

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH

Original Application No. 1143 of 2004

Quashed this the 22nd day of June, 2005

C O R A M

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

Rajendra Kumar Jaiswal
S/o Shri A.L. Jaiswal
Labour, Arty Sub-Depot
Central Ordnance Depot
Jabalpur (M.P.)

Applicant.

(By advocate Shri M. Sharma)

Versus

1. Union of India through
Its Secretary
Ministry of Defence
New Delhi.
2. The Director General Ordnance Services
Master General of Ordnance Branch
Army Headquarters
DHQ P.O., New Delhi.
3. The Brig. Commandant
Central Ordnance Depot
Post Box No.20
Jabalpur (M.P.)

Respondents

(By advocate Shri S.K. Mishra)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Quash and set aside the impugned orders dated 14.10.2004 and 22.11.2004 (Annexures A1 & A2).



- (ii) Direct the respondents to grant full back wages from 15.12.2000 till the date of reinstatement with all consequential benefits.

2. The brief facts of the case are that the applicant who was appointed on the post of Labour in the Central Ordnance Depot, Jabalpur in 1988, was placed under suspension vide order dated 28.8.1998 on an alleged incidence of misconduct, inter-alia, stating that the applicant has used abusive language and threatened the then Sub depot Commander. An enquiry was conducted against the applicant and charge sheet was served on him vide letter dated 22.10.1998 (Annexure A3). The applicant denied the charges. Vide order dated 23.11.1998, the suspension of the applicant was revoked. Thereafter, finding the reply of the applicant to the charge sheet unsatisfactory, the department initiated a regular inquiry against the applicant. The disciplinary authority dissented with the finding of the enquiry officer and issued the dissenting note, to which the applicant submitted his reply. The disciplinary authority rejected the reply filed by the applicant and imposed the harshest punishment of dismissal from service vide order dated 15.12.2000 (Annexure A4). The applicant submitted an appeal dated 1.1.2001. The appeal was not decided within 6 months. Hence the applicant approached the Tribunal by filing OA No.538/2001. During the pendency of the OA, the respondents decided the appeal and modified the order of dismissal to that of compulsory retirement vide order dated 28.2.2002. The applicant challenged the order of compulsory retirement before the Tribunal by filing OA No.515/2000²⁰⁰². The Tribunal set aside the order of compulsory retirement and directed the respondents to impose any other punishment on the applicant other than removal/dismissal/compulsory retirement. In compliance with the directions of the Tribunal, the respondents modified the order of compulsory retirement to that of reduction of pay by 5 stages from Rs.2960/- to Rs.2660/- for a period of 5 years with cumulative effect, with a further direction that the applicant will not earn increment of



pay during the e period of reduction and on expiry of the period, the reduction will have the effect of postponing his further increment. The appellate authority further directed that the intervening period i.e. from 15.12.2000 up to the date of reinstatement will be treated as "dies non". The respondents have passed the impugned orders without giving any show cause notice, violating the principles of natural justice. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that vide order dated 15.12.2000, the order of dismissal was passed by the respondents against the applicant after conducting the departmental enquiry proceedings against him. He filed OA No.538/2001 and the Tribunal directed the respondents to decide the appeal which was pending before the respondents. During pendency of the aforesaid OA, the respondents decided the appeal vide order dated 28.2.02 and the apphcant was ordered to be compulsorily retired from service. The applicant had to file OA No.515/02 and the Tribunal set aside the order of compulsory retirement and directed the respondents to impose any punishment other than removal, dismissal and compulsory retirement. Thereafter, the respondents passed the impugned order dated 14.10.2004 (A1) i.e. reduction of pay by 5 stages from Rs.2960/- to Rs.2660/- for a period of 5 years with cumulative effect, with a further direction that the applicant will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay and the intervening period from the date of removal up to the date of reinstatement will be treated as dies non. The aforesaid order is also harsh, which should be made applicable from the date of the order of compulsory retirement and not from the date on which this order is passed i.e. 14.10.2004. Our attention is drawn towards (1992) 21 ATC 63 I.C.Sharma Vs. UOI & Others and further argued that while passing the order of dies non about the intervening period, the respondents have not given an



opportunity of hearing while it is mandatory according to FR 54-A (ii) (i).

4. In reply, the learned counsel of the respondents argued that the OA No.515/02 filed by the applicant challenging the order of compulsory retirement of the applicant was decided by the Tribunal vide its order dated 11.8.2004 (Annexure A7) and it was held by the Tribunal that the dissenting note of the disciplinary authority is based on sufficient and justified reason. The case cannot be said to be a case of no evidence. The learned counsel further argued that the Tribunal did not find any illegality in the enquiry and the dissenting note of the disciplinary authority and the impugned orders challenged in that OA were held to be speaking orders. The Tribunal interfered with the quantum of punishment only, holding that it is harsh. Accordingly the respondents have modified the order of compulsory retirement to that of reduction of pay by five stages, with further direction that the applicant will not earn increment during the period of reduction and this reduction will have the effect of postponing his future increments. The period from the date of dismissal till his reinstatement is also treated as "dies non". The applicant by way of present application has challenged the quantum of punishment on the ground that no notice was issued to him before passing the order of punishment. The learned counsel further argued that the entire grievance of the applicant has been adjudicated on merit by the Tribunal in OA No.515/02 and the impugned orders dated 14.10.2004 and 22.11.2004 have been passed in compliance with the order of the Tribunal dated 11.8.2004. The punishment awarded by the said orders cannot be said to be too harsh. There is no illegality, arbitrariness and violation of natural justice. He further argued that the aforesaid ruling cited on behalf of the applicant is not applicable at all in the present case. The impugned order dated 14.10.04 (A1) shall be applicable from the date of passing the order i.e. 14.10.2004. The punishment is harsh. Initially the punishment of dismissal was passed by the disciplinary authority on 15.12.2000.



Subsequently vide order dated 28.2.02 it was modified as compulsory retirement and thereafter in compliance with the order passed by the Tribunal, the impugned order dated 14.10.2004 was passed. It is clear that the procedure followed by the respondents in conducting departmental enquiry proceedings was even corrected by the Tribunal. The Tribunal only directed the respondents to pass any other punishment other than dismissal, removal and compulsory retirement. Hence considering all facts and circumstances of the case, they passed the impugned order. As far as the order of dies non is concerned, the applicant is not exonerated from the charges at all. Hence the respondents are not bound to give a show cause notice or any opportunity of hearing to the applicant. The OA deserves to be dismissed.

5. After hearing the learned counsel for the parties and perusing the records, we find that initially by order dated 15.12.2000, the order of dismissal was passed against the applicant and his appeal was decided by the appellate authority vide order dated 28.2.02, thereby the punishment of dismissal was modified to that of compulsory retirement. The applicant filed OA No.515/02 and the Tribunal directed the respondents to impose any penalty other than dismissal, removal and compulsory retirement. The respondents have passed the impugned order dated 14.10.2004 by which the penalty is modified as "Reduction of pay by five stages from Rs.2960/- to Rs.2660/- in the time scale of pay Rs.2550-55-2660-60-3200 with effect from the date of issue of this order for a period of five years with cumulative effect with a further direction that he will not earn increment of pay during the period of reduction and that on expiry of this period, reduction will have the effect of postponing his further increment of pay. It is further ordered that the intervening period from the date of removal i.e. 15th December 2000 up to the date of his reinstatement be treated as dies non." The argument advanced on behalf of the respondents is that the Tribunal only directed about the quantum of punishment and



it has not found any fault or error in conducting the departmental enquiry proceedings against the applicant. We have perused the ruling cited by the applicant in which it is held by CAT, PB ^{New Delhi} as under:

"Departmental Enquiry-Penalty -Effective date, if exoneration replaced by a penalty in review-Held on facts, related back to the date on which the employee was exonerated-Charge sheet served on the applicant on 15.10.62 but exonerated on 1.3.1969-The President issuing show cause notice on 30.7.1970 for review of the order and imposing a penalty on 18.2.74 for reduction of pay for one year without cumulative effect-President's order related back to 1.3.1969 and therefore its currency of penalty lapsed on 28.2.1970-Thereafter, applicant's promotion could not be suspended by adopting sealed cover procedure-Promotion-Sealed cover procedure-Applicability when penalty imposed by review order."

6. This ruling does not seem to apply in the present case at all.

7. On the other hand, the argument advanced on behalf of the respondents that the impugned order dated 14.10.2004 shall be applicable from the date of passing seems to be legally correct. As far as declaring the intervening period as dies non, the argument advanced on behalf of the applicant seems to be legally correct in view of FR 54-A (i).

8. Considering all facts and circumstances of the case, we are of the considered opinion that the impugned order dated 14.10.2004 shall be applicable from the date of passing i.e. 14.10.2004. The respondents are directed to pass an order about declaration of the intervening period after giving notice to the applicant and an opportunity of hearing within a period of two months from the date of receipt of a copy of this order.

9. The OA is disposed of as above. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman