

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 805 of 1999

Jabalpur, this the 5th day of February, 2004

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

R.B. Singh, S/o. Shri Umrav
Singh, aged about 42 years,
Wireman Skilled, T.No. EM/75/1387,
E.M. Section, Ordnance Factory,
Katni.

... Applicant

(By Advocate - Shri S.K. Nagpal)

V e r s u s

1. Union of India, through :
The Secretary, Ministry of
Defence, Deptt. of Defence
Production, New Delhi.
2. Director General, Ordnance
Factory Board, 10-A, Shaheed
K. Bose Road, Calcutta-
700 001.
3. General Manager, Ordnance
Factory, Katni (M.P.).

... Respondents

(By Advocate - Shri B.de.Silva)

O R D E R

By G. Shanthappa, Judicial Member -


The said Original Application is filed seeking the relief to quash the charge sheet dated 11.5.1994, issued by the General Manager, Ordnance Factory, Katni, punishment order dated 13.1.1999, issued by the General Manager, Ordnance Factory, Katni, order dated 22.10.1999 issued by the appellate authority, order dated 2.4.1999 issued by General Manager, Ordnance Factory, Katni. The applicant further sought relief to direct the respondents to treat the period of suspension from 9.3.94 to 17.4.95 as on duty with all consequential benefits, and to restore the pay reduced by one stage and give all consequential benefits arising therefrom including arrears of pay and allowances.

2. The brief facts of the case as stated by the applicant are that the applicant was working as a Wireman (Skilled) in Ordnance Factory, Katni. He was joint Secretary of Ordnance Factory employees Co-operative Society, Katni during the year 1987 to 1989. The applicant was under suspension by order dated 9.3.94. Subsequently a charge sheet was issued on 11.5.1994 and the charges levelled against the applicant are that he failed to maintain integrity, moral turpitude etc. and has indulged in corruption, embezzlement and misappropriation of money while working as Joint Secretary of Ordnance Factory Employees Co-operative Society, Katni. The applicant submitted his representation denying the charges levelled against him and explaining the position. The disciplinary authority has appointed the enquiry officer to enquire into the charges levelled against the applicant. The enquiry officer has conducted a detailed enquiry and submitted his report on 18.9.98. The enquiry officer did not find the charges against the applicant as correct and concluded that the same were not proved. The disciplinary authority did not agree to the findings of the enquiry officer and issued a dissenting note on 13.10.1998. In the said dissenting note it is mentioned that "I hold charge of misappropriation of public money, breach of trust by cheating the members of the society, misuse of official and powers & conduct unbecoming of a Government servant (stated in Article-i, ii, iii & iv) as established against Shri R.B. Singh, Wireman Skilled, O.F. Katni." Against the said dissenting note the applicant has submitted his representation. Thereafter an order dated 13.1.1999 was issued by the disciplinary authority imposing the punishment of reduction of pay from the present pay to one stage for one year with cumulative effect. It is further ordered that he will not earn

increments during the penalty period and this reduction will also have the effect of postponing his future increments. The grievance of the applicant is that the disciplinary authority has not considered the enquiry report properly and he has also not considered the objections submitted by the applicant. As the charges are not proved against the applicant, the disciplinary authority has illegally exercised his power and imposed the penalty which is not sustainable in the eye of law. The specific ground taken by the applicant in his representation is that the Co-operative Society does not come within the purview of the service of the applicant, as it is a separate autonomous body registered under the Madhya Pradesh Co-operative Societies Act, 1960. The Court of the Co-operative society has decided the case of the applicant and exonerated him from the alleged offence. This order of the competent court must have been considered by the disciplinary authority and proceedings should have been dropped. One Shri S.S. Khan a Co-operative Extension Officer was examined and he has given the evidence that the applicant has not committed any misconduct. The applicant has also cross-examined the witnesses. On that basis the enquiry officer has submitted his findings.

2.1. Aggrieved by the said order of the disciplinary authority, the applicant submitted an appeal before the appellate authority taking all the legal grounds. The appellate authority has decided the appeal by confirming the orders of the disciplinary authority. The disciplinary authority and the appellate authority have not considered the case of the applicant and also the legal grounds including the proceedings under the Madhya Pradesh Co-operative Societies Act, 1960. Hence the impugned orders are not sustainable in the eye of law and the same are liable to be quashed.

3. The respondents have filed their reply denying the averments made in the OA. The applicant earlier approached this Tribunal in OA No. 557/1994 challenging the order of suspension and the memorandum of charges levelled against him. The said OA was dismissed and the applicant has filed this OA, after lapse of so many years. Hence challenging the memorandum of charges and the enquiry proceedings in this OA is not maintainable on the ground of principles of res-judicata. The respondents have contended that the allegation levelled against him are under the M.P. Co-operative Societies Act, 1960. Though it was committed under the said act, the said society is ^{Co-operative} Employees/Society at Ordnance Factory, Katni. The respondents have issued the charge sheet and on the same the applicant has submitted his representation. The enquiry officer has conducted a fair trial and submitted his findings. The applicant was given ample opportunity to cross-examine the witnesses. There is no illegality or irregularity committed by the enquiry officer. The applicant has also submitted his representation on the dissenting note issued by the disciplinary authority. After perusal of the dissenting note and the enquiry report, including the representation of the applicant on the dissenting note, the disciplinary authority has passed the impugned order imposing the penalty. The objection raised by the applicant has been properly considered. Aggrieved by the said order of the disciplinary authority the applicant submitted his appeal before the appellate authority. The appellate authority has also considered the case on merits including the legal grounds urged by the applicant and confirmed the orders passed by the disciplinary authority by rejecting the appeal of the applicant. Hence there is no illegality or irregularity committed by the respondents



