

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of order : 31.07.2000

O.A.No. 172/1998

I.M.Gauri S/o Shri Gafoor Mohammed, Aged about 36 years R/o Vill. and PO Badnore, Distt. Bhilwara, last employed on the post of Tradesman/D in Electrical Section, Rajasthan Atomic Power Station, and Rawatbhata PO Anushakti, Distt. Chittorgarh.

.....Applicant.

versus

1. Union of India through Secretary to the Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai
2. Senior Manager (P&IR), Nuclear Power Corporation of India Ltd., Rajasthan Atomic Power Project PO Anushakti, Rawatbhata, Distt. Chittorgarh.
3. Deputy Secretary to Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai.
4. Additional Secretary to Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai.

.....Respondents.

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Mr.J.K.Kaushik, Counsel for the applicant.
Mr.Vineet Mathur, Counsel for the respondents No. 1,3 and 4.
Mr.Arun Bhansali, brief holder for Mr.Rajendra Mehta, Counsel for respondent No.2.

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CORAM:

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

Hon'ble Mr.Gopal Singh, Administrative Member

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Per Hon'ble Mr.A.K.Misra :

The applicant had filed this application with the prayer that the impugned order dated 16.3.94 (Annex.A/1), along with chargesheet issued by the respondent No.2, punishment order dated 23.5.96 (Annex.A/2), imposing the penalty of removal from service, issued by

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respondent No.3 and the appellate order dated 19/23.3.98 (Annex.A/3) rejecting the appeal, be declared illegal and be quashed with all consequential benefits.

2. Notice of the O.A. was given to the respondents. Respondents No. 1, 3 and 4 filed reply to the O.A. in which it is stated that the applicant intentionally delayed the disposal of departmental inquiry which was being proceeded against him and ultimately stopped participating in the inquiry. Consequently, the inquiry officer proceeded against him ex-parte. All the charges were held proved against the applicant and the applicant has been rightly punished. The O.A. bears no merit and deserves to be dismissed.

3. The respondent No.2 by making a separate application adopted the reply filed by the respondents No.1,3 and 4.

4. We have heard the learned counsel for the parties and have gone through the case file.

5. From the O.A., it appears that while the applicant was working on the post of Tradesman 'D' (Electrical), was served with a chargesheet dated 16.3.94 in which it is alleged that applicant remained un-authorisedly absent for 68 days out of 300 working days in the year 1992 and remained un-authorisedly absent for 242 days out of 298 working days during 1993. The applicant inspite of repeated instructions failed to report on duty and thus dis-obeyed the orders and instructions given by the superiors and the applicant while functioning as Tradesman 'D' had taken petty contracts in the name of his father and his wife and was found supervising the work carried-out by his labourers on many occasions. The applicant denied the charges. During the course of inquiry the applicant sought adjournment on many occasions and the inquiry was adjourned from time to time, as is evident from the copies of the various proceedings. From the record, it appears that on 11.3.95, the applicant sought



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adjournment on the ground of his illness and the case was fixed on 13.3.95. On 13.3.95, the applicant informed the inquiry officer through an application that his brother has met with an accident and was hospitalised, therefore, he is not able to participate in the departmental inquiry. On this application, the inquiry was adjourned to 15.3.95, however, no information was given to the applicant about the date of hearing. on 15.3.95 the case was ordered to be proceeded ex-parte against the applicant and the case was fixed on 21.3.95.

6. On 21st March,1995, the case was adjourned to 22nd March,1995 without conducting any business. The case was then taken-up on 22nd March,1995 and statement of Shri S.K.Dubey was recorded in absence of the applicant and the case was adjourned to 27.3.95. Thereafter, the case seems to have been adjourned to 26.5.95 on which date statement of one Shri P.K.Dutta was recorded. Thereafter, the inquiry officer submitted his report dated 11.7.95 to the disciplinary authority.

