

#8
7/12

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Original Application No. 281/2002

Date of Decision : this is the 14th day of July, 2004

Hon'ble Mr. M.L. Chauhan, Judicial Member

Hon'ble Mr. M.K. Misra, Administrative Member

Jetha Ram S/o Shri Bhabhut Ram, aged about 50 yrs
R/o H 1 B 7, NTC Colony, Rawatbhatta, Distt. Chittorgarh
Last employed on the post of Watchman in the office
Of RAPS, NPCIL, PO Anushakti, Rawatbhata, Chittorgarh.

.....Applicant.

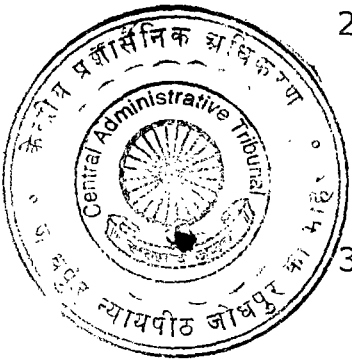
[By Mr. B.Khan, Advocate, for the applicant]

versus

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

.....Respondents.

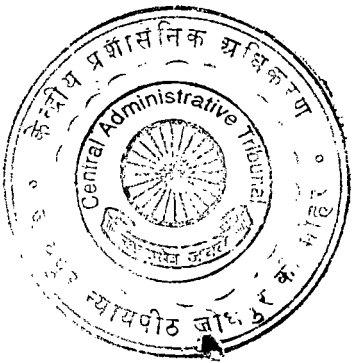
[By Mr. Arun Bhansali, Advocate, for the respondents]



Order**[By M.L.Chauhan]**

The applicant has filed this O.A. thereby praying for quashing the Chargesheet dated 2.6.1997 (Annex. A/1), order dated 8.2.2001 (Annex. A/2) whereby the penalty of compulsory retirement was imposed by the disciplinary authority and the appellate order dated 17.10.2001 (Annex.A/3) rejecting the appeal of the applicant with further prayer that applicant be allowed all consequential benefits.

2. The facts of the case are that the applicant at the relevant time was working as Watchman in the office of Rajasthan Atomic Power Project, NPCIL. He was issued Chargesheet vide Memorandum dated 2.6.1997. The allegation against the applicant was that while on duty on 16.10.1996 he forcibly entered into the quarter C-3 A/141 under the influence of liquor and misbehaved with Smt. Tara Devi w/o Shri R.K. Dwivedi, Teacher, AECS No. 3, RAPP, Kota by forcibly grasping her hand with mala fide intention and has thus, violated the provision of Rule 3 (ii) and (iii) of CCS (Conduct) Rules, 1965. The applicant was asked to submit his statement of defence which he submitted on 16.6.1997 denying the charges framed against him. The competent authority thereafter appointed inquiry officer vide letter dated 17.6.1998 and inquiry was ordered against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. Since the applicant did not cooperate in the inquiry



62

despite giving repeated opportunities, the inquiry was conducted against the applicant ex parte and the inquiring authority submitted its report on 23.10.1999 holding the applicant guilty of the charges. Copy of inquiry report was also sent to the applicant vide letter dated 26.10.1999 which has also been placed on record at page No. 24 and which was also received by the applicant as can be seen from the sheet at page 23 and there is also an endorsement made below the signatures of the applicant by one Shri S.S. Ahuja, S.O. to the effect that the inquiry report was handed over on 29.10.1999 though, the applicant in the grounds of appeal has also taken a plea that the inquiry report was not supplied to him despite the fact that request on his behalf was made as late as on 9.3.2001. At this stage, it may be mentioned that this plea taken by the applicant in the ground of appeal is palpably false as in the O.A. the applicant has himself placed these documents on record i.e. page Nos. 23 and 24 which proves that copy of the inquiry report was sent to him vide letter dated 26.10.1999 and the same was handed over to him on 29.10.1999. Besides this, applicant has also not taken this point in the O.A. that copy of inquiry report was not supplied to him, as such prejudice has been caused to him. The disciplinary authority after taking into consideration the inquiry report and the fact that the applicant did not submit any representation on the inquiry report and also taking into account all the relevant facts of the case including his conviction ordered by the Judicial Magistrate First Class, Rawatbhatta agreed with the findings of the inquiring authority

