

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 969 of 2000

Jabalpur, this the 7th day of May, 2004

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

Yohannan Kutty, aged about 49 years,
Upper Division Clerk, S/o. late Shri
G. Varghese, r/o. 135/2, Vidhya Nagar,
GCF Estate, Jabalpur (M.P.). ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India,
through its Secretary,
Ministry of Defence (Production),
New Delhi.
2. Chairman/DCOF, Ordnance Factory -
Board, 10-A, Shahid Khudiram Bose
Marg, Calcutta - 700 001.
3. General Manager, Gun Carriage
Factory, Jabalpur.
4. Shri B. Bandopadhyaya, Junior
Works Manager/PP, Gun Carriage
Factory, Jabalpur. ... Respondents

(By Advocate - 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 :

"II. set aside the punishment order dated 1.3.2000
Annexure A-1 and the appellate order dated 31-7-2000
Annexure A-2,


III. consequently direct the respondents to provide
all consequential benefits to the applicant as if the
impugned disciplinary proceedings, charge sheet and
suspension order are never passed against the
applicant,

IV. command the respondents to provide all other
consequential benefits arising thereto."

2. The brief facts of the case are that the applicant
is presently working as Upper Division Clerk. The



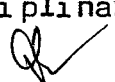
applicant was initially appointed as Lower Division Clerk on 15.12.1971. In the year 1979 the applicant was inflicted with a minor punishment of stoppage of one increment without cumulative effect. While working on the post of Upper Division Clerk, the applicant was served with a charge sheet under Rule 14 of CCS(CCA) Rules, 1965. He submitted his reply denying the charges in toto. The applicant was placed under suspension and the same was followed by the aforesaid charge sheet. In the departmental enquiry only one witness entered the witness box on behalf of the prosecution i.e. Dr. S. Tiwari, Short Term Medical Officer. The Doctor categorically deposed before the enquiry officer in the statement that although there was a smell in the expired breath of the applicant, he was fit for the duties and was not in intoxinate condition. He further admitted that the applicant was fit for duty on 12.5.1999. The enquiry officer prepared his report on 30.11.1999. The applicant submitted that initially an enquiry report was prepared by the respondent No. 4 in his own handwriting, wherein he found that the charges against the applicant are not established. The report was submitted by the respondent No. 4 to the respondent No. 3 and the respondent No. 3 directed the respondent No. 4 to alter the report and hold that the applicant is found to be guilty of the charges alleged against him. On the dictation of respondent No. 3 the respondent No. 4 has prepared a subsequent report wherein the charges on the basis of some witnesses were found to be established. The applicant was served with a notice alongwith the report of the enquiry officer. Against the report of the enquiry officer the applicant preferred a representation Annexure A-9. The disciplinary authority thereafter issued the impugned order dated 1.3.2000, whereby a



punishment of reduction of pay by two stages for one year with cumulative effected was inflicted on the applicant. Feeling aggrieved with the order of the punishment the applicant preferred an appeal to the respondent No. 2 on 25.3.2000. The appeal was also dismissed by a non-speaking order on 31.7.2000 (Annexure A-2). Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs.

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


4. The learned counsel for the applicant argued that the charge sheet dated 25.6.1999 was issued to the applicant with the allegation that while discharging his official duty the applicant was found in the condition of intoxication of liquor. But according to the statement of Dr. S. Tiwari recorded on 28.9.1999, he has stated that the applicant was working normally and in the last question he has admitted that there are so many Aurvedic medicine/tonic in which alcoholic contents are high and if it is consumed just medical examination, there may be some alcoholic smell in expired breath. It was further argued on behalf of the applicant that the applicant had taken one Aurvedic medicine one day before the said incident on 12.5.1999. The said smell was the outcome of this Aurvedic medicine. According to the statement of the of the Dr. S. Tiwari he was not in a intoxinate condition. He further argued that the enquiry officer had exonerated him from the said charge. But the disciplinary authority changed its view and directed the enquiry officer to alter the report and hold that the applicant is found to be guilty of the charges alleged against him. Hence the enquiry officer submitted his subsequent report to the disciplinary authority against the applicant and on which



the alleged action was taken by the respondents. This is against the law and not desired from such senior authority and rather it seems to be malafide act against the applicant.

4. In reply the learned counsel for the respondents argued that Dr. S. Tiwari has clearly stated that symptoms of Alcohol is present in the breath of the applicant. Hence it cannot be justified that he should be held in fit condition to discharge his duties. An employee cannot be permitted to work in the state of intoxication. He further argued that the disciplinary authority has never asked the enquiry officer to alter his report and to prove the applicant as guilty of the charges. In this regard the argument advanced on behalf of the applicant are out of record. The learned counsel for the respondents also argued that the applicant was medically examined and that the Doctor has deposed that alcoholic smell was coming out from the breath of the applicant.

5. We have given careful consideration to the rival contentions of the parties and we find that it is not disputed that the smell of liquor was coming out from the breath of the applicant. It is admitted even by the applicant. But it is argued on behalf of the applicant that the applicant has used one Aurvedic medicine one day before the said incident i.e. on 12.5.1999. It seems to be not possible ^{because} even if it is accepted then the applicant might have consumed the alleged medicine in a very high quantity and even that smell of that alleged medicine was continuing during his official hours which was not permissible at all, though it may keep the applicant in more better condition to discharge his duties. So far as the order passed by the disciplinary authority he had



never asked the enquiry officer to change his report and submit the same against the applicant. We have perused Annexure R-2 dated 24.12.1999, in which the disciplinary authority has not asked the enquiry officer to change his report and to submit a report finding the applicant guilty for the said charges. In this case we also find that Dr. S.Tiwari has also entered in the witness box and he has stated that ^{alcoholic} /smell was coming out from the breath of the applicant. It is settled legal proposition ^{by the Hon'ble Supreme Court} that the Courts/Tribunals cannot reappreciate the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

6. Accordingly, we are of the opinion that the Original Application is without any merit and is liable to be dismissed. We do so accordingly. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठान्त सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि लखो मिल:-

- (1) सचिव, ज.प. कारागार, ज.प. कारागार, जबलपुर
- (2) आदेशक, ज.प. कारागार, जबलपुर
- (3) प्रत्यक्षी, ज.प. कारागार, जबलपुर
- (4) कार्यपालक, ज.प. कारागार, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव

Filed
12-5-01

S. Paul
S. P. Dharwadkar