

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 488 of 1999

Jabalpur, this the 3rd day of October, 2003.

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member
Hon'ble Mr. G. Shanthappa, Judicial Member

D.C. Kori,
aged about 51 years,
S/o late Shri Babulal Kori
(Removed Supervisor 'B' Non Technical)
Ticket No. 2508/NIE), Security Office,
Gun Carriage Factory,
Jabalpur(M.P.)
R/o House No. 2611, New
Kanchanpur, Jabalpur(MP)

APPLICANT

(By Advocate - Shri S. Nagu)

VERSUS

1. Union of India,
through the Secretary,
Department of Defence Production
Ministry of Defence,
South Block, New Delhi.
2. Chairman/DGOF
Ordnance Factory Board,
10-A, Shaheed Khudiram Bose Road,
Calcutta - 700 001
3. General Manager,
Gun Carriage Factory
Jabalpur(MP)

RESPONDENTS

(By Advocate - Shri S.C. Sharma on behalf of
Shri B. da.Silva)

O R D E R (ORAL)

By G. Shanthappa, Judicial Member -

The applicant has filed the above Original Application challenging the order dated 20.10.1998 (Annexure-A-19) passed by the appellate authority by which the penalty of removal inflicted by order dated 21.1.1997 (Annexure-A-17) has been modified to the extent of reduction in pay by two stages for one year with cumulative effect. He further seeks a relief to declare that the action of finding the applicant guilty for the charges alleged is totally uncalled for.

2. The learned counsel for the applicant submits that

the applicant was working in the office of the respondents as Supervisor-B (Non-technical). He was served with imputation of charges along with memorandum of charge dated 1.1.1991. The articles of charges are as follows-

"Article of Charge No.1

That the said Shri D.C.Kori, T.No.2508/NIE, Supr.'B'(NT), Security Office, Gun Carriage Factory Jabalpur, on 28-11-90 alleged to have committed "Gross Misconduct-Misused official capacity, exploited and harassed Shri R.P.Pandey, Labourer, T.No.6339/IE/IM-Conduct unbecoming of a Govt. Servant."

Article of Charge No.2

That the said Shri D.C.Kori T.No.2508/NIE, Supr.'B'(NT), Security Office, GCF, Jabalpur on 28-11-90 alleged to have committed "Gross Misconduct -Accepted bribe from Shri R.P.Pandey, Labourer, T.No.6339/IE/IM and thus failed to maintain absolute integrity in violating of Rules 3(1) and 3(2) of CCS Conduct Rules - Conduct unbecoming of a Govt.servant."

2. An enquiry officer was appointed. After proper enquiry, the enquiry officer had submitted his report with his findings. The findings are as follows-

"From the foregoing it is evident that Shri D.C. Kori, Supr., S.O. has harrassed, terrorised and taken bribe of Rs.200/- from Shri R.P.Pandey, Lab., T.No.6339/IE,IM. As such charges framed against Shri D.C.Kori, T.No.2508/NIE, Supr.'B'(N/T), Security Office, GCF that (1) Committed "Gross Misconduct-Misused official capacity, exploited and harrassed Shri R.P.Pandey - conduct unbecoming of a Govt. Servant, (2) Committed "Gross Misconduct accepted bribe from Shri R.P.Pandey and thus failed to maintain absolute integrity - conduct unbecoming of a Govt.servant" is proved".

3. After receipt of the enquiry report, the applicant had submitted his representation dated 16.8.1991 (Annexure-A-9) with the request that the charges have not been proved beyond doubt being vague and baseless and as such he may be exonerated from both the articles of charges. Para 3 of his aforesaid representation is reproduced below-

"3. As regards articles of charge II, it is submitted that as per charge sheet, it is alleged that Shri Pandey has paid Rs.300/- on 28.11.90 to the undersigned inside the factory. In this connection, it is already submitted before the court by the PWs that they have paid me Rs.300/- on 1.12.90 inside the factory. Incidentally 1.12.90 was saturday and I was on leave on that day, as such the question of paying Rs.300/- on 1.12.90 by the Complainant does not arise. No evidence has been

Contd....3/-

presented before the Court by the Prosecution which proves of my entering inside the factory on 1.12.90. It is further pointed out that in their application sent to GM on 12.12.90 the complainants have alleged that Shri Pandey has paid Rs.500/- on 28.11.90 to Shri Maikolal for paying the same to the undersigned. This amply shows the contradiction in their different statements on the subject."