while passing the order of penalty on the applicant. The applicant has also filed an RA No. 20/1995 in OA No. 557/94. The same was dismissed on 13.10.1995. Accordingly the OA is liable to be dismissed on the ground of res-judicata and also as no principles of natural justice has been violated, the OA is liable to dismissed on merite also.

4. Heard the learned counsel for the parties and perused the pleadings and the documents.

5. The reliefs prayed in the OA is regarding quashing of the charge sheet, which is not maintainable in this OA because the same issue has been decided by this Tribunal in OA No. 557/94. Hence the said relief is rejected on the ground of principles of res-judicata. Subsequently after conclusion of the enquiry the applicant has challenged the enquiry proceedings initiated against the applicant and in which the applicant has been imposed the penalty by the disciplinary authority. We perused the enquiry proceedings. We find that the charges levelled against the applicant are not proved. For the said finding of the enquiry officer the disciplinary authority has issued a dissenting note dated 13.10.1998. The applicant has submitted his objections to the dissenting note taking the grounds that the charges are not proved and allegations made against the applicant in the charges are not within the purview of service of the applicant under the respondents. A separate court of enquiry has been conducted against the applicant and the applicant was exonerated. This fact was also not considered by the respondents while passing the punishment order. In respect of the charges levelled against the applicant under the MP Co-operative Societies Act, the respondents have relied on the judgment of the Hon'ble Supreme Court in the case of

Palghat BPL & PSP Thozhilali Union and BPL India Ltd. & Anrs in CA No. 8384/1995, decided on September 7, 1995. In this case the Hon'ble Supreme Court held that any act unrelatable to the service committed outside the factory would not amount to misconduct. The relevant paragraphs of this judgment is extracted below :

"4. The learned Counsel for the appellants contended that the alleged acts of the appellants are not misconduct within the meaning of Clause 39(h) of the Certified Standing Orders of the Company and that the findings of the High Court are thus illegal. We find no force in the contention. Clause 39(h) of the Standing orders of the Company reads:

"39(h) : Drunkenness, riotous or disorderly behaviour during working hours within the premises of the company or any act of subversive discipline either within or outside the premises of the Company."

5. A reading of Clause 39(h) indicates that drunkenness, riotous or disorderly behaviour during working hours within the premises of the Company is misconduct. The second part thereof indicates that any act subversive of discipline committed either within or outside the premises of the company is also misconduct. Though the learned counsel seeks to contend that it is not a misconduct, it is difficult to accept the contention. Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. But when misconduct vis-a-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline. The object appears to be that workmen need to maintain discipline vis-a-vis its management. What amount of misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed, and the attending circumstances leading thereto."

5.1. The disciplinary authority has considered the case of the applicant and he has got powers to impose the penalty taking into consideration that the offence/charges levelled against the applicant are coming within the service of the applicant in the factory, though the applicant was working as Joint Secretary of the Society. The disciplinary authority has passed a detailed and reasoned order by assigning the reasons while imposing the penalty. We do not find any illegality or irregularity committed by the disciplinary

authority while passing the impugned order. We have also perused the orders of the appellate authority and we find that the appellate authority has also considered all aspects of and all legal grounds urged by the applicant in the appeal and passed a reasoned and considered order. Hence the appellate authority has also exercised his power vested in him. Hence we also do not find any illegality or irregularity committed by the appellate authority in passing the impugned order. As per the judgment of the Hon'ble Supreme Court, the Tribunal has no power to assess the evidence and also regarding disproportionate punishment imposed on the applicant. When the authorities have considered all aspects, we do not find any judicial conscious to recommend the authorities to reduce the punishment.

6. Thus on perusal of the impugned orders including the charge and the judgment of the Hon'ble Supreme Court, we are of the considered view that no principles of natural justice has been violated while conducting the enquiry and also while passing the impugned orders by the respondents. Hence we find that the applicant has failed to prove his case for grant of any reliefs as claimed in the OA. Accordingly, the Original Application is dismissed. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

Issued
on
12/2/04

"SA"

पूठांकन से ओ/न्या.....जबलपुर, दि.....

पतिलिपि

(1) सचिव, राज्य सरकार, जबलपुर

(2) आदेशिका, जबलपुर

(3) प्रत्यक्षी, जबलपुर

(4) राज्यपाल, जबलपुर

सूचना एवं आवश्यक कार्यवाही के लिए

Basundhar

12/2/04

SK Mayapal
S. dasgupta