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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION NO.361/88.

Shri Joseph Cherian,
U.D.C./D.B.,
Ordnance Factory,
VARANGAON.

.. Applicant.

v/s.

1. Union of India, through
The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
CALCUTTA.

2. The General Manager,
Ordnance Factory,
VARANGAON.

3. The Foreman,
Safety Section,
Ordnance Factory,
VARANGAON.

.. Respondents.

Coram : Hon'ble Member (A) Shri M.Y. Priolkar.
Hon'ble Member (J) Shri T.C. Reddy.

Appearances:

Mrs.P.R. Shetty, Advocate
for the applicant and
Mr.V.M. Bendre for Mr.P.M.
Pradhan, Counsel for the
respondents.

JUDGMENT

DATED: 22-8-91

¶ PER : Hon'ble Shri T.C. Reddy, Member (J) ¶

This application is filed under Section 19 of the Administrative Tribunals' Act challenging the order of penalty dtd. 30.4.1987 passed against the applicant by reducing the pay of the applicant by one stage with cumulative effect for the period of one year and that the applicant will not earn any increment of pay during the period of reduction and during penalty period the applicant will not be eligible for promotion if found fit.

2. The facts giving rise to this application may be stated as follows:-

The applicant was working as U.D.C. in the Ordnance Factory, Varangaon. While so it was found that the applicant

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was in the habit of leaving the section frequently without the permission of head of section or without intimating his whereabouts in Section and wasting government time and that the applicant refused to do the additional typing work given to him by his head of section on 20.9.1984, 10.10.1984 and 11.10.1984 and continued to refuse to do the said work. Some other minor reports also appear to have been their against the applicant. So a charge sheet dated 13.11.1984 was issued by the Competent Authority as against the applicant for the following omissions and commissions.

1. Dereliction of duty.
2. Disobedience of orders of superiors.
3. Wasting Government time.
4. Breach of office discipline.
5. Conduct-unbecoming of Government servant.

The applicant was directed to submit within 10 days of the receipt of the said charge sheet a written statement of his defence and also to state whether he desired to be heard in person. In due course to conduct the enquiry against the applicant the competent authority of the said Ordnance Factory Varangaon appointed an Enquiry Officer. The said Enquiry Officer in his proceeding dated 30.4.1985 informed the applicant that the proceeding in the said enquiry will commence at 3 P.M. on 7.5.1985 at WM (TR Office) and the applicant was accordingly asked to attend the said enquiry. The applicant did not attend the said enquiry on 7.5.1985.

3. So the Enquiry Officer as per proceeding dtd. 9.5.1985 once again informed the applicant that the proceeding was adjourned to 14.5.1985 and that the said enquiry will be held at 3 P.M. in the said WM (TR Office) and if the applicant

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failed to appear on the said date, at the said time and place, that the Enquiry Officer will proceed with the enquiry.

4. The applicant did not attend the enquiry on 14.5.1985. But on other hand the applicant sent a letter dtd. 14.5.1985 that was in the nature of appeal to the General Manager, Ordnance Factory, Varangaon alleging bias to the Enquiry Officer and requested that the said enquiry ^{letter} may be handed over to any ^A suitable Enquiry Officer. However, a reply was sent by the General Manager, Ordnance Factory, Varangaon on 2.7.1985 to the applicant rejecting his letter of appeal.

5. On 14.5.1985 as the applicant did not attend the enquiry, the Enquiry Officer adjourned the said enquiry to 19.6.1985. On 19.6.1985 the applicant attended the enquiry. The Enquiry Officer read over the said charges to the applicant and the applicant denied the said charges that were framed against him. The Enquiry Officer on request of the applicant supplied the relevant copies of the documents and statements of witnesses. At the request of the applicant, from 19.6.1985 the said enquiry was adjourned to 8.7.1985. As per applicant's letter dtd. 5.7.1985 the applicant requested the Enquiry Officer to give assistance of a government servant to defend him (applicant) in the said enquiry. The Enquiry Officer in his letter dtd. 6.7.1985 asked the applicant to submit the names of three government servants alongwith their willingness to defend the applicant. On 8.7.1985 when the enquiry was taken up, the applicant submitted the names of three persons to defend him in the said enquiry, the said three persons being from Delhi, Madras and Bhubaneshwar whose consent had not been obtained by the applicant. The said consent of the persons to defend the applicant is required as per the provisions of the Ministry of Home Affairs, Notification No.11012/1/82-Estt(A)

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dtd. 2.6.1983. The applicant on 8.7.1985 agreed to obtain the willingness of these three persons and agreed to submit the same to the Enquiry Officer by 22.7.1985.

6. The applicant as per his letter dtd. 8.9.1985 informed the Enquiry Officer that he had approached the General Manager for reconsideration ^{of his appeal} and that no useful purpose will be served by the Enquiry Officer in proceedings with the enquiry. The said letter of the applicant dtd. 8.9.1985 did not find favour with the Enquiry Officer and so the Enquiry Officer directed the applicant to attend the enquiry. On 29.10.1985 the applicant addressed a letter to the Enquiry Officer again pleading to withhold the enquiry and that conduct of the enquiry pending decision of his representation by the General Manager will be ⁱⁿ violation of the rules. The said plea of the applicant was rejected by the Enquiry Officer and the request of the applicant to withhold the enquiry was turned down and the Enquiry Officer directed the applicant to attend the enquiry on 29.10.1985. But the applicant did not attend the said enquiry on 29.10.1985. So the Enquiry Officer on 29.10.1985 proceeded with the enquiry recorded evidence of witnesses and also received documentary evidence and closed the enquiry. The Enquiry Officer as per his report dated 20.12.1985 held all the charges framed against the applicant were proved and accordingly sent his report to the disciplinary authority who is the General Manager of Ordnance Factory. The disciplinary authority considered the enquiry report submitted by the Enquiry Officer and other material in that enquiry. The disciplinary authority agreed with the findings of the Enquiry Officer and held that the articles of the charge against the applicant were proved. After holding so the disciplinary authority imposed the penalty already indicated. As against the order passed by the disciplinary authority dtd. 13.1.1986 imposing the said penalty, the applicant preferred

