

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 352 of 1999

Jabalpur, this the 4th day of February, 2004

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

Durga Prasad Ojha (Machineman)
S/o Shri Ram Prasad Ojha
aged 47 years, resident of
T.T.C. Budhni, District Sihore
(M.P.)

APPLICANT

(By Advocate - Shri V. Tripathi)

VERSUS

1. Union of India
through the Joint Secretary,
(Machinery)/Appellate
Authority, Ministry of Agriculture,
Agriculture & Co-operation Department
Krishi Bhavan,
New Delhi.
2. Director, (Disciplinary Authority)
Central Farm Machinery Training
& Testing Institute,
(Under Ministry of Agriculture)
Department of Agriculture &
Co-operation, Tractor Nagar,
Budhni - 466445
District Sihore (M.P.)

RESPONDENTS

(By Advocate - Shri B. da. Silva through Shri Anand Singh)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

The applicant has filed this Original Application seeking a direction to quash ^rorders dated 11.8.1998 (Annexure-A-1), 23.4.1998 (Annexure-A-2), 11.8.98 and 11/12.8.1998^m; and direct the respondents to grant all consequential benefits to the applicant, including payment of difference of wages. He has also prayed that the period of suspension be treated as spent on duty for all purposes including payment of salary.

2. The brief facts of the case are that the applicant was holding the post of Machinemen under the respondent no. 2, and has been declared surplus on the recommendations of a Two Man Committee, appointed by the Government of India. Though he has been rendered surplus

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he continued to be at the Institute. The applicant was dismissed from service by invoking provisions of Rule 19 of CCS(CCA) Rules, 1965. The said order of dismissal was set aside by the Tribunal vide order dated 6.4.1994 in OA 752 of 1992. On the basis of the said order, the applicant was reinstated in service. Numerous FIRs were filed against the applicant in local police station and cases were charged in the criminal courts. The Tribunal in the aforesaid OA 752/1992 had also given liberty to the respondents to suspend the applicant and draw departmental proceedings against him. The applicant did not extend necessary co-operation to the enquiry officer by adopting dilatory tactics. The applicant was informed well in advance about the date of inquiry fixed by the enquiry officer. The applicant evaded the inquiry and tried to disassociate. Though the applicant produced an illness medical certificate that he was sick on 26.6.1995, on the same day on 2nd examination by the same doctor, the applicant was found fit. It shows that he was intentionally avoiding to appear before the enquiry officer. In the circumstances, the enquiry against the applicant was completed and the charges against him were held proved by the enquiry officer. A copy of the enquiry report was served to the applicant. After considering the representation of the applicant and the enquiry report, the disciplinary authority came to the conclusion that the applicant has committed a grave misconduct. However, taking a lenient view on humanitarian ground the applicant was awarded the penalty of reduction of three stages vide order dated 11.8.98 (Ann.A/1) without cumulative effect, for a period of four years. Against the said order, the applicant's appeal was rejected vide order dated 23.4.1999 (Annexure-A-2). Hence this OA.

3. Heard both the sides. The learned counsel for the applicant, during the course of arguments, has submitted that the enquiry has been held *ex parte* and ~~also~~ the orders passed by the appellate authority is not a speaking order. He has also

contended that relevant documents were not given to the applicant.

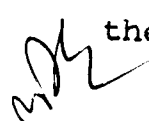
4. We find that the applicant has himself not acted properly and he was trying to evade the enquiry by dilatory tactics. The applicant had given a medical certificate that he was sick on 26.6.1995 and on the same day, re-examination got done by the respondents, the same doctor had certified that the applicant was found medically fit. The certificate given by the doctor reads as under-

"Sub: Information about health condition of
Shri D.P.Ojha.

In the above cited matter it is stated that in the morning Mr.D.P.Ojha was complaining of pain in chest more in the precordial region for the precautionary side, I examined him and advised bed rest and issued a certificate for the same.

Now receiving requisition for re-examination of Mr.D.P.Ojha from Shri S.C.Jain, Ex.Director, I examined and found him medically and physically fit. He(Mr.D.P.Ojha) is also stating that he is alright. Therefore, previous certificate should be treated as cancelled" (Annexure-R-3).


From the above it is clear that the applicant has been evading the enquiry proceedings. In these circumstances the respondents were forced to hold the enquiry against the applicant ex-parte. Now, the applicant cannot question the ex-parte enquiry. Now, it is the settled position of law that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority(see: Union of India Vs. Parma Nanda, AIR 1989 SC 1185). The Tribunal has also no jurisdiction to go into the correctness or truth of the charge. The function of the Court is one of the judicial review and the judicial review cannot extend to the examination of

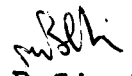


the correctness of charges or reasonableness of a decision (see: Union of India Vs. Upendra Singh, JT 1994(1)SC 658).

In the instant case we find that the applicant himself had not chosen to take assistance of defence assistant. Now at this stage he cannot take such an objection. He himself was trying to evade the enquiry proceedings. After the enquiry, a copy of the enquiry report was supplied to him and on considering his representation, the disciplinary authority has imposed the penalty. As such the principles of natural justice of providing hearing to the applicant has been followed by the respondents.

5. In view of the foregoing and the settled law legal position, we do not find any ground to interfere with the orders passed by the disciplinary & appellate authorities. Accordingly, the O.A. is dismissed, however, without any order as to costs.

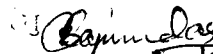

(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman


rkv.

पृष्ठांक सं. ओ/का जलपुर, दि.....
पंक्ति सं.

- (1) सविनय श्रद्धांजलि, जलपुर
- (2) अनामिका, जलपुर
- (3) प्रकाश, जलपुर
- (4) वंदना, जलपुर

सूचना एवं अनुसंधान कार्यवाही वि. 
उप निरीक्षक 17/2/04

S. Paul
B. danlue


17.2.04