

**CENTRAL ADMINISTRATIVE TRIBUNAL
NABALUBER BENCH**

JABALPUR

Original Application No.8/2001

Jabalpur, this the 15th day of December, 2003

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Shiv Prasad Tamrakar
working as Master Craftsman
Ticket No.2742/44/PM-1/GIF/JIP
in Grey Iron Foundry
JABALPUR (MF). ... Applicant

(By Advocate: Shri B.L.Nag)

Versus

1. Union of India through the Secretary
Ministry of Defence
South Block
NEW DELHI - 110 011.
2. The Chairman
Ordnance Factory Board
10-A, Shahid Khudiram Bose Road
CALCUTTA - 700 001.
3. The General Manager
Grey Iron Foundry
JABALPUR (MP). ... Respondents

(By Advocate: Sh. B. Da Silva)

Q R D E R (Oral)

By G. Shanthappa, Judicial Member:

The above original Application is filed seeking the following reliefs:

- a) To quash the impugned penalty order No.GIF/51/VIG/IE(28/98) dated 17-3-2000 (A-1).
- b) To quash the Inquiry Report dated 9-2-2000 (A-23).
- c) To direct the respondent to pay arrears of pay and allowances alongwith interest there on as a result of quashment of impugned penalty order dated 17-3-2000.
- d)
- e)
- f) To quash penalty order No.12605/A/VIG dated 12 Feb. 2001 (Annexure E-2/ to Regjoinder dated 01 May, 2001).

Contd....2/-

g) To direct the Respondent No.3 i.e. The General Manager, Grey Iron Foundry, Jabalpur to refund Rs.4,072/- alongwith interest @ 18% which has already been recovered from the wages of the applicant from the month of Mar 2001 to June 2001 @ Rs.1,018/- p.m. due to implementation of enhanced penalty order dated 12 Feb. 2001, thereby basic pay was reduced for four months from Rs.6,125/- p.m. to Rs.5,107/- p.m.

h) To direct the respondents to make payment of difference of wages and arrears thereon alongwith interest @ 18% as a result of grant of relief (f) and (g) above."

2. The brief facts of the case are that the applicant was initially appointed as wireman on 7.3.1973 and as on date of filing the OA he ~~was~~ working as Master Craftsman under Respondent No.3. He put in 27 years of service in various capacities. While he was working as Master Craftsman, he was served with a chargesheet dated 1.6.1998, which was issued by Respondent No.3 thereby three charges have been framed against the applicant which are impartial in nature and do not fall under the category of any misconduct, which are listed in CCS(Conduct) Rules, 1964. As such the said charges are not tenable in the eyes of law in view of the Judgement of the Hon'ble Supreme Court in Surath Chandra Chakravarty v. State of West Bengal, AIR 1971 SC 752. The imputation of the charges are that the applicant said to have composed/written a poetry titled as "Tarana", in addition to that the following charges are also made against the applicant:

- (i) Using abusive and provocative language against Sr. Officers of the factory by writing poetry "Tarana".
- (ii) Wasting of Govt. time.
- (iii) Denigrate the religious sentiments of Sr. Officers and thereby causing/encouraging the communalism.

Contd...3/-



3. After receiving the chargesheet, the applicant has submitted his reply to the chargesheet on 10.6.1998 whereby he has denied the charges and stated that he has been falsely implicated in the case ~~of~~ by fabricating imaginary charges with ulterior motives to damage his service career and to put him in great financial loss of recurring nature till his life time. Subsequently, an inquiry officer has been appointed and in the inquiry, five witnesses were examined and the applicant also made an application dated 2.11.1998 for change of inquiry officer on the ground of bias and as per Rule 14 of the CCS (CCA) Rules, 1965 for staying the inquiry proceedings on the ground of bias. The inquiry officer has proceeded to conduct the inquiry even after the aforesaid request made by the applicant. During the inquiry, the applicant was not able to attend the inquiry ~~as~~ ^{he} had sent a Telegram on 5.4.1999 to the inquiry officer, though the said telegram was received in the office on 5.4.1999, subsequently, it was given to the inquiry officer on 9.4.1999 and the proceedings were conducted on 7th and 8th April, 1999 placing the applicant as ex-parte. As the applicant was not allowed to participate in the inquiry, hence, the inquiry officer has violated the principles of natural justice. During the inquiry the applicant has made a request for change ^{vide} Annexure A-15 dated 25.5.1999 ~~of~~ of inquiry officer ^{which was rejected} ~~vide~~ Annexure-A/17. The inquiry officer has concluded the inquiry and a copy of the inquiry report has been served on the applicant and the applicant has submitted his reply ^{made} on 17.1.2000 (Annexure A-22) wherein he has ^{stated} ~~stated~~ that he has been falsely implicated by engineering a plot against him and fabricating charges and evidences. It is further stated that the inquiry officer

