

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 91 of 2005

Indate this the 18th day of October 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Panchamlal Sen, S/o. late Chowaram
Sen, D.O.B. 04/04/1973, R/o. House No.
22, COD Road, Ranjhi, Jabalpur (MP). Applicant

(By Advocate – Shri V. Tripathi)

Versus

1. Union of India, through it's Secretary,
Ministry of Defence, Production,
New Delhi.
2. Chief/Director General, Ordnance
Factory Board, 10-A, Shaheed S.K.
Bose Marg, Kolkata.
3. Additional Director General,
Ordnance Factory Board, 10-A,
Shaheed S.K. Bose Marg,
Kolkata.
4. General Manager, Ordnance
Factory, Khamariya, Jabalpur. Respondents

(By Advocate – Shri P. Shankaran)

ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

“(ii) set aside the order dated 10.3.2003 Annexure A-2 and the appellate order dated 16.7.2004 Annexure A-1,



(iii) command the respondents to reinstate the applicant with all consequential benefits as if the said impugned orders are never passed."

2. The brief facts of the case are that the applicant was working on the post of Darwan with the respondents Department. He was placed under suspension on 28.9.2000 (Annexure A-3) followed by a charge sheet dated 1.11.2000. It was alleged that the applicant has caused injury to one Shri Abhayraj Singh. The applicant was further placed under suspension on 2.11.2001 and then only the department intimated the applicant about the real nature of his suspension, whereby it was alleged that a criminal case was registered against the applicant, hence, he was placed under suspension. The applicant was falsely implicated in the criminal case which was registered as ST No. 789/2000. The IIIrd Additional Sessions Judge, Jabalpur held the applicant alongwith other accused persons guilty under Section 326 of the IPC. Thereafter, against the said sentence the applicant moved a Criminal Appeal under Section 374 Cr.P.C. before the Hon'ble High Court. The Hon'ble High Court vide order 1.8.2003 set aside the punishment against the applicant to the period already undergone and confirmed the conviction. The applicant also preferred an SLP before the Hon'ble Supreme Court but it was dismissed vide order dated 12.4.2004. Thereafter the disciplinary authority imposed the penalty of dismissal from service on the applicant vide order dated 10.3.2003. The applicant preferred an appeal against it. But it was also rejected vide order dated 16.7.2004 (Annexure A-1) without following any due procedure. The opportunity of hearing should have given to the applicant but it was not granted. Hence, the respondents have not followed the mandatory provisions and have passed the impugned orders. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.



4. It is argued on behalf of the applicant that the charge sheet dated 1.11.2000 was issued against the applicant under Rule 14 of the CCS (CCA) Rules, with the allegation that the applicant has caused injury to one Shri Abhayraj Singh and he was placed under suspension. The IIIrd Additional Sessions Judge, Jabalpur held the applicant alongwith others guilty. The applicant against the sentence of the IIIrd Additional Sessions Judge, Jabalpur preferred an appeal before the Hon'ble High Court and vide judgment dated 1.8.2003 the Hon'ble High Court allowed the appeal and punishment against the applicant was reduced to the period already undergone and confirmed the conviction. Against this the applicant preferred an SLP before the Hon'ble Supreme Court which was dismissed vide order dated 12.4.2004. The respondent without following the procedure under the CCS (CCA) Rules had imposed the punishment of dismissal from service on the applicant vide order dated 10.3.2000 and the appeal was also dismissed vide order dated 16.7.2004 (Annexure A-1). Merely on the basis of the conviction of the applicant in the criminal case the respondents should not have issued the punishment order. Thus these orders are not passed in accordance with the rules and law. Hence, this Original Application deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the applicant used Farsha to hit Shri Abhay Raj. Based on the report the applicant was charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 on 1.11.2000 for the gross misconduct occurred on 27.9.2000. He assaulted physically with his colleagues on his fellow Durwan Shri Abhay Raj with Farsha causing grievous injury to him. The applicant was detained in custody at Jail for more than 48 hours on being involved in criminal case and he was released on bail on 10.7.2001. The IIIrd Additional Session Judge vide judgment dated 4.9.2002 convicted the applicant under Section 326 of the IPC and awarded sentence of 5 years rigorous imprisonment and a fine of Rs. 1,000/-. Since the applicant was convicted and sentenced into Jail the departmental proceedings against



him could not be concluded in his absence. A show cause notice under Rule 19(i) of the CCS (CCA) Rules, 1965 was issued on the applicant on 20.11.2002 asking him as to why the penalty of dismissal from service should not be imposed on him. The same was served on the applicant on 4.12.2002 while he was undergoing imprisonment in Jail. The applicant did not submit any representation within the prescribed time of 15 days. Therefore the disciplinary authority imposed the penalty of dismissal from service vide order dated 10.3.2003. The appeal filed by the applicant before the Hon'ble High Court was decided and it was noticed that findings of conviction of the applicant for the offence punishable under Section 326 of IPC were not challenged and accordingly the conviction and imprisonment with fine was confirmed by the appellate court but the sentence of imprisonment was reduced to the period already undergone in Jail. Therefore on appeal the applicant was never acquitted of the charges but upheld the findings of trial court and also the sentence of imprisonment and he continued to be a convicted person. The applicant preferred an appeal against the order of the disciplinary authority which was dismissed by speaking order dated 16.7.2004. Both the authorities have considered all the relevant facts and circumstances of the case and have passed the impugned orders. No illegality or irregularity has been committed by the respondents in their action. Hence, this OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on carefully perusal of the pleadings and records, we find that initially a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued to the applicant on 1.11.2000 on the ground that he has caused farsha injury to Shri Abhay Raj. He was detained in custody for more than 48 hours and was released on bail on 10.7.2001. Hence he was placed under suspension by the respondents. Before, initiation of the enquiry proceedings against the applicant, the concerned competent court of the IIIrd Additional Session Judge vide his order dated 4.9.2002 convicted the applicant and awarded



5 years rigorous imprisonment and a fine of Rs. 1,000. On the appeal of the applicant before the Hon'ble High Court, the Hon'ble High Court has also confirmed the finding of the lower court and only reduced the sentence of imprisonment to the period already undergone in Jail. The applicant also filed an SLP before the Hon'ble Supreme Court which was dismissed by the Hon'ble Supreme Court vide order dated 12.4.2004. Thus, it seems that the applicant was held guilty by all the Courts including the Hon'ble Supreme Court for the offence he committed. When the applicant was convicted, the respondents issued the show cause notice under Rule 19 (i) of the CCS (CCA) rules on 20.11.2002, asking him as to why the penalty of dismissal from service be not imposed against him. It was served on him on 4.12.2002 while he was in Jail. The applicant did not submit any representation against the notice within the prescribed time limit of 15 days. We have perused the order dated 10.3.2003 (Annexure A-1) passed by the disciplinary authority and the order dated 16.7.04 (A-1) passed by the appellate authority and find that both these orders are speaking, detailed and reasoned orders. When the applicant himself admits the fact that he was finally convicted by the Hon'ble Supreme Court, then there remains no interference by this Court. Hence, the action taken by the respondents seems to be legal and justified. It is a settled legal proposition that the Courts/Tribunals cannot re-appraise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Considering all the facts and circumstances of the case we are of the considered view that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman