

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 585/2000

Jabalpur, this 4th day of February, 2004

Hon'ble Shri M. P. Singh, Vice-Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

D.Nandi s/o Late Sh. G.L.Nandi,
Chargeman Grade II(T),
MT Section, Vehicle Factory,
Jabalpur
R/o Q.No. 3306, Type III,
Sector II, V.F.J. Estate,
Jabalpur (MP).

...Applicant.

(By Advocate: Shri S.Nagu)

-versus-

Union of India through

1. The Secretary,
Ministry of Defence,
Deptt. of Defence Production,
Government of India,
South Block,
New Delhi - 110 011.
2. Director General Ordnance Factories,
10-A, Shaheed Khudiram Bose Road,
Calcutta - 700 001.
3. General Manager,
Vehicle Factory,
Jabalpur (MP).

...Respondents

(By Advocate: Shri S.A.Dharmadhikari)

O R D E R

By Shri G.Shanthappa, Judicial Member -

The present O.A. has been filed by the applicant
seeking the following reliefs:

- a) to quash the penalty order dated 25.10.1999(A-7), as well as appellate order dated 31.07.2000 (A-10), as being void, illegal and arbitrary;
- b) to direct the respondents to grant all consequential service benefits, consequent upon the quashment of the impugned penalty;
- c) to direct the respondents to consider and promote

the applicant to the post of Chargeman Grade I, w.e.f. July, 1996 when the applicant was superseded by his juniors on account of pendency of the impugned disciplinary enquiry with all consequential benefits, including arrears of salary, fixation of pay and seniority.

2. The brief facts of the case are that the applicant was ^{working} as Chargeman Grade II on 29.4.1996 at Quality Assurance Vehicle (QAV for short) and he was responsible for checking the loading of fire affected scrap material from the Scrap Yard to the transport vehicle, Truck No. 5177 belonging to M/s. Narmada Alloys entered the factory premises on 29.4.1996 at about 11 a.m. After loading of the said vehicle, the same was released at about 11.50 a.m. and again reported back in the Scrap Yard for further loading at about 2.10 p.m. to be released after completion of loading at about 2.45 p.m. Right from 11.00 a.m. till 2.45 p.m. and even during the lunch break i.e. between 11.50 a.m. to 2.10 p.m., the Security Darban Shri Dayaram was deputed to remain with the Truck so as to prevent happening of a mischief by the private truck driver/contractor. During the time when the loading of burnt scrap material took place, the applicant personally supervised the entire process alongwith Shri R.K.Tiwari, Supervisor (Store Disposal). The applicant ensured that the burnt scrap material was loaded and no other usable or serviceable item is allowed to be loaded. At gate No. 3, the personnel of DSC (Defence Security Corps) Shri Gurnam Singh wanted to check the material loaded in the truck when the security representatives (one of the common witnesses who were dropped in view of the CAT order), replied that he had already checked the contents of the truck and had found them to be in order. Shri Gurnam Singh has said to have found certain serviceable items such as Propellar Shafts, springs and door locks loaded alongwith the burnt auctioned unserviceable scrap.
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3. When the respondents came to know about the dereliction of duty on the part of the applicant, he was placed under suspension w.e.f. 30.04.1996 and a chargesheet under Rule 14 of CCS(CCA) Rules, 1965 was issued on 10.9.1996 as per Annexure A-1.
4. The applicant has urged that under Rule 18 of CCS(CCA) Rules, 1965, there must be a common enquiry against the three individuals, including the applicant, which was issued on 25.10.1996.
5. The departmental proceedings and criminal trial against Sh. R.K. Tiwari were initiated simultaneously. The applicant submitted his representation on 26.09.1997 requesting for supply of relevant documents. As per Annexure A-3, he has requested ^{for supply of} four documents i.e. i) Memorandum of Charges in respect of S/Shri R.K.Tiwari, Supervisor 'B'(NT)SPC and Dayaram Darban T.No. 8869(NIE/SO); ii) Factory standing orders relating to issue of auctioned stores to private contractors ^{with} ~~which~~ particular reference to duties and responsibilities of QAV rep.; iii) Copy of written statement given by Shri Shibbu Durwan T.No. 8067 and Manohar Lal, Durwan T.No. 8117 and iv) Copy of statement obtained from ^{him} ~~me~~ on 29.4.1996 by security staff.
6. The case of the applicant is that none of the above documents was supplied to him except chargesheet against R.K.Tiwari and Daya Ram.
7. In the enquiry proceedings, five witnesses were cross-examined. In the absence of documents sought by the applicant, the applicant was handicapped in preparing his defence and effectively cross-examining the prosecution witnesses thereby prejudicing his case adversely. After concluding the enquiry, the Enquiry Officer has submitted his findings which read as under:-

"Shri D.Nandi

Charge established to the following extent;




"Gross Misconduct - Negligence of duty resulting in loading of material, such as propeller shafts, road springs and door locks of Shaktiman NC/NP vehicles alongwith scrap material consisting of old fire affected stores in truck No.MPQ-5177 thereby causing likely huge pecuniary loss to the State - Conduct unbecoming of a Government Servant."

8. The applicant was supplied the enquiry report against which he filed his objections. The disciplinary authority imposed the penalty of reduction in pay by two stages of the grade of Chargeman Grade II (T) i.e. from Rs. 6050/- p.m. to Rs. 5750/- p.m. in the time scale of pay of Rs. 5000-150-8000/- with cumulative effect for a period of two years with effect from 25.10.1999 vide its order dated 25.10.1999. Against the said order of the disciplinary authority, the applicant preferred an appeal which was rejected vide order dated 31st July, 2000.

9. The case of the applicant is that he was not afforded proper opportunity to defend his case as the respondents have failed to supply the required documents. Hence, the respondents have violated the principles of natural justice and on that ground the entire proceedings is vitiated and the impugned orders are liable to be quashed ~~and the relief~~ as prayed for.

10. Per contra, the respondents have filed their reply denying the averments made in the Original Application. To the main ground regarding violation of principles of natural justice, the respondents have submitted that the applicant was supplied the documents and the same were acknowledged by him. As per the enquiry report, at page 45, "in his cross examination by the D.C. for Shri R.K. Tiwari Qn.No.3 "were they rejected store from the production shop" he has stated that "Yes, they were taken out of the production shop". At page 47 of the enquiry report it is



revealed that the delinquent government servant has signed on both the material gate passes and the issue vouchers. At page 49 of the enquiry report it is stated that in his general examination Shri D.Nandi has admitted that he was detailed on 29.4.1996 to check & release the auctioned scrap material to M/s. Narmada Alloys. In answer to Qn. No. 5 when asked whether he knew what material the contractor was supposed to lift for scrap on 29.4.1996 he replied that "The documents which were shown to me, it was written there, major assy., sub.assy., loose components, spare parts of fire affected items. Some are cut into pieces and some are welding cuts."

11. The respondents contended that they have supplied the documents as requisitioned by the applicant vide their letter dated 8.10.1997 except serial no. 3 which was not recorded.

12. The applicant has certified that the loaded items are in order.

13. We have carefully perused the enquiry report and found that the enquiry officer has given several opportunities to the applicant. The applicant was also given the requisitioned documents and he has made use of those documents and cross-examined the witnesses. It is, thus, well established that there is no irregularity and illegally while conducting the enquiry and the enquiry officer has submitted the correct findings.

14. Subsequently, on the basis of the enquiry report, the applicant has submitted his representation. The disciplinary authority has exercised his powers and on the basis of the enquiry report and submissions made by the applicant, passed the impugned order imposing the penalty.



We have carefully perused ~~the enquiry proceedings, the~~ ^{GP} ~~submission of the applicant and also~~ ^{GP} the order of the disciplinary authority dated 25.10.1999 at Annexure A-7. The documents as required by the applicant were supplied to him on 08.10.1997, except serial No. 3 in his letter dated 26.09.1997 (Annexure A-3), which was recorded. The applicant has cross-examined the witnesses. The contention taken by the applicant has no force. The applicant has certified that the material has been loaded correctly in his presence as per the contract. For the said voucher, the applicant has signed. The enquiry officer has recorded ^{this fact} ~~in~~ his enquiry report at page No. 7. The applicant tried to shift his burden on the other co-employees. Since he himself has certified that the loaded material is correct, he cannot say that the other co-employees are involved in committing misconduct. The representation submitted by the applicant on the enquiry report, has been carefully considered by the disciplinary authority and the disciplinary authority has passed a speaking and reasoned order on the basis of the gross-misconduct and negligence of duty, resulting thereby causing ^{likely} ~~huge~~ pecuniary loss to the state. After considering ^{GP} the documents on record, the disciplinary authority has exercised his power and passed ^{an} ~~the~~ impugned order imposing the penalty of reduction in pay by two stages of the grade of Chargeman Grade II (T) i.e. from Rs. 6050/- p.m. to Rs. 5750/- p.m. in the time scale of pay of Rs. 5000-150-8000/- with cumulative effect for a period of two years with effect from 25.10.99. The applicant will not earn increments during the period of reduction. He will earn his next increment after completion of 12 months ~~of~~ qualifying service from the date of expiry of the penalty. For this period of two years, the qualifying service rendered at this point of pay scale prior to the date of imposition of ~~penalty~~ ^{GP} will count. There is no illegality

or irregularity in the order. No principles of natural justice has been violated either by the enquiry officer or the disciplinary authority.

15. The appellate authority after considering all aspects urged in the grounds of Memorandum of Appeal, rejected the appeal by confirming the order of the disciplinary authority. We have carefully perused the order of the appellate authority dated 31.07.2000. The appellate authority has considered all the five grounds urged in the memorandum of appeal. We find that there is no irregularity or illegality while passing the impugned penalty order by the appellate authority. The appellate authority has passed a reasoned and speaking order and no principles of natural justice has been violated. We do not find shocking the judicial consciousness on the punishment imposed on the applicant. This Tribunal is not a fact finding authority and we do not find any grounds to recommend the authority to modify the punishment. All the authorities have exercised their powers vested in them.

16. In view of the facts and circumstances and discussions made above we decline to interfere with the impugned orders. Hence the applicant has failed to prove his case and he is not entitled to any relief as prayed for in the OA. Accordingly, the Original Application is dismissed. No costs.

(G. Shanthappa)
Judicial Member

(M.P. Singh)
Vice Chairman

 $^HSA^H$

~~Fixed~~
~~11-2-04~~

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अग्रे दितः—

(1) सचिव, राज्य सरकार एवं राज्य एवं विभाजन, जवतलपुर

(2) आवेदन की तिथि/ज. के काउंसल S. Meera

(3) प्रत्यक्ष निष्ठा के माध्यम से के काउंसल

(4) बंधनाना, बंधनाना, बंधनाना बंधनाना

सूचना एवं आवश्यक कार्यवाही हेतु

[Signature]
प्रप रजिस्ट्रार ११/२/०५

S. Wajuh.
SA Dhamu/hi kari