

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 816 of 2002

Bilaspur, this the 6th day of July, 2004

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

Viresh Tiwari, S/o. Shri Kailash Tiwari,
aged about 33 years, R/o. Q. No. 95, N-2,
D-Sector, Barkheda, BHEL, Bhopal. ... Applicant

(By Advocate - Shri M.K. Verma)

V e r s u s

1. Union of India, through Chairman Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Central Railway, Chatrapati Shivaji Terminus, Mumbai.
3. Chief Work Shop Manager, Coach Repair Work Shop, Nishatpura, Bhopal.

(By Advocate - Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

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

7.1 to quash the order dated 15.11.2001 to the effect of it prejudicing the applicant i.e. to the effect of it imposing penalties on the applicant,

7.2 to quash the order dated 24.2.2001 (Annexure A-10) and order dated 6.6.2001 passed by respondent No. 3 (Annexure A-14), in the interest of justice, to hold

7.3 that there was no misconduct committed by the applicant and therefore there was no question of penalty on the applicant,

7.4 to hold that the acts alleged in the charge sheet dated 16.3.2000 does not come within the definition of the misconduct,

7.5 to hold that there was a flagrant violation of principles of natural justice in the enquiry and the department has committed the departure from the mandatory requirements of the procedure, therefore the entire enquiry is vitiated and bad in the eyes of law.

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



the applicant was initially appointed in the services of the respondent Department on 12.4.1989. As he was being up-right outspoken, honest and dedicated towards the cause of the co-workers, became the Secretary of Central Railway Mazdoor Sangh for Coach Repair Work Shop, Bhopal. Hence, he was one of the disliked person of the administration and the administration was always looking for an opportunity any how cause harm to the applicant. On the unfortunate date of incident the applicant who was coming towards his office was on the way stopped by the private security employee and was threatened for life and was also assaulted by the private security employee. The applicant being aggrieved by the act of private security employee had submitted an application to the respondent No. 3 intimating him about the misbehavior and assault done by the private security employee. He also informed the matter to the SP, Bhopal by way of a written complaint on the same date i.e. on 19.2.2000. The Railway authorities who were bent upon to any how take vengeance from the applicant for the social activities done by him for the betterment of the employees of the Coach Repair Work Shop, Bhopal were looking for an opportunity to any how put the applicant to a disadvantageous position, ... have issued a charge sheet against the applicant. The applicant has refuted the charges levelled against him by way of submitting the reply and he has also demanded the help of defence assistant and which was exceeded to by the Department. For the same charges as mentioned in the charge sheet a criminal case was also initiated against the applicant and one of the witnesses mentioned in the charge sheet i.e. R.K. Jaiswal was also one of the witnesses in the criminal case along with the complainant and other witnesses relied upon by the State i.e. prosecution. R.K. Jaiswal had deposed before the

Judicial Magistrate First Class on 16.4.2002, wherein he has stated that no quarrel between the applicant and Shri Chandel have ever took place and he is not witness to that incident. The same departmental witness R.K. Jaiswal, who had in the coercive atmosphere of the departmental officers and the enquiry officers had sung a different tune before the enquiry officers and has given a totally different statement before the enquiry officer. All the witnesses who were the trustworthy persons of the Department were chosen by the Department to depose against the applicant. Based on the statement of the applicant the enquiry officer has finalised the Departmental enquiry and had submitted the enquiry report, wherein he had not relied upon the statement of defence witnesses and has based his entire enquiry on the statement of prosecution witnesses. The applicant has submitted the reply to the enquiry report and his reply was never considered in true perspective of law and the disciplinary authority had passed the order dated 24.2.2001, whereby the penalty of removal from service had been imposed upon the applicant. The applicant was acquitted from the criminal charges. The applicant preferred an appeal against the order of the disciplinary authority but it was also rejected vide order dated 6.6.2001. The applicant aggrieved by the order of the appellate authority preferred a revision petition and the revising authority on a humanitarian consideration and considering the applicant's appeal/revision have modified the penalty of removal from service to reduction in same time scale on the lowest scale for a period of five years with cumulative effect and further ordered for reinstatement of the applicant to the Kurdwadi Work Shop and had further ordered for non-consideration of applicant's request for transfer to Bhopal for further five years, further treating

the period from the date of removal from service till rejoining/reinstatement as leave without pay. All these orders passed by the respondents are arbitrary and illegal and are liable to be quashed and set aside. Hence, the applicant has filed this OA claiming the aforesaid reliefs.

