

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 377/1997

Manohar Singh Chauhan,
aged about 36 yrs;
S/o. Shri Mohan Singh,
resident of Adhartal Milk Scheme,
Subhash Nagar, Nahar Ke kinare,
post office - Adhartal,
Jabalpur M.P.

... Applicant

V e r s u s

1. Union of India, through
the Director General of
Ordnance Factories, Govt.
of India, Ministry of Defence,
10-A, Auckland Road, Calcutta-
700001.

2. The General Manager,
Vehicle Factory,
Jabalpur.

... Respondents

Counsel :

Shri Shajid Akhtar for the applicant.
Shri S.A. Dharmadhikari for the respondents.

Coram :

Hon'ble Shri Justice N.N. Singh - Vice Chairman.
Hon'ble Shri R.K. Upadhyaya - Member (Admn.).

O R D E R
(Passed on this the 7th day of January 2003)

By Hon'ble Shri Justice N.N. Singh - Vice Chairman :-

The applicant has challenged the punishment order of removal from service and has prayed to direct the respondents to reinstate the applicant with effect from 23/04/1993 with full pay, salary etc.

2. The case of the applicant is that he was working as a Bearer in Canteen Section of Vehicle Factory, Jabalpur and that he was being harassed by a Durban named Kanchhedilal, who was having a shop at Adhartal near his residence and ^{who} wanted that the applicant should purchase

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his articles from his shop. It was further claimed that on his refusal to do so, Kanchhedilal concocted a plan to implicate him and on 21/04/1993, when Kanchhedilal was on duty, on Gate No. 1, and the applicant, at 12.45 PM, was going out after giving his search, but was called back by Kanchhedilal and was taken to a room where two Motor Gears were kept and thereafter as per concocted plan, seizure memo (Annexure A-5) and statement (Annexure A-1 to Annexure A-5) were prepared and the matter was reported and to the Security Officer/ on that day the applicant was suspended. According to the applicant no show-cause notice or charge-sheet was issued, but by memo dated 02/04/1994 i.e. after 11.1/2 months, he was asked to appear before the Enquiry Officer. The applicant claimed not to have submitted his reply or show-cause and contrary to service rules, the enquiry was conducted and in hot haste the Enquiry Officer submitted his report (Annexure A-12). The applicant claimed to have filed ^{comments on Enquiry Report} his/ (Annexure A-13) before the competent authority and thereafter the order of removal from service was passed by Annexure A-14. The applicant further claimed to have filed an appeal (Annexure A-15) but the same was rejected by Annexure A-16.

3. The respondents filed reply asserting therein that the applicant was placed under suspension and was charge-sheeted based on a report regarding attempted theft of Government property. It was further claimed that the charge sheet was issued to the applicant vide memo No. 99/Vig/(18978), dated 07/08/1993. The case of the respondents is that the allegation made by the applicant against Kanchhedilal was after thought and that on the date of occurrence, during lunch hour, when the applicant was going

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out through the gate No. 1 of the factory, he was searched by Kanchhedilal Durban who was on duty there and after rigorous search 2 Nos. of Gears were found concealed inside his trousers and hence disciplinary action under Rule 14 was taken against him. It was further claimed that memorandum of charge dated 07/08/1993 was sent to the applicant on 07/08/1993 which was received at his own address and that the applicant had submitted a reply to the charge sheet on 23/08/1993 denying the charge. According to the respondents, he was advised to submit his defence, if any, within 10 days, but he failed to submit any reply and a Court of Enquiry was ordered. It was further claimed that he was given all reasonable opportunities to defend his case and he was also given a copy of the Enquiry Report for his representation on the enquiry report, which he submitted and the disciplinary authority, after considering his reply, passed the impugned order. According to the respondents 2 Nos. of Gears were recovered from the trousers of the applicant during rigorous search carried out in the presence of the Orderly Officer, as during the general search at the gate by the Durban he felt some hard material in possession of the applicant and hence he was taken for rigorous search where two number of Gears were found kept hidden in the trousers of the applicant. It was also claimed that one Shri Deepchand had accepted that he alongwith the applicant had been indulging in such thefts of the Government property from the factory for personal gains and subsequently six numbers of Gears were recovered from behind the locker of the canteen, which is not denied by the applicant. On these grounds it was prayed to dismiss the OA filed by the applicant.

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We have heard learned advocates of both the

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sides and have perused the record. This is admitted case that on the allegation of recovery of 2 Nos. of Gears from the possession of the applicant who was a Bearerⁱⁿ the Canteen Section of Vehicle Factory, Jabalpur, he was suspended and charge-sheeted and thereafter a departmental enquiry was held in which the disciplinary authority, holding him guilty, passed punishment order dated 04/05-08-1995 (Annexure A-14) by which he was removed from service. The applicant claimed to have filed memo of appeal dated 11/09/1995 (Annexure A-15) which was rejected by the Appellate Authority i.e. the Joint Director by order dated 25/07/1996 (Annexure A-16).