7. From the copies of the record of the departmental inquiry in which the above facts have been mentioned, it is not revealed that notice of subsequent hearings was given to the applicant when the case was adjourned on 13.3.95 on the request of the applicant on account of accident of his brother. It also does not appear that copies of day to day proceedings were ever supplied to the applicant as envisaged by the principles of natural justice. Thus, in our opinion, the applicant had no information about the subsequent dates to which the case was adjourned after 15.3.95. Notice of subsequent date was also essential to be given to the applicant so that he could know the date to which the case was adjourned and may opt to participate in the proceedings. In absence of such information, the applicant was deprived of reasonable opportunity of hearing. The departmental witnesses having been examined in absence of the applicant, were not subjected to cross examination and in absence of any information regarding the adjourned date of inquiry, the applicant could not avail the opportunity of cross-examining the departmental



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witnesses. Thus, he was deprived of reasonable opportunity to defend himself in meeting-out the charges. It should be noted that even in ex-parte departmental proceedings the entire gamut of inquiry has to be gone through, therefore, it is necessary that the applicant is informed about every day's proceedings so that he may come to know what has transpired in the departmental proceedings in his absence. This is also necessary to provide an opportunity to the applicant to appear and participate in the inquiry at any stage, he may feel it necessary to do so. But, in the instant case, in absence of information regarding subsequent dates of hearing and in absence of copies of proceedings and statements of witnesses, the applicant could not avail the opportunity of participating in the inquiry and thus, in our opinion, has been prejudiced in the conduct of inquiry. For this reason alone, the departmental proceedings are liable to be quashed.



8. The applicant has been found guilty of un-authorised absence as well as for taking petty contracts in the names of his father and wife. However, in respect of charge of un-authorised absence, no detailed discussion is necessary. Shri P.K.Dutta, departmental witness has stated that Shri Gauri remains habitually absent from duties as mentioned in his report. Even the applicant himself admitted in his O.A. that due to some family circumstances, he could not attend the duties between the period 1992 to 95. Thus, the charge of un-authorised absence cannot be said to be held proved without any sufficient material. However, termination of services of applicant on account of un-authorised absence seems to be dis-proportionate to his guilt and shocking to conscience.

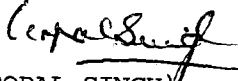
9. So far as the charge relating to taking of contracts in the names of father and wife, it can be stated that there is no evidence against the applicant. No independent witness who were found working as labourer in the alleged petty contracts were examined in the departmental inquiry and all what Shri S.K.Dubey has said that witness stated at their free-will before him. Shri S.K.Dubey was at that time

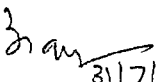
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only Assistant Security Officer (Vigilance). If at the instance of the department Shri Deubey had conducted preliminary inquiry then the witnesses deposing before him should have been examined again before the inquiry officer. However, their statements have only been accepted as ~~having~~ ~~were~~ recorded by Shri Dubey. As noted above Shri Dubey was not subjected to cross-examination by the applicant in absence of any information regarding the date of hearing, therefore, the veracity of the statements of Shri Dubey remained un-scrutinised. Hence, on the basis of the statements of Shri Dubey the third charge cannot be said to have been proved by the department. In any case, there is no ~~substantive~~ evidence regarding the charge No.3.

10. In view of the above discussions, it can be concluded that in absence of information regarding the dates of hearing the applicant was deprived of reasonable opportunity to defend himself and proceedings conducted in his absence remained un-scrutinised. Thus, the rule of natural justice have been violated. Consequently, the punishment ~~awarded~~ ~~out~~ by the disciplinary authority deserves to be quashed. The appellate authority had also failed to redress the procedural lacuna in the case by invoking his powers, therefore, the appellate order is also difficult to sustain and deserves to be quashed. Since in the instant case, we have found that there is a procedural lapse on the part of the inquiry officer, therefore, the case deserves to be remanded back for re-inquiry.

11. The O.A. is, therefore, partly accepted. The impugned punishment order dated 23.5.96 (Annex.A/2) and the impugned appellate order dated 19/23.3.98 (Annex.A/3) are hereby quashed. The respondents are hereby directed to reinstate the applicant without back wages on the same post and on the same pay, within a period of three months. The period of termination shall not be counted for any purpose whatsoever except continuity of service. The respondents shall be at liberty to re-start the inquiry from the stage as was then existing on 15.3.95. No orders as to cost.


(GOPAL SINGH)
Adm.Member


(A.K.MISRA)
Judl.Member

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Recd

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3/8/2000

Copy received
H.S. Gold
6-8-2000
for Mr. Nathan

Recd. by
asl

4/8/2000

Part II and III destroyed
in my presence on 2-1-2007
under the supervision of
section officer () as per
order dated 10/1/2006

Nathan
Section officer (Nathan)