

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 33 of 2003

Jabalpur, this the 6th day of September, 2004

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

Jai Shilan, aged about 59 years,
S/o. T.N. Nanda, working as Ex.
Chargeman, Gr.II/OFK, R/o. H. No.
101, Behind T.I. Bungalow, Police
Station, Lalmati Ghampur, P.O. Kasturba
Nagar, Jabalpur, M.P.

... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India, through
Secretary, Department of Defence
Production & Supplies, South
Block, New Delhi.
2. Chairman, Ordnance Factory Board,
Ayudh Bhavan, 10-A, Shaheed Khudiram
Bose Road, Kolkata (WB).
3. General Manager, Ordnance Factory,
Khamariya, Jabalpur, M.P.

... Respondents

(By Advocate - Shri K.N. Pathia)

O R D E R

By Madan Mohan, Judicial Member -

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

"(I) to quash the penalty order dated 5.5.2001 (Annexure-A/9) and also the appellate order dated 12.1.2002 (Ann. A/11),

(II) to direct the respondents to reinstate the applicant in service and grant all the consequential benefits,

(III) to declare the action of respondents in finding the charge of attempted theft to be made out, as unsustainable in law."

2. The brief facts of the case are that the applicant who was holder of the post of Chargeman-II under the respondent No. 3, parked his Lamberetta Scooter on the stand situated in front of the Store (Stocks) office on 7.1.2000 and started discharging his duties as usual on 7.1.2000. When the



applicant finished his duty at about 17.30 hrs. on 7.1.2000, and proceeded towards the Gate No. 1 of the factory with his scooter, he was stopped by security personal at the gate and was frisked. Nothing was found from the possession of the applicant. The security personal asked the applicant to open the panel of the scooter, which the applicant did. The applicant was surprised to see something kept in a khaki cloth and inside left panel of the scooter/on opening the cloth one brass piece and few number of safety pins were found. The applicant was placed under suspension on 11.1.2000 and a charge sheet under Article 14 of CCS(CCA) Rules, 1965 was issued on 31.1.2000 primarily alleging unauthorised possession of Government material with the further allegation of attempted theft of the material. The applicant denied the charges and sought conduction of enquiry vide letter dated 27.2.2000. The prosecution witnesses were produced and made available for cross-examining, whereafter defence statement was submitted by the applicant. The applicant was supplied the copy of the enquiry officer's findings which found both the charges established. The applicant refuted the implicative findings of the enquiry officer and show caused by reply dated 7.12.2000. The disciplinary authority thereafter imposed the penalty of removal from service dated 5.5.2001. Aggrieved by this the applicant preferred an appeal on 14.6.2001 which was also rejected vide order dated 12.1.2002 by the appellate authority. Hence, this OA.

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

4. It is argued on behalf of the applicant that the charges against the applicant are not proved and there is no evidence or material on record to support the charge of attempted theft. All the prosecution witnesses have said in unanimity



that nothing was found from the possession of the applicant which proves lack of intention of theft. The articles which are said to be recovered from the alleged panel of his scooter must have been kept by someone else because his scooter was parked through out the day and the applicant was surprised when he was asked by the security personal to open the panel of the scooter. This is a mischief planned by someone against the applicant and the penalty imposed is very harsh. Our attention is drawn towards the order passed by the Ernakulam Bench of this Tribunal in the case of A. Sukumaran Vs. Sub Divisional Officer & Ors., (1996) 32 ATC 1, in which it is held that "in absence of proof of the charge, penalty set aside." In this case the charges against the applicant are not proved. Hence, the penalty of removal from service and its appellate order are liable to be quashed and set aside.

5. In reply it is argued on behalf of the respondents that the alleged articles were recovered from the left panel of the scooter of the applicant in his own presence, wherein in a khaki cloth one brass piece and few numbers of safety pins were found. This is not a case of attempt to commit theft. In case of attempt to commit the theft the charge would have been of the nature that he was making efforts to take out the alleged articles but in this case the applicant has already stolen the alleged articles and kept them in his own scooter and these were recovered from his possession. Hence, according to the Indian Penal Code this act of the applicant comes within the purview of Section 379/411 of the IPC and not merely under Section 379/511 of IPC which is attempt to commit theft. The applicant could not show and prove the contention that this mischief is committed or planned by someone else by any evidence. Mere version in this regard cannot be believed. He further



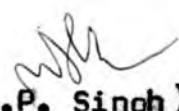
argued that the charge against the applicant is established and proved vide report of the enquiry officer and the applicant was involved in similar offence earlier for which he was penalised. The punishment is not harsh. Hence, the action taken by the respondents is perfectly legal and justified.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the charges against the applicant are proved according to the report of the enquiry officer and he was found in possession of the Government property in his own scooter and in his own presence from the left panel of the scooter. According to the order dated 5.5.2001 (Annexure A-9) it is mentioned that he was found involved in similar offence ^{earlier} for which he was penalised which indicates that he is a habitual offender which makes him totally unbecoming of a Government servant and amounts to violation of Rule 3(i)(iii) of CCS(Conduct) Rules, 1964. This is not a case of mere attempt of theft. The applicant could not show any irregularity or illegality conducted in the departmental enquiry against him. It is also not a case of no evidence. Considering the gravity of the charges the punishment seems to be ~~not~~ harsh and does not ^{shocks} our conscience. It is a settled legal proposition that the Courts /Tribunals cannot reapprise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. In view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case and this OA is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.


(Madan Mohan)
Judicial Member

"SA"


(M.P. Singh)
Vice Chairman