44



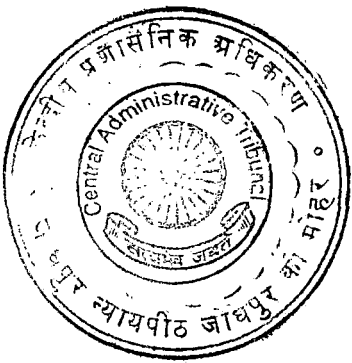
and came to the conclusion that the applicant is not a person fit to be retained in service and lacks devotion to duty and misconduct shown by him is serious enough to warrant such penalty. The order of compulsory retirement was affirmed by the appellate authority vide order dated 17.10.2001 (Annex.A/3). It is these orders which are under challenge in this O.A.

3. The respondents have filed a detailed reply. The fact that applicant on 16.10.1996 misbehaved with the wife of Shri R.K. Dwivedi has not been disputed. It is further stated in the reply that a fact finding inquiry was held in the matter by deputing a Security Officer of R.A.P.P. for the said purpose. After conducting detailed investigation in the matter, it was divulged that the applicant had entered into the quarter of Shri R.K. Dwivedi on 16.10.1996 in an intoxicated state and misbehaved with his wife. The matter was thereafter reported to the local police and a criminal case was also instituted against him. It is further stated that since the allegation leveled against the applicant disclosed a strong prima facie case of grave misconduct involving moral turpitude and, therefore, it was in the fitness of things to initiate a disciplinary proceeding against him and accordingly, he was served with a Chargesheet dated 2.6.1997. Since the applicant has denied all the allegations, an inquiry officer was appointed and he ultimately gave his report thereby holding the applicant guilty of the charges. In the reply, it has been stated that during the course of departmental inquiry, he was afforded sufficient

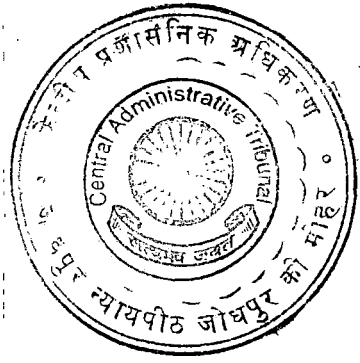


ucl

opportunity to defend himself but he remained indifferent and did not show any degree of cooperation and even remained absent on 19.7.1999 without any valid reason. Thus, the inquiry was ultimately adjourned for ex parte hearing by the inquiry officer on 19.7.1999. The applicant along with defence assistant remained present on 9.8.1999 and the inquiry officer after taking a lenient view, decided to withdraw the order of ex parte hearing till the applicant shows his cooperation for the disposal of inquiry. However, on the date i.e. 9.8.1999, the matter was further postponed on the request of applicant so as to enable him to cross-examine the departmental witnesses on the next date. However, on the next date of hearing i.e. 16.9.1999 which was fixed for cross examination of the departmental witnesses by the assistant, none was present on behalf of the applicant and consequently, the departmental witnesses were discharged by the inquiry officer and the presenting officer was directed to submit his written brief. The respondents have also placed on record copy of daily order sheets dated 19.7.1999, 9.8.1999 and 16.9.1999 as Annex. R/2 with the reply of disciplinary proceedings initiated against the applicant. Thus, according to the respondents, it is the applicant who has failed to avail the opportunity given to him during the course of inquiry and as such, he cannot complain that the inquiry proceedings have been held ex parte in violation of the principles of natural justice. According to the respondents, the evidence of prosecution witnesses remained totally un-controverted and undisputed by the applicant and the inquiry officer has therefore, rightly held



the charge proved against the applicant. It is further stated in the reply that the misconduct of the applicant got further corroborated when the order of conviction was passed by the learned Judicial Magistrate First Class, Rawatbhatta and, therefore, the contention raised by the applicant that a false case has been instituted against him, is totally misplaced. The respondents have further stated that without prejudice to the charges which has been held proved by the inquiry officer, the applicant could have been imposed major punishment on the ground of misconduct which has led into his conviction in terms of the Rule 19 of the CCS (CCA) Rules. It is on these basis that the respondents have just imposed penalty of compulsory retirement on the applicant.

