OA No 79/97

केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,

J_O_D_H_P_U_R.

Date of Order : 19.7.2000

1. O.A. No.77/1997
2. O.A. No.78/1997 &
3. O.A. No.79/1997.

Tilak Singh S/O Shri Raja Ram aged 42 years, Watchman Nuclear Power Corp. Anushakti R/O H-IB/172 RAPP Colony, Ratawatbhats, District Chittorgarh.

... Applicant in OA No.77/97

Hawaldar Singh S/O Shri Sukhwasi Singh Parihar aged 49 years Watchman, Nuclear Power Corp. Anushakti R/O H/I/B/261/NTC Colony, RAPP, Rawat Bhata District Chittorgarh.

... Applicant in OA No.78/97 &

Jugal Kishore S/O Shri Narayan aged 42 years Watchman, Nuclear Power Corp. Anushakti R/O H-I/B/205 N.T.S Colony, RAPP Rawatbhata District Chittorgarh.

... Applicant in OA No.79/97

Vs

1. Union of India through the Secretary, Department of Atomic Energy, Chatrapati Shivaji Maharaj Marg, Bombay.
2. Chief Superintendent (Project Director) Nuclear Power Corp. Anushakti, District Chittorgarh.
3. Executive Director (C) Nuclear Power Corp. Balapur Bhawan, Sector 11, Balapur CBD, Navi Mumbai-400 614 &
4. Cadre Controlling Authority, Department of Atomic Energy, Anushakti Bhawan, Chatrapati Shivaji Maharaj Marg, Mumbai

Mr. Vijay Mehta, Counsel for the Applicants.
None is present for Respondents No.1 & 3
Mr. Arun Bhansali, Counsel for the Respondents No. 2 & 4.

CORAM :

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

Hon'ble Mr. Gopal Singh, Administrative Member

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(13)

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In these applications the controversy involved as also the relief sought is the same and, therefore, all the three applications are being disposed of by this single order.

2. All the applicants while working as Watchman with the respondent-department on deputation were served with a charge-sheet on 05.3.1981 for the alleged misconduct of not attending Parade during the period September 1980 to December, 1980 thus defying the orders dated 07.6.1980 of the Chief Security Officer and also of refusing to accept the official letter addressed to them. After conclusion of the departmental enquiry the punishment of reduction of pay to the lowest stage of Rs.750/- of the scale 750-940 for a period of two years with further stipulation that during the period of reduction they will not earn any increment and on completion of two years, the reduction will not affect the future increment was imposed upon the applicants vide disciplinary authority order dated 07.4.1994 at Annexure A/1 Appeals against the orders of the disciplinary authority were rejected by the Appellate Authority vide its order dated 18.12.1996 (Annexure A/6 in O.A. No.77/97 & 78/97 and Annexure A/5, in OA No.79/97). Hence, these applications for quashing the orders of disciplinary authority and Appelate Authority with all consequential benefits. Applicants have challenged the authority of the Chief Security Officer for introducing Parade for the Watchman on the ground that this was not included in the service conditions of the applicants. They have also challenged the competence of the authority for imposing penalty as in their view any penalty can be imposed by their parent organisation.

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(14)

3. In the counter, it has been stated by the respondents as under :

> " It is, however, denied that the Chief Security Officer is below the rank of the Appointing Authority for a Watchman and has no powers whatsoever to impose fresh conditions of service unilaterally. It is submitted that to require the security personnel to attend parades (for the physical fitness required in connection with performance of their duties) in no way amounts to imposing fresh conditions of service. Issue of the order dated 7.6.1980 by the Chief Security Officer, RAPP, in connection with duties of the Security Personnel, is therefore, very much within the purview of his powers and the same does not amount to imposition of fresh conditions of service. The appointing authority is not expected to issue orders relating to duties of the security personnel which are of routine nature.
>
> 5 (ii) The employee is bound to obey all reasonable orders in connection with the performance of his duties issued by his superiors. As the applicants failed to carry out the reasonable orders of his superiors, the same amounts to serious misconduct warranting the disciplinary proceedings and imposition of a minor penalty."