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an appeal before the appellate authority. The appellate authority after carefully going through the order dtd. 30.4.1987 held that all the charges were established against the applicant beyond doubt and there were no mitigating circumstances to moderate the penalty and that the penalty imposed was adequate and that there was no merit in the appeal and so dismissed the said appeal. After dismissal of the said appeal, the applicant had filed this Original Application on 30.5.1988 for the reliefs indicated already.

7. The respondents have filed their reply opposing the application.

8. It is contended in this application on behalf of the applicant that the order of penalty imposed on the applicant is not legal as the enquiry was held ex parte and the said enquiry was completed within a day without affording opportunity to the applicant to participate in the enquiry. It is also further contended that the Enquiry Officer had not given reasonable opportunity to the applicant to examine defence witnesses and to file defence statement and as such the said enquiry is vitiated. It is also further contended that there is no evidence to bring home charges framed against the applicant and as such the applicant is liable to be exonerated of all the charges framed against him. It is also contended that the penalty imposed on the applicant is bad in law as second respondent by the said order had imposed three penalties and on that ground the penalties imposed on the applicant are liable to be set aside.

9. The counsel for the applicant contended before us that witness were not examined by the Enquiry Officer and that witnesses have not given evidence in the said enquiry and that the witnesses have not signed in the deposition and that the

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said enquiry was a complete farce and so illegal. In view of the said contention we directed the advocate for the respondents to produce the entire enquiry file before the Tribunal. The learned counsel for the applicant also perused the said file. The witnesses mentioned in the enquiry report were examined by the Enquiry Officer and the witnesses had also signed in their deposition. The enquiry being vitiated as the witnesses were not examined during enquiry and the enquiry being farce and illegal cannot be accepted. So the contention of learned counsel has absolutely no force.

10. From the facts narrated above it is quite evident that the applicant had every opportunity to participate in the enquiry. But for reasons best known to himself the applicant had not participated in the enquiry and had remained ex parte. For this, the applicant had to blame himself. As the applicant had not participated in the enquiry even though he had every opportunity to participate and had remained ex parte it is not open for him to contend that he was not given opportunity to examine defence witnesses and to file his defence statement. So in the circumstances of the case, it is also not open for the applicant to complain any prejudice as having been caused to him in the conduct as the enquiry even though the enquiry had been completed on the same day.

11. No doubt it is contended ~~as~~ the representation of the applicant was pending with the appellant authority ~~to~~ ^{and} ~~that~~ to reconsider the ^{request} of the applicant, the applicant did not attend the enquiry and hence no malafide can be contributed to the applicant. The appellant authority had not passed any orders to stay the enquiry since the said representation was pending. So it was the duty of the applicant to attend the said enquiry and request the Enquiry Officer to adjourn the enquiry. In any event as no orders by the appellant authority

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staying the said enquiry against the applicant had been passed, we see no justification on the part of the applicant in not attending and participating in the said enquiry. This appears to be a case whether the applicant somehow wanted to delay the enquiry and also to avoid the enquiry. We see no bonafides on the part of the applicant in not attending the said enquiry and participating in the same.

12. Even though it is contended that principles of natural justice are violated we are not made aware which principle of natural justice are violated in the conduct of the enquiry.

13. During the course of Enquiry the enquiry Officer had examined Shri P.K. Sarkar, Foreman and Shri Harjit Singh, Works Manager who are employees of the Ordnance Factory. The learned counsel appearing for the applicant picked up some contradictions in the evidence of the said witness and brought the same to our notice. She has also further pointed out some discrepancies in the deposition of those two witnesses which are of minor nature. The said discrepancies and contradictions pointed out by learned counsel for the applicant are not of such a nature as to discredit the enquiry. The said contradictions and discrepancies do not go to the root of the matter. In (1991) 16 Administrative Tribunals Cases 700 Ramesh Chand Vs. Commissioner of Police, Delhi and Others it is held that the Tribunal can not reassess the evidence nor can it sit as a Court of appeal. The Tribunal has undoubtedly power to interfere only where there is not an iota of evidence against the applicant from the material on the record, and if there is some evidence, the Tribunal should refuse to interfere with the findings of the Enquiry Officer. This is not a case where absolutely there is no evidence. A cumulative reading of the evidence of the two witnesses examined in the enquiry

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makes clear that there is evidence against the applicant. That being the position we are unable to understand how the applicant can be exonerated by this Tribunal of the charges levelled against him and quash the penalty imposed on him.

14. Even though the order recites as though three penalties are imposed, in law there is only one penalty. This position is not disputed by the learned counsel for the applicant.

15. We see absolutely no merit in this application and the application is dismissed. In the circumstances of the case the parties shall bear their own costs.

T. C. REDDY
(T.C. REDDY)
MEMBER(J).

M.Y. PRIOLKAR
(M.Y. PRIOLKAR)
MEMBER(A).

22/8/91.