

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad This the 7th day of April 2017

PRESENT:

**HON'BLE DR. MURTAZA ALI, MEMBER - J
HON'BLE MR. O.P.S MALIK, MEMBER-A**

Original Application No.709 of 2007.

A.K Pandey, son of Ticket No. 56/C.M Quarter No.
415/New Type IIIrd, Armapur Estate, Kanpur.

..... Applicant

By Advocate: Shri M.K. Upadhyaya

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Additional Director General, Ordnance Factory/Member Ordnance Factory Board, 10-A, S.K. Bose Road, Kolkata.
3. Senior General Manager, Ordnance Factory, Kanpur.

..... Respondents

By Advocate: Shri Arvind Singh.

**ORDER
BY HON'BLE DR. MURTAZA ALI, MEMBER - J**

The applicant has filed this O.A under section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs –

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“(i) to quash the order dated 21.10.2005, 20.12.2005 and 11.7.2006 (Annexure No. 1, 2 and 3 of the Original Application) passed by respondent No.2 and 3 with all consequential benefits.

(ii) To issue any other and further relief as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iii) to issue award cost of the original application to the applicant”.

2. The brief facts of the case are that a charge-sheet dated 6.12.2004 was served upon the applicant for alleged misconduct under Rule 14 of C.C.S (C.C.A) Rules, 1965 while he was working as Labour in Ordnance Factory Kanpur. He denied the charges and submitted his reply. The Inquiry Officer conducted the enquiry and submitted his report on 8.9.2005. On receipt of copy of enquiry report from Disciplinary Authority, he submitted his reply on 24.9.2005 and challenged the authenticity of the said enquiry and requested to exonerate him. The Disciplinary Authority imposed the punishment of reduction of pay for 3 stages from Rs. 3580 to Rs. 3370 in the pay scale of Rs.2650-65-3300-70-4000 for a period of 2 years with cumulative effect vide order dated 21.10.2005. The applicant preferred an appeal on

3.12.2005 against the said punishment which was rejected by the Appellate Authority vide order dated 11.7.2006. It has been alleged that charges against the applicant and Shri U.K. Awasthi were same and both were found equally responsible for the fighting incident but he has been punished by reduction of pay by one stage for 6 months only while the applicant has been awarded harsher punishment.

3. In the counter reply filed on behalf of respondents, it has been stated that on 8.11.2004, Shri U.K. Awasthi, L.D.C./Store submitted his complaint against the applicant for manhandling him while he was discharging Government duty. The applicant also submitted an application for alleged beating by Shri U.K. Awasthi. The applicant and Shri U.K. Awasthi were placed under suspension w.e.f. 11.11.2004 and charge-sheets were served upon them separately. On denial of charges, Shri A.K. Sharma was initially appointed as Inquiry Officer and later-on Shri S.S. Dwivedi was substituted as Inquiry Officer in his place, who submitted his report and held the applicant guilty on various charges. On considering the representation of applicant against the enquiry

report, the Disciplinary Authority while agreeing with the findings of Inquiry Officer took a lenient view by imposing the penalty of reduction of pay by 3 stages from Rs. 3580-3370 per annum in the pay scale of Rs. 2650-65-3300-70-4000 for a period of 2 years with cumulative effect vide order dated 21.10.2005. It is stated that the appeal filed against the said penalty has rightly been rejected by the Appellate Authority vide order dated 11.7.2006.

4. Heard Shri M.K. Upadhyay counsel for the applicant and Shri Arvind Singh counsel for the respondents and perused the records.

5. Learned counsel for the applicant confined his arguments on the issue of parity only and contended that parity should be maintained in awarding the punishment as both the employees were found equally responsible for the alleged misconduct but the applicant has been awarded harsher punishment. He relied upon the judgment of Hon'ble Supreme Court in the case of **Director General of Police and others Vs. S. Dasiyan** reported in 1998 (L & S) 557 and prayed that the

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applicant should not be discriminated in awarding punishment.

6. Learned counsel for the respondents contended that the role of applicant was grave, compared to the role of Shri U.K. Awasthi and, therefore, applicant has been awarded harsher punishment.

