

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 920/03

Jabalpur, this the 16th day of December, 2004

CORM

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

Shri Udai Singh
S/o Late Shri Phool Singh
H.S.II Fitter
GCF, Jabalpur.
R/o H.No.360/2 Behind Pump House
Shankar Shah Nagar, Rampur
Jabalpur.

Applicant

(By advocate Shri Bhoop Singh)

Versus

1. Union of India through
Secretary
Ministry of Defence Production
New Delhi.
2. The Chairman
Ordnance Factory Board
10-K, S.K. Bose Road
Kolkata.
3. The General Manager
Gun Carriage Factory
Jabalpur.

Respondents

(By advocate Shri Om Namdeo)

ORDER

By Madan Mohan, Judicial Member

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

- (i) To quash the order dated 2.4.03 passed by respondent No.3 and the order dated 29th Sept. 03 passed by appellate authority.



(ii) The order dated 11.2.04 passed by Dy.GM, GCF, Jabalpur and the respondent No.2 OFV order dated 20.1.04 be declared as illegal, inoperative and against law and provision and passed without jurisdiction against the principles of natural justice.

2. The brief facts of the case are that the applicant who was serving as Fitter (High Skilled Grade.II) was placed under suspension by respondent No.3 and a charge sheet was issued to him. The allegation made against the applicant was that he was gambling at the factory premises. The applicant submitted his reply on 18.9.2001 denying the allegation made against him. An enquiry was conducted and during the course of the enquiry, the applicant demanded documents relating to other 4 persons who were also involved in the gambling but the respondents refused to supply the documents. On completion of the enquiry, the presenting officer submitted his prosecution brief in which he stated that the act of gambling is not proved. Thereafter the disciplinary authority passed the impugned order dated 2.4.03 (Annexure A11) by which the applicant was compulsorily retired from service. The applicant preferred an appeal dated 17.4.03 (Annexure A12). The appellate authority vide order dated 29.9.03 (Annexure A13) modified the penalty of compulsory retirement to that of reduction of pay by three stages for a period of one year with cumulative effect and treating the intervening period between the date of compulsory retirement i.e. from 2.4.03 to that of reinstatement in service as dies non and no back wages shall be payable for the intervening period. After passing the modification order, the appellate authority vide order dated 20.1.04 (Annexure A15) again modified the penalty to that of withholding of one increment for a period of three years, when next due, with cumulative effect. This penalty order is illegal and against the law and provision. Once a penalty order is passed, the respondents cannot review their own order without application of mind and without giving an opportunity of being heard. Hence this OA is filed.



3. Heard learned counsel for both parties. It is argued on behalf of the applicant that no opportunity of hearing was given to the applicant. The applicant had demanded the relevant documents from the respondents from time to time and also asked about the names of other 4 persons who were alleged to be involved in the gambling/playing cards but these names were not supplied by the respondents. The enquiry officer had not conducted the enquiry in a fair way. The charge against the applicant was not proved. The disciplinary authority had passed the order dated 2.4.03 by which the applicant was ordered to be compulsorily retired from service. On appeal, the penalty of compulsory retirement was modified. But again the appellate authority vide order dated 20.1.04 (Annexure A15) suo moto changed the earlier penalty order. Both these orders are passed without affording the applicant an opportunity of hearing and the respondents are not legally authorized to change their earlier order without giving an opportunity of hearing to the applicant. Hence the whole enquiry proceedings conducted by the respondents and the impugned orders passed are liable to be quashed and set aside.

4. In reply, learned counsel for the respondents argued that the applicant was caught red-handed by the security while gambling inside the factory along with 4 other employees. Immediately the factory security made a seizure memo of the playing card along with the scoring sheet. All the individuals were suspended and subsequently issued with the charge sheet. The accomplices other than the applicant accepted the charges. The disciplinary authority imposed a suitable penalty on them. As the applicant did not accept the charges, the disciplinary authority constituted a court of enquiry to enquire into the charges. Due opportunity of hearing was given to the applicant. Relevant papers were supplied to the applicant. The applicant had been penalized on earlier three occasions. The respondents are duly authorized to change the penalty if the authority concerned subsequently is of the opinion that the earlier penalty was not sufficient. Hence no irregularity or illegality is committed by the respondents.

(Signature)

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that due opportunity was given to the applicant and copies of all the relevant documents were supplied to him and names of other 4 persons who were also allegedly involved in the gambling were given to the applicant. Those names are clearly mentioned in the report of the enquiry officer. On an earlier occasion also, the applicant was imposed the penalty of censure in 1986 for playing cards. Initially a penalty of compulsory retirement was imposed on the applicant by the disciplinary authority vide order dated 2.4.03 but it was modified by the appellate authority vide order dated 29.9.03 to that of reduction of pay by 3 stages for a period of one year with cumulative effect. Subsequently the appellate authority vide order dated 20.1.04 has issued a corrigendum in which it is mentioned that "in partial modification of the appellate order dated 29.9.03, following amendment to para 5 of the said order is made: For reduction of pay by three stages for a period of one year with cumulative effect: Read: withholding of one increment for a period of three years, when next due, with cumulative effect." And subsequently vide order dated 11.2.04, the intervening period between the date of suspension and reinstatement was treated as dies non. The charges against the applicant are proved and this is not a case of no evidence and the Tribunal cannot re-appraise the evidence. The appellate authority had initially passed the appellate order dated 29.9.03 (Annexure A13) and the said appellate authority himself modified his own order vide corrigendum dated 20.1.04, as the earlier order dated 29.9.03 was not passed in accordance with Rule 11 of CCS (CCA) Rules, 1965. Therefore, the appellate authority had modified his own order by issuing a corrigendum dated 20.1.04 and such type of legal mistake can be corrected by the respondents.

(Signature)

Initially the applicant was awarded a punishment of compulsory retirement by the Disciplinary Authority vide order dated 2.4.03 (Annexure A11). Subsequently it was reduced by the appellate authority vide order dated 29.9.03 (Annexure A13) and lastly vide order dated 20.1.04 (Annexure A15), the appellate authority has again reduced the punishment imposed on the applicant. So far as treating the intervening period i.e. from the date of compulsory retirement and the date of reinstatement of the applicant is concerned, it is ordered to be treated as dies non vide earlier order dated 29.9.03 (Annexure A13) and again by another order dated 11.2.2004 (Annexure A14), the respondents have stated that they are legally authorized to pass such order under FR-54. The applicant is not exonerated from the charges. Hence all the orders passed by the respondents seem to be perfectly legal and justified. This OA has no merit. Accordingly the OA is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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प्रधानकाज सं. ओ/न्या
प्रतिविनियोगी काउंसिल, जबलपुर, दि.....
(1) सचिव, उच्च प्रान्तीय विधायिका, जबलपुर
(2) आदेशक शो/प्री. विधायिका, जबलपुर
(3) प्रत्यक्षी शो/प्री. विधायिका, जबलपुर
(4) विधायक, उच्च प्रान्तीय विधायिका, जबलपुर

Ram Singh Ad. 288
Om Namah Shab. Ad. 288

Agreed
On 17.12.04

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जप रजिस्ट्रर