

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

D.A.388/87

Shri Hari Parashram Bhalerao,
 At Post: Bhalod,
 Tal. Yawal,
 Dist. Jalgaon.

... Applicant

Vs.

General Manager,
 Ordnance Factory,
 Varangaon,
 Tal: Bhussaval,
 Dist. Jalgaon.

... Respondent

Coram: Hon'ble Member(A) J.G. Rajadhyaksha
 Hon'ble Member(J) M.B. Mujumdar.

Appearances:

1. Shri V.R. Nikam
 Advocate for the
 applicant.
2. Shri S.R. Atra (for
 Shri P.M. Pradhan)
 Advocate for the
 respondent.

ORAL JUDGMENT

Date : 10-11-1987

(Per M.B. Mujumdar, Member(J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the penalty of removal from service imposed upon him after holding a departmental enquiry.

2. The applicant was appointed as a Labourer in Category 'B' in 1967. In 1982 he was promoted as Turner 'C'. On 16-10-1984 he was served with a chargesheet alongwith necessary accompaniments. The charges were 3, viz: (i) drunkenness while on duty, (ii) disorderly behaviour and use of physical force towards a co-worker, and (iii) breach of factory discipline.

Mr. N. Satyanarayana, Works Manager (Stores) was appointed as Inquiry Officer and S. K. Chakravorty, Asstt. Foreman, was appointed as Presenting Officer. The applicant defended himself personally. The enquiry was held between 2.1.1985 and 12.2.1985. In all 7 witnesses were examined. The applicant was also examined. The Inquiry Officer submitted his report dt. 15-2-85. He held that the applicant was under the influence of liquor and he had manhandled and beaten Shri K. R. Sonar, a co-worker of his. Relying on that report the Disciplinary Authority i.e. the General Manager, Ordnance Factory, Varanasi passed the impugned order dtd. 1-3-1985. He accepted the report of the Inquiry Officer and imposed the penalty of removal from service upon the applicant w.e.f. 3-3-1985. Accordingly, the applicant was removed from service on 3-3-1985 A/N.

3. The applicant had preferred an appeal dtd. 11-3-1985 against the order of the Disciplinary Authority. However, the appeal was dismissed by the Appellate Authority i.e. Director General, Ordnance Factories Calcutta and his decision was communicated to the applicant by the letter dtd. 20-1-1986. The applicant had challenged both these orders by preferring this application on 4-6-1987.

4. The respondents have resisted the application by filing their written statement along with copies of the relevant documents.

5. We have heard Mr. V. R. Nikam, Learned Advocate for the applicant and Mr. S. R. Atre (for Mr. P. M. Pradhan) Learned Counsel for the respondents. We have also perused the relevant record. After considering the arguments and record we find that the order

- 3 -

of penalty passed by the Disciplinary Authority as well as the order passed by the Appellate Authority suffer from serious legal infirmities. It was undisputed before us and it is also clear from the record that before passing the order of penalty the applicant was not supplied with a copy of the report of the Inquiry Officer and he was not given a reasonable opportunity of making a representation against the findings of the Inquiry Officer. In a recent judgment delivered by the Full Bench of this Tribunal on 6-11-1987 in the case of P.K. Sharma vs. Union of India, it is held that "the findings of the Disciplinary Authority are bad in law because the applicant was not given a copy of the report of the Inquiry Officer and was not heard (given an opportunity of making his representation) before arriving at the finding." It is, however, clarified that hearing does not mean "oral hearing" and an opportunity to make a written representation to the Disciplinary Authority against the report, would constitute hearing and would amount to affording a reasonable opportunity to the charged officer. We are bound by this judgment of the Full Bench and in view of the legal position explained in the judgment we are constrained to set aside the finding and order passed by the Disciplinary Authority on 1-3-1985.

6. It is also not clear whether the Appellate Authority i.e. The Director General Ordnance Factories, who considered the appeal preferred by the applicant, has passed any separate order. However the order dt. 31-12-1985 passed by the Dy. Director (Vig), for and on behalf of the Director General, Ordnance Factories shows that the appeal was considered by the Director General and the following conclusions were drawn by him: "(i) The procedure prescribed in the CCS(CCA) Rules has been complied with;

(ii) The findings are justified; and (iii) The penalty imposed is adequate. There is no reason or mitigating circumstances to modify the decision already arrived at. The appeal of Shri H.P. Bhalerao is accordingly dismissed." Neither the order shows nor is there anything on record to show that any personal hearing was given to the applicant before dismissing the appeal preferred by him. In Ram Chander vs. Union of India, reported in ATR 1986(2)SC 252, a similar order was set aside by the Supreme Court and the matter was remitted to the Appellate Authority for deciding it according to law i.e. by affording a personal hearing and deciding the appeal on merits by ~~and~~ passing a reasoned order. In the present case, even if the order of the Disciplinary Authority would have been proper and according to law we would have been required to set aside the order in appeal because it is contrary to the principles laid down by the Supreme Court in Ram Chander's case.

7. In the result we pass the following order :

- (1) The order passed by the Disciplinary Authority i.e. The General Manager, Ordnance Factory, Varangaon on 1-3-1985 as well as the order passed by the Appellate Authority i.e. Director General of the Ordnance Factories, Calcutta on 31-12-1985, are hereby quashed and set aside;
- (2) The respondents shall reinstate the applicant to his previous post with effect from the F/N of 3-3-85 with all the backwages and consequential benefits;
- (3) The respondents are, however, at liberty to start the departmental proceedings from the point of vitiation of the enquiry. To be specific the

- 8 5 -

Disciplinary Authority shall give a copy of the Inquiry Officer's report to the applicant and ~~the~~ permit him to make a written representation against the findings of the Inquiry Officer and after considering it pass a proper order which it may deem fit.

(4) If any amount of Provident Fund is paid to the applicant by the respondent in view of our interim order dtd. 20-8-1987, the same shall be adjusted against the backwages which are due to the applicant from the respondents due to his reinstatement w.e.f. F/N of 3-3-85 as directed by us, and the said amount of Provident Fund shall be deposited in the Provident Fund Account of the applicant. If the Provident Fund account is closed it may be reopened.

(5) Parties to bear their own costs.

8. At this stage at the request of Mr. S. R. Atre we direct that the respondents may not implement the above order till 18-12-1987. However, the respondents shall have to implement the order thereafter if no stay is received from the Supreme Court.