनांक 28.11.05
3. चलान सं० 17/05 06 दिनांक 24-12-2005
4. निरीक्षण पत्र दिनांक 24.12.05
5. संयुक्त महा प्रबंधक की रिपोर्ट दिनांक 27/12/2005
6. आई० जी० पी० सं 200507745 दिनांक 24.12.2005
7. अधिकारियों की संयुक्त जॉच रिपोर्ट, दिनांक 27.12.2005
8. निर्दिष्टीकरण (specification) आई० एस० 1544-1973
9. श्री इसरार अहमद, पूर्व कार्यवेक्षक-II/ओ०ई०एफ०सी० का प्रार्थना पत्र दिनांक 09.01.06".

7. Israr Ahmad, who was the team leader, was one of crucial witness and admittedly, he was not allowed to cross examine. It is also learnt from the pleadings that it is admitted by Bandhupadhyaya that he has also instructed Israr Ahmad, who was the team leader, about the verification, which was never communicated to the applicants, who were also in the team. In the enquiry report, it is also admitted by the Inquiry officer that Bandhupadhyaya informed the team leader which reads as under:

“सरकारी गवाह - 1 के परीक्षण और प्रति परीक्षण करने पर यह स्पष्ट होता है कि बल्की इन्सपेक्सन के पहले श्री बन्द्योपाध्याय ने बल्कि इन्सपेक्सन के बारे में टीम लीडर श्री इसरार अहमद को ब्रीफ किया था। श्री इसरार अहमद ने फर्म प्रिमिसेज में निरीक्षण के दौरान दाग धब्बे वाले थान के होने से सम्बन्धित सूचना श्री बन्द्योपाध्याय को दिया जिसे इन्होने रिजेक्ट करने का आदेश दिया। साथ ही इसरार अहमद ने यह भी बताया कि इन्सपेक्सन समाप्त कर दो और दाग धब्बे युक्त मैटेरियल को न लेने का आदेश दिया। इस आदेश के बावजूद दाग धब्बे युक्त मैटेरियल को स्वीकृत किया गया। वरिष्ठ अधिकारी के दिये गये आदेश की अवहेलना की गई।

— J. Chaudhary

और स्वीकृत न होने योग्य मैट्रियल को स्वीकृत किया गया।"

8. From the above, it is evident that nowhere it is pleaded by the respondents that Israr Ahmad also communicated the above direction to the applicants. Moreover, since the team has been constituted for the inspection and it is for the team leader to submit the report to the Higher Authority who thereafter to act accordingly. Respondents have not issued the charge-sheet to Israr Ahmad it smacks of favoritism, therefore, the impugned charge-sheet cannot be sustained particularly when applicants ~~th~~ were not allowed to cross examine ~~the~~ Israr Ahmad, who is material witness. It is settled law that when delinquent officer was not allowed to cross examine the material witness then the enquiry proceedings cannot be sustained. Moreover, inspection report, copy of which has been appended to the supplementary counter affidavit, shows that inspection report has been signed by all the three persons including Israr Ahmad. Once the report has been signed by Israr Ahmad then he is also equally responsible for the alleged loss. No reason has been given as to why Israr Ahmad has not been charge-sheeted if the applicants have been charge-sheeted on the same charges. Our view finds support of the case of **Prakash Kumar Tandon (supra)**. The relevant portion of the judgment reads as under:-

"8. *Order of the Appellate Authority was questioned by the respondents by filing an original application before the Central Administrative Tribunal. In the said application, respondent, inter alia, contended that Inquiry Officer being superior in rank to the Disciplinary Authority and Mr. B.S. Wallia having not been examined as a witness by the Department, the order imposing penalty was unsustainable.*  
*"After hearing the learned counsel for the parties, we find from Annexure A-3 that "AEN is responsible for correctness of moment for all works" and applicant has also requested to the respondents*

*T Chandra*

*to call the AEN for clarifying the picture. But, he was not called whereas he was main person to clarify the picture. In the reply the respondents have stated that Shri Walia was interrogated by the vigilance and nothing was found against him. Hence he was not called nor cited as witness. It seems to be not satisfactory, therefore, the contention of the respondents is rejected. We have also found that the enquiry officer was from a different department and of a different division and thus there is no question of daring to disagree or a reappreciated the findings by independent application of mind. However, the argument advanced by the respondents also does not seem to be proper and justified. the enquiry officer must be junior to the disciplinary authority. He may be of any department. If the enquiry officer is senior to the disciplinary authority, the same is neither legal nor justified and it is against the principles of natural justice".*

9. Since the enquiry proceedings are quasi judicial function, it is incumbent upon the Inquiry Officer to provide full opportunity to the delinquent officer to defend his case. As alleged by the applicants, they have not been given chance to cross examine the material witness, therefore, the full opportunity to defend themselves has not been extended to the applicants, therefore, enquiry proceedings does not survive and consequential impugned orders. We also find support from the judgment of Hon'ble Supreme Court reported in **AIR 1996 S.C. 998.**

10. In view of the above, the impugned orders do not survive and accordingly, the same are quashed.

11. In the above term, the O.A. is allowed. No costs.

*T. Chandra*

Member (A)

*Manish*  
Member (J)

Manish/-