


CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

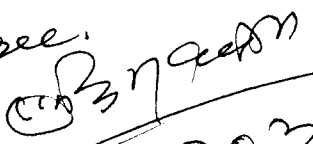
Original Application No. 465 of 1997

To Hon'ble Shri R.K. Upadhyaya - Administrative Member :-

For consideration please.

  
(A.K. BHATNAGAR)  
JUDICIAL MEMBER

23/05/2003

I agree.  
  
23/5/03

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 465 of 1997

Jabalpur, this the 23<sup>rd</sup> day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.  
Hon'ble Shri A.K. Bhatnagar - Judicial Member.

Mohammad Ashraf, S/o. Bhai Khan,  
Civilian Driver MT Coy, No. 1418--  
Resident of Golf Maidan, AB Road,  
Mhow (MP).

... Applicant

(By Advocate - None)

V e r s u s

1. Union of India, through  
Secretary, Ministry of Defence,  
New Delhi.
2. Director General Military  
Training (M.T.7), New Delhi.
3. Commandant Infantry School,  
Mhow.

4. Chief of Army Staff, New Delhi. ... Respondents
- (By Advocate - Shri V. Saran for Shri B. Dasilva)

O R D E R

By A.K. Bhatnagar, Judicial Member :-

Nobody was present on behalf of the applicant inspite of adjournment on earlier two occasions. The learned counsel of the applicant was also informed about the date of hearing, however nobody was present. Hence this original application is being disposed of on the material available on record and with the assistance of learned counsel of the respondents under Rule 15(1) of Central Administrative Tribunal (Procedure) Rules.

2. By the said petition filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed the following reliefs :

"(a) Order of punishment passed by respondent No. 3 dated 10/05/1995 Annexure A-12 be quashed and be declared it as illegal unjustified and non-est.

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- (b) That in quansquence of relief prayed in sub para (a) all deductions made from petitioners pay and increments denied to petitioner be awarded back and his pay be fixed as above punishment was not there.
- (c) Cost of this Rs. 1500/- awarded to the petitioner."

3. The facts giving rise to this application in brief are that the applicant was employed at Infantry School, Mhow (MP) in the capacity of MT Driver and was holding the post of Vice President of Surksha Asainik Karamchari Sangh which is a registered Trade Union. It is also claimed that as the applicant was working in the interest of employees, there was great element of malice against him. So he was being harassed. On receipt of letter dated 23/07/1994 a show cause notice No. 6928/2/1418 Civ, dated 31/07/1994 was issued, asking the applicant that why disciplinary action be not recommended against him, which is Annexure A/5. The applicant sent a reply to this notice and clarified his position, which is Annexure P/6. It is claimed that because of malice and well conceived conspiracy the applicant was served with a charge sheet by respondent No. 3 under his letter No. 6920/1/1418 Civ, dated 08/09/1994, levelling charges stated in Article I and II which is as under :

"Article I : That the said Shri Mohd Ashraf, Civ/Dvr, while detailed for duty at Station Workshop, EME, Mhow, for repair of vehicle BA No. 81B 19960, was absent from the place of duty (i.e. Stn Wksp EME) without proper authority from 0700 hrs to 0930 hrs on 17 Jun 94;

Article II : That the said Shri Mohd Ashraf, Civ/Dvr, on the aforesaid date and while on duty in the aforesaid Workshop, non co-operated and misbehaved with the floor JCO at 0930 hrs."

The applicant submitted his representation on the charges levelled against him vide his representation dated 24th September 1994 (Annexure R/9). Both the charges have

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been proved by the evidence as per findings of the enquiry officer and a copy of the enquiry report was supplied alongwith the memorandum (Annexure A/9). The applicant was given fifteen days time for making representation on the penalty proposed. The applicant submitted his representation on 28/04/1995 which is Annexure A/10. The disciplinary authority after considering the representation of the applicant passed orders vide letter No. 6928/4/1418/CIV, dated 10th May 1995 (Annexure A/12) communicating the findings of the disciplinary authority by awarding the penalty of "reduction of pay by three stages i.e. from Rs. 1560/- (included one increment of Rs. 30/- due on 01/02/1995) to Rs. 1470/- in the time scale of pay of Rs. 1320-30-1560-EB-40-2040 for a period of two years with further directions that he will not earn the increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay." Aggrieved by this order of the disciplinary authority the applicant made an appeal to respondent No. 2 dated 24/05/1995, which is Annexure A/13 of the original application and which was rejected vide letter dated 7th March 1996, communicated to the applicant vide letter dated 31st March 1996, which is Annexure A/14. Being aggrieved by this order the applicant filed this original application.

4. The grounds taken for claiming relief by the applicant are that the punishment order based on enquiry and report is unlawful and without any substance ~~therefore~~ the applicant cannot be held guilty of the charges. The enquiry officer and the punishing authority have not considered the evidence on record judiciously. The entire enquiry conducted against the applicant was in violation of the principles of natural justice, with only motive to punish the applicant

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for his lawful trade union activities. The punishing and acted in violation of principles of natural justice authority did not consider the entire evidence on record/ and fairplay. It is also averred that the applicant was a driver and is not supposed to repair the vehicle.

