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Central Administrative Tribunal
Jabalpur Bench

OA No.51/05

Thursday this the 23rd day of March, 2006

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.G.Santhappa, Judicial Member

Madhukar
S/o Shri Tukaram
Ex-Storekeeper, MM Section/VFJ
(Removed from service)
R/o House No.500
Oriya Mohalla, Jhanda Chowkh
Chhoti Omti
Jabalpur (M.P.). Applicant

(By advocate: None)

Versus

1. Union of India through
Secretary
Ministry of Defence
Department of Defence Production
South Block
New Delhi.
2. The Chairman and DGQF
Ordnance Factory Board
10-A, S.K.Bose Road
Kolkata.
3. The General Manager
Vehicle Factory
Jabalpur.

(By advocate Shri M.Chaurasia)

ORDER (oral)

By Mr.G.Shanthappa, Judicial Member

Case called. Neither the applicant nor the counsel for the applicant is present. We invoke Rule 15 (1) of CAT (Procedure) Rules, 1987.

2. Shri M.Chaurasia, learned counsel for the respondents is present and he argued the case.

3. This OA has been filed by the applicant under Section 19 of the A.T.Act, 1985 seeking the following reliefs:

- (i) Quash the impugned orders dated 31.7.01 and 21.2.02 (A-1 & A2) as void, arbitrary and illegal.
- (ii) Direct the respondents to reinstate the applicant in service with all consequential benefits.

4. The applicant is challenging the order of the disciplinary as well as appellate authorities. He has enclosed a memo of appeal dated 19.10.2001 (A-8) which runs into 10 pages. He has taken as many as 18 grounds to challenge the order of the disciplinary authority. We carefully examined the impugned order of the appellate authority dated 21.1.2002 (A-2). The appellate authority has decided the appeal without assigning any reason and the grounds of appeal are not considered properly. The relevant portion of the appellate order reads as follows:

"If the applicant needed the presence of the Orderly Officer, as he now contends in the appeal, to buttress his claim, he was at liberty to request the I.O. to seek his attendance in the Court of Enquiry. He cannot rake up this aspect at this stage. The prosecution witnesses have corroborated their statements given by them on the day of the incident. Accordingly, the analysis of evidence by the I.O. is considered logical and based on evidence on record. Besides, the charge has been established in the Court of Enquiry. The enquiry officer has established the charge after a logical analysis of the evidence on record.

5. The appellate authority has considered the statement made by the applicant on the date of the incident. The same has been produced as Annexure R-3 dated 18.10.98. When the applicant denied the

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charge and he has taken the ground in his appeal, the appellate authority has not considered the ground of the applicant, whether the enquiry officer has given the finding on the said statement, the same has been considered by the disciplinary authority, if so what is the opinion on such statement.

6. While imposing major penalty under Rule 27 of CCS (CCA) Rules, 1967, the appellate authority has to follow the DoPT OM No.11012/20/85-Estt.(A) dated 28.10.1985 and the directives as per the judgment of the Hon'ble Apex Court in the case of Ram Chander Vs. Union of India & Ors. reported in 1986 (2) SLR 608. Para 24 of the judgment is extracted below:

"24. There has been considerable fluctuation of judicial opinion in England as to whether a right of appeal is real a substitute for the insistence upon the requirement of a fair hearing or the observance of natural justice which implies 'the duty to act judicially'. Natural justice does not require that there should be a right of appeal from any decision. This is an inevitable corollary of the fact that there is not right of appeal against a statutory authority unless the statute so provides. Professor H.W.R. Wade in his Administrative Law, 5th edn., at p.487 observes:

"Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle there ought to be an observance of natural justice equally at both stages... If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

After referring to Megarry J.'s dictum in a trade union expulsion case holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body, the learned author observes:

"Nevertheless it is always possible that some statutory scheme may imply that the 'appeal' is to be the only hearing necessary."


7. After careful consideration of the said impugned order and the reference made in the earlier para, we are of the considered view that the order of the appellate authority is not a speaking order. No reasons

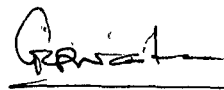
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are assigned. Accordingly we quash the impugned order of the appellate authority only.

8. We remand the matter to the appellate authority to consider the appeal and pass a detailed, speaking and reasoned order in accordance with Rules and the reference made above, within three months from the date of receipt of a copy of this order. The OA is allowed in part.


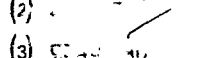
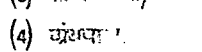
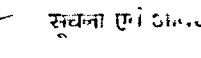
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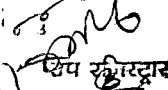

(G. Shanthappa)
Judicial Member

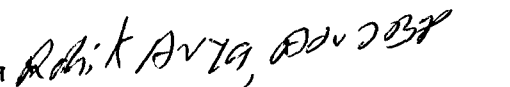

(Dr. G.C. Srivastava)
Vice Chairman


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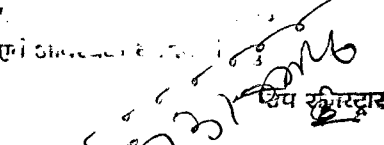
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