

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH.
NAGPUR CAMP

O. A. No.

T. A. No. 285/87

DATE OF DECISION : 10.08.1990

Shri Munilal Sitaram Chauhan

Petitioner.

Shri S. S. Majumdar,

Advocate for the Petitioners

V/s.

Govt. of India, Ministry of Defence
Indian Ordnance Factories.

Respondent.

Shri Ramesh Darda,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I. K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporters or not ? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

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TR 285/87.

Munilal Sitaram Chauhan	...	<u>Applicant.</u>
versus		
Government of India,		
Ministry of Defence,		
Indian Ordnance Factories	...	Respondent.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri I.K.Rasgotra, Member(A).

For the applicant- Sri S.S.Majumdar, Advocate.

For the Respondent- Sri Ramesh Darda, Advocate.

Date of hearing - 8.8.90.

Date of Judgment and order - 10.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

This relates to Writ Petition No.2637/89
on the file of the High Court, which has been received
on transfer.

2. The applicant who was a Driver under the respondents was proceeded against under Rule 16 of the CCS(CC&A) Rules, 1965, for short, the Rules, by the issue of a Memorandum of Charges dated 15.2.1983 for gross misconduct. The imputation was that he caused damage to the Government vehicle by driving at a high speed and dashing against a brick piling. The applicant submitted his reply. By the order dated 24.10.1983, the Disciplinary Authority held that the charge is established and imposed upon the applicant the penalty of recovery of Rs. 780.00 from his monthly pay towards the cost of the damage to Government property, as well as stoppage of three increments without cumulative effect for three years. The applicant prays for quashing the order imposing the penalty. It is urged that the Deputy General Manager was incompetent to initiate the disciplinary

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proceedings. There is also the plea that on receipt of the Memorandum of Charges, he had requested the conduct of an enquiry and since no enquiry was held and no reasons have been recorded for not holding the enquiry, there is violation of Clause(b) of Rule 16 of the Rules.

3. In the reply filed by the respondents, it is stated that an enquiry was conducted by a preliminary Board and it was only after the Board found that a prima facie case is established that the Memorandum of Charge was issued. It is contended that there is no violation of the provisions of the Rules. Since the penalty has been imposed by the General Manager himself, it is contended that the plea that the proceedings were initiated by ^{an} incompetent authority is unsustainable.

4. There is no merit in the plea of the applicant that the proceedings are vitiated as the Memorandum of Charges was issued by the Deputy General Manager, for it is clear that it was for and on behalf of the General Manager that it was issued. Besides, the reply submitted by the applicant in response to the Memorandum of Charges was considered by the General Manager and the order imposing the penalty was issued by him.

5. However, there is force in the plea of the applicant that there has been denial of reasonable opportunity of defence as no enquiry was held. No doubt, the proceedings were initiated under Rule 16 of the Rules, and as such, the holding of an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14 of the Rules is required only where the Disciplinary Authority

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is of the opinion that such an enquiry is necessary. However, in a case where the Government servant makes a request for holding such enquiry, the Disciplinary Authority is expected to apply its mind and arrive at the conclusion whether in the nature of the case such an enquiry is necessary, and if it is of the view that it is not necessary, it should say so in writing indicating its reasons. The failure to do so amounts to denial of reasonable opportunity of defence and will be violative of the principles of natural justice. Indeed, this principle has been embodied in the Office Memorandum dated 28.10.1985 issued by the Department of Personnel, Government of India.

6. It is seen that on receipt of the Memorandum of Charges the applicant on 28.2.1983 submitted his written statement denying the charges and explained that it was on account of mechanical defect in the vehicle that the accident occurred. He pointed out that as the vehicle is still lying under-repair, a thorough inspection/examination of the vehicle may be ordered to be made. Besides, he prayed for an enquiry of the circumstances under which the damage was caused to the vehicle. There is nothing on record to indicate that the Disciplinary Authority considered this request and rejected the same. Having regard to the nature of the charge, it cannot be said that the request of the applicant for the holding of an enquiry into the circumstances under which the damage ~~was~~ ~~was~~ was caused to the vehicle was not justified. It appears that the request of the applicant was not heeded to on account of the enquiry said to have been conducted by a Preliminary Board, evidently behind the back of the applicant. No reliance should have been placed on the

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report of the said Board to arrive at the conclusion that the damage was caused to the vehicle on account of the negligence of the applicant.

7. In the result, the order of the first respondent dated 24.10.1983 imposing upon the applicant the penalty of recovery of Rs. 780/- from his monthly pay, and stoppage of three increments without cumulative effect is hereby quashed. In case, any amount has been recovered from the pay of the applicant on this account, it shall be reimbursed to him ~~for~~ within three months from the date of receipt of copy of this order.

8. The application is disposed of as above.

I.K. Rasgotra
(I.K. Rasgotra)
Member(A) 10/8/90

G. Sreedharan Nair
(G.Sreedharan Nair)
Vice Chairman.
10-8-1990

S.P. Singh/
9.8.90.