

Central Administrative Tribunal  
Jabalpur Bench

OA No.301/05

Jabalpur, this the 28<sup>th</sup> day of November 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman  
Hon'ble Mr.A.K.Gaur, Judicial Member

Baldeo Prasad Dubey  
S/o Dwarka Prasad Dubey  
R/o Village Pahari  
P.O.Nimar  
PS.Tikuri, Distt.Katni.

Applicant

(By advocate Shri S.Paul  
rep.by Shri V.Tripathi)

Versus

1. Union of India through  
Its Secretary  
Ministry of Defence  
(Defence Production)  
South Block  
New Delhi.
2. The Chairman  
Ordinance Factory Board  
10-A, S.K.Bose Marg  
Kolkata.
3. The General Manager  
Ordinance Factory  
Katni, Distt.Katni.

Respondents

(By advocate Shri M.Chaurasia)

ORDER

By A.K.Gaur, Judicial Member

The applicant is challenging the order dated 14.12.2002 (A-1) whereby he was dismissed from service, and the order dated 15.8.04 (A-2) by which his appeal was rejected. He has sought the following reliefs:

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- (i) Set aside the order dated 14.12.2002 (A-1) and order dated 15.8.04 (A-2).
- (ii) Direct the respondents to reinstate the applicant with all consequential benefits including back wages.
- (iii) Direct the respondents to pay arrears of subsistence allowance w.e.f. 26.6.95 with 18% interest.

2. The applicant, an unskilled labourer in the Ordnance Factory, Katni, was served with a charge sheet on 26.7.92 alleging theft of brass caps from the factory premises. The applicant was proceeded against and having been found guilty by the inquiry officer, he was dismissed from service vide order dated 26.6.93. Against the dismissal, the applicant filed OA No.791/96 before this Tribunal. The OA was partly allowed, whereby the order of dismissal and the order of the appellate authority were quashed and the respondents were given liberty to proceed with the inquiry from the appropriate stage if so advised. On reinstatement, the applicant was placed under suspension. According to the applicant, he was not paid subsistence allowance w.e.f. 26.6.95, the date he was dismissed from service. It has been stated by the applicant that he was falsely implicated in the theft case and his defence was totally ignored by the inquiry officer and the charges were held proved without any reason in the departmental proceedings initiated second time. The appeal preferred by the applicant to the appellate authority on 20.1.2003 was not decided. Feeling aggrieved, the applicant filed another OA No.788/2003 which was disposed of by this Tribunal directing the respondents to decide his appeal. The appeal was rejected by the respondents by a non-speaking order (A-1) which is under challenge in this OA.

3. The respondents have filed a reply in which, apart from the facts having been admitted as matter of records, they have stated that the inquiry from the stage of production of the evidence by the defence was further held. The inquiry officer found that the charge of attempted theft of government property was again established on the basis of evidence adduced during the enquiry proceedings. Hence the penalty of dismissal from service w.e.f. 14.12.2002 was imposed

second time. They have contended that the representation made by the applicant against the penalty was disposed of by the appellate authority by a reasoned and detailed order, rejecting the same. The applicant was given full opportunity to rebut the charges and there has been no violation of the principle of natural justice. The penalty imposed was in accordance with the departmental rules and procedure since the offence involved was attempted theft. It has been further contended on behalf of the respondents that the order of the disciplinary authority pertaining to deemed suspension of the applicant was made on 10.4.2002 and not on 10.4.2004. The intervening period from 29.7.92 to 14.12.2002 has been regularized as notified in F.O. Part II o.413 dated 8.2.2003 (R-2). The applicant was dismissed from service in the first instance w.e.f. 26.6.95 and accordingly he was eligible to get the subsistence allowance w.e.f. 27.6.95. According to the respondents, the applicant was paid subsistence allowance on 26.9.04. The payment was delayed due to administrative/audit formalities. The penalty is not excessive and the applicant does not deserve any relief, contend the respondents.

4. The applicant has filed a rejoinder reiterating the averments made in the OA and also contending that the findings of the inquiry officer is perverse.

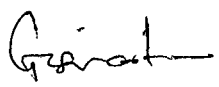
5. We have heard Shri S.Paul, learned counsel for the applicant and Shri M.Chaurasia, learned counsel for the respondents.

6. It has been argued on behalf of the applicant that the principle of natural justice has not been followed in the instant case and the action of the respondents is violative of Articles 14, 16 and 21 of the Constitution of India. It has also been argued that the finding of the enquiry officer is not based on material on record. On the other hand, learned counsel for the respondents vehemently argued that the order of the disciplinary authority is not liable to be interfered with, if there is some evidence. In support of this contention, he has placed reliance on 2000 (1) SCC 460 - High Court of Bombay vs. S.K. Patil. Learned counsel for the respondent also argued that the applicant has failed to establish as to what prejudice has been done to him due to non supply

of certain documents. In support of this contention, he has placed reliance on 1996 6 SCC 4 – State of Tamil Nadu vs K.V. Perumal and JT 1996 – Central Bank of India. Learned counsel for the respondents has also argued that this Tribunal cannot sit as a court of appeal over the findings recorded by the enquiry officer in a disciplinary case.

7. We have carefully gone through the order passed by the disciplinary authority. A perusal thereof would indicate that the applicant has been given full opportunity to defend himself and in compliance of the order of this Tribunal dated 18.2.2002, the disciplinary proceeding was initiated against him second time, culminating in his dismissal from service. We find that the enquiry officer has conducted the enquiry in accordance with the Tribunal's order and as per the procedure under the CCS (CCA) Rules. We also find that the applicant has been afforded full opportunity to defend himself. As the applicant has failed to make out any case warranting our interference, the OA is liable to be dismissed. Accordingly the OA is dismissed. No costs.

  
(A.K. Gaur)  
Judicial Member

  
(Dr. G.C. Srivastava)  
Vice Chairman

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पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

प्रतिलिपि अर्पित:-

(1) सचिव, उच्च न्यायालय कार एसेसिशन जबलपुर

(2) आवेदन श्री/श्रीमती/कु.....के काउंसल

(3) सदस्य श्री/श्रीमती/कु.....के काउंसल

(4) मध्यमाल, कोर्ट ऑफ, जबलपुर न्यायी

सूचना एवं आवश्यक कार्यवाही के

उप रजिस्ट्रार

ISJWS  
on 5/12/02  
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S. Paul, Adv 238  
M. Chaurasia  
Adv 238  
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