

Central Administrative Tribunal, Lucknow Bench, Lucknow  
Original Application No. 427/2009

**Reserved on 25.3.2014**

**Pronounced on 10/04/2014**

**Hon'ble Sri Navneet Kumar, Member (J)**  
**Hon'ble Ms. Jayati Chandra, Member (A)**

Hari Lal Yadav aged about 38 years son of Sri Chandra Pal r/o Baburiha, Majra Jagdishpur, P.O. Bhueymau, Raibareilly.

Applicant

By Advocate: Sri G.S. Sikarwar

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Director General, Directorate of Field Publicity, Ministry of Information and Broadcastings, East Block-IV, Level III, R.K. Puram, New Delhi.
3. Director, Directorate of Field Publicity, U.P. (CE) Region, IIInd Floor, Sector H, Kendriya Bhawan, Aliganj Lucknow (Ministry of Information and Broadcasting).
4. Joint Director, Directorate of Field Publicity, U.P. (CE) Region, IIInd Floor, Sector H, Kendriya Bhawan, Aliganj Lucknow (Ministry of Information and Broadcasting).
5. Filed Publicity Officer, Allahabad (Ministry of Information and Broadcasting) Allahabad Cantt.

Respondents

By Advocate: Sri D.S. Tiwari

**ORDER**

**BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- a) To quash the orders dated 19.3.2009 dated 30.8.2006, and dated 13.9.2006 contained in Annexure No.1,2 and 3 to this Original Application.
- b) To issue a suitable order or direction to respondent to allow again the applicant on the post of Driver as he was in earlier position.
- c) To issue any appropriate orders or directions in favour of the applicant as this Hon'ble Tribunal deems fit and proper for the facts and circumstances of the case.
- d) To allow the present original application with cost.



2. The brief facts of the case are that the applicant was initially appointed on the post of Chowkidar in 1997 and was subsequently promoted on the regular vacant post of Driver and posted at Allahabad. The applicant while incharge of vehicle No. UP 84-A/8004, met with an accident near Shahganj, Jaunpur resulted with death of one Anand Kumar, LDC who was also travelling in the same vehicle . The applicant was placed under suspension on the prima facie report of the Regional Publicity Officer, Allahabad and subsequently he was issued charge memo dated 17.5.2006 under Rule 14 of CCS (CCA) Rules, 1965. The applicant submitted reply to the charge memo. The enquiry officer forwarded the written brief prepared by the Presenting Officer to the applicant and applicant submitted the reply. Subsequently, on account of rash and negligent driving, the applicant was held responsible and he was reverted from to the post of Driver to the post of Peon and again vide order dated 13<sup>th</sup> September, 2006, he was again reverted to his substantive post of Chowkidar w.e.f. 31.8.2006 and was posted at Gorakhpur. Applicant feeling aggrieved by the order dated 19.3.09 reverting the applicant from the post of Driver to the post of Peon as well as order dated 13.9.2006 placing the applicant to his substantive post of Chowkidar preferred the O.A. The learned counsel appearing on behalf of the applicant pointed out that the impugned orders suffer from the errors of law and the applicant is competent to drive the light vehicle having legal driving licence. No FIR was lodged in police station either by the Department or by any person. It is also indicated by the learned counsel for the applicant that the impugned order is violative of Article 14,16 and 21 of the Constitution of India and the disciplinary authority without supplying a copy of the enquiry report along with findings of the enquiry officer and without considering the reply submitted by the applicant against the memorandum dated 17.5.2006 passed the orders in illegal and

arbitrary manner and without providing opportunity of making representation, passed the punishment order.

3. On behalf of the respondents the reply was filed and through reply, it is indicated that the impugned orders which are challenged are reasoned and speaking order and there is neither any illegality nor they are passed in an arbitrary manner. It is also indicated by the learned counsel for the respondents that the applicant was placed under suspension on the basis of prima facie report of the Field Publicity Officer as it was found that the applicant driving the vehicle in a rash and negligent manner which caused death of one LDC traveling in the same vehicle. On being considered, the applicant was given a charge memo under Rule 14 of the CCS (CCA) Rules, 1965 and the applicant submitted his reply on 26.5.2006 and has also denied the charges leveled against him. The enquiry officer forwarded the written brief prepared on 10.8.2006 and the applicant also submitted the reply on 21.8.2006 and after considering carefully, the applicant was found guilty in negligent and rash driving as such an order of reversion to the post of Peon was passed which was subsequently modified and the applicant was placed to his substantive post of Chowkidar. It is also to be pointed out that the applicant preferred O.A. No.50 of 2008 which was disposed of by the Tribunal to consider and decide the representation of the applicant and the respondents rejected the same by passing a reasoned and speaking order on 19.3.2009. The said order dated 19.3.2009 is under challenge in the present O.A.