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. Undisputed facts of the case are that there is no provision of parade in the service conditions of the applicants The applicants are on deputation to the respondent-department. The parade was started with the joining of a new Security Officer at that time and was discontinued.

6. The manner in which penalty can be imposed upon a deputationist has been prescribed in Rule 20 of CCS (CCA)Rules, 1965, which is extracted below :

> "20. Provisions regarding officers lent to State Governments etc.
>
> (1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred as "the borrowing authority"), the borrowing authorityshall have

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(15)

the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the Diciplinary Authority for the purpose of conducting a disciplinary proceeding against him ;

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authrotity") of the circumstances leading in the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be

(2) In the light of findings in the diciplinary proceeding conducted against the Government servant-

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government servant it may, after consultation with the lending authority, make such orders on the case as it deems necessary ;

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Govt. servant shall be replaced at the disposal of the lending authority;

(ii) If the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Govt. servant, it shall replace his services at the disposal of the lending authrority and transmit to if the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority , pass such orders thereon as it may deem necessary , or, it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provision of sub-rules (3) and (4) of Rule 15.

EXPLANATION- The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rule 14."

7. It is clear from the above provision that in matters of imposing minor penalty the lending authority has to be consulted and in matters of imposing major penalty the entire case is required to be remitted to the lending authority for

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disposal. Simultaneously, the charged official is required to be repatriated to the lending authority. It is seen from the records that the respondents have neither placed the services of the applicants at the disposal of lending authority nor have consulted them before imposing penalty. Thus, the orders of the Disciplinary Authority as also of Appellate Authority cannot be sustained in the eyes of law. Both these orders, therefore, deserve rejection.

8. It is also seen that the Parade introduced vide CSO order dated 07.6.1980 continued for a short time and thereafter dispensed with. It is a fact that this order dated 07.6.1980 was not in consonance with the service conditions of the applicants. It also cannot be called a reasonable order as in none of the Government of India offices watchmen are required to attend parade. Thus, this order dated 07.6.1980 is not supported by any GOI orders/instruction and, therefore, bad in law.

9. Further, the alleged misconduct pertains to the year 1980, chargesheet was served on 05.3.1981, enquiry report was submitted on 12.12.1984, the penalty was imposed on 07.4.1994, and the appeal was rejected on 18.12.1996. Thus, respondents have taken 16 long years in finalizing the disciplinary case of the applicants.

10. In terms of Rule 20 of CCS (CCA) Rules, as discussed above, the lending authority should have been consulted before imposition of the penalty. However, at this stage we do not consider it appropriate to remand the case back for consultation with the lending authority as the entire departmental proceedings were based on wrong premises and cannot be sustained in the eyes of law. Moreover, the incidence of so-called dis-

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obedience had taken place more than 19 years ago. Remanding the case for consultation with the lending authority would be quite time consuming and would amount to persecution of the applicants. Therefore, we do not think it reasonable and just to remand the case for fresh consultation.

11. In the light of above discussion, we are of the view that the applications deserve to be allowed and orders of the Disciplinary Authority and Appellate Authority deserve to be quashed. Accordingly, we pass the following order :

12. The Original Applications are allowed. The orders of the Disciplinary Authority dated 07.4.1994 and the orders of the Appellate Authority dated 18.12.1996, are hereby quashed with all consequential benefits.

13. Parties are left to bear their own costs.

SD/-
(GOPAL SINGH)
MEMBER (A)

SD/-
(A.K. MISRA)
MEMBER (J)

J

प्रमाणित सही प्रतिलिपि
30/1/2000
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

Part II and III destroyed
in my presence on 4.1.07
under the supervision of
section officer ( ) as per
order dated 19.11.06

Section officer (Record)