

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 622 of 2007

Allahabad this the 23rd day of November 2011

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Mr. Shashi Prakash, Member (A)**

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

Applicant

By Advocate: Mr. O.P. Gupta

Vs.

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

Respondents

By Advocate: Mr. Himanshu Singh

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD

Instant O.A. has been instituted for the following relief (s): -

"In view of the facts and grounds mentioned above, it is prayed before the Hon'ble Court to be pleased to quash the

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Instant O.A. has been instituted for the following relief (s): -

"In view of the facts and grounds mentioned above, it is prayed before the Hon'ble Court to be pleased to quash the

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penalty order dated 6-2-2007 passed by the Hon'ble President of India [Ann. No. -A-1].

It is also prayed further that any deduction made from the pension of application in pursuance of the penalty order dated 6-2-2007, may be refunded to the applicant along with interest at market rate.

Any other order or direction to which this court may deem fit and proper in the facts and circumstances of the present case may also be passed."

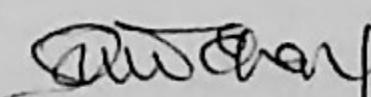
2. Pleadings of the parties may be summarized as follows: -

It has been alleged by the applicant that while he was working as Chargeman-II, was given charge sheet dated 09.09.2002. The applicant denied from the charges but even then the inquiry was instituted against him. During the pendency of inquiry, applicant was compulsory retired from service in pursuance of another disciplinary proceeding. In the present inquiry, no charges were proved against the applicant but because the applicant was compulsory retired from service, and the matter pertains to the President of India for final decision in the matter hence, disagreement note was served on the applicant dated 15.12.2006, and was given opportunity to make a representation against the same. On dated 26.12.2006, a reply was submitted of the show cause notice but the President of India has passed the penalty order dated 06.02.2007 imposing the penalty of cut in his

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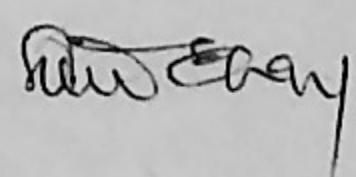
pension of ₹ 100/- per month for a period of two years.

Under these circumstances, O.A. is filed to challenge the order dated 08.02.2007. Till filing of the O.A., no deduction has been started from his pension in pursuance of the penalty order. The charges against the applicant were that he misbehaved and manhandled with Sri Ranjeet Singh on 08.07.2002. Secondly, he is in the habit of indulging in misconduct/misbehaviour and is ~~an~~ -disciplined employee. Five witnesses were examined during the inquiry but they refuted the charges leveled against the applicant. However, 10 witnesses were examined by the defense, and out of 10, 05 witnesses were namely S/Sri Suresh Singh, R.G. Yadav, Narbadeshwar Singh, Naresh and Khushi Ram as eye witness but they have denied from the incident. Moreover, they have also stated that Sri Ranjit Singh refused to sign the requisition paper and threw the same on the face of Sri V.K. Gautam - applicant. When Sri V.K. Gautam requested him to behave properly, Sri Ranjit Singh threw the papers on his face. It was also stated that Sri Ranjit Singh punched so forcibly on the face of Mr. V.K. Gautam-applicant that he has suffered finger pain. Moreover, prosecution witnesses admitted the case of applicant. But even then the punishment order was awarded. The disciplinary authority disagreed with the I.O. and His Excellency the President of



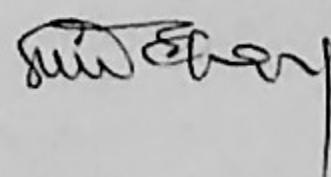
India passed the order of punishment. The complainant Ranjit Singh himself is responsible for the incident. Contrary to the facts, the applicant has been punished. The order of punishment deserves to be set aside and quashed. It is submitted that one O.A. No. 1460 of 2006 is still pending and in that O.A., the order of compulsory retirement was challenged.

3. The respondents contested the case, filed the Counter Affidavit and denied from the allegations made in the O.A. It has further been alleged that the oral inquiry was ordered by the disciplinary authority vide charge sheet dated 09.09.2002 on the charges of misbehaviour and manhandling with the superiors. The charges also framed that the applicant is incorrigible employee and not amenable to discipline and habitually indulged in misconduct and misbehaviour with fellow employee/superior officers. The I.O. held that the charges of misbehaviour and manhandling with his superior Sri Ranjit Singh has not been proved but the Disciplinary Authority, Hon'ble President of India after considering the inquiry report communicated the disagreement note to the applicant and directed the applicant to submit the representation, and representation was also submitted by the applicant. Thereafter, considering the representation



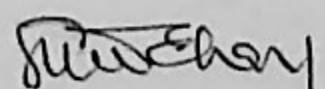
of the applicant, order of punishment was passed to cut in pension of Rs.100/- per month for a period of two years.