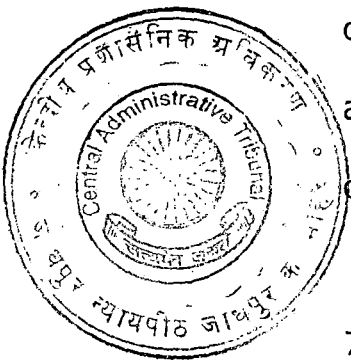


4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The main grievance of the applicant as projected by him in this O.A. is that Smt. Tara Devi, complainant, was not examined by the prosecution and there were no eye witness as such, the charges could not have been proved on the basis of statement of two witnesses who were not the eye witnesses to the occurrences and came subsequently. The further contention raised by him is that no medical test of the applicant was got conducted, thus, the charges that the applicant was under intoxication cannot be held to be proved only on the basis of hearsay evidence. The inquiry officer has held the charges to be

proved only on the basis that applicant has not produced any defence and thus, the version of the prosecution witnesses remain un-corroborated cannot absolve the prosecution to discharge the burden to prove the charges. The whole proceedings stand vitiated as the proper procedure for conducting ex parte proceedings was not followed. Similarly, applicant has also contended that the order passed by the appellate authority is a non speaking order and the penalty awarded against the applicant is ex facie excessive and disproportionate to the alleged misconduct.

6. We have given our thoughtful consideration to the contentions raised by the learned counsel for the applicant. We are of the view that the applicant has not made-out any case for our interference.



7. Admittedly, the charges against the applicant was serious as he under the influence of intoxication entered into the house of Shri R.K. Dwivedi, thereby intentionally committing not only offence of house tress pass but also assaulted and used criminal force to the wife of the complainant with an intention to outrage her modesty. Thus, it cannot be said that the act of the applicant does not constitute grave misconduct in case the same are proved. As already stated above, the findings of the inquiry officer are sought to be quashed on the ground that Smt. Tara Devi was not examined whose statement was very relevant and

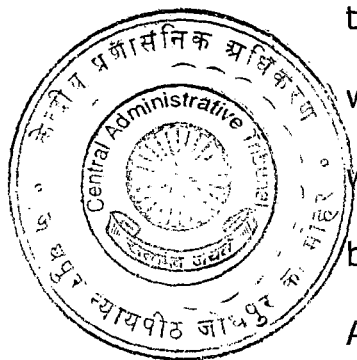
the findings have been given on the basis of evidence tendered by two witnesses who cannot be said to be eye witnesses.

8. At this stage, it may be relevant to mention here that the appreciation of evidence in a domestic inquiry is altogether different and the same is not required to be evaluated by taking into account the strict law of evidence as required in criminal case being tried before the criminal court. The guiding principle for deciding the culpability of the charged official in a disciplinary proceeding is based on the 'preponderance of probability; and not on the basis of 'proof beyond reasonable doubt'. Thus, in all fairness, if the evidence of other witnesses has proved the charge against the applicant in the disciplinary proceeding, non-examination of the eye witness Smt. Tara Devi, as alleged by the applicant, cannot be considered to be fatal. Further, the applicant was given full opportunity to cross-examine the prosecution witnesses and also to led defence evidence and appear before the inquiry officer. He was also given opportunity to engage a defence assistant. Even the ex - parte order which was passed by the inquiry officer during the inquiry proceedings was also set aside on the request of the applicant and his defence assistant on 9.8.1999 and the matter was adjourned for the purpose of cross examining the departmental witnesses. The applicant failed to avail this opportunity and did not appear on the next date of hearing which was fixed on 16.9.1999 as such, the applicant cannot be heard to say at this stage that no proper procedure was followed



