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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 03.1.200

O.A. No. 148/96

Shri P.N. Chaudhary son of Shri K.K. Choudhary, aged about 53 years resident of RAPP, C-3A 49, Post Rawat Bhata, Distt. Chittore, last employed on the post of (H.V.D.) Heavy Vehicle Driver, Rajasthan Atomic Power Station, P.O. Anushakti, Via Kota, District Chittorgarh.

... Applicant

v e r s u s

1. Union of India through Secretary to the Government of India, Department of Atomic Energy, C S M Marg, Bombay - 400 039.
2. The Director (Operations), Nuclear Power Corporation, Homi Bhabha Road, Colaba, Bombay - 400 005.
3. The Nuclear Power Corporation, through its Managing Director, N.P.C., Homi Bhabha Road, Colaba, Bombay - 400 005.
4. The Chief Superintendent, Rajasthan Atomic Power Station. P.O. Anushakti, Via Kota - 323 303, Distt. Chittorgarh.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

None is present on behalf of the respondent No. 1.

Mr. Arun Bhansali, Counsel for the respondents Nos. 2 to 4.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed challenging the impugned order date 08.04.87 (Annexure A/1) passed by the disciplinary authority, imposing the penalty of compulsory retirement. The applicant also has challenge the order of appellate authority dated 12.01.95/19.01.95 vide Annexur

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A/2, confirming the order of disciplinary authority. The applicant prays that these orders may be quashed with all consequential benefits.

2. The disciplinary proceedings were initiated against the applicant on the basis of the following charges :-

"That Shri P.N. Choudhary, Heavy Vehicle Driver, CT Pool Section reached the Main Guard House at about 10 a.m. on 2.4.1983. As he was not on duty and was entering plant premises, he was asked by the Watchman on duty, Shri Jetha Ram to make an entry in the register. Shri P.N. Choudhary not only refused to sign in the register, but stated that he would prevent entry of others, if he was not allowed to enter the site without entering in the register. On this, the Chief Security Officer and Chief Administrative Officer all requested Shri Choudhary to make entry in the register. Shri Choudhary did make an entry but at the same time passed derogatory remarks on the Chief Administrative Officer. Subsequently, inspite of being prevented by the Watchman on duty, he forced his entry in the plant site. In this connection, explanation was called for from Shri Choudhary and the reply submitted by Shri Choudhary is not considered satisfactory.

Shri P.N. Choudhary is therefore charged for :-

- (i) dis-obedience of reasonable orders given to him to make an entry in the register at Plant Site before entering the Masin Guard House on 2.4.1983 at about 10 am.
- (ii) passing derogatory remarks on the Chief Administrative Officer on the said date and time.
- (iii) creating a scene of indiscipline at Plant premises making a forced entry into the plant site regardless of the Watchman on duty.
- (iv) acting in a manner wholly unbecoming of a Government servant."



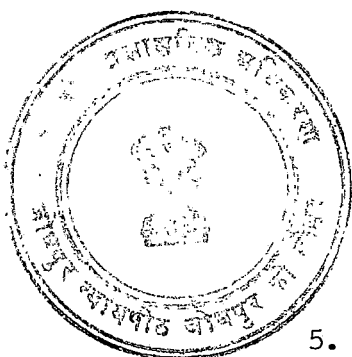
3. The enquiry officer, after considering the witnesses examined for the department and also the witnesses examined by the applicant in defence, has held that the charges were proved. The disciplinary authority accepted those findings and ultimately, imposed the punishment of compulsory retirement. This order of the disciplinary authority has been confirmed by the appellate authority.

4. The learned counsel for the respondents contended that the statement of one of the witnesses, by name Shri Shri B.D. Sharma, is not a proper statement. ~~of xxxxxx~~ He contended that at the end of the

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statement, the date 13.04.83 is written, but at the top of the statement, the date 04.04.83 is found. The statement filed at page 24 of the O.A. is a ^{copy} zerox/and it is not legible whether the date was 4.4.83 or 13.04.83. Even otherwise, it appears that earlier the applicant had appraoched the Jaipur Bench of the Central Administrative Tribunal in O.A. No. 437/92 and vide judgement/order dated 8.7.94, the Tribunal overruled this and other objections regarding the enquiry report and held as under:-

"5. The contention that the statement of a witness recorded before the formal proceedings were instituted which begins with the date 4.4.83 and again with the date 13.04.83 is a fabrication and is not tenable. Merely because for some reasons, two different dates have been mentioned, the statement does not become fabrication. The evidence regarding the maintenance of the register at the date and creation of an unruly scence of the applicant is available from the statements of other witnesses as well. The point that in the original show cause notice issued to the applicant , there was no mention about the derogatory remarks by the applicant against the superior authority, is correct. However, there was oral evidence in support of the charge presented during the inquiry, on the basis of which the Inquiry Officer held this charge also as proved. We do not sit as an appellate authority to reappraise the evidence and come to our own conclusion as to whether the charges against the applicant are proved or not. Therefore, we will not interfere with the report of the Inquiry Officer or the order of the Disciplinary Authority."



