

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.396/2000

day of
Jabalpur, this the 10th/February, 2004

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri G.Shanthappa, Member (J)

Inderjeet Dass s/o late Sh. N.M.Dass,
R/o 3076, Narsingh Nagar, Kali Mandi,
Ranjhi, Jabalpur.

...Applicant

(By Advocate:- Shri S.Paul)

-versus-

1. Union of India through
Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman/Director,
General Ordnance Factory,
10-A, Shahid Khudiram Bose Marg,
Calcutta.
3. The General Manager,
Ordnance Factory,
Khamaria,
Jabalpur.

...Respondents

(By Advocate:- Shri P.Shankaran)

ORDER (ORAL)

By G.Shanthappa, Judicial Member -

The above O.A. has been filed by the applicant seeking the relief to quash the impugned order dated 7.7.1999 (A/1) and to direct the respondents to reinstate the applicant with full back wages and other consequential benefits. The applicant has also filed an MA No. 1588/2000 alongwith orders of the appellate authority dated 1.8.2000 (A/7) with a request to quash the said order also. Though the MA was not allowed, the same has been considered alongwith the main O.A.



2. The brief facts of the case are that the applicant was served with a chargesheet dated 6.2.1998 under Rule 14 of the CCS(CCA) Rules, 1965. The applicant submitted his representation denying the charges in toto. The disciplinary authority has appointed an enquiry officer to enquire into the charges. The enquiry officer recorded the statements of the witnesses and afforded an opportunity to the applicant to defend his case by participating in the enquiry. After conducting the enquiry, the enquiry officer has submitted his findings as per A/3 by exonerating the applicant from the charges.

3. The disciplinary authority disagreed with the findings of the enquiry officer and issued the show cause notice dated 30.3.1998 calling upon the applicant to show cause against his intention to hold the applicant as guilty and inflict a punishment. Paragraph 5 of the said notice is as under:-

"In the oral enquiry, none of the prosecution witnesses have accepted witnessing scuffle between Shri Inderjeet Das and Heeralal. Since the charge was not supported by any prosecution witnesses in the oral enquiry, the enquiry officer concluded that the charges could not be established."

3.1 The disciplinary authority scrutinized the relevant documents i.e. (a) initial statement of witnesses where they have stated the details of the incident that took place on 29.11.1997; (b) the medical report dated 29.11.97 in which the Medical officer has clearly mentioned that the injury caused to Mr. Heeralal was due to hitting by a blunt object and (c) Joint statement dated 13.7.1998 of the individual showing compromise between them during oral enquiry.



3.2 The disciplinary authority has passed the order without application of mind and disagreeing with the findings of the enquiry officer and imposed the penalty of removal from service. The said order is illegal and is not sustainable in the eye of law and is liable to be quashed.

3.3 The applicant preferred an appeal before the appellate authority vide A/6 dated 23.8.1999. Since the appellate authority did not consider the appeal of the applicant, he has approached this Tribunal challenging the orders of the disciplinary authority.

3.4 During the pendency of the O.A., the appellate authority has passed the order on the appeal of the applicant confirming the orders of the disciplinary authority without assigning any reason and without considering the aspects including the report submitted by the enquiry officer. Though the findings of the enquiry officer have been considered but the reasons are not assigned while coming to the conclusion for upholding the order of the disciplinary authority. Hence, the order of the appellate order is illegal and the same is also liable to be quashed and after quashment of the impugned orders, the applicant is entitled for the reliefs, as prayed for with all consequential benefits.

4. The respondents have filed their reply denying the averments made in the O.A. and have supported the action taken by them while passing the impugned orders.

4.1 The charges levelled against the applicant are considered, the enquiry officer has conducted the enquiry in a fair manner, he has recorded evidence and submitted the report by exonerating the applicant. On the basis of the enquiry report, the disciplinary authority has issued the show cause notice against which the applicant has submitted his representation with a request to withdraw the notice.



4.2 The disciplinary authority has scrutinised the relevant documents, as referred to above in the preceeding paragraphs, The said documents have been relied upon in support of the charges listed in Annexure III in the departmental enquiry. The Joint Statement dated 13.7.98 which was recorded has been submitted by the delinquent employee. Since the enquiry officer has afforded ample opportunity to the applicant and all documents listed in the list of documents were supplied to him, The disciplinary authority has exercised his powers for disagreeing with the findings of the enquiry officer and imposed the penalty of removal from service and hence there is no illegality or irregularity committed by the disciplinary authority while exercising his powers. The disciplinary authority has considered all aspects of the case and he has decided the matter independently. Hence the order passed by the disciplinary authority is in order.

4.3 The appellate authority has decided the appeal by considering the contents of the enquiry officer's report and also the orders passed by the disciplinary authority apart from the records submitted by the applicant. Both the above orders passed by the disciplinary authority as well as appellate authority are in order and no principle of natural justice has been violated and accordingly the O.A. is liable to be dismissed.

