

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.260 of 2001

Jabalpur, this the 17th day of June, 2004

N.K. Chadha, S/o Shri A.N.Chadha
Aged about 50 years, R/o 117/H,
2/8 Pandurang Nagar, Kanpur
Ex-clerk, L.A.O. 506, Army Based
Workshop, Jabalpur..

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India through the Secretary, Deptt. of Defence New Delhi.
2. The Controller General of Defence Accounts, R.K. Puram, West Block, New Delhi.
3. The Finance Advisor (Defence Service) Ministry of Defence, South Block, New Delhi.
4. The Controller of Defence Accounts C.C. Meerut.
5. L.A.O., 506, Army Based Workshop Jabalpur

RESPONDENTS

(By Advocate - S.P. Singh)

O F D E R

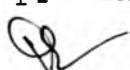
By Madan Mohan, Judicial Member -

By filing this O.A, the applicant has sought the following main relief :-

" to quash the order dated 15.5.85 (Annex A-2) whereby penalty of compulsory retirement has been imposed on the applicant.

This Hon'ble Tribunal may further be pleased to quash the Appellate order dated 18.1.2000 (Annex A-7) by which the appeal preferred by the applicant has been rejected".

2. The brief facts of the case are that the applicant was an employee under the respondents and was working in the post of Clerk at Kanpur in the year 1983. There was some allegations against the applicant when he was working at Kanpur. A chargesheet was issued against him, (Annexure A-1). The applicant was thereafter transferred from Kanpur to Jabalpur and was posted in the office of respondent no. 5. An enquiry was conducted against the applicant and the applicant was found guilty



of the charges by the Enquiry Officer, and on the basis of the findings of the enquiry officer, respondent no. 2 imposed the punishment of compulsory retirement from service on the applicant vide its order dated 15.5.1985 (Annexure A-2). The findings of the enquiry officer were contrary to the evidence recorded during the enquiry. The enquiry officer has held that the applicant disobeyed the transfer order. From the evidence it is clear that the applicant after his transfer from Group III to Group IV, was allowed to work in Group III where he was posted earlier and therefore the findings of the enquiry officer are absolutely false and contrary to the record. Apart from this, the whole findings of the enquiry officer are false and contrary to the record.

2.1 Aggrieved by the order of the disciplinary authority i.e. respondent no. 2, applicant preferred an appeal which was rejected by the appellate authority as time barred. Hence, the applicant filed an OA No. 799/92 before this Tribunal which was allowed vide its order dated 4.11.1999 to the extent that the appeal/preferred to the appropriate authority by the applicant against the punishment order/be decided by respondent no. 3. In compliance with the order of the Tribunal, respondent no. 3 after considering the appeal of the applicant rejected the same vide order dated 18.1.2000 under communication to the applicant on 25.1.2000 (A-7). It is submitted that the appellate authority has not gone through the complete evidence on record of enquiry and has passed the impugned order without applying its mind. In this view of the matter, both the impugned orders passed by the disciplinary authority as well as appellate authority are illegal and deserve to be quashed and set aside.

3. Heard the learned counsel for the parties and perused the material available on record and the departmental record pertaining to the disciplinary proceedings in respect



of the applicant.

4. It is argued on behalf of the applicant that charges levelled against the applicant are not proved. He has drawn our attention towards the statement of Shri M.C. Shrivastava recorded before the enquiry officer in which he has admitted that the applicant was retained. Hence, the senior officer of the applicant has justified the version of the applicant and the applicant did not disobey the order of transfer, if any. The orders passed by the disciplinary authority and the appellate authority are not speaking and reasoned order but have been passed without application of their mind and no reasons are also assigned in both these orders to come to the conclusion in passing such type of orders. It is further argued that no opportunity of hearing was given to the applicant to defend himself and moreover the witnesses produced before the enquiry officer have not supported the case of the respondents. Therefore, the findings of the enquiry officer are perverse and are not based on any evidence available on record. It is further argued that suspicion cannot take the place of proof howsoever strong it may be. It is the burdened duty of the respondents to prove the charges levelled against the applicant before passing any adverse order against him. Since the charges are not proved at all and the applicant is ordered to be compulsory retired is a very harsh punishment. It is also argued that the age of the applicant was 50 years at the time of filing of the present Original Application.

5. In reply, the learned counsel for the respondents argued that the enquiry was initiated against the applicant on four charges framed against him, and no irregularity or illegality has been committed by the respondents in conducting the enquiry. It is further argued that this is not a case of 'no evidence' and proper opportunity of hearing was also given to the applicant. It is further argued that the statement of Shri M.C. Shrivastava cannot help the case of the applicant

as he was not the competent authority to stay the transfer of the applicant and no order or statement of the competent authority has been filed by the applicant to show that he had not disobeyed the transfer order. It is further argued that the other charges are also stood proved. The applicant also preferred an appeal which was heard and considered by the appellate authority and the same was rejected by a speaking and reasoned order in compliance with the order of this Tribunal passed in OA No. 799 of 1992 on 4.11.1999 as the charges against the applicant were of very serious nature i.e. he failed to obey the transfer order; tempering with the attendance register and marking his attendance for the dates on which he was not present and also marked his attendance in advance for one day and also used unparliamentary language and threatened his senior officer and also tore the attendance register and took away with him forcibly and he failed to join his duties at the transferred place and absented himself unauthorisedly. All these acts of the applicant adversely affected the smooth functioning of the office of the respondents hence there was no option for the respondents to compulsory retire the applicant from service.

6. After hearing the learned counsel for both the parties and careful perusal of the record, we find that proper opportunity of hearing was given to the applicant. He submitted his representation and also preferred an appeal before the appellate authority which was rejected on the ground of limitation. The applicant after direction of the Tribunal in OA No. 799/92 preferred by him, he again preferred an appeal and the appellate authority after considering the appeal of the applicant rejected the same and passed the impugned order. We have also gone through the orders passed by the disciplinary authority as well as of the appellate authority and find that both the impugned orders are speaking orders and have been passed after



considering all aspects of the case of the applicant. We also find that this is not a case of 'no evidence' and the charges levelled against the applicant relating to misconduct, tempering with the attendance register and disobeying the transfer order and absenting himself unauthorisedly are no doubt serious and grave in nature. Therefore, we find no irregularity or illegality committed by the respondents while passing the impugned orders. Moreover, it is the settled position of law that the Tribunals/Courts cannot re-appraise the evidence and also cannot go into the quantum of punishment. Hence, the O.A. deserves to be dismissed.

7. Having regard to the facts and circumstances of the case and in view of the observations made above, we do not find any merit in the present O.A. and the same is accordingly dismissed with no order as to costs.

(Madan Mohan)
Member (Judicial)

(M.P. Singh)
Vice Chairman

पृष्ठांवज्ज से अे/त्या..... जवलपुर. दि.....
प्रतिलिपि अवादा दिवत:-
(1) राज्य, उच्च व्यायामिक बोर्ड एवं नियायालय, जवलपुर
(2) अधिकारी श्री/श्रीमती/कु..... के काउंसल
(3) पर्याली श्री/श्रीमती/कु..... के काउंसल
(4) वायापाल, टोप्रा, जवलपुर ज्यायपीठ
सूचना एवं आवश्यक कार्यवाही डेटु
B. P. Jhunjhunwala
30.6.04

Issued
on 30.6.04
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