

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 158/96
T.A. No.

188

DATE OF DECISION 24.08.1999

Mr. Mahendra Kishore Sharma.. Petitioner

Mr. M.A. Siddique .. Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.S. Rathore Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member.

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Judl. Member

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....
DATE OF ORDER : 24.08.1999.

O.A.NO. 158/1996

Mahendra Kishore Sharma, S/o Late Shri Dayal Prasad Sharma, Ex.Superintendent, E/M Gr.II, G.E. (M&S), Udaipur, R/o 161 Sector 11, Vakil Colony, Near Alok School, Udaipur.

.....APPLICANT.

VERSUS

1. Union of India, through the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. Engineer-In-Chief, Army Head Quarters, Kashmir House, DHQ, New Delhi.
3. Superintending Engineer, Commander Works Engineer (Army), Multan Lines, Jodhpur.
4. Chief Engineer, M.E.S. (Jaipur Zone), Power House Road, Banny Park, Jaipur.

.....RESPONDENTS.

.....

CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

Mr.M.A.Siddique, Counsel for the applicant.

Mr.B.S.Rathore, Counsel for the respondents.

Gopal Singh

PER HON"BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER :

Applicant, Mahendra Kishore Sharma, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 20th March, 1996 at Annex.A/1 and order dated 20.4.1995 at Annex.A/14, with all consequential benefits.



2. Applicant's case is that he was working as Sectional Officer (Mechanical), in Beas Construction Board, (Himachal Pradesh). Due to completion of work, the applicant and number of other employees were declared surplus in the year 1985 and their services were placed at the disposal of the Central (Surplus Staff) Cell. The applicant was re-deployed in the Southern Command, Pune and he joined his duties at Udaipur on 2nd July, 1985. The applicant was served with a Chargesheet vide respondents letter dated 4th December, 1993 (Annex.A/2) and consequently, the penalty of dismissal from service was imposed upon the applicant vide respondents order dated 20th April, 1995 at Annex.A/14. The appeal of the applicant against the penalty imposed was rejected vide respondents letter dated 20th March, 1996 (Annex.A/1). Aggrieved by the action of the respondents, the applicant has approached this Tribunal.

3. Notices were issued to the respondents and they have filed their reply.

4. We have heard the learned counsel for the

Gopal Singh

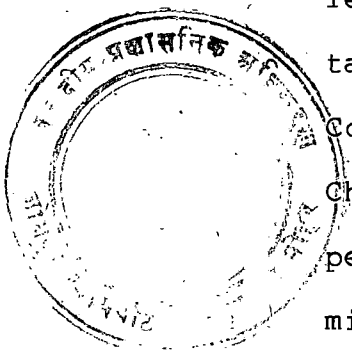
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parties and perused the record of the case.

5. The learned counsel for the applicant has challenged the order of the Disciplinary Authority as also of the Appellate Authority on various grounds as under :-

- (1) Charges are vague,
- (2) Penalty has been imposed by a authority who is not the Disciplinary Authority,
- (3) The applicant's appeal has been rejected by a authority who is not the Appellate Authority,
- (4) The order of the Appellate Authority is non speaking and
- (5) The penalty imposed is dis-proportionate to the alleged mis-conduct.

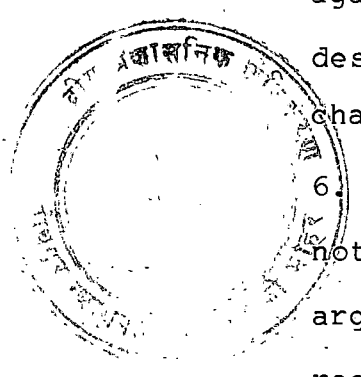
The learned counsel for the respondents has produced before us Annex.(i)&(ii) to Appendix 'A' to CE SC, Pune letter No. 180801/2/ELD dated 25.5.1981, the same is taken on record. It is seen from Annex.(ii) ~~supra~~ that the Commander Works Engineer (A), who had issued the Chargesheet to the applicant and had imposed the penalty on the applicant, was only competent to impose minor penalty. In terms of the delegation, CE, Command, Commander CME, Commandant Engineer Group, Officer Incharge Records, Army Authorities, could have imposed the major penalty on the applicant and the appeal would lie with Engineer-In-Chief/CE Command. It is seen from the records that the Chargesheet was for major penalty was issued by ~~Commander Works~~ Engineer, Jodhpur, and the penalty of dismissal from service was also imposed by the same authority. The applicant's appeal was rejected by the Chief Engineer, Jaipur Zone. It is, thus seen that the authorities who have



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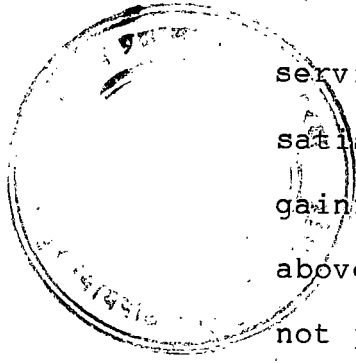
imposed the penalty and rejected the appeal of the applicant, are not the competent authorities to have imposed the penalty or rejected the appeal of the applicant. It is also provided in Para 4 (f) of Annex.(i)supra that major penalties should in no case be imposed by any authority lower than the authority who actually appointed the accused Government servant. It is also seen from records that the applicant was appointed by the Chief Engineer, Southern Command, Pune. It is thus clear that the various authorities in this case have acted beyond their competence. This itself vitiates the entire departmental proceedings against the applicant and the departmental proceedings deserve to be quashed on this count alone. Even the charges levelled against the applicant are vague.



6. In the light of the above discussion, we do not consider it necessary to deliberate upon the other arguments adduced on behalf of the applicant in this regard.

7. The Original Application, therefore, succeeds. Respondents order dated 20th March, 1996 at Annex.A/1 and order dated 20.4.1995 at Annex.A/2, are set aside. The applicant would be re-instated in service within three months from the date of issue of this order. Since the applicant has been kept away from duty for no fault of his, he would also be entitled to full back wages. The respondents are accordingly directed to pay to the applicant Salary and Allowances from the date of termination of his

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service to the date of his re-instatement after satisfying themselves that the applicant was not gainfully employed during this period, within the above mentioned period. The respondents are, however, not precluded to take disciplinary action against the applicant for alleged misconduct as per rules afresh.

8. The parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm.Member

A.K. Misra
24/8/99
(A.K. MISRA)
Judl.Member

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