

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

OA No. 162/99

Date of Order: 4/6/2001

Mahendra Singh Daiya son of Shri Bheru Singh Daiya, aged about 36 years, posted as 'Technician, Grade 'A' Defence Laboratory, Jodhpur, Resident of Juni Bagar, Jodhpur.

...APPLICANT

VERSUS

1. Union of India- through Secretary,  
Ministry of Defence, Raksha Bhawan, New Delhi.
2. Scientific Adviser to Defence Minister  
Director General Research & Development  
Ministry of Defence, R & D Organisation  
Department of Personnel, Pers.-10, 'B' Wing,  
Sena Bhawan, DHQ P.O. New Delhi.
3. The Director, Defence Laboratory  
Ratanada Palace, Jodhpur.

...RESPONDENTS

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Mr. R.S. Saluja, counsel for the applicant.

Mr. Vinit Mathur, counsel for the respondents.

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

Hon'ble Mr. Gopal Singh, Administrative Member.

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ORDER

(per Hon'ble Mr. A.K. Misra)

The applicant had filed this OA with the prayer that impugned penalty order dated 27.2.98 Annexure-A/19 passed by Disciplinary Authority and order of the Appellate Authority dated 23.8.98 Annexure-A/21 confirming the penalty order be quashed and set aside with all consequential benefits such as promotion, increments and grant of pay in the revised pay scale

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with arrears of salary.

2. Notice of the OA was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

3. Brief facts of the case are that while the applicant was working as Technician 'A' Grade, he was served with a charge-sheet for having misbehaved with the officers on 27.1.97 at 3.00 p.m. It is alleged by the applicant that he was elected Secretary of the Trade Union of the Respondent's Department and while he was successful in getting certain demands of the employees granted, he was served with a charge-sheet on the false ground by the respondents. After the departmental enquiry, the applicant was punished and the penalty reads as-

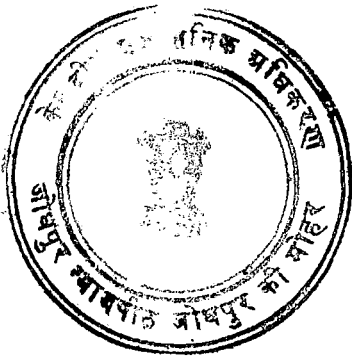


"Reduction to a lower stage by 3 stages in the time scale of pay Rs.3050-75-3950-80-4950 from basic pay Rs.3275/- reduced to Rs.3050/- for a period of 3 years with the directions that the aforesaid Government Servant will not earn the future increments during the period of such reduction and on the expiry of such period of 3 years the reduction will not have the effect of postponing future increments of his pay. Shri Mahendra Singh, Technician 'A' will not get any arrears of pay for the period of penalty after expiry of the period from retrospective date."

4. The applicant preferred an appeal against the punishment order which was rejected. Aggrieved of the orders passed by the Disciplinary Authority and the Appellate Authority, the applicant has challenged the departmental proceedings and consequent orders on the grounds that the order of the Disciplinary Authority is arbitrary and illegal, the applicant was not provided with any defence assistant in the preliminary enquiry

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and thus, was deprived of a reasonable opportunity to defend himself in preliminary enquiry. The applicant had fallen ill during the enquiry, his request for extension of time was refused without any reasons with regard to medical certificates etc. and thus, the applicant was wrongly proceeded by the respondents ex parte which has resulted into denial of reasonable opportunity to defend himself, the Disciplinary Authority had not afforded an opportunity of personal hearing to the applicant and straightway proceeded to inflict punishment of stoppage of grade increment and thus, the applicant was denied the reasonable opportunity to defend himself and the Appellate Authority did not proceed in the matter according to Rules and without recording reasons passed the appellate order and thus, the order of the Appellate Authority is also arbitrary. Consequently, the applicant has prayed as mentioned above.



5. On the other hand, it was stated by the respondents that the applicant was rightly charge-sheeted for his misbehavior because at the time of misbehavior the applicant was under the influence of liquor. The applicant was provided with defence assistant in the enquiry, the applicant participated in enquiry and cross-examined many witnesses but thereafter he absented himself on the ground of illness. Everytime, he was given an opportunity to attend on the next date and participate in the enquiry but the applicant at his own did not participate in the enquiry. Consequently, on closure of evidence of the department, the applicant was given an opportunity to produce defence witnesses but the applicant did not avail the opportunity given and consequently the charge of misbehavior was held

proved by the Disciplinary Authority. It is also stated by the respondents that there is no provision for providing any defence assistance during the preliminary enquiry and therefore, the contention of the applicant in this regard is not tenable in law. The applicant had himself did not participate in departmental enquiry on the false pretext of illness. It is also stated by the respondents that all the contentions of the applicant were considered by the Appellate Authority in detail, there was no violation of principles of natural justice in disposing of the appeal. The appellate order is well-reasoned and, therefore, the applicant is not entitled to any relief.