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

4. The learned counsel for the applicant argued that in the said incident the complainant Shri R.K. Chandel deposed before the judicial Magistrate 1st Class on 8.11.2000 and stated that somebody has thrown a stone on him and because of that he had received injury on the nose and he had become unconscious. He has further stated that he was never assaulted by the applicant nor had received any injury by the stick on the nose. On the basis of the statement of the complainant the applicant was acquitted by the Judicial Magistrate vide judgment dated 16.4.2001. Hence, this departmental proceedings cannot be initiated against the applicant when the competent court of law has acquitted the applicant from the said charge on which this departmental proceedings are conducted. Shri R.K. Jaiswal also denied his statement against the applicant. The enquiry was not conducted in accordance with rules, and the impugned orders passed by the authorities concerned are arbitrary, perverse and illegal.

5. In reply the learned counsel for the respondents argued that the past record of the applicant was also not clean. He was also punished earlier and his working was not satisfactory. The prosecution witness, Shri R.K. Jaiswal has confirmed the action of the applicant. The proceedings under the departmental case and criminal case, both are different. In departmental case the action is taken based on

the finding of the enquiry report. The nature and scope of criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, cannot conclude the departmental proceedings. All witnesses including Police Head Constable Shri Bhaduria have deposed before prosecution and defence counsel. Based on all the statement of witnesses, defence witnesses, accused employees cross examination statements, evidence and documents, the enquiry officer has logically drawn conclusion and findings. No evidence has been made out by the applicant and it is a settled legal proposition that the Tribunals have limited scope for reappraisal of evidences. There was no pressure on any witnesses during the course of enquiry. Due opportunity of hearing was given to the applicant. The impugned orders are passed in accordance with rules and law.

6. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the arguments advanced on behalf of the respondents that the proceedings of criminal case and departmental case both are different and in the departmental enquiry, the standard of proof are different from criminal proceedings, seems to be legally tenable as in the criminal proceedings there must be conclusive and clinching proof to convict a person but it is not required in the departmental enquiry proceedings. We have perused the judgment passed by the Judicial Magistrate by which the applicant was ordered to be acquitted because the complainant Rajendra Kumar Chandel did not support the prosecution's version, while the report of the enquiry officer shows that the other witnesses who also had seen the alleged incident have supported the case of the respondents against the applicant. The applicant has mentioned in the OA that R.K. Jaiswal has given his statement before the enquiry officer against the applicant

under compulsion of the enquiry officer. No such compulsion is proved by the applicant. We perused the enquiry officer's report and find that the charges levelled against the applicant is established. The applicant cannot take the legal benefit of the judgment of acquittal in the criminal case for exonerating him in the departmental proceedings. Due opportunity of hearing was given to him as he has made representation against the charge sheet, preferred an appeal and also preferred revision petition. Hence this is not a case of no evidence. We also perused the revisional order and we find that the revisional authority after considering the contention of the applicant made in his revision petition have taken a lenient view on humanitarian ground and reduced the penalty to reduction in the same time scale for a period of five years with cumulative effect. It was further ordered that the applicant shall be reinstated in KWV Workshop, and at least for a period of 5 years he will not be considered for transfer to Bhopal even on own request transfer. The intervening period from the date of removal of the applicant to the date of his rejoicing shall be treated as leave without pay. The Hon'ble Supreme Court in the case of Dhananjay Vs. Chief Executive Officer, Zilla Parishad, Jalna, 2003 SCC (L&S) 170 has held that "reinstatement - acquittal in criminal case - held, does not entitle to automatic reinstatement - open to the competent authority to direct an enquiry before reinstatement." Hence, there seems to be no irregularity or illegality committed by the respondents while passing the impugned orders. All orders passed by the authorities are speaking orders. It is a settled legal proposition that the Courts/Tribunals cannot reappraise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals. Thus, we do not find any ground to interfere with the orders passed by the

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respondents. The judgments cited by the learned counsel for the applicant in his written submission are distinguishable in view of the judgment of the Hon'ble Supreme Court in the case of Dhananjay (supra).

7. Accordingly, 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. Hence, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं. ओ/व्हा..... जबलपुर, दि.....
प्रियदिनपि आदो धिरा:-
(1) सहित, उत्तर व्यावराय कार एसेमिलान, जबलपुर
(2) आवेदक श्री/श्रीमती/इ. के कार्यस्थल M.K. Verma
(3) अस्थार्थी श्री/श्रीमती/इ. के कार्यस्थल M.N. T. S. Verma
(4) अंगरेज, लोदी, जबलपुर व्यावरों
सूचना एवं आवश्यक कार्यवाही हेतु 19-7-04
उप रजिस्ट्रार

Issued
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by