7. In catena of cases, Hon'ble Supreme Court has held that in imposing punishment, the authorities cannot discriminate and similarly situated delinquent employees should be awarded similar punishment.

8. In the case of ***Man Singh Vs. State of Haryana and others*** reported in ***(2008) 12 SCC 331***, Hon'ble Supreme Court held that the concept of equality as enshrined in Article 14 of the Constitution, embraced the entire realm of State action. It would extend to an individual as well, not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. The doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a

government action. The administrative action is to be just on the test of "fair play" and reasonableness. It has further been held that the appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis head constable HC Vijay Pal, the driver of the vehicle.

9. In the case of **State of UP and other vs Raj Pal Singh** reported in (2010) 5 SCC 783 Hon'ble Supreme Court has held that when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In the case of **Rajendra Yadav Vs. State of M.P. and others** reported in (2013) 3 SCC 73 it has been held by Hon'ble Supreme Court that the doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment

is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences. It has further been held that the action of disciplinary authority imposing a comparative lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law since they were all involved in the same incident.

10. In the case of **Ramesh Chandra Gupta Vs. General Manager (Karmic) UPSRTC Lucknow and others** reported in **2010 (4) ADJ 708 (LB)** it has been held by Hon'ble Allahabad High Court that similar punishment should be awarded to the delinquents who were charged with similar set of allegations.

11. The charge memo served upon the other employee viz. Shri U.K. Awasthi involved in the same incident, its enquiry report and punishment order are not on record

but the respondents have filed the complaint of applicant as well as complaint of Shri Umakant Awasthi as Annexure CA-2 and CA-3 to their Counter Affidavit, which are reproduced as under -

“सेवा में
श्रीमान महाप्रबन्धक महोदय
आ० नि० कानपुर

महोदय

निवेदन है कि प्रार्थी स्टोर क्षेत्र से समिति संचालक है। आज प्रार्थी दि० 8.11.04 को समय 11-30 A.M को बीमार व्यक्ति सज्जन लाल 90/स्टोर को तथा समिति सम्बन्धित कलर्क श्री चन्द्रशेखर सिंह को साथ लेकर लाभांश दिलाने गया।

वहाँ पर अनुभाग लिपिक श्री यू० के० अवस्थी जो लाभांश वितरित कर रहे थे। उनसे लाभांश दिलाने के लिये बात किया परन्तु उन्होने प्रार्थी का कालर पकड़कर आफिस के बाहर लाकर मारने लगा और गाली गलौज करते हुए बाहर धक्का देकर गिरा दिया। और जान से मारने की धमकी दिया। तथा पेट में लातों घूसों से मारा। अतः आप से अनुरोध है कि इस प्रकरण की जाँच कर उक्त आरोपी के उपर कानूनी कार्यवाही करके एक विकलांग व्यक्ति के साथ न्याय करने की कृपा करे।

गवाहः—

1. अजय पाण्डे
2. सज्जन लाल ०/० Store
प्रतिलिपि प्रेषित
1. श्रीमान् वरिष्ठ सुरक्षा अधिकारी
आ० नि० कानपुर

प्रार्थी
(ए० के पाण्डेय)
56/सा० एम० फैक्टी
आ० नि० कानपुर”

“सेवा मे

सुरक्षा अधिकारी
आ० नि० कानपुर

विषय – भण्डार अनुभाग के अन्दर कोआपरेटिव सोसायटी के श्री ए. के. पाण्डेय द्वारा मारपीट करने के सम्बन्ध में

महोदय

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आज दि. 08.11.2004 को श्री ए. के पाण्डेय आदि और किसी का पेमेन्ट करने के लिये दबाव डाला मना करने पर मार पीट के उतार हो गये एवं प्रार्थी को मारा प्रार्थी के गम्भीर चोट आई अतः श्रीमान जी से निवेदन है कि प्रार्थी के साथ उचित न्याय किया जाये।

उपरोक्त घटना हम लोगों के समक्ष हुई¹
Arun Kumar 32/S.