5. The learned counsel for the respondents contested his case by filing counter reply. The learned counsel of the respondents contended that the present applicant is liable to be dismissed on the ground of limitation as the order passed by the appellate authority is of 7th March 1996, while this application was filed in June 1997 which is about 2½ months beyond the limitation period. The learned counsel for the respondents further submitted that the applicant was absent from 7 to 9.30 A.M. on 17th June 1994, due to which the repair work of the vehicle could not be progressed on that day. The applicant was found non-cooperating and had misbehaved with the Floor J.C.O. of the workshop. The Station Workshop Officer recommended for initiating disciplinary action against the applicant vide letter dated 17/06/1994 (Annexure A/2). A proper show cause notice dated 31st July 1994 was served upon the applicant who denied the charges by his reply dated 7th August 1994, which are Annexure R/6 and Annexure R/7 respectively. It is also contended that as the charges were of serious nature, the applicant was served with a charge sheet under Rule 14 of the CCS (Classification, Control and Appeal) Rules, 1965 by memo dated 8th September 1994. The applicant submitted his representation denying all the charges vide his representation dated 24th September 1994 (Annexure R/9). A departmental enquiry was initiated against the applicant. Major Sanjeev Pandey and Shri K.P. Balan were respectively appointed as enquiry officer and presenting officer/

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Annexure R/10 and Annexure R/11. The enquiry commenced on 24th November 1994 and completed on 9th February 1995. The applicant was afforded sufficient time and opportunity to defend himself, but the applicant did not produce a single evidence in support of his defence. The applicant did not co-operate with the enquiry officer and merely made representations for change of presenting officer. Both the articles of charges have been proved by the evidence produced as per finding of the enquiry officer (Annexure R/17). Considering the gravity of charge second, a major penalty was proposed and accordingly the applicant was issued with a memorandum bearing No. 6928/4/1418/CIV, dated 15th April 1995 communicating the findings of the disciplinary authority in proposing the penalty of "Reduction of pay by three stages i.e. from Rs. 1560/- (including one increment of Rs. 30/- due on 01/02/1995) to Rs. 1470/- in the time scale of pay of Rs. 1320-30-1560-EB-40-2040/- for a period of two years and that he will not earn increments of pay during the period of reduction and that on expiry of such period the reduction will not have the effect of postponing the future increments of his pay." A copy of the enquiry report was supplied to the applicant alongwith the memorandum and was given 15 days time for making representation. The applicant submitted his representation on 28th April 1995 (Annexure R/19). The disciplinary authority after considering the representation passed the final order with a reply to the representation vide letter No. 6928/4/1418/CIV, dated 10th May 1995 (Annexure R/21). It is also contended by the counsel for the respondents that the applicant filed an appeal on 24th May 1995 which was rejected by the appellate authority by a <sup>detailed</sup> reasoned and <sup>by letter</sup> speaking order/bearing No. 49005|Ashraf|ISM|GS|MT 7, dated 7th March 1996. The appeal and appellate order is Annexure R/22 and Annexure R/23 respectively, which was communicated

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to the applicant on 31st March 1996 and was received by the applicant on 3rd April 1996. The learned counsel for the respondents further contended that the disciplinary authority as well as the appellate authority considering the age and service of the applicant took a lenient view by awarding the above mentioned punishment. The applicant is required to follow the service rules/orders/instructions issued from time to time otherwise such a Defence Establishment cannot run effectively without maintaining discipline which the applicant termed as harassment. This is the duty of the staff driver to co-operate and help the workshop staff till the repair work is completed and no illegality has been committed anywhere by the respondents in awarding the punishment to the applicant and the original application is liable to be dismissed as lacking in merits.

6. We have heard the learned counsel for the respondents and have perused the records available before us carefully.

7. We find force in the arguments of learned counsel for the respondents. We have also closely perused the documents, i.e., punishment order dated 10th May 1995 (Annexure A/12) and appellate order dated 31st March 1996 (Annexure A/14) and find no illegality or infirmity in the aforesaid orders. The order of the appellate authority is a detailed and speaking order which has been passed after fully considering the representation of the applicant. In view of the aforesaid we find no force in the claim of the applicant as no illegality is found anywhere in the conduct of the respondents in passing the orders.

8. In view of our discussion in the preceding paragraphs we are of the view that this original application

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(R.K. UPADHYA YA)  
ADMINISTRATIVE MEMBER

प्रतिलिपि अन्वेषितः—

- (1) सचिव, राज्य न्यायालय वार एग्रीगेशन, जयलपुर
- (2) आवेदनक डी/डीनम्बरी/वकु ..... के काउंसल Mohd. Ashraf, applicant
- (3) एग्रीगेशन डी/डीनम्बरी/वकु ..... के काउंसल H. Sarwan, Advocate
- (4) एग्रीगेशन, के एग्रीगेशन, जयलपुर न्यायालय  
सुप्रीम एवं आवेदनक कार्यकारी डी/डीनम्बरी/वकु ..... के काउंसल B. Chakraborty

"SA"