

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 709 of 2001

Jabalpur, this the 17th day of June, 2004

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

Anand Kumar Soni
S/o Shri B.P. Soni
aged about 43 years,
Steno Grade-III
R/o Gr.No. 365/3,
Parel Line, GCF Estate
Jabalpur.

APPLICANT

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India
through its Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman/DGOF,
Ordnance Factories,
10-A Shahid Khudiram
Bose Marg, Kolkata.
3. The General Manager,
Gun Carriage Factory,
Jabalpur.

RESPONDENTS

(By Advocate - Shri P.Shankaran)

O R D E R

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the following main reliefs :-

"(ii) Set aside the impugned order dated 24.3.2000
Annexure-A-1 and appellate order dated 11.9.2000
Annexure-A-2.

(iii) Consequently command the respondents to provide all consequential benefits as if the impugned orders are never passed!"

2. The brief facts of the case are that the applicant is working on the post of Steno Grade-III with utmost honesty, sincerity and devotion. He was served with charge sheet dated 4.11.1998. In the said charge sheet an incorrect allegation of fraudulently drawal of an House Rent Allowance and tampering with official documents or to fabricate false evidence were

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made against the applicant. The applicant submitted his reply vide letter dated 14.12.1996 (Annexure A-3) and denied the charges in toto. The applicant preferred serious of representations demanding documents which were mentioned in the charge sheet and also the other relevant documents or in the alternative he is may be given opportunity to inspect the original documents. In the departmental enquiry neither the original documents were produced and were permitted to be inspected by the applicant nor the same were supplied to him. None of the prosecution witnesses deposed anything against the applicant on the basis of which it can be said that the charges are found to be proved. On the contrary Shri Surendra Kumar, Assistant General Manager appeared as defence witness on behalf of the applicant, who categorically accepted that the applicant's representations were received on the dates of representations. The applicant submitted his defence brief dated 11.10.1999 (Annexure A-6) The report of the enquiry officer was served on the applicant with direction to furnish a representation against the said report. The applicant submitted his representation against it. Thereafter the disciplinary authority inflicted the punishment dated 24.3.2000 whereby the major punishment of withholding of next increment for one year with cumulative effect was inflicted on the applicant. The applicant being aggrieved by the said order of the disciplinary authority preferred an appeal to the respondent no. 2 i.e. the appellate authority. The said appeal of the applicant was rejected by the appellate authority on 11.9.2000. According to the applicant, effective, adequate and sufficient opportunity of defence was not provided to him as the relevant documents were not served on him nor he was permitted to inspect the same. The applicant wanted to see the genuineness and authenticity and validity of the documents by verifying it from the original documents. However, it has not been supplied or permitted to be inspected by the applicant. The Dak Book

register which was the main document to show and establish that the applicant's representations were mentioned therein or not, has not been made available. The non-production of documents and aforesaid register should have resulted into drawing the adverse inference against the respondents by the enquiry officer which has not been done.

2.1 The excess payment was being made through the official mistake without being claimed by the applicant and the applicant made applications and verbal requests vide PW-2's deposition, for stoppage of House Rent Allowance though it was not a part of applicant's duty, but the said fact was not considered and the impugned penalty was imposed on the applicant. In view of the Statement of Shri Surendra Kumar, no case is made out against the applicant, hence the impugned order is illegal and deserves to be set aside.

3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that according to the statement of Sh. Surendra Kumar, A.G.M., who was produced as defence witness before the enquiry officer, relevant letters were shown to him and he was asked whether those documents bears his signatures. The answer of Shri Surendra Kumar was in affirmative. Our attention is drawn towards enquiry report (Annexure A-7) in which it is mentioned that during examination by D.G.S., defence witness no. 1 Sh. Surendra Kumar, AGM, FGK certified that the signatures on the letters available in the enquiry report are his only (Q.1 sitting no.11). It is further mentioned that although DW-1, Shri Surendra Kumar, AGM/DGK has authenticated his signatures, there is no conclusive proof of forwarding the signed applications to the addressees. It is further argued that this is not the duty of the applicant to confirm whether his letter is actually forwarded and received by the addressee concerned or not. It is proved on record that the applicant had moved an application regarding the concerned matter to the

concerned authorities and A.G.M. Shri Surendera Kumar has accepted his signatures in token of having received the application of the applicant. It is further argued that the said fact could have been easily revealed by producing the Dak Register as requested by the applicant but the said document was not produced for the reasons best known to the respondents before the enquiry officer.

5. On the contrary, the learned counsel for the respondents has argued that the applications of the applicant were not received by the respondents and the photocopy of the relevant original dak register was given to the applicant and the photocopies are sufficient and no original documents are necessary to be shown to the individual or to be produced before the departmental enquiry. Against this argument, the learned counsel for the applicant has submitted that according to rules though the production of photocopies of the relied upon documents are sufficient, but in the instant case the main Dak Register was very much important and essential to be produced before the enquiry officer so as to enable him to take just and proper decision in the matter before submitting his report as the alleged fabrication, manipulation or cutting etc. in the Dak Register could have been easily ascertained from the perusal of the said document.

6. After hearing the learned counsel for both the parties and careful perusal of the material on record, we find that the applicant had demanded to produce the original Dak Bahi/Register before the enquiry officer as mentioned in paras no. 4.10 and 4.11 of the original application which has been produced before us. From the original Dak Bahi/Register we find that entry no. 247 shows that the application of the applicant dated 30.11.1994 was received on that very day and the initials of A.G.M. Shri Surendera Kumar are accepted by the respondents. But the learned counsel for the respondents stated that in the said entry in place of word 'BADAINE', word 'BAND' is written, which clearly amounts to fabrication and manipulation by the applicant. Respondents'

counsel further took us to show one letter of the applicant dated 4.11.1998, to substantiate his above argument, in which the applicant has himself mentioned about his letter dated 30.11.1994 which also confirms the aforesaid fabrication, manipulation and cutting as alleged by the respondents. We have seen the original Dak Bahi/Register and we are in the agreement of the contention of the respondents that there is a manipulation, fabrication and cutting in the record. As there was a charge of manipulation and fabrication of record against the applicant, a major penalty chargesheet was issued against the applicant. The respondents have conducted a fulfledged enquiry and afforded due opportunity of hearing by giving him the enquiry report. Therefore, the principles of natural justice have been followed by the respondents. It is the settled position of law that the Tribunal cannot interfere with the finding of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern. It is also the settled position of law that the Tribunal cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. (see : Union of India vs. Parma Nanda, AIR 1989 SC 1185).

7. In this view of the matter as in the instant case a fulfledged enquiry has been held by the respondents and principles of natural justice have been followed, we do not find any infirmity with the orders passed by the authorities concerned and the O.A. deserves to be dismissed which is accordingly dismissed without any order as to costs.


(Madan Mohan)
Member (J)


(M.P. Singh)
Vice Chairman