

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 915 of 2003

Indore, this the 10th day of January, 2005

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

Steven Rao, S/o. Shri J. Rao,
R/o. Yadav Mohalla, Rampur,
District : Jabalpur (MP). Applicant

(By Advocate - Shri N. Pandharkar)

V e r s u s

1. The Union of India, through : The Secretary,
Ministry of Defence, New Delhi.
2. The Director General of Ordnance Factory Board,
10-A, Shahid K.B. Road,
Kolkata – 700 001.
3. The General Manager,
Gun Carriage Factory,
Jabalpur (MP). Respondents

(By Advocate – Shri P. Shankaran on behalf of Shri S.P. Singh)

ORDER

By Madan Mohan, Judicial Member –

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

“(i) to call for the records pertaining to present case and be further pleased to quash the order dtd. 28.10.1999 and order dated 26.1.2002 and be further pleased to command the respondent to reinstate the petitioner in service with all consequential service benefits.”

2. The brief facts of the case are that the applicant was an employee of respondent No. 1 and was working under the direct control of respondent No. 3. The respondent No. 3 was not pleased with him and he issued a charge sheet stating that he was absent from duty without



sanction of leave and without any intimation to the respondents. The enquiry was initiated against him without following the procedures in accordance with law. A major penalty of compulsory retirement was imposed on the applicant vide order dated 28.10.1999 (Annexure A-3). He preferred an appeal against this order but the appeal was also dismissed vide order dated 26.1.2002. The appellate authority also did not consider the entire material available on the record and failed to see that the punishment imposed on him is severe and harsh. The applicant was not furnished with the documents demanded by him, hence he was unable to raise the contentions in support of his claim. The entire action of the respondents was arbitrary and in violation of Article 14 and 16 of the Constitution of India. Thereafter the applicant has filed OA No. 31/2003 and the Tribunal vide its order dated 2.4.2003 directed the respondents to supply the copy of the relevant documents to the applicant. The applicant submitted a copy of the order of the Tribunal dated 2.4.2003 to the respondents but they did not agree for it. The copies which were furnished to him were not complete and were not legible. When the applicant had proceeded on leave, he submitted the application along with the relevant medical certificates. But without application of mind the charge sheet was issued to him. The applicant has submitted his written brief against the enquiry report also. It is very clear that the impugned order is passed in violation of the principles of natural justice and infringing the provisions of Rule 14 of CCS (CCA) Rules, 1965. Hence, this Original Application is filed.

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

4. It is argued on behalf of the applicant that the respondent No. 3 i.e. the General Manager, Gun Carriage Factory, Jabalpur was not pleased with the working of the applicant. Hence, he had issued the charge sheet against the applicant on false and frivolous grounds with the allegation that the applicant was absent from his duty without sanctioned leave and



without any intimation to the administration. The applicant demanded the copies of the documents but these were not supplied to him. He filed OA No. 31/2003 and in compliance with the directions given by the Tribunal vide its order dated 2.4.2003, ill-eligible copies of the concerned documents were supplied to him. The complete documents were not supplied to him. Thus without conducting the enquiry according to the rules and procedure and without considering the contention of the applicant the disciplinary authority has imposed the severe and harsh punishment of compulsory retirement from service vide order dated 29.10.1999. Thereafter his appeal was also dismissed by the appellate authority. The applicant was not at fault at any time, as whenever he proceeded on leave he applied for it and applications were duly supported with medical certificates. Taking leave is a legal right of every employee according to the law. Hence, the charges against the applicant are not proved and even then the applicant was imposed with a severe punishment of compulsory retirement from service which is illegal and unjustified.

5. In reply the learned counsel for the respondents argued that the applicant was working as a Messenger Boy and he was charge sheeted on 24.6.1998 for misconduct of irregular attendance to a tune of 170 days in the year 1997 and 70 days in the year 1998. Further in addition he unauthorisedly absented for a period of 141 days and 54 days respectively in the above period. It was also mentioned in the charge sheet that the period of unauthorized absence after the issuance of the charge sheet would also be taken into cognizance by the disciplinary authority while deciding the penalty. Thus after the issuance of the charge sheet on 24.6.1998, the applicant further continuously remained absent from duty for 378 days further. In the above referred charge sheet it was also pointed out that inspite of being penalized for the same misconduct in the year 1991 still the applicant has not shown any improvement in his performance. Copies of the relevant documents were duly given to the applicant. He was given due opportunity of hearing.



The applicant filed the appeal against the order of the disciplinary authority. His appeal was duly considered and both the authorities have passed the impugned orders after considering all the facts, circumstances and contentions of the applicant. Remaining absent from duty for such a long period by an employee would adversely affect the smooth functioning of the respondent's office. The applicant had been absenting himself for a long time without intimation and without permission. Hence, the respondents have not committed any irregularity or illegality in conducting the departmental enquiry proceedings and in passing the impugned orders.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant was a Messenger Boy and he has made allegations against respondent No. 3 i.e. the General Manager of Gun Carriage Factory, Jabalpur alleging that the respondent No. 3 was not pleased with the working of the applicant, and hence he issued the charge sheet against him. This allegation of the applicant does not seem to be correct as the applicant had been absenting himself from his duty for a long period for several times without permission and intimation to the administration which is a matter of record and not displeasure of any authority. This is not a case of allegation for any misconduct or misbehaviour against the applicant. The applicant was penalised for the same act i.e. for absence from duty in the year 1991 but he did not show any improvement in his performance. He again absented for 170 days in the year 1997 and 70 days in the year 1998. Further in addition to it he unauthorisedly absented himself for a period of 141 days and 54 days respectively in the above period. Even after issuing the charge sheet the applicant further continuously remained absent from duty for 378 days though this is not a charge against the applicant in the present charge sheet. But according to the charge sheet the applicant remained absent for a very long period. The applicant has not justified this act by showing us any document or orders on his application passed by the respondents. Apparently, on long absence from duty of any



employee adversely affects the smooth functioning of the office of the respondents. The charge against the applicant is proved and established. Hence this is not a case of no evidence. The punishment so awarded to the applicant does not seem to be harsh or severe and it also does not shock our conscience as the applicant further remained absent from his duty for 378 days after issuance of the charge sheet. We have perused the impugned orders passed by the disciplinary authority dated 29.10.1999 and appellate order dated 25.1.2002 and find that these orders are speaking and reasoned orders. 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 opinion that the applicant has failed to prove his case and hence, 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

“SA” पृष्ठंकन सं ओ/न्या. जयलपुर, दि.
प्रतिनिधि लखे बिल :-
(1) सचिव, उच्च न्यायालय काट एडमिनिस्ट्रेशन, जयलपुर
(2) आवेदक श्री/श्रीमती/शु के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/शु के काउंसल
(4) ग्रंथपाल, को.प्र.अ., जयलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु

उपे रजिस्ट्रार

10. Peshkar Kar 2005
S.P. Singh 2005

Issued
On 25.01.05
BS