

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No. 423/2001

Jabalpur, this the 26th day of April, 2004

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Member (Judicial)

Raj Kumar Jaiswal,
S/o late Phoolchand Jaiswal,
Aged about 50 years,
Machinist (Skilled),
House No. 316, Shitlamai,
West Ghampur, Near Phuhara,
Jabalpur.

...Applicant

(By Advocate - Shri S.Paul)

-versus-

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

2. The Chairman/DGOF,
Ordnance Factory Board,
10-A, Shahid Khudi Ram Bose Marg,
Kolkata.

3. The General Manager,
Ordnance Factory, Khamariya,
Jabalpur.

...Respondents

(By Advocate - Shri S.C.Sharma through Sh. Harshit Patel)

O R D E R (ORAL)

By A.S. Sanghvi, Member (Judicial) :

The applicant, who was serving as a Machinist under the respondent no. 3, was served with a chargesheet dated 6.5.99 levelling imputation of his misbehaving and man-handling a co-worker thereby violating the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. On the applicant denying the charges, an enquiry was held to enquire into the charges levelled against him. The enquiry officer, however, exonerated the applicant of the charges levelled against him but the disciplinary authority disagreeing with the finding of the enquiry officer after issuing a note of disagreement to the applicant and inviting his representation thereon, imposed the

penalty of reduction in pay by three stages of the grade of Machinist (skilled) from Rs. 3500/- p.m. to Rs. 3275/- p.m. in the time scale of pay of Rs. 3050-4590/- for a period of two years with cumulative effect. The applicant preferred an appeal against the order of the disciplinary authority but the appeal had come to be rejected and, therefore, he has approached this Tribunal.

2. The main ground, on which the applicant has challenged the orders passed by the disciplinary authority and confirmed by the appellate authority, is that the disciplinary authority as well as the appellate authority have not given any reason for holding him guilty of the charges. It is also contended that there was no evidence led before the enquiry officer which would go to prove the charges levelled against him. The finding of the disciplinary authority, therefore, was based on 'no evidence' and as such the same was illegal and unsustainable and the penalty imposed on this finding deserves to be quashed and set aside.

3. The respondents in their reply, however, have defended the penalty imposed on the applicant contending that the enquiry was held as per rules and regulations and the disciplinary authority was very much justified in holding the applicant guilty of the charges levelled against him and imposing the penalty on him. It is denied that the disciplinary authority's findings are not based on the evidence on record and that the order of the disciplinary authority deserves to be quashed and set aside because of the same not disclosing any reason. They have, therefore, prayed that the O.A. be dismissed with costs.

4. We have heard the learned counsel for both the parties and carefully perused the documents and pleadings on record.

5. So far as the enquiry held by the enquiry officer is concerned, the applicant has not challenged the same on the ground that the enquiry is vitiated on account of non-observation of the principles of natural justice. He has, however, heavily relied on the enquiry officer's report and contended that even the enquiry officer on the analysis of the evidence recorded by him in the enquiry proceedings, has come to a definite conclusion that there was no evidence proving the charges levelled against him. According to the applicant's case inspite of this finding of the enquiry officer, the disciplinary authority had, on some strange grounds, disagreed with the finding of the enquiry officer. The grounds on which the note of disagreement was recorded by the disciplinary authority are as follows:-

- i) The enquiry officer has failed to consider the medical examination report which is authentic documentary evidence. As per report, the injury was caused due to blunt object.
- ii) The enquiry officer has failed to appreciate/ consider the findings recorded by the Board of enquiry wherein it has been clearly indicated that Shri R.K. Jaiswal had beaten Shri Mangal Singh on 1.4.1998.
- iii) The argument given by the enquiry officer has no basis. He has relied on the defence statements which are after thought and ignored oral and documentary evidences, adduced during the enquiry.

6. It is an undisputed position that against the disagreement note of the disciplinary authority, the applicant had submitted his representation pointing out that the disagreement is based on unsubstantiated grounds and that the enquiry officer's report should be accepted. The disciplinary authority, however, has disagreed with the representation of the applicant and held that the charges levelled against the applicant were proved. The order of the disciplinary authority, however, does not demonstrate the reason for arriving at such a conclusion. The reasoning for disagreeing with the findings of the enquiry officer and holding the

applicant guilty of the charges levelled against him are found in para 4 of the disciplinary authority's order dated 30.9.2000 (Annexure A-1). Para 4 of the said order reads as under:

"Now the undersigned after careful consideration of the facts and relevant evidence on record and also the representation of Shri R.K.Jaiswal, T.No. SA-1/246 holds that the charges viz: (i) committed gross misconduct - manhandling a co-worker Shri Mangal Singh, T.No. SA-1/196; (ii) violation of Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964 and conduct unbecoming of a Government servant are established against Shri R.K.Jaiswal, Ex.T.No. SA-1/246/59427, Now T.No. SA-1/86."

The next para i.e. para no. 5 of the said order proceeds to impose the penalty of reduction in pay by three stages of the grade of Machinist (Skilled) from Rs. 3500/-p.m. to Rs. 3275/- p.m. in the time scale of pay of Rs. 3050-4590/- for a period of two years with cumulative effect. There is absolutely no discussion of the evidence led before the enquiry officer, in the order of the disciplinary authority. It is, therefore, quite obvious that the order is devoid of any reason and as such it cannot be considered to be a valid and reasoned order. It is a settled position that the disciplinary authority while holding the delinquent guilty of the charges levelled against him, is required to record his reasons in writing. In the instant case, he was required to record his reasons in writing, all the more, when the enquiry officer had exonerated the applicant of the charges levelled against him. It can hardly be gainsaid that the order of the disciplinary authority suffers from vices of non-application of mind and does not satisfy the statutory requirement of recording the reasons while holding the delinquent guilty of the charges levelled against him.

7. The significant aspect of the matter is that the appellate authority has also followed suit and without recording any reason for rejecting the appeal of the applicant confirmed the order of the disciplinary authority. He has not even recorded the contentions of the applicant in his

appeal memo nor dealt with those contentions, though the applicant had raised several contentions in his appeal. Neither the disciplinary authority nor the appellate authority seems to have applied their minds to the evidence led before the enquiry officer. Even the grounds on which the disciplinary authority disagreed with the findings of the enquiry officer are not sustainable as they themselves demonstrate that the disciplinary authority did not know on what basis he could disagree with the findings of the enquiry officer. He has observed that the enquiry officer has failed to consider the medical examination report which is authentic documentary evidence. The allegation against the applicant was that he had manhandled his colleague and beaten him. The prosecution was required to prove that the applicant had beaten his colleague Mangal Singh and it was the finding of the enquiry officer that no evidence was led by the prosecution to prove that the applicant had beaten Mangal Singh. The question of appreciation of medical report, therefore, had no significance and it could not have formed a ground for disagreeing with the findings of the enquiry officer. The second ground on which the disciplinary authority has disagreed with the findings of the enquiry officer is that the enquiry officer has failed to appreciate/consider the findings recorded by the Board of enquiry. It appears that the disciplinary authority is not aware of the rule position that any finding recorded by the Board of enquiry or any finding arrived at in the preliminary enquiry, cannot be a ground to hold that the charges levelled against the delinquent are proved as these findings are recorded ex parte and the same cannot be accepted by the enquiry officer without first examining the persons who recorded those findings. In fact if the disciplinary authority's observation is to be accepted then there was no necessity of holding a regular fulfledged enquiry against the applicant as the Board of enquiry had already held him guilty of the charges levelled

against him. It is, therefore, quite evident that the disciplinary authority's disagreement on ~~certain~~^{the} grounds was also not based on proper appreciation of the evidence and facts. The third ground for disagreement is that the argument given by the enquiry officer has no basis but how this argument has no basis is not disclosed either in the disagreement note or in his order imposing the penalty on the applicant. When the disciplinary authority observed that the enquiry officer's arguments were baseless and that he had ignored oral and documentary evidence, it was incumbent on the part of the disciplinary authority to analyse the evidence adduced before the enquiry officer and to point out what evidence proves the charges levelled against the applicant. Merely observing that he had carefully considered the facts and relevant evidence on record and also the representation of the delinquent does not go to establish that the charges levelled against the delinquent were proved. We have, therefore, no hesitation in concluding that the order dated 30.9.2000 (Annexure A-1) passed by the disciplinary authority does not disclose any application of mind and being devoid of any reason, deserves to be quashed and set aside on this ground. It cannot be said to be a legal and valid order and the same can be said also about the order of the appellate authority confirming the order of the disciplinary authority. The appellate authority had no material before it to conclude that the order passed by the disciplinary authority deserves to be confirmed, as the disciplinary authority had not given any reason for holding the applicant guilty of the charges levelled against him.

8. For the foregoing reasons, we are of the considered

opinion that the orders passed by the disciplinary authority and confirmed by the appellate authority imposing the penalty on the applicant are not sustainable and the same deserves to be quashed and set aside.

9. In the conclusion, we, therefore, quash and set aside the order dated 30.9.2000 passed by the disciplinary authority imposing the penalty of reduction in pay by three stages of the grade of Machinist (Skilled) from Rs. 3500/- p.m. to Rs. 3275/- p.m. in the time scale of pay of Rs. 3050-4590/- for a period of two years with cumulative effect on the applicant and also the appellate order confirming the order of the disciplinary authority and direct the respondents to restore the applicant's pay with all consequential benefits. No costs.

A. S. Sanghvi
(A. S. Sanghvi)
Member (Judicial)

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

/na/

पूर्णांकन सं. ओ/न्या..... जयलालु, दि.....
परिलिपि अंडो गिर्जा—
(1) सदिक, उच्च व्याकाता, नं. 10, राजा, जयलालु
(2) आकेला देवी/मही/पु. के काउंसल S. Paul
(3) प्रस्तरी श्री/मही/पु. के काउंसल S. G. Shashikumar
(4) वंशगत, केदारा, जयलालु, राजा, जयलालु एवं अवश्यक कार्यालयी हेतु *Parundas*
राजगता एवं अवश्यक कार्यालयी हेतु *Parundas*
उप राजस्वार रक्षा

Jaswal
on 10/10/04
by G. S. O. U.