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

7. The first contention of the applicant is that he was <sup>not</sup> provided any opportunity to defend preliminary enquiry inasmuch as he was not provided a defence assistant but the applicant has not been able to show that in preliminary enquiry, defence assistance or defence nominee is required to be provided to help the delinquent. In view of this it cannot be said that the applicant was deprived of reasonable opportunity to defend himself at the stage of preliminary enquiry. Arguments in this regard are therefore rejected.

8. The second contention of the applicant is that due to his illness the applicant sought time which was refused <sup>without</sup> recording any reasons and no opportunity to defend himself was provided to the applicant. In this regard, we have gone through details of departmental enquiry proceedings, a copy of which is Annexure A/6. From the proceedings it appears that

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the applicant and defence nominee participated in the enquiry upto 2nd September, 1997 and had also cross-examined 13 witnesses as were examined by the enquiry officer till then. Thereafter, the applicant or his defence nominee did not attend the enquiry proceedings on 9.9.1997 which was the next date. On 9.9.1997, four witnesses were examined. Since the applicant did not appear on 9.9.97, a date was given and the case was fixed on 25.9.1997 with the direction that copies of the statement be sent to the applicant and applicant can cross-examine the witnesses on 25.9.1997. On 25.9.97 five more witnesses were examined by the Enquiry Officer and the next date was fixed on 6.10.97. Again on the date, the applicant or the defence nominee did not attend the enquiry proceedings and the case was fixed on 20th October and 21st October with this direction that on these dates the witnesses examined on 9.9.97 and on 25.9.97 would be summoned and the applicant can cross examine those witnesses and can also produce his defence witnesses. On these dates, the applicant did not participate and the proceedings also did not proceed due to non-availability of Chairman of the Board. The case was fixed on 3.11.97 and on that date one more witness was examined and the case was again fixed for next date. It may be noted that on subsequent dates also the applicant did not attend the departmental enquiry nor produce any defence witnesses. The applicant has not been able to produce sufficient evidence in this OA to hold that the applicant was so ill from 2nd September, 1997 onwards till the termination of the proceedings that he could not attend the departmental proceedings. Two medical certificates have been produced by the applicant as Annexure-A/8 and



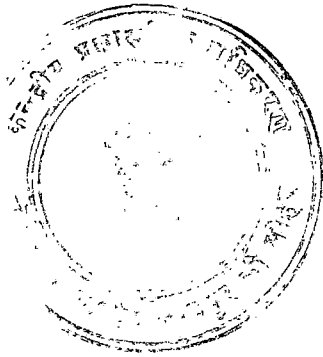
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Annexure-A/10. They only go to show that applicant was suffering from fever during 10.11.97 to 14.11.97 and 9.12.97 to 15.12.97 respectively. No specific ailment has been mentioned by the applicant in the OA due to which the applicant could not attend the departmental proceedings continuously from 9.9.97 onwards. In our opinion, the ground of illness due to which the applicant is said to have not been able to attend the proceedings in the departmental enquiry seems to be an excuse to delay the departmental proceedings and we do not see any unreasonableness on the part of the Enquiry Officer/Board to proceed in the matter in absence of the applicant. The applicant was provided opportunities to cross-examine the witnesses, to produce his defence witnesses and to participate in the proceedings, but he did not do so. Therefore, he has to thank himself for all this. Looking to the facts as mentioned above, we do not see any reason to hold that reasonable opportunity to defend himself was not provided to the applicant by the Enquiry Board. On the contrary all reasonable opportunities were given to the applicant to defend himself by asking him to participate in the enquiry. Enough opportunities were giving to him from time to time so that he can participate in the enquiry. If the applicant was advised not to participate or he thought that he would be able to avoid the enquiry on the ground of illness then it can be said that he was misguided and has to thank himself. We do not find any breach of rule in this regard. The arguments of the learned counsel for the applicant on this count are devoid of any force.

9. The next contention of the applicant is that the Enquiry Board did not consider the written submissions

of the applicant in respect of the enquiry, inasmuch as there is no mention of such written submissions in the report. We have considered this aspect, we are of the opinion that simply because no mention has been made in this report in respect of written submissions, it cannot be said that the same was not considered. A copy of written submissions is available on the record which is Annexure-A/12 in which the applicant has tried to justify his absence due to illness but there are no grounds as to why the statement of witnesses recorded in presence of the applicant and cross-examined by him are required to be disbelieved. In view of this written submissions can only be taken to be a note justifying his absence in participating the proceedings and nothing more. Therefore, submissions in this regard are required to be rejected.



10. It was argued by the learned counsel for the applicant that Disciplinary Authority did not permit him a personal hearing in addition to the representation and therefore, the applicant was denied a reasonable opportunity to defend himself. We have gone through the order of the Disciplinary Authority Annexure-A/11. From the order of the Disciplinary Authority, we find that the applicant was heard on 27th January, 1998 in presence of two Senior Officers but there is no mention of various grounds which he might have adduced in his support or against the enquiry report. If the applicant was given an opportunity of being heard then the report should have mentioned the same. The absence of grounds of attacked in this report as advanced by him at the time of alleged hearing helps us to conclude that no proper hearing was accorded to the applicant and if hearing was accorded, his submissions were not disposed of by reasoned order. In view of this, the enquiry report can

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be said to be a non-speaking report.