12/

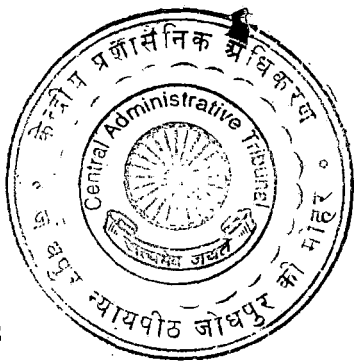
by the inquiry officer while conducting the ex parte departmental proceeding. This is a settled law that a person who has been given an opportunity to appear before the inquiry officer and if he failed to avail that opportunity, cannot subsequently complain that there is violation of principles of natural justice as the inquiry was not conducted in proper manner. Thus, the contention raised by the applicant that no further opportunity was given to him during the inquiry proceedings and ex parte proceedings were held in violation of the rules, cannot be accepted. Similarly, the contention raised by the applicant that the inquiry officer held the charge proved solely on the ground that applicant was unable to cross examine the departmental witnesses, cannot be accepted and also that inquiry proceedings were closed when the factum of conviction of applicant was brought to the notice of inquiry officer also cannot be accepted. A copy of the inquiry report has been placed on record as Annex. A/4 at page Nos. 25 to 27. From a perusal of penultimate para of this inquiry report, it is clear that after the closure of inquiry, written arguments were submitted on behalf of the prosecution in which besides the fact that charge against the applicant stand proved on the basis of the statement given by the departmental witnesses, the factum of conviction of the applicant by the learned Magistrate under Section 451 and 354 Indian Penal Code, as published in the news paper i.e. Rajasthan Patrika dated 25.1.1998 was also brought to the notice of the inquiry officer. The inquiry officer taking these facts into consideration held that defence has not controverted the version given by the



✓

E/17
2/21

prosecution witnesses, as such, their version cannot be held to be untruthful. Thus, the charge was held to be proved on the basis of version given by the prosecution witnesses which remain un-controverted. Besides it the inquiry officer has also taken note of the fact that the applicant has also been convicted by the criminal court and taking this fact into consideration, the charges against the applicant stand fully proved. Thus, on the basis of material placed on record and in view of the findings recorded by us hereinabove, the applicant is not entitled to any relief.



8 Further, the charges leveled against the applicant viz. forcefully entered into the quarter under the influence of liquor and thereby misbehaved with a lady and causing assault and using criminal force with an intent to outrage her modesty, cannot but said to be charge of grave mis-conduct. As such, it cannot be said that the penalty of compulsory retirement imposed by the disciplinary authority and as confirmed by the appellate authority is ex facie excessive and dis-proportionate to the alleged misconduct. That apart, the applicant has been held guilty and convicted by the learned court of Judicial Magistrate First Class, Rawatbhatta, vide judgement dated 23.1.1998 under Section 451 and 354 of the IPC. The conviction and the sentence so awarded by the learned Judicial Magistrate has not been set aside by the learned Sessions Judge in appeal. This fact itself would have been sufficient for the disciplinary authority to take action against the applicant on the ground of misconduct which has led to his conviction on a criminal charge under Rule

W

19 of the CCS (CCA) Rules. This part of finding also from part of inquiry report. Indeed, the disciplinary authority as well as the appellate authority has also taken this fact into consideration while awarding the punishment of compulsory retirement on the applicant besides the finding of charge having proved by the inquiry officer in departmental proceedings.



9. Thus, viewing the matter from any angle, facts remains that the action of the respondents in initiating the inquiry and imposing penalty of compulsory retirement cannot be said to be without basis. Accordingly, the O.A. is dismissed with no order as to costs.

[M.K.Misra]

Adm.Member

[M.L.Chauhan]

Judl.Member

jrm

R/copy
on 27/7/04
J.K.
A

Recd. Adv
ucl
27/07

Part II and III destroyed
in my presence on 25/10/13
under the supervision of
section officer (J) as per
order dated 18/10/13

J.K. S
Section officer (Records)
28.10.13