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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 512 of 2000
Cuttack, this the 16th day of April, 2004

Dinabandhu Mishra.

....

Applicant,

-Versus-

Union of India & Ors.

....

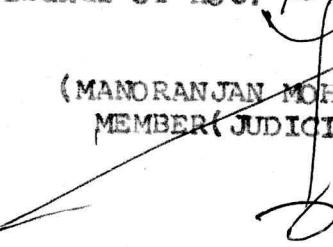
Respondents.

(FOR INSTRUCTIONS)

1. whether it be referred to the reporters or not? Yes
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes


(B.N. SOM)

VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

16/04/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 512 of 2000
Cuttack, this the _____ day of April, 2004.

CORAM:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

....

Dinabandhu Mishra, aged about 32 years,
S/o. Gourisankar Mishra, Ex-Cook,
Ordnance Factory, Badmal, at present
at Rajaram Pana, (near Sanatan Mandir),
Dist. Balangir, Orissa.

Applicant.

By legal practitioner: M/s. A. R. Dash, N. Lenka, N. Das,
R. N. Behera, Advocates.

-Versus-

1. Union of India, represented by Secretary,
Ministry of Defence, New Delhi.
2. Additional DSOF/Member, Appellate Authority
Ordnance Factory Board, Govt. of India,
Ministry of Defence, 10-A Shaheed K. Bose Road,
Calcutta.
3. General Manager-Cum-Disciplinary Authority,
Indian Ordnance Factories, Govt. of India,
Ministry of Defence, Badmal, District-Balangir,
ORISSA.

.... Respondents.

By legal practitioner: Mr. A. K. Bose,
Senior Standing Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

Applicant(Dinabandhu Mishra, a Cook of the Hospital of Ordnance Factory at Badmal, in the District of Bolangir, Orissa) having been removed from service (under Annexure-9 dated 18.2.1999) unsuccessfully carried the matter in Appeal and Revision and, thereafter, he has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 with prayers to quash the order of punishment as well as the orders of rejection of his appeal and revision under Annexures-11 & 13 with a further prayer to direct the Respondents to reinstate him with all consequential service benefits and arrears.

2. By filing a counter, the Respondents have contested the stand of the Applicant taken in his Original Application. They have also filed an additional counter, after serving copies thereof on the counsel for the Applicant and the Applicant has also filed notes of submission which have been taken note of.

3. The facts which are not in dispute, are that the Applicant was an employee of the Ordnance Factory Hospital at Badmal (of the Government of India in the Ministry of Defence) w.e.f. 16.01.1995. On contemplation of a disciplinary proceedings that was initiated against him, the Applicant was placed under suspension under Annexure-2 dated 13.02.1998. Thereafter, he was issued with a Memorandum of charges (under Annexure-3 dated 18.03.1998) under Rule-14 of CCS (CCA) Rules,

1965. On denial of the charges by the Applicant, Inquiring Officer as well as Presenting Officer were appointed on 14.5.1998 to enquire into the allegations levelled against the Applicant. On completion of enquiry, a report under Annexure-8 dated 23.11.1998 was submitted. Thereafter, by taking into consideration the representation dated 29.1.1999 of the Applicant (pertaining to the findings of the Inquiring Officer) and the report of the Inquiring Officer, the Disciplinary Authority imposed the order of punishment of "removal from service" on the Applicant under Annexure-9 dated 18.2.1999. Applicant submitted his appeal on 17.3.1999, which was rejected under Annexure-11 dated 09.08.1999. Thereafter, the Applicant again submitted a revision (to the Secretary to the Government of India in the Ministry of Defence) which was also rejected under Annexure-13 dated 11.1.2001. In the said premises, this Original Application has been filed.

4. We have heard learned counsel for both sides and perused the materials placed on record. On perusal of the Memorandum of charges/imputations under Annexure-3 dated 18.3.1998, it is seen that there were four Articles of charges; which in nut shell are that (1) the Applicant (Dinabandhu Mishra), cook/OFBL Hospital committed gross misconduct by appearing in a public place i.e. OFBL Hospital in a state of intoxication; (2) Creating nuisance and unruly scene at Factory Hospital; (3) Misbehaviour with the duty staff at OFBL's Hospital and estate resident; and (4) unauthorised absence from duty w.e.f. 4.2.1998 to 12.2.1998. The

Inquiring Officer in his report held that since during hearing conducted on 22.6.1998, the accused pleaded guilty to two of the charges (i.e. Charge Nos.1 & 2) enquiry in respect of charge Nos.3 and 4 were only held and after analysing the evidences recorded in respect of charge no.3 it was held by the Inquiring Officer that the same is partly proved and as regards charge No.4 it was held by the Inquiring Officer that the same is not proved.

5. Though neither of the parties submitted any papers with regard to supply of the enquiry report to the Applicant and the Written statement of defence to the report/findings of the Inquiring Officer but on perusal of the order of the Disciplinary Authority under Annexure-9 it reveals that the Applicant had submitted his defence to the report/findings of the Inquiring Officer on 29.1.1999. However, taking into consideration the report of the Inquiring Officer and the representation allegedly submitted by the Applicant, the Disciplinary Authority passed the order of punishment of removal from service which are quoted herein below:-

"On careful consideration of the Inquiry report aforesaid and the submission made by the said Shri D.B.Mishra in his representation dated 29.1.1999, the undersigned is satisfied that the following article of charges levelled against Shri D.B.Mishra Cook of Hospital, OFBL vide this Office Memorandum of even number dated 18.3.1998 are established:-

1. Appearing in a public place i.e. OFBL Hospital in a State of intoxication;
2. Creating Nuisance and unruly scene at Factory Hospital; *M*

3. Misbehaviour with the staff of OFBL Hospital and estate resident.

The undersigned has, therefore, come to the conclusion that Shri D.B.Mishra, cook of OFBL Hospital, is not a fit PERSON TO BE RETAINED IN GOVERNMENT SERVICE AND THEREFORE HEREBY IMPOSES THE PENALTY OF 'REMOVAL FROM SERVICE' w.e.f. 18.2.1999 on the said Shri D.B.Mishra, Cook of Hospital of OF Badmal".