अब्दुल शकूर
चमन इरफान
बी के गिर कार्य / मण्डल
ओ० पी० शर्मा पर्यवेक्षक / स्टोर

प्रार्थी
उमाकान्त अवस्थी
अ० नि०”

12. From perusal of complaints filed by both the employees, it appears that allegations are almost similar in nature. The applicant was charge-sheeted under Rule 14 of C.C.S (C.C.A) Rules 1965 of following charges –

“(i) *On 08.11.2004 at about 11.40 A.M when Shri Awasthi, LDC/Stores disbursing regular pay and cooperative dividend in respect of IEs of Stores section in Stores section, the appellant entered Stores section and pressurised Shri Awasthi to release the Co-operative Society dividend payment in respect of one Shri Sajjan Lal T. No. 90/Stores. On denial by Shri Awasthi the appellant entered into scuffle with Shri Awasthi besides fighting.*

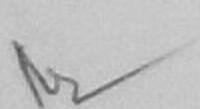
(ii) *Since the appellant was involved in money lending business inside the factory, he pressurized Shri Awasthi to release payment of Shri Sajjan Lal so that the payable amount*

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could be regularized in the money lending business.

- (iii) Gross misconduct thereby obstructing Govt. work without any authority.**
- (iv) Gross misconduct – creating an atmosphere towards loss of govt. money.**
- (v) That in collaboration with Shri Awasthi, Shri A.K. Pandey submitted a compromise letter in the office of Foreman/SO on 08.11.2004 at about 1430 hrs in order to settle the issue. The above acts on the part of Shri A.K. Pandey are in contravention of rule 3 (1) (ii) and (iii) of CCS (Conduct) Rules 1964".**

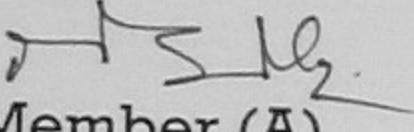
13. The Inquiry Officer found the charges No.1, 3, 4 and 5 as proved against the applicant. However, the Inquiry Officer also found Mr. U.K. Awasthi to be equally responsible for the said fighting incident. After considering the representation received on the enquiry report, the Disciplinary Authority imposed a penalty of reduction in pay to 3 stages from Rs.3580 to Rs.3370 in the pay scale of Rs.2650-65-3300-70-4000 for a period of 2 years with cumulative effect against the applicant. There is no document on record to show what charges were levelled against Mr. U.K Awasthi and what charges were proved against him and on what ground Disciplinary Authority imposed the penalty of reduction

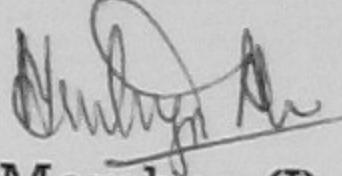


in pay by one stage from Rs.5450 to Rs.5300 in the pay scale of Rs.5000-150-8000 with cumulative effect for a period of merely 6 months against Mr. U.K. Awasthi.

14. The respondents have not controverted the fact that after occurrence of said incident both the employees namely Shri U.K. Awasthi and Shri A.K. Pandey had preferred a joint application (Annexure A-3) stating therein that due to some misunderstanding such incident was occurred and now there was no dispute among them. They have also requested to stop any proceeding in this regard. It is also not in dispute that the applicant is a handicapped person. Taking into consideration, the letter of compromise preferred by both the employees and finding of Inquiry Officer holding both the employees are equally responsible for such incidents and in absence of any document in respect of Shri U.K. Awasthi including charge-sheet, enquiry report and punishment order, we are of the considered view that both the employees should be awarded similar punishment as they were involved in an incident for which the Inquiry Officer held both the employees as equally responsible for such misconduct.

15. Accordingly, O.A. is partly allowed and impugned punishment order dated 21.10.2005 and appellate order dated 11.7.2006 are quashed. The respondents are directed to consider to pass fresh punishment order in accordance with the observations made hereinabove within a period of 2 months from the date of receipt of this order. No order as to costs.


Member (A)


Member (J)

Manish/-