

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR**  
**BENCH, JABALPUR**

**Original Application No. 200 of 2005**

Jabalpur, this the 1<sup>st</sup> day of April, 2005

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Ms. Sadhna Srivastava, Judicial Member

Anup Kumar Pandey, S/o. Shri Sukhdev  
Prasad Pandey, Aged 46 years, Vill. &  
P.O. Hinotibhui, Tehsil Jabalpur,  
District : Jabalpur. .... Applicant

(By Advocate – Smt. S. Menon)

**V e r s u s**

1. Union of India, Ministry of Defence,  
Ordnance Factory Board, Through :  
Its Director General, Ordnance Factory Board,  
10-A, Shaheed K Bose Road,  
Kolkata – 700 001.
  
2. Senior General Manager,  
Ordnance Factory, Khamaria,  
Jabalpur (MP). .... Respondents

(By Advocate – Shri A.P. Khare)

**O R D E R**

**By Ms. Sadhna Srivastava, Judicial Member –**

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

“II. to quash the impugned order of compulsory retirement dated 24.12.2004 (Annexure A-6) and direct respondents to reinstate the applicant in service with all other consequential and ancillary service benefits including back wages,

III. to grant consequential relief as also arrears of salary to the applicant.”



2. The brief facts of the case are that while the applicant was working as Fireman Grade-I, F.B. Section was served with a charge sheet dated 27.2.2004 containing the following charges :

**“Article I**

That the said Shri Anup Kumar Pandey, T. No. FB/64/001201 while functioning as a Fireman Grade-I, FB Section had been irregular in his duties during the period from 1.9.2002 to 11.5.2003. He remained absent for 551/2 days in 8 spells which amounts to gross misconduct.

**Article II**

That, the said Shri Anup Kumar Pandey, FB 64/001201 while functioning in the above said capacity absented himself from duty 21.9.2003 which amounts to gross misconduct.

**Article III**

That, the said Shri Anup Kumar Pandey, FB 64/0012001 while functioning in the above said capacity was found involved in similar offence on different occasions in the past for which he was penalized. This indicates that he is a habitual offender which amounts to gross misconduct.

**Article IV**

That, the said Shri Anup Kumar Pandey, FB 64/001202 while functioning in the above said capacity was found irregular in his duty and absenting from duty which construes negligence of duty on his part in violation of Article 3(1) (iii) of CCS (Conduct) Rules, 1964 and thereafter gross misconduct”.

3. Vide order dated 10.5.2004 the enquiry officer and the presenting officer was appointed. After holding the detailed enquiry the enquiry officer has found the charges proved and he submitted a copy of the enquiry report to the disciplinary authority. The copy of the enquiry report was sent to the applicant on 18<sup>th</sup> September, 2004 with the clear stipulation that Shri A.K. Pandey, is given an opportunity to make any representation or submission on the enquiry report in writing to the disciplinary authority within a period of 15 days of the receipt of the copy of this letter. The applicant has submitted representation and after careful consideration of the report of the enquiry officer as well as evidence and documents adduced during the enquiry the disciplinary authority agreed with the finding

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of the enquiry officer and held that Shri A.K. Pandey, the applicant, is guilty of the charges levelled against him and passed the punishment of compulsory retirement from service on 24.12.2004. The counsel for the applicant has challenged the order of punishment dated 24.12.2004 (Annexure A-6) on the ground that the nature of charge does not amount to a mis-conduct. Hence the entire action deserves to be quashed. She further submitted that the enquiry has been conducted without waiting for the explanation of the applicant and the enquiry officer has conducted the enquiry in a most casual and routine manner. No opportunity was granted to the applicant to explain and submit his defence in brief. Neither the enquiry officer nor the disciplinary authority has applied their mind while passing the impugned order. In support of her contention she produced a copy of the judgment passed in OA No. 672/2004 & other connected matters, dated 9.2.2005, before us. She has argued that in a similar case this Tribunal has quashed the punishment order passed by the disciplinary authority as well as the appellate authority on the ground that the charges were not specific and were vague.

4. The learned counsel for the respondents has submitted that the punishment order has been passed after considering the representation of the applicant filed against the enquiry report. Since the charges were found proved by the enquiry officer, this Tribunal has no power to re-appraise the evidence. The learned counsel for the respondents has further submitted that the punishment order is appealable and the applicant has not filed any appeal against the order of punishment dated 24.12.2004. Hence, the OA is liable to be dismissed on this ground alone.

5. We have heard the learned counsel for the parties. Admittedly no appeal has been filed against the order of punishment. Rule 23 of CCS (CCA) Rules, 1965 provides that the Government servant may prefer an appeal against the orders imposing any of the penalties



specified in Rule 11 of the CCS (CCA ) Rules, 1965. Since the order of the compulsory retirement has been passed under Rule 11 of the CCS (CCA) Rules and it is a punishment, this order is appealable. Filing of appeal is a statutory remedy which has to be availed by the delinquent employee. Our attention is also drawn to Section 20 of the Administrative Tribunals Act, 1985 which shows that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of the grievances. Section 20(2) further provides that "for the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant rules as to redressal of grievances, (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance, or (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired".

6. In view of the facts and circumstances stated above we hereby direct the applicant to file an appeal against the punishment order dated 24.12.2004 to the appellate authority within a period of two weeks and the appellate authority is directed to consider and decide the appeal of the applicant after meeting all the pleas raised in the appeal within a period of three months, in case the applicant complies with the aforesaid direction, by passing a speaking, detailed and reasoned order.

7. Original Application is disposed of accordingly. No order as to costs.

  
(Ms. Sadhna Srivastava)

Judicial Member

  
(M.P. Singh)  
Vice Chairman