The order of cut in pension had already been communicated to the bank concerned. The applicant during the course of oral inquiry concealed the action of the charged officer and confused the circumstances of incident. Sri V.K. Gautam in representation dated 26.12.2006 on disagreement memorandum has conceded the existence of pain with Shri Ranjit Singh while wondering how pain Shri Ranjit Singh's finger is more than pain in Shri Ranjit Singh's head, thereby Sri Gautam has confessed punching Shri Ranjit Singh's head. Sri Binda Charan has stated that both Sri Ranjit Singh and Sri V.K. Gautam were jostling with each other, and Sri SKD Sharma and Sri Binda Charan separated Sri V.K. Gautam and Sri Ranjit Singh. Sri SKD Sharma stated that Sri V.K. Gautam punched Sri Ranjit Singh on his head when he was seated and forced Sri Ranjit Singh to seat holding his hands. Sri Ranjit Singh, therefore, complained pain in his finger. There were witnesses against the applicant. It is alleged that the applicant was facing two departmental inquiries simultaneously, and it appears that the applicant manhandled with his superior Sri Ranjit Singh being incorrigible employee and not amenable to discipline. In another inquiry, penalty of



compulsory retirement was imposed upon Sri V.K. Gautam-applicant. It was decided by the Disciplinary Authority on exercise of extent rule that there was no need to peruse the departmental proceedings on charge memo dated 09.09.2002, and the proceedings had been kept under suspended animation/abeyance till further order. In O.A. 1137 of 2002, direction was given to the Disciplinary Authority to take the disciplinary proceedings to its logical end and take final decision in the matter within a period of three months hence the final decision was taken and the Disciplinary Authority disagreed with the finding of the I.O. It is stated that the subsequent inquiry in which penalty has been imposed of the compulsory retirement was also regarding the charge of misconduct and misbehaviour. The inquiry was properly conducted and the Disciplinary Authority ^{has} got the right to disagree with the finding of the I.O. Hence, there is no illegality and impropriety in the order. Therefore, O.A. is liable to be dismissed.

4. In response to the Counter Reply of the respondents, RA has also been filed on behalf of the applicant. Moreover, a short counter affidavit as well as supplementary counter affidavit has also been filed by the



respondents, which shall be discussed at the appropriate place.

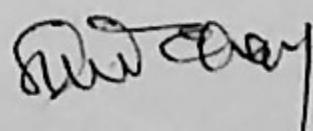
5. We have heard Mr. O.P. Gupta, Advocate for the applicant and Mr. Himanshu Singh, Advocate for the respondents and perused the entire facts of the case.

6. It is an admitted fact that a charge sheet was served on the applicant regarding some incidence of misbehaviour and manhandling with his superior Sri Ranjit Singh, Senior Store Superintendent, Store Section on 08.07.2002 at about 02.35 p.m. over local purchase requisition/demand of binding clothes. There had been some scuffle between the applicant and Sri Ranjit Singh- superior officer of the applicant. It is also an admitted fact that during the course of inquiry, statement of witnesses were recorded and the I.O. submitted the report to the effect that the charges framed against the applicant are not proved. In the meantime, and during this period, applicant faced another departmental inquiry, and in that departmental inquiry punishment order was passed of compulsory retirement from service of the applicant and hence after compulsory retirement of the applicant, punishment order was passed by His Excellency-President of India. It is also evident from the order of punishment, that the Disciplinary Authority disagreed with the finding

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of the I.O. and outright punishment order was passed after calling and considering the representation of the applicant. A punishment of cut of Rs. 100/- per month from the pension of the applicant for a period of two years was imposed. The main contention of learned counsel for the applicant is that no evidence was received by the I.O. during the proceedings of inquiry, and none of the witnesses supported the story rather they have stated that it was Sri Ranjit Singh who gave a blow to applicant, and in the inquiry report submitted by the I.O. it is held that the charges are not proved. Under these circumstances, when there was no material before the Disciplinary Authority, it is unjustified on the part of the Disciplinary Authority to impose the order of punishment, and the order of punishment is devoid of merit.

7. It is a fact that the I.O. submitted the inquiry report in the matter and he exonerated the applicant from the charges framed against him. But the Disciplinary Authority disagreed with the findings of the I.O. and thereafter a show cause notice was served on the applicant. There can be various reasons due to which, witnesses were hostile. It is a fact that the applicant had been working as a Class III employee whereas Sri Ranjit Singh was his superior officer; some incident took place