4.1. In the course of argument Shri S. Akthar learned counsel for the applicant **assailed** the aforesaid punishment order on the ground that the applicant was only a carrier and that the charge sheet was issued after 11.1/2 months of the alleged occurrence. He also challenged the whole enquiry on the ground that no defence assistant was given to him which vitiated the enquiry. It was contended that in Annexure A-1 (Page 6) it was mentioned that Deepchand had admitted to have asked the applicant to take away the Gears. On behalf of the respondents these points, raised by the applicant, were contested and it was claimed that whereas the occurrence was of 21/04/1993 and **so/** charge sheet was **claimed to have been** served on the applicant on 07/04/1994 (Annexure A-10) **but it** was simply a notice sent to the applicant informing him that the proceeding will commence at 2.30 PM on 22/04/1994 and he was asked to attend the enquiry and to submit a pannel of three names whom he wished **to** utilise as defence assistant. In course of hearing of argument the learned counsel for the applicant himself produced the photocopy of the memorandum of charge which indicated that

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it was dated 07/08/1993 and since it has come from possession of the applicants counsel, it is to be presumed that it was served upon the applicant. Annexure A-11 ^{is} ^{copy of} the ^{record} of proceeding dated 22/04/1994, over which the applicant ^{admitted to have received} ~~had~~ also signed ^{in which he had} the memorandum of charge dated 07/08/1993 against the applicant. The objection raised on behalf of the applicant that he was illiterate and could not understand the charge, when it was read over to him, is of no consequence in view of the fact that it was clearly mentioned therein in Annexure A-11 that the memorandum of the charge was explained to the applicant in Hindi which he refused to accept. The applicant in his application dated 28/04/1994 at page 25 of the record referred to memorandum of charge dated 07/08/1993, which also indicated that the applicant had received the memorandum of charge earlier. The respondents in their reply claimed to have served it through registered post at the home address of the applicant. Thus we find no merit in this objection raised on behalf of the applicant that the charge was conveyed to the applicant after 11.1/2 months.

4.2. On behalf of the applicant the whole departmental enquiry was assailed on the ground that no defence assistant was given to him to defend his case during the enquiry and as such the whole enquiry is vitiated. In support of this allegation it was also contended that the applicant had prayed for permitting the applicant to avail the privilege of taking the assistance of a legal practitioner under the provisions of Sub Rule 8(a) of Rule 14 of CCS(CCA) Rules, 1965 to plead his case on behalf of the applicant. Such prayer was made in the application dated 28/04/1994 by the applicant at page No. 25 of the record. In the reply it was asserted that prayer for taking

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assistance from a legal practitioner was denied on the ground that under provisions of Sub Rule 8(a) of Rule 14 a legal practitioner could not be allowed to defend the ~~proce-dee~~ where the enquiry officer was not a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permitted. In the instant case as the enquiry officer was not a legal practitioner, the prayer to engage a legal practitioner as defence assistant was rightly refused by the disciplinary authority. The copy of record filed by the applicant shows that on 15/09/1994 at page 24 Shri G.C. Choudhary appeared as defence assistant for the ~~procedee~~ applicant. There is a reference of Shri Choudhary, ^{of} Gun Carriage Factory, Jabalpur, whom the employee desired to have his defence assistant as per letter No. 99/vig/(18978), dated 12/11/1994 sent to the applicant. It appears that, subsequently his defence assistant and thereafter this applicant also did not turn up. Thus the allegation of the applicant that he was not given opportunity to defend himself does not appear to be correct.

4.3. Another point was raised that all documents were not supplied to him even after it was asked for by the defence assistant Shri Choudhary on 21/09/1994. Order Sheet dated 15/09/1994 at page No. 24 indicates that the photo copy of the desired documents were shown to his defence assistant and that copies of those documents had already been delivered alongwith the memorandum of charge. On the same date on 21/09/1994 Annexure-7 was filed by the Defence Assistant Shri G.C. Choudhary calling for the medical report of Deepchand and material and manufacturing warrant of recovered gears. In this connection we can simply say that the copies of only those documents were

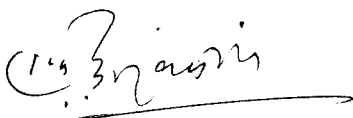
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required to be served upon, which the prosecution relied upon and as such the documents called for by the applicant's defence assistant on 21/09/1994 were not at all necessary to be supplied.

4.4. The other ground taken by the applicant was that he was only a carrier and that Deepchand had also admitted to have asked this applicant to do so. This **impliedly** is an admission that two Gears, as alleged, were recovered from the possession of the applicant and simple because some **admitted to have asked him to do so** employee who was his accomplice, the guilt of the applicant is not minimised, who was found in possession of the Government property trying to take it out from the factory. The applicant had not filed any show cause after service of the memorandum of charge. We have gone through the order passed by the disciplinary authority (Annexure A-14) and that by the appellate authority (Annexure A-16), and we find that the disciplinary authority and the appellate authority had applied their mind and had given cogent reasons for holding the applicant guilty. So far as the punishment is concerned, we find and hold that in such cases **where** the applicant was found taking away the Government property out of the factory, by concealing them inside his Pant, the punishment awarded was commensurate with the offence committed and did not warrant any interference.

5. Summing up the entire discussion made above we find no merit in this Original Application and it is accordingly dismissed, but without any order as to cost.


(R.K. UPADHYAYA)
MEMBER (A)


(N.N. SINGH)
VICE CHAIRMAN

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

प्रतिनिधि अर्थात् प्राप्त:-

(1) सचिव, उच्च न्यायालय, जवलपुर

(2) सामाजिक कार्यकर्ता, जवलपुर के काउंसिल 8. Akhbari Beka

(3) प्रमुख, जवलपुर के काउंसिल 5. P. Sharmachikari Adh

(4) जलपान, जवलपुर, जवलपुर के काउंसिल
सूचना एवं आवश्यक कार्यवाही हेतु

10/1/03
उप सचिव

Issued
On 10/1/03
BS