could not ~~prove~~ any of the charges and therefore
the whole Departmental Enquiry Report dated 9.2.2000
is based on no evidence and the same is liable to be
quashed. *gr.* According to
gr. the disciplinary authority *gr.*
the applicant, *gr.* has passed the impugned order dated
17.3.2000, without considering the objections raised
in his reply to the inquiry report, imposing a
penalty of withholding of two increments with cumulative
effect when next due for a period of two years
vide Annexure A-1. Against this, the applicant has
gr. preferred an appeal before the appellate authority
gr. the said authority has passed an order *gr.*
(Respondent No.2) vide order dated 24.6.2000(Annexure
A-25) under Rule 23(ii) of CCS (CCA) Rules, 1965.
The appellate authority has modified the order of
punishment vide order dated 12.2.2001 vide Annexure-E/2
attached
gr. to the rejoinder. The relevant portion of the
order of the appellate authority is as follows:

"..... since a minor penalty has been
imposed on him he should be allowed full
pay and allowances treating the suspension
period as unjustified, it is stated that
the disciplinary authority relying on the
ruling of Hon'ble S.C. in the case of Kulwant
Singh Vs. State of Punjab S.C.1991 has
treated the same as major penalty.

However, taking an extreme lenient stand
in view of his impending superannuation, the
undersigned has decided to moderate the
existing penalty to that "Reduction of pay
by two stages for a period of one year with
cumulative effect."

4. In view of the above, the appellate authority
has convinced that the impugned order of the disciplinary
authority is illegal but the appellate authority
instead of quashing the order of the disciplinary
authority, without issuing notices and without
giving an opportunity to the applicant, the
punishment order has been modified. Hence, the
aforesaid proceedings are illegal and are liable to
be *quashed*. Hence, the present OA seeking the above
reliefs.

5. The applicant has submitted some additional documents along with his rejoinder, wherein the specific contention taken by the applicant is that the applicant had requested the inquiry officer through Telegram dated 5.4.1999 to stay the inquiry proceedings to be held on 7.4.1999, 8.4.1999 and 9.4.1999 in view of the appeal filed by him against the decision of the General Manager dated 4.3.1999 for change of inquiry officer to the Chairman, Ordnance Factory Board, Calcutta. It is stated that the said Telegram dated 5.4.1999 has been delivered to the inquiry officer on the same date between 1700 and 2000 hours, when the applicant was under suspension. However, the inquiry officer has deliberately ignored the Telegram and he had concluded the inquiry ex-parte. Hence, he has violated the principles of natural justice.

The applicant has also relied on the Judgement of this Tribunal in CA No.712/1990 in V.V.Ramaiah v. General Manager, S.C.Railway, Secunderabad and others, reported in 262. Swamy's CL Digest 1993 Page 400, wherein it has been held that "Punishment of reduction to lower stage having effect of reduction of pay permanently with effect on pensionary entitlements cannot be imposed beyond the period ~~till~~ ^{up} 10 months prior to the date of retirement". In this view of the matter, the applicant stated that it is well settled position in law that only Present of India can reduce the pension as per Rule 9 of the CCS (Pension) Rules, 1972, whereas under the impugned order the respondents have reduced the pension by imposing the aforesaid penalty vide order dated 17.3.2000 which goes beyond the date of retirement, i.e., 31.10.01

L.P.

which is not permissible in the eye of law. Under the said order of punishment, the Respondent No.3 has reduced the basic pay from Rs.6125/- to Rs.5875/- w.e.f. 17.3.2000 with cumulative effect for a period of one year in the time scale of pay of Rs.4500-125-7000 vide order dated 8.3.2001 (Annexure E-3). Hence, the applicant has filed the aforesaid OA seeking the above reliefs.

6. Per contra, the respondents have filed their detailed reply denying the averments made in the OA. The specific contention in their reply is that the applicant had requested for change of inquiry officer vide order dated 10.11.1998 but his request was turned down. He had ~~ep~~ requested for change of inquiry officer and presenting officer vide his application dated 16.2.1999 and after due consideration of his representation, it was rejected by the disciplinary authority vide order dated 4.3.1999. The applicant then began the dilatory tactics by raising irrelevant, baseless and unreasonable objections. He failed to ~~take~~ part in the inquiry when it was ~~ep~~ convened on 7.4.1999 and 8.4.1999 inspite of having been served with the notice of hearings. The inquiry officer proceeded the inquiry ~~ex-parte~~ and copies of the proceedings ~~as~~ sent to the applicant. On 9.4.1999 at about 1210 hours, the inquiry officer received a telegram from the applicant requesting that the proceedings should be stayed as he intended to prefer an appeal to the Chairman, Ordnance Factory Board, against the order of the disciplinary authority dated 4.3.1999. The inquiry officer replied to the Telegram vide correspondence dated 9.4.1999 and the applicant was duly explained the entire factual position. The applicant preferred his representation