on 08.07.2002 at about 02.35 p.m. over local purchase requisition/demand of binding clothes; at that time Sri V.K. Gautam-applicant had acted in a manner unbecoming to a Government servant. The applicant demanded Fevicol, to which Sri Ranjit Singh stated that the Fevicol is not being used in binding but Sri Gautam got annoyed from it. However, Sri Ranjit Singh asked Sri Gautam to write Fevicol on the requisition but Sri Gautam threw the paper on the face of Sri Ranjit Singh and also gave him a punch on his forehead; when Sri Ranjit Singh got up from his seat, then Sri Gautam twisted his hand causing him pain. Numerous witnesses have seen this incident, and they were examined. It has been stated that the witnesses were turned hostile and they have not supported the story of Sri Ranjit Singh hence there was no material available with the Disciplinary Authority to award the punishment. It is a fact that the Disciplinary Authority has got the right to disagree with the findings of the I.O. If an I.O. after submitting the report exonerated the charged official from the charges, then there are three options available to the D.A. firstly to agree with the finding of the I.O., and acquit the charged official; secondly the D.A. passed an order for fresh inquiry in the matter considering the gravity of the charges; and thirdly if the charges are so grave in nature, then a disagreement

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note can be served on the charged official. In the circumstances of the case, the D.A. adopted third recourse and the D.A. disagreed from the findings of the I.O. and a disagreement note was served upon the applicant to submit his explanation. Learned counsel for the applicant agreed that the D.A. was within his rights to disagree with the finding of the I.O. Learned counsel for the applicant cited the statements of witnesses in order to allege that there was no material available to the D.A. to serve a disagreement note. We have perused the inquiry report as well as disagreement note and from the inquiry report it is evident that the witnesses have not supported the story. But reliance has been placed on certain statement of witnesses by the D.A. Sri Ranjit Singh specifically stated that Sri V.K. Gautam-applicant punched on his forehead. Further Sri Binda Charan, U.D.C. stated in his statement that both Sri Ranjit Singh and Sri V.K. Gautam were jostling with each other, and Sri SKD Sharma and Sri Binda Charan separated Sri V.K. Gautam and Sri Ranjit Singh. He further stated that he did not remember the date and time of the incident. Sri SKD Sharma stated that Sri V.K. Gautam punched Sri Ranjit Singh on his head when he was seated and forced Sri Ranjit Singh to seat holding his hands. Sri Ranjit Singh, therefore, complained pain in his finger. There were witnesses

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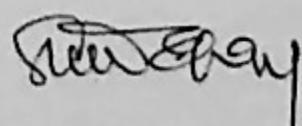
against the applicant. Hence, the D.A. was of the opinion that the I.O. has given factually incorrect finding. It has wrongly been stated that the penalty imposed on 01.10.1996 was quashed by the CAT vide order dated 05.08.2003. The CAT Allahabad Bench has quashed the appellate order dated 25.02.1997 on technical grounds and remanded the case back to the Appellate Authority to dispose off the appeal afresh; the penalty order has not been quashed by the CAT. The IO has further erred in observing that the major penalty proceedings initiated vide charge sheet dated 24.05.2001 has not yet finalised and still in progress, and outcome not known. He (I.O) ignored the basic facts that the applicant, despite being penalized in the past vide order dated 01.10.1996, did not show any sign of contrition or improvement but re-indulged into repeated misconducts warranting issue of major penalty charge sheet.

8. That D.A. considered certain material facts and the I.O. factually not considered these facts. It was wrongly observed by the I.O. that the punishment dated 01.10.1996 of compulsory retirement has been quashed by the CAT Allahabad Bench whereas the fact was that the punishment order was not quashed rather the appellate order was quashed. The applicant was found in

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misbehaving and manhandling with the superior officer in another proceeding also; applicant was held guilty, and this fact was also taken into consideration. These facts show that the applicant was in habit of misbehaving with his superior officers. The D.A. has every right to disagree with the findings of the I.O. Nothing has been argued by learned counsel for the applicant that irregularity or illegality has been committed by the D.A. The representation was called from the applicant after the DA disagreed with the report of the I.O. and thereafter after considering the representation, punishment order was passed. By no stretch of reasoning, it can be said that the punishment order was perverse. There is statement of Sri Ranjit Singh against the applicant and there is justification of the fact that as to why the other witnesses have not supported the story; other employees are fellow employee working with the applicant. In our opinion, there was no procedural lapse.

9. For the reasons mentioned above, we are of the opinion that there is no illegality or impropriety in the order passed by the D.A. Hon'ble President of India, and the President of India had acted within his rights to disagree with the findings recorded by the I.O. It cannot be said that the order of punishment of the D.A. is



perverse. There was statement of Sri Ranjit Singh against the applicant. There is record of the applicant of misbehaving with his superiors. There is no reason to interfere in the order of punishment imposed upon the applicant. O.A. lacks merit and is liable to be dismissed.

10. O.A. is dismissed. No order as to cost. *The interim order
granted by order dated 07/09/07 stands vacated*

S. Rana
Member - A

S. W. Chary, B.A.M
Sr. Member-J/HOD

/M.M/