5. After giving the above finding, this Tribunal set aside the order of appellate authority and remanded the matter to the appellate authority to pass fresh order in compliance with the Rule 27 (2) of the CCS (CCA) Rules, 1965. From these circumstances, it is clear that similar technical objections raised earlier were overruled by this Tribunal by upholding the enquiry report and the order of disciplinary authority. After remand, the appellate authority ~~extensively~~ considered the appeal and passed an order dated 12.01.95 vide Annexure A/2, complying with the requirements of Rule 27 (2) of CCS (CCA) Rules, 1965. The appellate authority stated that no procedure irregularities have been committed in the instant case. It also held that on the basis of the enquiry report, the applicant made a forced entry into the Plant, without making any entry in the register kept with the Watchman. From the evidence also, we find that the CAO, CSO, ASO and the duty Watchman

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advised the applicant to make necessary entry in the register and then enter into the premises of the Unit. The appellate authority found fault with the applicant in making such forced entry in the Unit, which is admittedly a Defence Unit and also a sensitive area. From the instructions issued by the Rajasthan Atomic Power Station dated 25.02.83, we find that if a person on duty wanted to go out of the Atomic Power Station, he had to make entry in the register and a person entering in the Power Station during duty hours to attend his duties, he has to produce the time card to the Watchman on duty and get the necessary entries made. Admittedly, the applicant wanted to enter into the Power Plant not during duty hours. It is his case that he had to go to the Plant for his personal work. As the applicant was going on a personal work, there is no question of producing time card, but he had to make necessary entries in the register kept with the duty Watchman. The instruction itself ^{states} that the incoming and outgoing timings must be noted in muster registers. From this, it follows that the applicant should have made the necessary entries before entering in the Power Plant. In spite of the advice given by the superiors on the spot, he created a scene of indiscipline by making a forced entry into the Plant site. Having regard to these aspects, there is ample evidence on record and on that basis, the enquiry officer has given a finding that the charges framed against the applicant were proved. From going through the order of the appellate authority, we find that after remanding the case, the appellate authority has complied with the directions of the Tribunal, and the impugned order does not call for any interference. The appellate authority also took note of the fact that the instant case was one deserving compulsory retirement. Thus, the discretion exercised by the disciplinary authority and the appellate authority do not call for any interference.

6. However, the learned counsel for the applicant contended that there was no satisfactory evidence to prove the charges. But from going



through the order of the C.A.T., Jaipur Bench, dated 8.7.94 passed in O.A. No. 437/92, we find that the findings of the enquiry officer has already been upheld. In AIR 1990 Calcutta 32 [Dilip Kumar Roy and Others vs. Panchkari Sinha and Ors.], it is stated that the finding given by the appellate Court in the order of remand, would be binding on the appellate authority, if the matter was to come again to the appellate authority, after the case being decided by the lower Court. Even otherwise, from the enquiry report and also evidence on record, we find that those findings do not call for any interference.

7. The learned counsel for the applicant nextly contended that the punishment of compulsory retirement is too harsh. He also relied upon judgement of Hon'ble the Supreme Court reported in AIR 1996 SC 484 [B.C. Chaturvedi vs. Union of India & Ors.], contending that this Tribunal has power to reduce the punishment, if such punishment is shocking the conscience of this Tribunal. But as pointed out by us above, Rajasthan Atomic Power Station, where the applicant has been working as a Heavy Vehicle Driver, is a sensitive Defence establishment. Forcing entry into the Unit, contrary to the rules, that too, contrary to the advice of the applicant's superiors, who were present at the gate, would be a very serious factor, and having regard to the nature of the unit and its functions, if both the disciplinary authority as well as the appellate authority considered it just and proper to impose the punishment of compulsory retirement, we do not think that there is any arbitrary exercise of such power. Having regard to these circumstances, we are also of the opinion that the punishment awarded to the applicant is quite just and proper.

8. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."

(A.P. NAGRATH)
Adm. Member

(JUSTICE B.S. RAIKOTE)
Vice Chairman

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Part II and IN destroyed
in my presence on 28. 3. 2007
under the supervision of
section officer () as per
order dated 19. 2. 2007

Section officer (Record)

[Signature]
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