4. The learned counsel for the applicant has contended that admittedly one charge was proved and another charge was not proved. The charges are vague in nature and there is no inconsistency in framing the charges. When one charge was not proved, the enquiry officer has given the finding that the charge is proved. Hence the findings of the enquiry officer regarding proving the charges is baseless and illegal. After considering the effects pointed out by the applicant, the respondents have issued one more notice dated 30.12.1991 (Annexure-A-10) to attend before the enquiry officer for further investigation. The learned counsel contends that the respondents want to prove another charge which was not proved by conducting another enquiry on the same imputation of charges. On the basis of the findings of the enquiry officer, the disciplinary authority i.e. the General Manager had imposed the penalty of 'removal from service' vide order dated 15.3.1992 (Annexure-A-11). Prior to the passing of the said order of penalty, 5. The enquiry officer had issued one more letter dated 10.1.1992 (Annexure-A-15), contents of which are extracted below-

"It is found that both the witnesses stick to their original statements. Shri R.P. Pandey has once again admitted before court that he handed over Rs.300/- to Shri D.C. Kora on 01.02.90 at about 1300 hours which was eye-witnessed by Shri Jagdish Mishra (PW-2)."

The applicant preferred an appeal dated 24.3.1992 (Annexure-A-12) being aggrieved by the order of punishment of the disciplinary authority dated 15.3.1992. The applicant filed OA No.749/92 before this Tribunal contending that there was no further enquiry, no evidence was recorded and



the report submitted only with regard to the discrepancies regarding the date on which the incident took place. The question in the said case was whether the applicant is prejudiced because he has not been furnished a fresh copy of the report. After examining all aspects, this Tribunal disposed of the said OA with certain observations. The said observations are as follows-

"Accordingly the disciplinary authority is directed to give a copy of the enquiry report to the applicant and ~~after~~ hearing before passing any order. The orders passed by the appellate authority & the disciplinary authority are set aside and the matter is remanded to the disciplinary authority for passing fresh order".

6. Consequent to the said order, the services of the applicant were treated as deemed suspension. The subsistence allowance was directed to be paid as admissible under the rules. Explaining all the said proceedings, the applicant had submitted ^{a representation in} ~~an appeal~~ dated 9.12.1996 (Annexure-A-16) to the disciplinary authority. After considering all the facts, the disciplinary authority has passed the order of removal from service as per Annexure-A-17. The applicant preferred an appeal dated 16.3.1997 (Annexure-A-18) challenging the said impugned order of the disciplinary authority. The grounds urged in the said appeal clearly prove that the disciplinary proceedings are vitiated on ^{so many} grounds. The appellate authority has passed the order dated ^{14.12.1998} 20.10.1998 (Annexure-A-19) and penalty is modified by imposing the punishment to reduction in pay by two stages for one year with cumulative effect on the charges of harassing Shri Pandey on 28.11.1990 by misusing his official position. The intervening period between the date of removal from service and the date of reinstatement was directed to be regularised by giving a notice in terms of FR 54.

7. While arguing the case, the learned advocate for the applicant has pointed out that the entire departmental proceedings vitiate on the following grounds -

- (1) the charge is vague; charges are not proved on the basis of the proceedings (Annexure-A-18). Though the EO was satisfied that the charges are not proved, the findings given by him is illegal and has no basis;

- (ii) the notices at Annexures A-10 and A-15 were unwarranted which vitiate the entire disciplinary enquiry by violation of principles of natural justice, hence the impugned order is illegal, void and arbitrary in nature;
- (iii) by ignoring the contradiction in the date of incident i.e. 28.11.90 and 1.12.90 and by concluding that the applicant entered the factory without permission on 1.12.90 despite being on leave, the disciplinary authority has punished the applicant for a misconduct i.e. "entering the factory on 1.12.90 unauthorisedly despite being on leave" without framing the said charge and without affording any opportunity in this regard to the applicant as prescribed by the CCS(CCA) Rules, 1965. Thus in sum and substance, the applicant has been punished for a charge which was never levelled and in regard to which the conclusions arrived at are totally based on imagination;
- (iv) Evidence on record was not considered by both the authorities;
- (v) charges are not in conformity with law and there is no application of mind in issuing the chargesheet; and
- (vi) the charges are based on stale allegations and malafide in nature.

8. The applicant relied on the decisions in support of his case which are - 1992(2)SCC 10, Kuldeep Singh Vs. Union of India. In the said decision, the decision in Nandkishore's case, 1978(3) SCC 366 is referred. By the application of the said judgment of the Hon'ble Supreme Court, the entire proceedings against the applicant are liable to be quashed including the orders passed by the disciplinary authority and the appellate authority.