dated 5.4.1999 to the Chairman, Ordnance Factory Board in which he made false, baseless and unreasonable allegations against the inquiry officer and the presenting officer. His representation was duly considered and rejected vide a speaking order dated 24.9.1999. Based upon the findings of the inquiry officer, the applicant was awarded the aforesaid punishment by the disciplinary authority thereafter, the appellate authority has also awarded the punishment, after modifying the order of the disciplinary authority, as mentioned ⁱⁿ earlier, ~~as~~ ⁱⁿ para. Hence, the action of the respondents is in accordance with law and rules and the OA is liable to be dismissed.

7. The respondents have further stated that the appellate authority has also passed the order in accordance with rules as such the Judgement relief upon by the applicant in OA No.712/90 (supra) is not applicable to the present case. The respondents have also denied the contention of the applicant, that the charges framed against him are fabricated and imaginary. It is also stated that as there was no bias against the applicant, the question of change of inquiry officer does not arise, accordingly they rejected the request of change of the inquiry officer. They have further stated that merely because the applicant has preferred an appeal which gives no right to avoid the proceedings. The applicant should have attended the proceedings and requested for an adjournment instead of sending a telegram after the proceedings were concluded. The contention of the applicant that by recording the proceedings in English he has been ^{and} prejudiced/cannot be sustained for a simple reason ^{as}.

that the applicant himself was communicated in English. The respondents have also denied that Respondent No.3 has totally ignored all the submissions made by the applicant before imposing the penalty of withholding of two increments with cumulative effect for the periods of two years vide his order dated 17.3.2000.

8. The respondents have supported the action taken by the respondents for imposing the aforesaid punishment. There is no illegality or irregularity committed by the respondents, hence, the CA is liable to be dismissed.

9. After hearing the advocate for the applicant and after hearing the ~~for the~~ advocate for the respondents and after perusal of the pleadings and documents available on record, we proceed to decide the CA finally.

10. After perusal of the pleadings and submissions the substantive question of law involved in this CA is whether the proceedings of inquiry officer, the order of the disciplinary authority and the order of the appellate authority are illegal, violative the principles of natural justice or not?

11. The admitted facts of the case are that inquiry proceedings were concluded ex-parte though the applicant had sent the telegram well in time, i.e., on 5.4.1999. Subsequently, after receipt of the telegram, the inquiry was concluded. Though the applicant had submitted his application under Rule 14 of the CCS (CCA) Rules, 1965 for change of inquiry officer, on the ground of bias, the inquiry officer, ^{and} disciplinary authority have rejected the same without assigning proper reasons.

The appellate authority, while exercising his powers under Rule 11(IV) of the CCS (CCA) Rules, 1965, modified the punishment order of disciplinary authority and imposed the punishment of reduction of pay by two stages for a period of one year with cumulative effect vide his order dated 12.2.2001 (Annexure E-2). It is very clear that the appellate authority has modified the punishment imposed by the disciplinary authority on the ground that the impugned order of disciplinary authority was illegal. In this view of the matter, we are of the considered view that when the appellate authority has decided that the order of the disciplinary authority is illegal, the appellate authority has to quash either the order of the disciplinary authority or to remand back the matter to the disciplinary authority to take a view according to the advice of the appellate authority. However, in the present we do not find any such action has been taken by the appellate authority. The appellate authority, taking a lenient view, has simply modified the punishment imposed by the disciplinary authority, which is not sustainable in the eyes of law as the appellate authority has not given an opportunity to the applicant before taking his action. Both the disciplinary and appellate authorities have considered that the proceedings of inquiry is illegal, even then, they have imposed the penalty, which is not proper, which violates the principles of natural justice.

12. Taking over-all aspects of the case of the applicant and observations made above, we are

Contd....10/-



of the considered view that the respondents have violated the principles of natural justice while imposing the penalty on the applicant. Hence, the impugned orders of disciplinary authority dated 17.3.2000 as well as the impugned order of appellate authority dated 12.2.2001 are quashed and set-aside. The applicant is entitled for consequential benefits, if any, in view of the aforesaid Judgement, relied upon by the applicant, in CA No.712/1990.

13. The CA is accordingly allowed in terms of the directions given above. No order as to costs.

G. Shanthiappa
(G. SHANTHIAFFA)

Judicial Member

M. P. Singh
(M. P. SINGH)
Vice Chairman

/rao/

F. C. Steele
22/12/03

RECORDED & INDEXED
12/12/03
12/12/03
12/12/03
12/12/03

B. L. Nayak, Adw.
B. Chaitanya, Adw.

Rajendra
22/12/03