

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 486 of 2000

Jabalpur, this the 20th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Khilawan Singh Tekam,
aged 48 years, S/o. Shri
S.S. Tekam, House No. 18,
Behind Hanuman Temple, Gokalpur,
Jabalpur. ... Applicant

(By Advocate - Shri S. Paul & Shri V. Tripathi)

V e r s u s

1. Union of India,
through Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman/DGOF,
Ordnance Factory Board, 10-A,
Shahid Khudi Ram Bose Marg,
Calcutta.
3. The General Manager,
Gun Carriage Factory,
Jabalpur. ... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By Madan Mohan, Judicial Member -


By filing this Original Application the applicant has sought the following main reliefs :

"(ii) set aside the punishment order dt. 27.7.1998 Annexure A-1 and the appellate order dated 7.10.99/16.10.99 Annexure A-5.

(iii) direct the respondents to reinstate the applicant with full back wages and other consequential benefits as if the impugned orders are never passed."

2. The brief facts of the case are that the applicant was initially appointed on 17.1.1979. The applicant thereafter was working with utmost devotion, sincerity and his whole service record is clean and unblemished except the impugned disciplinary proceedings. The applicant submits that no


adverse C.R. has ever been communicated to the applicant at any point of time. The applicant was served with a charge sheet dtd. 19.3.1997 under Rule 14 of CCA rules. The applicant replied to the charges by denying the same. Thereafter vide order dated 21.4.1997, Shri R.N. Mehtani, appointed the enquiry officer. The enquiry officer conducted the departmental proceedings and submitted his report. In this enquiry the applicant demanded security routine register for 22.12.1996. The applicant has also demanded to produce Shri Chakrapan, the JCO on duty on the relevant date. Neither the register was produced nor Shri Chakrapan appeared. No directions were issued and nor any reasons were assigned for rejecting the applicant's demand. Shri M.P. Tiwari appeared as a prosecution witness No. 2. There was no examination-in-chief of Shri Tiwari and he merely stated that he confirms the pre-recorded statement. In other words without thereby being any examination-in-chief, the pre-recorded statement was produced before the PW-2 who confirmed that it is his statement. Such a procedure is not permissible under the law. There has to be an examination-in-chief, wherein the witness is required to state in his own language before the delinquent employee without there being any pre-determination and thinking. The pre-recorded statement have been disallowed in the law. Adequate opportunity had not been granted to the applicant during the about enquiry. The enquiry officer submitted his report dated 5.6.1998. The applicant preferred a representation against it. The disciplinary authority thereafter imposed the punishment of removal from service on the applicant. The applicant preferred an appeal to respondent No. 2 which also was rejected vide order dated 7.10.1999/16.11.1999 by Shri R.N. Mehtani, Additional Director General, Ordnance Factories. But Shri R.N. Mehtani was the disciplinary authority on 21.4.1997 who appointed the enquiry officer.



Thus at the relevant time he himself was the disciplinary authority and was associated with the case. In this view of the matter as per the principles of natural justice and also as per the principle of Justice is not only to be done but also seen to be done, he should not have decided the appeal of the applicant. The appeal ought to have been decided by an independent officer, who had no relation/connection or association of the instant case. In the appellate order also no reasons are assigned and the same is not in consonance with Rule 27 of CS(CCA) Rules, 1965. Aggrieved by this the applicant has approached this Tribunal claiming the aforesaid reliefs.


3. Heard the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the applicant has argued that Shri R.N. Mehtani, General Manager, vide his order dated 21.4.1997 (Annexure A-2) appointed Shri R.K. Sharma, Works Manager as the enquiring authority to enquire into the charges framed against the applicant. While he himself decided the appeal vide order dated 7th October, 1999. To support his claim the applicant has relied on the judgment of the Hon'ble High Court of Karnataka in the case of Sachidanandan M. Vs. Asst. General Manager, Vijaya Bank & Ors. reported in 1999(II) LLJ 1005, wherein the Hon'ble High Court has held that "same authority who had issued show cause notice and later initiated disciplinary proceedings rejecting explanation given in reply to such notice, hearing and deciding as appellate authority - held likely to arise - Possibility of predispositions hovering over mind of adjudicator could be rules out".




5. Against this argument of the learned counsel for the applicant, the learned counsel for the respondents argued that the facts of this judgment are not applicable to the facts of the present OA because in the present OA Shri R.N. Mehtani simply appointed the enquiry officer vide his order dated 21.04.1997, neither he issued any show cause notice to the applicant nor he conducted the disciplinary proceedings himself. Shri R.K. Sharma was appointed as enquiry officer and after completion of the enquiry proceedings, Shri K.R. Shankaran being the disciplinary authority has passed the impugned order of penalty of removal from service on the applicant. Then thereafter Shri R.N. Mehtani being the appellate authority has decided the appeal rejecting the same.