5. We have heard the learned counsel for the parties and have perused the pleadings and other documents available on record.

6. To enquire into the charges levelled against the applicant, the disciplinary authority appointed the enquiry officer. The enquiry officer has conducted the fulfilled enquiry and submitted his report after recording the statement of all the witnesses. He has come to the conclusion that the charges are not proved and exonerated the applicant.

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6.1 The note of disagreement with the findings of the enquiry officer has stated to offer an opportunity to the applicant to make his submissions, if any, if he desires so within 15 days. In the show cause notice, the disciplinary authority has mentioned the following documents;

- i) Initial statement of witnesses where they have stated the details of the incident that took place on 29.11.1997;
- ii) The medical report dated 29.11.1997 in which the Medical officer has clearly mentioned that the injury caused to Mr. Heeralal was due to hitting by a blunt object; and
- iii) Joint statement dated 13.7.1998 of the individual showing compromise between them during oral enquiry.

6.2 The disciplinary authority has disagreed with the enquiry report without going through the same and has considered the facts which are not on record and issued show cause notice for disagreement. While coming to conclusion for disagreement, no reasons are given for "sufficient evidence to prove charges". Hence the application of mind for disagreement is illegal.

6.3 It is an admitted fact that a joint statement was recorded by the enquiry officer against which the disciplinary authority has issued notice by disbelieving the initial documents which have been signed by the respective parties/individuals. The disciplinary authority has not assigned the reasons on what ground he is disagreeing with the findings of the enquiry officer while passing the order. Recording the joint statement in the oral enquiry itself is a fatal in the eye of law.

6.4 We have carefully verified the order passed by the disciplinary authority and we find that no reasons are assigned in respect of disagreement. Hence, the impugned order is not sustainable in the eye of law. In the impugned order the disciplinary authority has mentioned regarding the facts mentioned in the charges and finally



has come to the conclusion that the applicant is holding the post of Durwan. He was alcoholism while on duty and assaulting a co-worker during duty hours by him is considered very grave misconduct requiring severe penalty. When there is no application of mind while passing the order by the disciplinary authority, the same is bad in law and is liable to be quashed.

6.5 We have perused the orders of the appellate authority. Even the appellate authority has not assigned any reason while confirming the order of the disciplinary authority but stated that on close scrutiny of the case ^{it} it has been observed that though the articles of charges were not established during the enquiry but the disciplinary authority held the articles (i) & (ii) as established vide his dissenting findings dated 30.4.1999 wherein the reasons for arriving at such a decision have been analysed in detail. We go back to the orders passed by the disciplinary authority. We find that the disciplinary authority has not assigned the reasons in the order while disagreeing with the findings of the enquiry officer. The procedure adopted while coming to conclusion for disagreement and also imposing the severe penalty shocks the conscious of the judiciary. Without considering the illegality committed by the disciplinary authority, the appellate authority has confirmed the orders of the disciplinary authority. The relevant sentences from the order of the appellate authority are extracted below:-

"The reasons advanced by the appellant for sustaining injury by Shri Hira Lal is without any evidence and does not hold good in view of the medico legal report. In the medical examination it was established that he was in inebriated condition while he was brought to the Hospital at about 1930 hrs. The reasons mentioned by him are not logical. Further, he was free to call the concerned Medical officer as his DW or could have requested the IO to call the Med. Officer before the court. But he did not do so and has raised the point at this stage which is nothing but an afterthought."

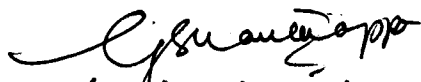


Hence it is clearly revealed that the appellate authority has not applied his mind while passing the order confirming the order of the disciplinary authority

Hence, the order of the appellate authority is also not sustainable in the eye of law ~~proper~~ and is liable to be quashed.

7. In the facts and circumstances of the case, we are of the considered view that the disciplinary authority as well as appellate authority have not applied their mind while passing the impugned orders imposing the penalty of removal from service on the applicant vide orders dated 7.7.1999 (A/1) passed by the disciplinary authority and order dated 1.8.2000 (A-7) passed by the appellate authority are quashed and set aside. The respondents are directed to re-instate the applicant in service with full back wages and other consequential benefits within a period of three months from the date of receipt of a copy of this order.

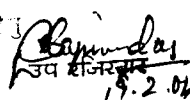
8. With the above directions, the O.A. is allowed. There shall be no order as to costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

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*Filed
27/10/2004*

पृष्ठान्त सं ओ/ज्या..... दि.....
परिगणित...
(1) सचिव, उच्च न्यायालय, कोलकाता, पश्चिम बंगाल
(2) आवेदन पत्र प्राप्त करने वाले अधिकारी के कार्यालय S. Paul
(3) प्रत्यक्षी श्री/श्रीमती/श्रीमान के कार्यालय P. Shantam
(4) पंजीयन, लेखा, प्रशासनिक एवं अन्य संबंधित
सूचना एवं आवश्यक कार्यवाही हेतु

19.2.04