11. The Disciplinary Authority, if it agrees to the finding of Enquiry Officer, need not repeat the detail reasons for believing the prosecution evidence but when a personal hearing has been accorded to the applicant then the ground of attack should be appreciated, in view of the evidence recorded. Merely righting that applicant has been heard is not sufficient. If he has been heard then what was addressed to the Disciplinary Authority, what was his attack on the enquiry report and what was his attack against the witnesses, all should have found place. In view of this, we are of the opinion that reasonable opportunity to defend was not provided to the applicant and for this reason the order of the Disciplinary Authority deserves to be quashed.



12. It was next argued by the learned counsel for the applicant that the appeal of the applicant was also not properly disposed of by a reasoned order. We find substance in this argument. In the order of the Appellate Authority dated 23.8.98, there is no mention of appellant having been provided with an opportunity of personal hearing. The Government decision in this regard can be usefully quoted hereunder----

"(5) Personal hearing at the discretion of appellate authority in major penalty cases- The Committee of the National Council (JCM) set up to review the CCS (CCA) Rules, 1965, has recommended that provision may be made for personal hearing by the Appellate Authority of the employee concerned if the appeal is against a major penalty.



2. The above recommendation has been considered in all its aspects. Rule 27 of the CCS(CCA) Rules, 1965, does not specifically provide for the grant of a personal hearing by the appellate authority to the Government servant before deciding the appeal preferred by him against a penalty imposed on him. The principle of right to personal hearing applicable to a judicial trial or proceeding even at the appellate stage is not applicable to departmental inquiries, in which a decision by the appellate authority can generally be taken on the basis of the records before it. However, a personal hearing of the appellant by the appellate authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the appellate authority in deciding the appeal quickly and in a just and equitable manner. As Rule 27 of the CCS (CCA) Rules does not preclude the grant of a personal hearing in suitable cases, it has been decided that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing. (G.I., Dept. of Per. & Trg., O.M. No.11012/20/85-Est.(A), dated the 28th October, 1985)."



In absence of copy of memorandum<sup>of</sup> appeal, it cannot be said that applicant had demanded an opportunity of personal hearing before the appellate authority but there is no such mention in the order of the appellate authority and therefore, it is difficult to say whether an opportunity of personal hearing was asked for and not granted or was not at all asked for. ~~There~~ There is nothing on record to show that in addition to the written submissions in the form of memorandum of appeal, the applicant had also asked to

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address the Appellate Authority in person. In this case major penalty was awarded to the applicant which was upheld by the appellate authority and in view of this keeping in view the principles of natural justice the applicant should have been provided with<sup>an</sup> opportunity to address in person the appellate authority. It was also for the Appellate Authority to see whether a proper procedure was adopted by the Disciplinary Authority in the matter. Had the Appellate Authority consider the case in this light, it would have certainly come to the conclusion that not providing an opportunity of personal hearing<sup>by the D.A.</sup> to the applicant amounts to violation of principles of natural justice. In view of this the order of the appellate authority also deserves to be quashed.

13. From the foregoing discussion, we come to the conclusion that while the applicant is not entitled to be provided any further opportunity to cross-examine the witnesses which were recorded in his absence, the applicant is certainly entitled to be heard in person by the Disciplinary Authority in respect of those witnesses which were cross-examined by him in detail through his earlier participation in the proceedings. Therefore, the case deserves to be remanded back to the Disciplinary Authority for providing an opportunity of personal hearing to the applicant and then to dispose of the matter on the basis of the material available on record. The OA, therefore, deserves to be accepted partly.

14. The OA is therefore, partly accepted. The orders of the Disciplinary Authority dated 27.2.98 Annexure-A/19 and that of Appellate Authority Dated 23.8.98 Annexure-A/21 are hereby quashed and set aside, with

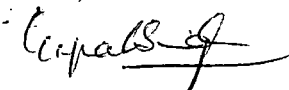
consequential benefits such as increments, revision of pay and payment of arrears and salary.

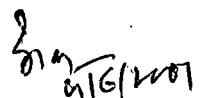
15. The case is, therefore, remanded back to the Disciplinary Authority with the direction that the applicant be provided personal hearing in the matter and the case be decided afresh after considering the material available as per the enquiry file and reasoned order be passed within a period of four months from the dates of communication of the order. The applicant would be free to avail departmental remedies thereafter as per law.

16. Question of promotion consequent to the above order is left for the DPC and Departmental Authority for consideration.

17. Parties are left to bear their own costs.



  
(Gopal Singh)  
Admn. Member

  
(A.K. Misra)  
Judl. Member

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