

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 240 of 1999

Jabalpur, this the 29th day of September, 2003

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member  
Hon'ble Shri G. Shanthappa, Judicial Member

Pramod Narain Sarin, S/o Late Shri H.N. Sarin,  
aged 58 years, resident of 288/3, M.E.S. Colony,  
Ridge Road, Jabalpur

- APPLICANT

(By Advocate - Shri S. Paul)

Versus

1. Union of India through the Secretary,  
Ministry of Defence, New Delhi.
2. Engineer-in-Chief (Appellate Authority),  
E.In.C's Branch, Army Headquarter, Kashmir  
House, D.H.Q., P.O. New Delhi-110011.
3. Chief Engineer, Military Engineering Service,  
Engineer's Branch, Headquarter Central  
Command, Lucknow.
4. Commander Works Engineer (C.W.E.), Military  
Engineering Service, Supply Marg, P.B. No. 54,  
Jabalpur Cantt.

- RESPONDENTS

(By Advocate - Shri S.C. Sharma through Shri P. Shankaran)

O R D E R (Oral)

By G. Shanthappa, Judicial Member -

The above O.A. is filed by the applicant seeking the relief to set aside the order dated 31.1.1997 (Annexure-A-9) and consequential order dated 5.3.1999 (Annexure-A-1), and also to provide all consequential benefits thereon.

2. The brief facts of the case are that while the applicant was holding the post of Superintendent(B/R) Grade-I under respondent no. 4, he was served with a charge sheet by the Commander Works Engineer, Jabalpur on 19.9.1994 as per Annexure-A-5 under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. There were three articles of charges. The applicant submitted his reply to the said charge-sheet on 7.10.1994. On 21.1.1995 an enquiry officer was appointed to enquire into the said charges. After enquiry, the enquiry officer found the charges not proved as per the analysis made in the enquiry report dated 19.4.1996. Disagreeing with the

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findings of the enquiry officer, a show cause notice was issued to the applicant on 31.1.1997 (Annexure-A-9) by the Engineer-in-Chief, Army Headquarters, New Delhi, respondent no.2. The applicant submitted his reply to the said show cause notice on 14.3.1997 (Annexure-A-10). After considering his representation, the disciplinary authority i.e. the Chief Engineer, Central Command, Lucknow, vide his order dated 5.3.1999 (Annexure-A-1) imposed the penalty of 'reductional to a lower stage from Rs.9700 to Rs.9500 in the time scale of pay Rs.6500-200-10500 for a period of one year with cumulative effect'. It was further directed that the applicant will not earn increment of pay during the period of reduction and that on the expiry of such period, the reduction will have the effect of postponing his future increment of pay.

3. The learned counsel of the applicant submitted that vide order dated 16.8.1979 (Annexure-A-7) the President has empowered the Engineer-in-Chief to act as the appellate authority and the Chief Engineer as the disciplinary authority. He submits that in the instant case the charge sheet was issued by the respondent no.4 i.e. the Commander Works Engineer. The notice of disagreement with the findings of the enquiry officer was issued by the appellate authority i.e. the Engineer-in-Chief and after receipt of the reply of the applicant, the punishment order has been passed by the Chief Engineer i.e. the disciplinary authority. The learned counsel contended that the impugned order is an illegal order. He also submitted that as the appellate authority i.e. the Engineer-in-Chief has already issued the show cause notice on 31.1.1997 (Annexure-A-9), the applicant has no remedy to file appeal against the order passed by the Chief Engineer.

4. Per contra, the respondents have filed their reply. Their main ground of attack is that the applicant has not exhausted the departmental remedy of filing an appeal against

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the impugned order of punishment, hence the OA is premature and is liable to be dismissed on this count alone. They have further stated that the Engineer-in-Chief, Army Headquarters, New Delhi is the Head of the Department and he can exercise the power to disagree with the findings of the enquiry officer. Therefore, the procedure followed by the respondents is in accordance with rules and fully justified. They further contend that no right of the applicant has been infringed.

5. The applicant has filed his rejoinder as well.

6. We have heard the learned counsel of parties and have carefully considered the arguments advanced by both sides. We have also perused the pleadings available on record carefully.

7. The learned counsel for the applicant has referred to Govt. of India's instructions issued vide O.M.No. 11012/2/22/94-Estt.(A) dated the 27th November, 1995 wherein it has been stated that "where the inquiring authority holds, a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the disciplinary authority to first examine the report as per the laid down procedure and formulate its tentative views". He submits that in the instant case the appellate authority has suo moto examined the enquiry report and communicated his disagreement with the report of the enquiry officer. He contends that the appellate authority had no authority to call for the record and suo moto <sup>and etc</sup> disagreed with the findings of the enquiry officer. Hence the impugned order is illegal.

8. The learned counsel of the respondents submits that if the Tribunal feels there is a procedural error, the matter may be remanded to the authority from where the procedural error has been committed.

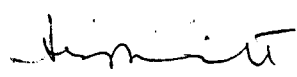
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9. The learned counsel of the applicant relied on a decision of this Bench of the Tribunal in the case of Balwant Rai Vs. Union of India & another, R.A.No.2/2003 decided on 28.3.2003 and of Calcutta Bench of the Tribunal in the case of Swapan Kumar Das Vs. Union of India & others, 2003(2)ATJ 353.

10. After perusal of the pleadings and the case law referred to by the learned counsel, we are of the considered view that in the instant case the disciplinary authority has not exercised his full powers and the appellate authority had no suo moto powers to pass orders without any appeal. The contention of the applicant is supported by the latest decision of the Apex Court in the case of M.D.Maharashtra Cotton Growers Market Federation Ltd Vs. Choughule Pappatrao Annasaheb and another, (2003)6 SCC 247 wherein it has been held that the appellate authority has no suo motu power to enhance the punishment, once the appeal has been withdrawn. In view of this, it is clear that a great injustice has been caused to the applicant by violating the provisions of Rule 12, 14 & 27 of the CCS(CCA) Rules as well as the aforesaid memorandum of the DOPT dated 27.11.1995. Therefore, we are of the confirmed opinion that the impugned order dated 5.3.1999 which was issued on the basis of the show cause notice dated 31.1.1997 is illegal and against the provisions of the rules. As such we have no other alternative except to quash the same.

11. In the result, the O.A. is allowed. The impugned order dated 5.3.1999 is quashed. ~~and set aside~~ The respondents are directed to grant all consequential benefits to the applicant within a period of 8 weeks from the date of receipt of a copy of this order. No costs.

  
(G. Shanthappa)  
Judicial Member

  
(Anand Kumar Bhatt)  
Administrative Member