6. The learned counsel for the applicant further argued that the statements of witnesses Shri K.L. Jaiswal and Shri H.P. Tiwari were recorded by the enquiry officer, but their pre-recorded statements (examination-in-chief) ^{which} were recorded earlier, subsequently these witnesses during examination confirmed their earlier statements as correct. Such pre-recorded statements (examination-in-chief) is not sustainable in the eye of law. The whole statement including the examination-in-chief should have been recorded in presence of the applicant. In this regard our attention is drawn towards the judgment of the Jaipur Bench of the Tribunal in the case of Gaffor Khan Vs. Union of India and Ors., 2002(3)AISLJ 75, wherein the Tribunal has held that "Railway Servants (Disciplinary and Appeal) Rules, 1968 - Examination in Chief - Alleges that during enquiry only a prerecorded statement of witness was shown to him and got confirmed but no examination in Chief was done". On this ground alone the whole procedure were vitiated. It is further discussed in



para 7 of the said judgment that the witnesses examined were not subjected to the Examination-in-Chief, but, instead their statements recorded during the investigations by the PI, quite sometime back, were shown to the witnesses and they were asked whether it was their statement and whether all that is written in these was correct. Thus, according to the learned counsel for the applicant, there was violation of Rule 9(17) of the Rules and this by itself had vitiated the entire enquiry and was a ^{enough} good reason to quash the impugned order.

7. Against this the learned counsel for the respondents has drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of State of Mysore and others Vs. Shivabasappa Shivappa Makapur, AIR 1963 SC 375, wherein the Hon'ble Supreme Court has held that "Domestic Tribunal - Inquiry held before - Rules of natural justice - Bombay Police Manual, s. 545, cl. (8) - Statements of witnesses recorded in absence of defaulter - Witnesses called and their statements read out in defaulter's presence - Opportunity to cross-examine witnesses given - Rules of natural justice are not violated." This judgment is full Bench decision consisting of Hon'ble Five Judges of the Hon'ble Supreme Court. In the present case the pre-recorded examination-in-chief were also read over in presence of the applicant and both the witnesses told that their pre-recorded examination-in-chief are correct and the applicant was also given due opportunity of cross-examining ^{both} the witnesses. Hence no illegality has been committed by the enquiry officer in this regard and the decision taken on the basis of these statements cannot be said to be against the rules and principles of natural justice.



8. The learned counsel for the applicant further argued that inspite of the request of the applicant for production of the relevant register and one Shri Chakrapan, the respondents have not produced them before the enquiry proceedings and the production of the said document and Shri Chakrapan in the enquiry proceedings were necessary to take just and proper decision in the matter. Our attention was drawn towards the judgment of the Principal Bench of the Tribunal in the case of Hari Giri Vs. Union of India & Others, (1992) 19 ATC 659, wherein the Tribunal has held that "omission to examine material witness - Proceedings initiated against applicant on the basis of a letter from Vice-Principal of a school that certificate produced by the applicant was false - Vice Principal not examined - Enquiry, held, vitiated."

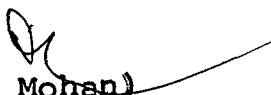
9. Against it, it is argued on behalf of the respondents that Shri Chakrapan was not an eye witness of this case and his non-production as a witness during the enquiry proceedings is not material at all and it has not caused any prejudice to the applicant and also the production of the said register was also not necessary. Simply the applicant wanted to prolong the disciplinary proceedings without any justifiable grounds.


10. We have given careful consideration to the rival contentions made on behalf of the parties and we have also perused the disciplinary proceeding file, produced by the respondents during the time of hearing and we find that Shri R.N. Mehtani only appointed the enquiry officer vide order dated 21.4.1997 (Annexure A-2) and he himself had not issued the show cause notice to the applicant nor he conducted the enquiry proceedings. One K.R. Shankaran, General Manager was the disciplinary authority who issued the impugned order



dated 27.7.1998. Thereafter the applicant preferred an appeal against the said order of the disciplinary authority to the appellate authority and Shri R.N. Mehtani, who was the appellate authority rejected the appeal of the applicant vide order dated 7th October, 1999. Shri Mehtani simply issued an order appointing the enquiry officer and this act does not disqualify him to decide the appeal of the applicant, as he has not passed any order as a disciplinary authority. So far as the ground raised by the applicant regarding pre-recorded statement (examination-in-chief) of two witnesses which were recorded earlier and confirmed by them subsequently stating that it was correct, cannot be a ground for vitiating the proceedings in view of the judgment of the Hon'ble Supreme Court in the case of Shivabasappa Shivappa Makapur (supra). The non-production of the Register and one Shri Chakrapan also seems to be no justifiable ground to vitiate the enquiry proceedings. It is a settled legal proposition that the Courts/Tribunals cannot reapprise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals. In this case the punishment imposed by the disciplinary authority and also confirmed by the appellate authority does not shock our conscience.

11. In view of the observations made above, we are of the considered opinion that the applicant has failed to prove his case and accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman