

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 271 of 2001

Jabalpur, this the 15th day of June 2004

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

Shri Narayan Mishra, S/o Shri
Ram Sajivan Mishra, aged about 42
years, Lower Division Clerk,
House No. 1885/72, P.O. Kasturba
Nagar, Chandmari Talaiya, Jabalpur. ... Applicant

(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul)

V e r s u e

1. Union of India,
through its Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman/DOF,
Ordnance Factory Board,
10-A, Shahid Khudli Ram Bose Marg,
Kolkata.
3. The General Manager,
Ordnance Factory Khamariya,
Jabalpur. ... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member -

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

"(ii) set aside the order dated 9.6.2000 Annexure
A-1 & A-2 and also the punishment order dt.
21.2.2001 Annexure A-3.

(iii) direct the respondent to prove all
consequential benefits to the applicant as if the
impugned disciplinary proceedings are never
initiated against him.

(iv) command the respondents to pay yearly
increment due to the applicant during the suspended
period between 12.2.1999 to 8.6.2000,

(v) command the respondents to consider the case
of the applicant for promotion from the date his
juniors mentioned in para 4.8 are promoted as UDC."

2. The brief facts of the case are that the applicant



while working as LDC was placed under suspension with effect from 12.2.1999. The suspension was followed with charge sheet issued to the applicant on 17.4.1999. The applicant denied the charges in toto and thereafter a departmental enquiry was instituted against him. The charge sheet shows that the only one witness Shri R.S. Tripathi was cited as witness by the prosecution. In fact the charge sheet was issued against Shri R.S. Tripathi who admitted the guilt. On his admission he was inflicted with a punishment by the department. While admitting the charges Shri Tripathi falsely implicated the applicant also. In the departmental enquiry also one witness Shri Tripathi was produced by the prosecution. The enquiry officer came to the conclusion that the applicant is not guilty of the charges. The respondent No. 3 disagreed with the finding of the enquiry officer and accordingly passed a show cause notice dated 16.5.2000 alongwith the revised finding of the disciplinary authority. The applicant submitted his reply against the finding of the disciplinary authority. Considering the reply to the show cause notice the impugned order dated 9.6.2000 has been passed by the disciplinary authority imposing the punishment of reduction of pay by two stages for a period of two years with cumulative effect on the applicant. Another order dated 9.6.2000 has also been passed thereby deciding the applicant's suspension period from 12.2.1999 to 8.6.2000 as a period spent on duty for the purposes of pay and allowances and for other purposes. Aggrieved by this the applicant has filed an appeal to the appellate authority and the appellate authority has rejected the appeal of the applicant vide order dated 21.2.2001, without assigning any reason and without application of mind. During the period of suspension of the applicant the yearly increment due to the applicant

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was not paid to him. There was no order of the competent authority to withhold the yearly increment of the applicant. The applicant has also cited a judgment of the Hon'ble M.P. High Court in the case of Jawaharlal Jain Vs. Administrative Jabalpur, Municipal Corporation Jabalpur, with regard to payment of yearly increment.

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

4. It is argued on behalf of the applicant that he has claimed for setting aside of the penalty order as well as for grant of increment during the suspension and for promotion. He further submitted that grant of increment during the suspension period is consequential relief of relief No. 7(ii) i.e. setting aside of the penalty, and/ the relief No. 7(v) he submitted that he is not pressing the same. The learned counsel for the applicant further argued that ^{the} only witness Shri Tripathi did not support the case of the prosecution. Hence the enquiry officer submitted the report in favour of the applicant stating that the applicant is not guilty of the charge. The disciplinary authority has wrongly dissented with the report of the enquiry officer. Hence this is a case of no evidence. No other witnesses were produced against the applicant except the complainant himself. He also submitted that during the suspension period the applicant should not have been denied his increment due.

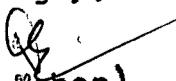
5. The learned counsel for the respondents argued that under CCS(CCA) Rules, the disciplinary authority is legally empowered to dissent with the report of the enquiry officer after issuing the dissenting note to the applicant. In this case the disciplinary authority has



issued
the dissenting note to the applicant. The charges against the applicant are of moral turpitude as is evident from the charge sheet itself. Shri Tripathi has named the applicant and he also has been awarded the same penalty which was awarded to the applicant.

6. After hearing the learned counsel for the parties, we find that the charges against the applicant are of moral turpitude and which are very serious and grave. The only witness was Shri R.S. Tripathi who has admitted his guilt and has also named the applicant. There was no other witness except Shri Tripathi. Hence another witnesses could not have been produced by the respondents during the departmental proceedings. The disciplinary authority has given his dissenting note against the report of the enquiry officer for which he is duly empowered under the rules. The disciplinary authority has also mentioned the reasons for his disagreement in the dissenting note. The copy of the enquiry report alongwith the dissenting note was forwarded to the applicant for making his submission if any. Thus due opportunity of hearing was given to the applicant and there is no violation of any rule and the principles of natural justice has been followed. This is not a case of no evidence. It is a settled legal proposition that the Courts/Tribunals cannot reapprise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Hence we are of the considered opinion that the applicant has failed to prove his case and the 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