9. Per contra, the respondents have filed their reply denying the allegations and the contents of the OA and supported the action by the respondents. The learned counsel of the respondents submitted that there were complaint against the applicant, alleging that the applicant had harassed and taken a bribe of Rs.300/-. There was an investigation, in the investigation three persons were examined. One Mr A.K.Lamba, DGM had submitted a preliminary investigation report. On the basis of the said report the applicant was suspended on 15.12.1990. Subsequently, the

charge-sheet was framed. The learned counsel of the respondents had drawn our attention to para 5 of the impugned order dated 21.1.1997 (Annexure-A-17) passed by the disciplinary authority contending that reasons are assigned while passing the impugned order. He further referred the grounds taken in the reply. The evidence of witnesses clearly show that the charges are proved against the applicant and the appellate authority has shown mercy on the applicant and modified the order of punishment. The learned counsel supported the action of the authority while issuing the notice dated 30.12.1991 (Annexure-A-10) and the letter dated 10.1.1992 (Annexure-A-15). There is no ambiguity in issuing the notice to conduct the enquiry to know the truth of the facts. Hence the applicant has not proved his case for grant of relief. Hence, the OA is liable to be dismissed.

10. After perusal of the pleadings, documents available on record & after hearing the arguments of either side, we come to the conclusion that entire enquiry proceedings is illegal and the same is liable to be quashed. According to the enquiry report, the findings given by the enquiry officer proving the charges which are vague does not disclose any misconduct which are based on stale allegations. According to the statement of witnesses, P.W.2 Jagdish Mishra and Maikoo Lal do not support the case of prosecution. The authority who has issued the notice dated 30.12.1991 to attend the enquiry and the enquiry report dated 10.1.1992 has no authority which is uncalled for. When the enquiry was concluded on 17.6.1991, there was no necessity to conduct further enquiry which amount biased in nature and violates the principles of natural justice. Hence the impugned order and the entire disciplinary proceeding vitiated.

11. The observations made in the impugned order are perverse and no reasons are assigned. Hence all the charges are not proved in the enquiry. The presence of the charged official on 1.10.1990 was not proved. The question of proving demand of bribe and harassment of his colleague cannot hold

good. Demand and receiving the alleged amount of Rs.300/- was not proved before the enquiry officer.

12. The appellate authority has modified the order of punishment only on the basis or the charges are not proved. The relevant portion of the said order is extracted below-

"From perusal of records of the case, it is observed that Article I of the charge was proved by the IO on the basis of statements/ evidence of PWS. Article II of the charge has not been proved conclusively. Besides the discrepancy regarding the date of the incident as mentioned in the chagememo and as indicated in the IR, there was no clearcut prior intimation to the management about the transaction in the form of bribery to catch Shri DC Kori 'red-handed'. The only evidence is seen to be Shri Mishra from whom Rs.300/- was taken by Shri Pandey to pay to Shri Kori. Either of them should have complained to the management then and there so that Shri Kori (who was to enter the factory without permission on 1.12.90 as he was on leave), could have been held immediately. Instead, the incident was reported after nearly 13 days when Shri Kori allegedly asked for balance money from Shri Pandey.

The above indicates that the incident supposed to have taken place on 1.12.90 is an after thought and does not appear to be established beyond doubt so as to impose penalty of Removal from service. Accordingly the penalty is moderated to Reduction in pay by two stages for one year with cumulative effect on the charge of harassing Shri Pandey on 28.11.90 by misusing his official position. The intervening period between the date of removal from service and date of reinstatement may be regularised after giving notice to Shri Kori in terms of FR 54".


All the grounds urged in the appeal memo are not considered by the appellate authority. Taking over all considerations on record and the submissions of either side and also decisions referred and another judgment of CAT, Division Bench, Delhi Bench reported in 2003(3) ATJ 42, Than Singh Vs. Union of India and others and also Division Bench Judgment of the Hon'ble High Court in CWP No.3448/98 decided on 19.9.2002 the impugned order of punishment is not sustainable in the eye of law.

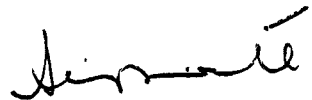
13. Accordingly, the UA is allowed. The impugned order dated 20.10.1998 at Annexure-A-19 is quashed, the

Sp.

Contd.....o/-

findings of the enquiry officer are uncalled for, all the charges levelled against the applicant are quashed. Consequently, the respondents are directed to pay all consequential benefits in pursuant thereon. No order as to costs.


(G. Shanthappa)
Judicial Member

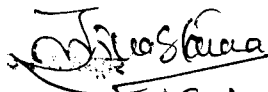

(Anand Kumar Phatt)
Administrative Member

rkv.

पुस्तक सं ओ/न्या..... दि.....

Received
14/10/03

SNAQU Advt
Bdasilwa Advt


13.10.03