

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

RESERVED

Dated: This the 3rd day of Dec 2010

Original Application No. 847 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

Jamuna Prasad, T. No. 243/SM-II, P. No. 2554, Presently working as Machinist (H.S.) Ordnance Factory, Kanpur.

..... Applicant

By Advocate: Sri G. Chaudhar

V E R S U S

1. Union of India through its Principal Secretary, Ministry of Defence, New Delhi.
2. The Senior General Manager, Ordnance Factory, Kalpi Road, Kanpur.
3. The Chairman/DGOF, Ordnance Factory Board, Kolkata (WB).
4. The Additional DGOF/Member Appellate Authority.

..... Respondents.

By Advocate: Shri R.C. Shukla

O R D E R

Through this OA the applicant seeks quashing of orders dated 19.07.2007 (Annexure A-1 to the OA) and 20.07.2005 (Annexure A-2 to the OA).

2. Vide order dated 20.07.2005 penalty was imposed by Disciplinary Authority stipulated reduction of pay by one increment and recovery of amount ₹ 56857.97 from the pay of the applicant. Vide order dated 19.07.2007 the appeal against the penalty order has been rejected by the Appellate Authority.

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3. On 26.06.2003 the applicant was performing his function as operator in the Ordnance Factory. There was an accident of sorts ~~relating~~ ^{resulting in} into some damage to a shell under manufacturing. The applicant was charge-sheeted through memorandum dated 11.11.2003 (Annexure A-3 to the OA). The applicant demanded a Court of Inquiry which was held. Witnesses were examined and cross-examined and the inquiry was concluded and submitted by Sri S.N. Gupta (Annexure A-10 to the OA). The applicant was held guilty. He submitted his representation and after considering the same the Disciplinary Authority imposed the penalty and the Appellate Authority rejected the appeal after considering the grounds raised in the appeal.

4. Essentially, the applicant does not seem to have any grievance of any short-circuiting of procedure in the disciplinary proceedings. According to him, however, the penalty has been imposed even while there was no conclusive evidence of any wrong going on his part and that he has been punished only on a suspicion. He also alleged that during the inquiry statement of one Sri Jashveer Singh was recorded who was working as a programmer. In his statement Sri Jashveer Singh opined that the accident took place because of fluctuation in the voltage and that the applicant could not be blamed for that. It was submitted that all the witnesses examined during the inquiry were technical experts and that their opinion should have been considered while arriving at final conclusion by the Disciplinary Authority.

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5. The inquiry report was perused. For the purposes of this OA it will suffice to say that inquiry officer considered three possibilities which may have led to the accident. First two possibilities were ruled out. There was a suspicion of the 3rd possibility having played out, though not proved. The enquiry officer finally concluded as under:-

"Considering the situation, it is, therefore, concluded that circumstances and the evidences in case, definitely point out the mistake on the part of the A.G.S. Shri Jamuna Prasad, although the conclusive proof could not be produced. The charge of negligence of duty on part of A.G.S., Shri Januma Prasad T. No. 243/SM II, OFC, is "established", to some extent, and he cannot escape responsibility of the facts of the accident and therefore the loss of the state."

6. The appellate authority agreed with the findings of the enquiry officer and imposed penalties as described above.

7. The appellate authority considered the valid grounds raised in the memo of appeal and for the reasons recorded in the order dated 19.07.2007 rejected the appeal.

8. Heard learned counsel for the parties and perused the material on record. It has to be pointed out at the very outset that this Tribunal does not sit as a Court of Appeal against the order of the Disciplinary and Appellate Authorities. The Tribunal performs its functions in such cases by limiting itself to the judicial review of the entire proceedings and to come to a conclusion whether procedure prescribed as per law/rules has been followed and the rule of natural justice has been observed. Also that the order of the authorities imposed is not disproportionate to the alleged offence.

(Signature)

9. The Tribunal is of a firm view that no irregularity of procedure and violation of natural justice has been committed by the authorities.

10. One significant ground taken by the applicant is that he should have not been penalized twice for same offence. The Tribunal has considered this aspect also. Rule 11 of CCS (CCA) Rules, 1965 provides as under:-

"Minor Penalties -

- (i) censure;*
- (ii) withholding of his promotion;*
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;*
- (iii a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.*
- (iv) withholding of increments of pay;"*

11. Similarly the question of 02 statutory penalties was clarified in Swamy's Compilation of CCS (CCA) Rules, 1965 (3rd edition 2006) :

"(22) Imposition of the penalty of recovery - (a) General conditions. - In the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss.

In the case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer, and while determining any omission or lapses on the part of an officer, the bearing of such lapses on the loss considered and the extenuation circumstances in which the duties were performed by the officer, shall be given due weight.

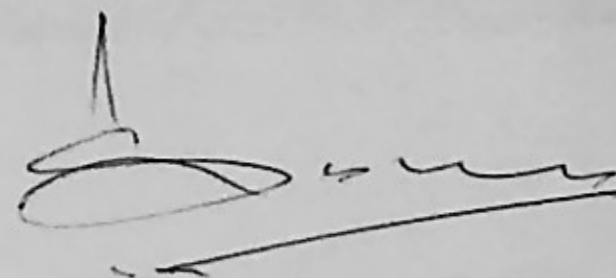
The amount of recovery of loss ordered as a measure of penalty can be reduced by the punishing authority at any later stage if it is found that the amount of loss sustained by the Government is less than that originally calculated. If, however, the loss subsequently found to be nil,

the case has to be reviewed by the competent authority for imposing, an appropriate penalty. That authority will not, however, be competent to impose a penalty higher than that of recovery.

[Rules 106, 107 and 111 of P. & T., Manual, Vol. III.]"

12. Under these circumstances two penalties parse cannot be termed illegal since both go towards making up of pecuniary loss to the state. From the record it is understood that the total loss to the equipment etc was in the range of approximately ₹ 7 lacs and, therefore, there appears to be a considerable seriousness in the observation of the competent authority to the effect that a lenient view was being taken while imposing the penalties on the applicant. The order of the authorities cannot said to be arbitrary, high-handed, disproportionate or harsh.

13. In view of the above I do not find any reason warranting intervention in the impugned orders. OA, therefore, stands dismissed. No cost.



Member (A)

/pc/