

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 107 of 1999.

Jabalpur, this the 20th day of March 2003.

Hon'ble Mr. Shanker Raju, Member (Judicial)
Hon'ble Mr. R.K. Upadhyaya, Member (Admnv.)

Subhash Chandra
S/o Shri Chedilal,
aged 48 Years,
Chargeman-II (Non-Technical)
Vehicle Factory, Jabalpur
Resident of 1457, Vinoba Nagar,
Adhartal, Jabalpur (M.P.)

- APPLICANT

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India,
Through the Secretary
Ministry of Defence,
New Delhi.
2. Chairman,
Ordnance Factory Board,
10 Khudiram Bose Road,
Calcutta,
3. The General Manager,
Vehicle Factory,
Jabalpur.

- RESPONDENTS

(By Advocate- Shri S.C.Sharma)

ORDER (Oral)

By R.K.Upadhyaya, Member (Admnv.)-

This application has been filed with a prayer to set aside the order dated 26.8.1997 (Annexure-A-1) by which punishment of 'withholding of one increment when next due, for a period of one year without cumulative effect' has been imposed upon the applicant. The order dated 9.3.1998 (Annexure-A-2) of rejection of appeal against the aforesaid penalty order has also been challenged in this O.A.

2. It is stated by the learned counsel of the applicant that by memorandum dated 7.1.1997 (Annexure-A-1A) the applicant was issued a charge-sheet under Rule 16 of Central Civil

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Services (Classification, Control & Appeal) Rules, 1965

to the following effect -

"That on 21.12.96 when the said Shri Subhash Chandra, Chargeeman Gr.II(NT)/Store Section, VFJ went to the office of DGM/S-II for booking of EOT for his Gowdown staff and IEs, Shri Subhash Chandra had been clearly instructed by DGM/S-II not to detail/book any staff and IEs of his godown on extra O.T. on 22.12.96 as the overtime was sanctioned mainly for main production shops and stores as per requirement. It is alleged that despite clear cut directives given by DGM/S-II the said Shri Subhash Chandra not only came on duty on 22.12.96 but also detailed/booked O.T. for the staff and IEs of godown under his charge including himself, disobeying the instruction of superior officer.

The above act on the part of the said Shri Subhash Chandra is highly irregular and subversive of discipline which tantamounts to "Gross Misconduct - Disobedience of instruction of superior officer - Conduct unbecoming of a Government servant".

The applicant asked for some documents and denied the allegation. However, the disciplinary authority was not satisfied with the explanation of the applicant and imposed the penalty vide impugned order dated 26.8.1997 (Annexure-A-1). Aggrieved by that order, the applicant had submitted an appeal on 22.9.1997, which was also rejected by the appellate authority vide impugned order dated 9.3.1998.

2.1 The learned counsel of the applicant stated that the General Manager issued an order dated 20.12.1996 (Annexure-A-3) regarding overtime working on Sundays, which was to the following effect-

"..... As regards Stores Section, the office of Main Stores will not work O.T. on Sundays. However the godowns which caters to the material requirement of the Production Sections will work O.T. at par with the Production Sections. The Production Section will ensure that adequate material is drawn for the O.T. working hours on Sunday in advance. The Stores Godowns attached to the Production Sections will work O.T. on Sundays in lieu of holidays at par with the Production Sections".

The learned counsel stated that the applicant was Incharge of Store Section which caters to the requirement of the production section. Therefore, in pursuance to the order of the General Manager dated 20.12.1996, he and his subordinate staff attended office on 22.12.1996 (Sunday). The learned

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counsel invited attention to the provisions contained in Rule 3(2)(iii) of Central Civil Services (Conduct) Rules, 1964 which reads as under:-

"The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided, as far as possible, Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter."

