

CENTRAL ADMINISTRATIVE TRIBUNAL. JABALPUR BENCH. JABALPUR

Original Application No. 529 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

Indra Bhan Mishra, aged about 48 years,
s/o. late R.B. Mishra, Ticket No. 954/NIE
P No. 700985, LDC Section MID, Gun Carriage
Factory, Jabalpur. ... Applicant

(By Advocate - Shri R.K. Nanohariya)

V e r s u s

1. Union of India, through Chief Secretary, Ministry of Defence, New Delhi.
2. The Addl. Director General, Ordnance Factories, 10-A Shaheed K.B. Road, Calcutta.
3. The General Manager, Gun Carriage Factory, Jabalpur. ... Respondents

(By Advocate - Shri Gopi Chourasia on behalf of Shri S.A. Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member -

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

"(i) the orders Annexure A-V and A-VII be please quashed.

(ii) the period of suspension of the applicant from 21.1.1997 to 5.12.1998 be please ordered to be treated as period spent on duty.

(iii) the respondents be directed to pay the full salary of the period of suspension from 21.1.1997 to 5.12.1998 to the applicant alongwith all consequential benefits."

2. The brief facts of the case are that the applicant is working as Lower Division Clerk in the MID section of the Gun Carriage Factory, Jabalpur. On instigation of some persons enemical to the applicant, the authorities of Lordganj Police Station arrested him on an accusation that



a Country made revolver (Deshi Katta) was recovered from his possession. A charge sheet for an offence punishable under section 25(1-B)(a) of the Arms Act was submitted against the applicant in the Court of the Chief Judicial Magistrate, Jabalpur. Since the applicant remained in custody in connection with this criminal case, he was suspended from forenoon of 21.1.1997 by the authorities of the GCF, Jabalpur. The Chief Judicial Magistrate convicted the applicant under Section 25(1-B)(a) of the Arms Act and sentenced him to R.I. for one year and a fine of Rs. 1000/- *vide* judgment dated 3.12.1999 passed in Cr. Case No. 1464/97. The applicant challenged this judgment and preferred an appeal before the Court of the Sessions at Jabalpur which was registered as Criminal Appeal No. 141 of 1999. The learned VIIth Additional Sessions Judge, allowed the appeal and set aside the judgment passed by the CJM and acquitted the applicant of the charge under section 25(1-B)(a) of the Arms Act, *vide* judgment dated 13.3.2000. The suspension of the applicant was revoked during the pendency of the criminal case before the CJM and the applicant consequently resumed his duties on 5.12.1998. The respondent No. 3 served a notice calling upon him to show cause as to why the period of suspension from 21.1.1997 to 5.12.1998 be not treated as period not spent on duty. The applicant submitted a reply on 1.6.2000. The respondent No. 3 *vide* order dated 31.8.2000 treated the period of suspension as not spent on duty. The applicant preferred an appeal against it but the respondent No. 2 rejected the appeal holding that the applicant has been acquitted after granting him the benefit of doubt and therefore the period of suspension cannot be treated as period spent on duty. The applicant submitted that the appellate court allowed the appeal and the judgment and the sentence passed by the CGM was set aside and the

applicant was acquitted from the charge. This was a clear acquittal of the applicant. Hence the impugned orders are illegal and are liable to be set aside.

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

4. The learned counsel for the applicant argued and drawn our attention towards the judgment of the appellate court i.e. the VIIth Additional Sessions Judge passed in Criminal Appeal No. 141 of 1999, in which the appeal was allowed on merit and the judgment of the learned lower court i.e. of CGM was not set aside on the ground of giving benefit of doubt. Hence the impugned orders passed by the respondents are not in accordance with the facts and law and they have not ap-plied their mind in passing these orders and even they did not cared to read the judgment of the appellate court, otherwise the fact of benefit of doubt could not have been mentioned in these orders, while the acquittal order by the appellate court was not on benefit of doubt.

5. The learned counsel for the respondents argued that the opportunity of hearing was given to the applicant and the charge against the applicant was very grave and serious as he was found in possession of Country made Pistol, which is not expected from a Government servant rather it comes within anti-social activity of the applicant. The authorities have given show cause notice to the applicant and after hearing him the impugned orders were passed. Hence they have not committed any irregularit: or illegality as contended by the applicant.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the

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applicant was acquitted from the charges levelled under Section 25(1-B)(a) of the Arms Act, by the learned VIIth Additional Sessions Judge in Criminal Appeal No. 141 of 1999 and the appeal was allowed and the orders⁸ passed by the learned EGM were set aside and it was also ordered that if any fine is deposited by the applicant the same be refunded to him. This judgment is passed on merit and the learned VIIth Additional Sessions Judge has no where mentioned that the applicant was acquitted giving him benefit of doubt, while it is mentioned in the order that the sole testimony of seizure officer Manjit Singh (PW-5) is not reliable and certainly the learned trial Magistrate has committed a grave mistake in relying such evidence without taking a note of above mentioned settled principles of law of appreciation of evidence and case law as well. Thus the conviction recorded by learned Trial Magistrate suffers infirmity and can not be allowed to be sustained. Thus the findings given by the respondents in the impugned orders are against this judgment of the appellate court. The respondents should have gone through the judgment passed by the appellate court. The fact that benefit of doubt is mentioned in the order of the appellate authority itself shows that the respondents did not care and honour the judgment passed by the appellate court in the Criminal Appeal No. 141 of 1999. On this ground alone the Original Application deserves to be allowed and the orders passed by the disciplinary authority and the appellate authority are liable to be quashed and set aside.

7. Accordingly, the Original Application is allowed and the impugned orders dated 31.8.2000 (Annexure A-V) passed by the disciplinary authority and dated 3rd July, 2001 (Annexure A-VII) passed by the appellate authority

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are quashed and set aside and the matter is remitted back to the disciplinary authority to pass fresh orders, within a period of three months from the date of receipt of copy of this order. No costs.


(Madan Mohan)
Judicial Member

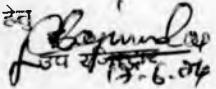

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं. ओ/न्या.....जड़लपुर, दि.....
प्रतिलिपि अब्दे दिला:-

(1) रामेश, उच्च व्याकरण गार उस्तीयाइकर, जड़लपुर
(2) अमेन श्री/श्रीमती/कु.....के कानूनसल
(3) एस्ट्री श्री/श्रीमती/कु.....के कानूनसल
(4) नंगपाल, लोपाड़, जड़लपुर न्यायीठ

R.K. Nanohariya
SA Dharmadik


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T.S. Seel
28/6/85