

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 275 of 1999

Jabalpur, this the 9th day of February, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Smt. Manoramabai age about
45 years Wife of Late Shri
Moolchand Mishra (Removed
unskilled Labour) Ex Ticket
No. 286/02110/QA Ordinance
Factory Katni District Katni
(M.P.)

APPLICANT

(By Advocate - None)

VERSUS

1. The Union of India through
the Secretary Deptt of Defence
Production, Ministry of defence,
Govt. of India, New Delhi.
2. The Chairman & DGOF/Member
Ordinance Factory, 10-A, S.K.
Bose Road-Calcutta-700001
3. The General Manager, Ordinance
Factory Katni, Distt. Katni(M.P.)

RESPONDENTS

(By Advocate - Shri B.da.Silva)

O R D E R (ORAL)

By M.P.Singh, Vice Chairman-

By filing this Original Application, the applicant has prayed for a direction to quash the penalty order dated 15.12.1990(Annexure-A-4) by which he has been removed from service. He has also challenged the order dated 16.12.1998 by which his appeal against the order of removal has been rejected by the appellate authority. He has further sought a direction to the respondents to reinstate him on the post of Labourer with consequential benefits including arrears of pay etc.

2. The brief facts of the case are that the applicant was working in Ordnance Factory, Katni. She was issued a charge sheet for carrying 9.650kgs of brass cups in her blouse. An enquiry officer was appointed to conduct the enquiry. Enquiry was concluded and the charges were found proved. A copy of the enquiry report was sent to

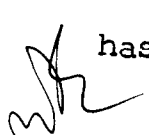
the applicant to make her representation. The applicant submitted her representation on 7.12.1990. The disciplinary authority after taking into consideration the report of the enquiry officer and the representation of the applicant imposed the penalty of removal from service vide impugned order dated 15.12.1990. Her appeal against the said punishment was rejected vide order dated 18.12.1991 (Annexure-R-3). She approached this Tribunal by filing OA No.226 of 1992. The Tribunal vide its order dated 6.3.1998 passed the following order-

"2. A serious question has been raised by the applicant saying that it is not possible for a lady to carry 9.650 kgs. of brass cups in a bag hanging around her neck within the blouse. Prima facie it is a question of appreciation and that is why we are reluctant to say anything about it but after giving a second thought we have come to the conclusion that the appellate authority should minutely consider this aspect of the case. In the circumstances, we set aside the order passed by the appellate authority and remit the matter back to the appellate authority for reconsideration. The appellate authority shall reconsider the matter and give a definite finding after going through the record and also examining the pros and cons of the matter and as to whether such a huge weight could have been carried in the manner stated. With this observation, the application is disposed of. Parties shall bear their own costs".

The appellate authority vide its order dated 16.12.1998 again rejected the appeal. The finding of the appellate authority is that it is possible for her to attempt theft in the manner she did. Against this order, the applicant has filed this OA.

3. None was present for the applicant at the time of argument. Since it is an old case of the year 1999, we are disposing of this by invoking the provisions of Rule 15 of Central Administrative Tribunal (Procedure) Rules, 1987, after hearing the learned counsel for the respondents and perusing the available material on record.

4. We have carefully considered the rival contentions in the pleadings. We find that the applicant has earlier approached this Tribunal by filing OA 226/1992. The Tribunal has considered the matter on merit vide its order dated




6th March, 1998. The only ground, on which the order of the appellate authority dated 18.12.1991 was quashed by the Tribunal in OA 226/1992, was that a serious question was raised by the applicant saying that it was not possible for a lady to carry 9.650 kgms of brass cups in a bag hanging around her neck within the blouse. Prima facie it was a question of appreciation and that is why the Tribunal was reluctant to say anything about it and it was after giving a second thought, the Tribunal came to the conclusion that the appellate authority should minutely consider this aspect of the case. Accordingly, the order was set aside and case was remitted to the appellate authority to reconsider the matter and give a definite finding after going through the records and after examining the pros and cons of the matter and as to whether such a huge weight could have been carried in the manner it was stated. In pursuance of the directions of the Tribunal, the appellate authority has re-examined the case and has come to the conclusion that the applicant on being called aside for the search had herself produced the items from her person in the presence of the orderly officer and security staff. The appellate authority has also physically examined the material seized and other relevant items used for the theft on 24th October, 1998 at Ordnance Factory Katni. The material was brass cups which are small in size but heavy in weight. The type of bag used was capable of carrying/holding the abovequoted quantity of the said material. The incident having taken place on a winter duty as stated by the female searcher. The applicant was wearing a sweater over her blouse and a shawl over it. This had a concealing effect on the material in the bag. It was also told that the applicant Smt. Manorama Bai was of robust² stature. Hence it was felt that it was possible for her to attempt the theft in the manner she did.

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5. It is the settled legal position that the Tribunal cannot reappreciate the evidence. The case of the applicant has already been considered by the Tribunal on merits in the earlier OA filed by the applicant. As a serious question had been raised by the applicant in the earlier OA that it is not possible for a lady to carry 9.650 kgs of brass cups in a bag hanging around her neck within the blouse, the Tribunal has remitted the matter to the appellate authority to reappreciate the evidence. In terms of the aforesaid order of the Tribunal, the appellate authority has reappreciated the evidence and has come to the conclusion that it was possible for the applicant to attempt the theft in the manner she did. Therefore, we cannot interfere in the matter further.

6. For the reasons recorded above, the OA is bereft of merit and is accordingly dismissed, however, without any order as to costs.


(G. Shanthappa)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

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

पतिलिपि अद्यै पितः—

- (1) सचिव, उच्च न्यायालय दार एटेंडिंगरूम, जयलपुर
(2) आवेक श्री/श्रीमती/कु.....के काउंसल A N Shivastava
(3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल B. Dahiya
(4) कार्यवाही के प्रमाण पत्र जारी करने के लिए
सूचना एवं अवगत करवा दी जाती है कि

रिप रजिस्ट्रार 3/04

Issued

10.3.04