According to the learned counsel, the claim of the respondents that the Dy. General Manager S-II had orally directed the applicant not to attend overtime duty on Sunday on 22.12.1996 is against the provisions contained in Rule 3 (2)(iii) ibid. The applicant had denied that any oral instructions were given by the Dy. General Manager S-II on 21.12.1996. Even assuming for sake of argument that he had given any such instruction, the same were contrary to the provisions contained in Rule 3(2)(iii) ibid, as extracted earlier, as the Dy. General Manager S-II had not confirmed in writing about his instructions. In any case, the learned counsel pointed out that the order of the General Manager dated 20.12.1996 (Annexure-A-3) could be modified or superseded only by another order of the General Manager and not by an authority subordinate to him. In this connection, he further invited attention to the office order dated 4.1.1997 (Annexure-A-8) where the General Manager had amended his earlier order dated 20.12.1996 by directing that the Stores Section will not work overtime on Sundays. It clearly shows that the order of the General Manager was modified or superseded only on 4.1.1997. Therefore, the charge of insubordination as made out by the respondents is contrary to the factual position as the applicant had obeyed the orders of superior authority i.e. the General Manager. The learned counsel also invited attention to the impugned order of the disciplinary authority dated 26.8.1997 (Annexure-A-1) which is a non-speaking order and deserves to be quashed on that account itself.

3. The learned counsel of the respondents invited attention to the reply filed in which it has been stated that due to acute shortage of funds, the order dated 20.12.1996 was issued directing that the offices in which the applicant was working was not to work overtime on Sundays. The Dy. General Manager S-II in compliance with the directions of the General Manager had summoned all Group Incharge including the applicant and had issued instructions on 21.12.1996. In this connection he also placed reliance on the report of the Dy. General Manager dated 28.12.1996 (Annexure-R-2). According to the learned counsel in spite of specific directions, the applicant attended the office on 22.12.1996 on his own accord and at the same time detailed/ booked for overtime a number of staff of the Store Godown under his charge. The total disregard to the orders and directions of the Superiors by the applicant not only created a confusion but also led to the labour unrest. However, taking a lenient view, the applicant as well as others were allowed to take an off in lieu of the work on 22.12.1996. The learned counsel of the respondents stated that there has been no violation of principles of natural justice and a lenient punishment has been imposed upon the applicant which calls for no interference by this Tribunal.

4. We have heard the learned counsel of both the parties and have perused the material available on record.

5. There is no dispute that the General Manager had issued the order dated 20.12.1996 (Annexure-A-3) regulating overtime on Sundays. This has been subsequently modified by another order dated 4.1.1997 (Annexure-R-1) which prohibits working overtime on Sundays by the employees of Stores section. There is nothing on record to suggest that the applicant was actually asked on 21.12.1996 not to work on Sunday on 22.12.96. As per provisions contained in Rule 3(2)(iii) ibid if the Dy. General Manager-S-II who issued any oral orders to the applicant, he should have immediately confirmed the same in



writing. The alleged report dated 28.12.1996 by the Dy.G.M. is addressed to the A.G.M.(S). This cannot be said to be a timely order. The order of the General Manager could certainly be modified or superseded by another order of the General Manager only but the subordinate officers of the General Manager could have changed it subject to his approval only by a written order to his subordinates. In this case, there is nothing on record to suggest that the Dy. G.M. S-II had ordered the applicant not to work overtime on Sunday, 22.12.1996. In this view of the matter, we are of the considered opinion that the impugned order of punishment is not sustainable.

6. In this result, this O.A. is allowed. The impugned orders dated 26.8.1997 (Annexure-A-1) and 9.3.1998(Annexure-A-2) are quashed and set aside. The respondents are directed to grant the consequential benefits to the applicant within a period of two months from the date of communication of this order. In the facts and circumstances of the case, the parties are left to bear their own costs.

(R.K.Upadhyaya)
Member (Admnv.)

S. Raju
(Shanker Raju)
Member (Judicial)

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~~उमा राजसदार~~ 26/3/03

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