

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,

CIRCUIT CAMP AT GWALIOR

Original Application No. 158 of 2001

Jabalpur, this the 3<sup>rd</sup> day of September, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

K.M. David (deceased) through I.Rs-  
1. Smt. Thankamma David W/o Late Shri K.M. David  
Aged 58 years, R/o House No. M/47. Thatipur,  
R.K Puri, Gwalior.

2. Mr. Victoria Johan Panicker, W/o Mr. John Penicker  
Aged 30 years, R/o Riya Travel & Tours(India)  
Pvt. Samarias Centre, P.M.G. Jungetion,  
Trivandrum 625004.

3. Mr. Mercy Jubi W/o Mr. Jubi Cherian Joseph,  
Aged 28 years, R/o A-2, Amit Sagar Co-operative  
Society Sector No.10-A Plot No.10, Vashi Navi  
Bombay-400703.

4. Ku. Glory David D/o Late Shri K.M. David,  
Aged 17 years, Under guardianship of her mother  
Smt. Thankamma David R/o House Nom M/47. Tatipur  
R.K. Puri, Gwalior.

(By Advocate- Shri S.C.Sharma)

APPLICANTS

VERSUS

1. The Union of India through  
The Secretary Ministry of Defence  
New Delhi.

2. Engineer in Chief,  
Army Head Quarter,  
New Delhi.

3. Chief Engineer,  
Central Command,  
Lucknow(UP)

4. Chief Engineer(A/F)  
Allahabad(U.P.)

5. Commander Works Engineer  
5. Maharajpura Distt. Gwalior(MP)

6. Garrison Engineer(A/F)  
Air Force Maharajpura  
Distt. Gwalior(M.P)

7. Maj. Sarv Deep Singh,  
Garrison Engineer(A/F)  
Air Force, Maharajpura,  
Distt. Gwalior(MP)

8. J.L. Arora, Superintendent(E/M)  
C/o Garrison Engineer Air Force,  
Maharajpura Distt. Gwalior(M.P.)

RESPONDENTS

(By Advocate - Shri P.N. Kelkar)

O R D E R

By M. P. Singh, Vice Chairman-

By filing this OA, the applicants have sought the following main reliefs :-


"(A) whole proceedings of enquiry may kindly be declared as illegal, arbitrary against the rules and in violation of principles of natural justice, hence vitiated and be quashed.

(B) enquiry report Annexure A/46 is out of record being findings are perverse and hence be declared as illegal, may kindly be quashed.

(C) the impugned order of penalty contained in Annexure A/48 based on appreciation of illegal enquiry report be declared as void being no reasoned, perverse cryptic and vimsical hence be quashed."

2. The brief facts of the case are that the deceased Government servant K.M.David was initially appointed as Mechanic in E & M in 1963; in due course he was promoted as Superintendent E/M. Vide order dated 22.4.1996, he was transferred to the Office of Garrison Engineer (P) Maharajpur within the same complex. For one or other reason, he avoided to comply with the order of posting for a long time and and he remained absent. Therefore, a charge-sheet was issued to him. An enquiry officer was appointed to conduct an enquiry. The enquiry officer submitted his report, holding the charges proved against him. A copy of the inquiry report was given to Shri K.M.David to submit his representation. He submitted his representation. After considering the enquiry report and the representation of the charged-official, the disciplinary authority vide order dated 12.1.2000/ (Annexure-A-48) imposed the penalty of reduction to lower stage from Rs.7775/- to Rs.7600/- in the time scale of pay of Rs.5500-9000 for a period of 20 months without cumulative effect and not adversely affecting his pension. Against the said order Shri David has submitted an appeal on 3.3.2000. The said appeal was not decided and in the meantime the applicant has filed this OA.

3. The respondents in their reply have stated that the deceased Government servant had remained absent for a long period. He was, therefore, issued a charge-sheet. An enquiry officer was appointed to conduct the enquiry. The enquiry was conducted as per rules. Full opportunity was given to the charged-official to defend himself. He submitted his defence



statement and participated in the enquiry. After substantial compliance of the rules and affording full opportunity to the charged-official, the enquiry was concluded. The charges were held proved against the charged official. A copy of the enquiry report was furnished to him and after considering his representation, the disciplinary authority imposed the aforesaid penalty of reduction to a lower stage. The respondents have, therefore, contended as there was no procedural irregularity in the conduct of enquiry, this OA is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the pleadings.

5. During the course of arguments, the learned counsel for the applicants has contended that the enquiry has not been held as per the laid down procedure, as the enquiry officer himself asked the leading questions from the charged-official; and the charged-official was not given full opportunity to defend himself. In support of his claim he has relied on the decision of Hyderabad Bench of this Tribunal in the case of S.B. Ramesh Vs. Ministry of Finance, (1996) 32 ATC 731. On the other hand, the learned counsel for the respondents has contended that the enquiry has been held as per the laid down procedure and no irregularities were pointed out by the charged-official even at the stage of enquiry. The learned counsel for the respondents has also contended that the order passed by the disciplinary authority has been merged in the order passed by the appellate authority which has not been challenged in this OA, therefore, this OA is liable to be dismissed on this ground alone. In reply to this contention, the learned counsel for the applicants has submitted that he was not required to challenge the order of the appellate authority as the same has been passed after filing of this OA and <sup>in terms of</sup> Section 19(4) of the Administrative Tribunals Act, 1985, <sup>the appellate authority</sup> should not have passed it.

6. We find that a charge-sheet for major penalty was issued to the charged-official under Rule 14 of the Central Civil Services (CCA) Rules, 1965. The enquiry officer has held the charges proved and a copy of the enquiry report was supplied to the charged official to submit his

representation. Thus, the principles of natural justice

have been fully complied with. It is an admitted fact that the charged-official remained absent for a long period for which the present enquiry was conducted. After enquiry, the disciplinary authority has only imposed the minor penalty of reduction to a lower stage from Rs.7775/- to Rs.7600/- for a period of 20 months only without cumulative effect and not adversely affecting his pension. It is a settled legal position that the Courts or Tribunals cannot reappraise the evidence and also cannot go into the question of quantum of punishment. In this view of the matter we do not find any merit in this OA.

7. As regards the contention of the respondents that since the applicants have not challenged the appellate order this OA is liable to be dismissed, we find that this OA was filed 27.2.2001 but notices were issued only on 10.8.2001 and in the meantime the appellate order was passed on 31.7.2001. Thus, the order passed by the appellate authority on 31.7.2001 is not in violation of the provisions of Section 19 ibid. As the order of the disciplinary authority has been merged in the appellate order, the applicants were required to challenge the same. As the same has not been challenged, this OA is also liable to be dismissed on this ground alone.

8. In the result, for the reasons stated in the preceding paragraphs, we dismiss this OA, however, without any order as costs.

(A.K. Bhatnagar)  
Judicial Member

(M.P. Singh)  
Vice Chairman

rkv.

पूरांकन सं ओ/न्या.....जबलपुर, दि.....  
प्रतिनिधि अवशिष्ट:-

- (1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के कार्यालय
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के कार्यालय
- (4) मध्यपक्ष, कोप्रअ., जबलपुर न्यायापीठ

सूचना एवं आवश्यक कार्यवाही हेतु  
9/1/2002  
उप सचिव

Shri S. S. Sharma  
Shri P. N. Kelkar  
JHC Co-chairman

9554ed an  
24