4. On behalf of the applicant, Rejoinder reply is filed and through the rejoinder reply, mostly the averments made in the O.A. are reiterated and the contents of the C.A. are denied.

5. Learned counsel for the respondents has also filed the Supple. Counter reply and through Supple.CA the averments made in the R.A. are denied and the averments made in the C.A. are reiterated and no new facts are brought on record.

6. Heard the learned counsel for parties and perused the pleadings on record.

7. The applicant was initially appointed in the respondents organization and promoted to the post of Driver. While he was driving vehicle No. UP 84-A-8004 accompanied with one LDC, met with an accident near Shahganj which resulted with the death of one Anand Kumar, LDC. After the incident, the preliminary enquiry was conducted and after the enquiry, the applicant was placed under suspension and he was issued a charge sheet under rule 14 of CCS (CCA) Rules indicating therein certain charges leveled against him. The said charge sheet was issued to the applicant on 17.5.2006. The said charge sheet contains 4 charges against the applicant, indicating therein that due to rash and negligent driving, the applicant lost his control over the vehicle which resulted in an accident and the vehicle dashed with a tree which resulted death of one LDC on the spot. The vehicle was inspected by the Transport Department and it was pointed out that the condition of the vehicle shows that it was driven in a very careless manner. The applicant submitted reply and denied the charges leveled against him and has also denied charge No. 2 which shows that at the time of accident when the applicant was taken out from the vehicle, there was a foul smell of liquor, as such it is presumed that the applicant was in a drunken stage. The applicant was given copy of the enquiry report along with written brief of presenting officer. He submitted the reply to the said written brief and also denied the charges and also submitted that the authorities may consider the case of applicant. After considering the said reply, the disciplinary authority came to the conclusion that the applicant is found guilty of rash and negligent driving. He was also given full chance to explain his points and defence and the disciplinary authority agreed with the findings of the enquiry officer passed an order of reversion reverting the applicant from the post Driver to the post of Peon and is posted to Field Publicity

Officer, Gorakhpur. The next higher authority passed another order on 13.9.2006 further reverting the applicant to his substantive post of Chowkidar w.e.f. 31.8.2006.

8. Learned counsel appearing on behalf of the applicant has categorically pointed out that while passing an order, reverting the applicant to his substantive post of Chowkidar, no notice whatsoever was given to the applicant and without affording any opportunity of hearing, the order was passed.

9. The respondents through their reply also only indicated this fact that after the enquiry, the applicant was placed under suspension and the enquiry officer forwarded the written brief to the applicant for his reply and the applicant has also submitted reply to the said written brief and after that disciplinary authority passed the order but the respondents failed to indicate that while passing the order dated 13.9.2006, reverting the applicant to his substantive post of Chowkidar, whether any opportunity of hearing has been given to the applicant or not. Under such circumstances, the order dated 13.9.2006 appears to be unjustified whereas the other orders dated 19.3.2009 rejecting the representation of the applicant on the basis of direction issued by the Tribunal as well as order dated 30.8.2006, reverting the applicant with immediate effect from the post of Driver to the post of Peon appears to be justified.

10. As observed by the Hon'ble Apex Court, the scope of judicial review in matters of disciplinary proceedings is very limited. The Tribunal cannot look into the entire evidence or facts which was looked into by the enquiry officer or by the Department.

11. The Hon'ble Apex Court in the case of B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749 again has been pleased to observe that “**the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence.**”

12. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited.

13. But as regards the order dated 13.9.2006 is concerned, the same was passed without any opportunity of hearing to the applicant.

14. Considering the submissions made by the learned counsel for the parties as well as observations of the Hon'ble Apex Court, the O.A. is partly allowed. The prayer in regard to quashing of order dated 19.3.2009 as well as 30.8.2006 is rejected and the prayer in regard to quashing of the order dated 13.9.2006 reverting the applicant to his substantive post is allowed. The impugned order dated 13.9.2006 is quashed and the respondents are at liberty to issue a notice upon the applicant and give him an opportunity of hearing and pass a fresh order if they deemed fit and proper.

15. With the above observations, O.A. is partly allowed .No order as to costs.

*J. Chandra*  
(JAYATI CHANDRA)  
MEMBER (A)

*Navneet Kumar*  
(NAVNEET KUMAR)  
MEMBER (J)

HLS/-