On perusal of the appeal Memo of the Applicant under Annexure-10 it is seen that he had strongly denied the allegations levelled against him stating therein that he is not guilty of the offence and the same has been made out against him with ulterior ~~motive~~. However, the Appellate Authority had rejected the Appeal of the Applicant under Annexure-11. Relevant portion of the said order of rejection of the appeal is quoted herein below:-

"aggrieved by the above penalty the instant appeal has been preferred wherein following contentions have been made:-

1. There is no evidence for any incident on 8.2.98 at public place;
2. No preliminary enquiry was conducted;
3. No show cause notice and detailed enquiry report were provided;
4. The I.O. did not summon D.W.;
5. evidence of PWS do not lead to prove the charge;
6. The penalty is disproportionate.

On careful examination of the relevant records it had been observed that none of the above contentions is substantiated on evidence. There are ample evidence for the incident S.C.M. is not required as per rules I.R. was supplied to him. He himself admitted two charges. Penalty cannot be stated to be disproportionate as the offence was conducted in Hospital. It has,

therefore, been concluded that the appeal has no merit warranting moderation of the penalty imposed by the DA as his contentions have not been substantiated based on record and the penalty which has been imposed after following laid down procedure is commensurate with the offence and hence justified".

Now the question comes as to whether on the face of the Rules/law, the enquiry report, order of punishment and rejection of appeal is sustainable in the present form/the manner in which it has been dealt into. For considering these aspects, we would like to first quote Sub-Rule-9 of Rules, 14 of the CCS(CCA) Rules, 1965; which provides as under:-

"(9) If the Government servant who has not admitted any of the Articles of the charge in his written statement of defence or has not submitted any written statement of defence, appears before the Inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of the charge, the Inquiring authority shall record the plea sign the record and obtain the signature of the Govt. servant thereon".

Sub Rule-10 of Rule-14 provides as under:-

"(10) The Inquiring authority shall return a finding of guilty in respect of those articles of charge to which the Govt. servant pleads guilty".

But here, in this instant case, the Inquiring Officer did not follow the rules quoted above. Neither he had recorded the finding of guilty of the charges allegedly admitted by the Applicant during hearing nor placed any material to show that the Applicant has admitted in writing. In absence of this, the report of the Inquiring Officer is not sustainable.

Hence the report of the Inquiring Officer is hereby quashed.

6. As regards the order of the Disciplinary Authority it is seen that the same is not in conformity with the Rules and the Govt. of India instructions issued on 13th July, 1981. This instructions has been issued by the Govt. of India providing therein that the Disciplinary Authority has to issue a reasoned/speaking order dealing with the Articles of charges/findings given by the Inquiring Officer on each of the Articles and the defence given by the delinquent and then come to the conclusion as to whether he agrees with the report of the Inquiring Officer or not. Only after analysing the evidences, he is required to pass the order of punishment. This is also requirement of law as has been held by the Hon'ble Supreme Court of India in the case of MAHAVIR PRASAD vs. STATE OF UP (reported in AIR 1970 SC 1302) wherein it has been observed that recording of reasons in support of a decision by a quasi judicial authority is obligatory, as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater, if the order is subject to appeal. Therefore, the impugned order of punishment is hereby quashed.

7. From the wording appeared in the order of rejection of appeal, *prima facie*, gives an impression that as if the Appellate Authority had the previous knowledge of the fact, basing on which he had rejected the order. This is

not at all the requirement of law or rules. Therefore, we have no hesitation to hold that the order of rejection of appeal of Applicant is not sustainable in the eye of law and the same is also accordingly quashed.

8. So also, on perusal of the order of rejection of revision under Annexure-13 dated 11.1.2001, it is seen that the points raised by the Applicant on his revision petition and the law cited by him in this connection, had not at all been taken into consideration. In absence of a detailed report, on each of the findings/pleas taken by the Applicant in a disciplinary proceedings/in his appeal/revision petition, if the petition of an employee is rejected, then it would definitely give an impression in his mind that there is no rule of law and injustice should prevail. In this view of the matter, we also hold that in absence of findings on each of the points raised by the Applicant the order of rejection of his revision petition is not sustainable and the same is accordingly quashed.

9. In view of the discussions/observations holding that the order of punishment under Annexure-9, rejection of Appeal/Revision under Annexures-11 and 13 are not sustainable and the same are hereby quashed with a direction to the Respondents to reinstate the Applicant forthwith and, while doing so, liberty is hereby granted to the Respondents to proceed as against the Applicant afresh from the stage of enquiry etc.

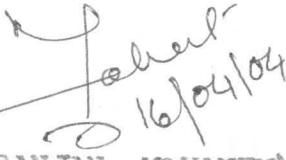
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10. In the result, this Original Application is allowed. No costs.


(B. N. SOM)
VICE-CHAIRMAN


16/04/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)