

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,

CIRCUIT BENCH AT INDORE

Original Application No. 854 of 2000

Indore, this the 14th day of January, 2004

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

Madanlal Jaithwa, S/o. Sri Dayaram
Jaithwa, aged 48 years, Junior Machine
Assistant, Bank Note Press, Dewas, r/o
1171, BNP Colony, Dewas.

... Applicant

(By Advocate - Shri D.M. Kulkarni)

V e r s u s

1. Union of India, through Joint
Secretary, Ministry of Finance,
Economic Affairs, Works Department,
Ministrial, Finance Building,
New Delhi.

2. General Manager, Bank Note
Press, Dewas.

3. Dy. General Manager, Bank
Note Press, Dewas.

4. Works Manager, Bank Note
Press, Dewas.

5. Chief Administrative Officer,
Bank Note Press, Dewas (M.P.).

... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By G. Shanthappa, Judicial Member -

The said Original Application is filed seeking the relief to quash the order of punishment imposing punishment of reduction of applicant's basic pay to the lowest in grade for 8 years with cumulative effect, order of rejecting the appeal, revision and charge sheet issued against him. He has sought further relief for direction to the respondents to restore the applicant's pay to his original stage with all benefits with due seniority and they be also be directed to pay the arrears of pay with interest thereon.



2. The brief facts of the case are that the applicant was appointed as Printing Mazdoor, on 07.06.1973. He was promoted on the post of Printing Attendant in the year 1975. He was further promoted to the post of Binding Assistant in the year 1978. He was selected to the post of Junior Machine Assistant Intglio Printing in December, 1978. While working on the post of Junior Machine Assistant, a charge sheet was issued under Rule 14 of the CCS (CCA) Rules, 1966 on 29.04.1995, on the following charges :

"Being in Government service without obtaining permission from the Department formed "Prayas Housing Development and Construction Company (Private Limited)" with Head Quarters at Panchashel Nagar, Civil Lines, Dewas and got the Company registered under the Companies Act, 1956 on 24.7.79 with the sole object of constructing houses by purchase of plots. On perusal of Memorandum of Association and Articles of Association of the said company, it was found that the applicant was its first Director and from time to time took contracts from Government/semi Government and private companies which is in breach of Rule 15(1) of Civil Service (Conduct) Rules, 1964. The Conduct Rules prohibit any steps being taken for commercial object and he was prohibited from participating in any co-operative society which is required to be registered under the Companies Act, 1956. The applicant congenital with other Government servants for which the Registrar of Companies issued certificate on 17.1.1985. The copy of the charge sheet is Annexure A-4."

The charge sheet was also issued to other employees separately i.e. Shri S.C. Verma, Deputy Technical Officer, Shri M.L. Verma, Senior Painter and Shri P.M. Wankhede, Head Clerk. There was no joint enquiry as prescribed under Rule 18 of the said rules. Shri M. Dutta, Assistant Works Manager was appointed as enquiry officer against the applicant. The applicant submitted his written statement of defence on 18.05.1995. The applicant denied that he has participated in the said Company. He was not performing the part of Director for his personal gain. No evidence in the enquiry was recorded though the applicant ^{and} denied the charges _{by} levelled against him. The enquiry officer did not give an opportunity to the applicant to defend his case and he has



submitted the enquiry report dated 04.03.1996 vide Annexure A-6. Subsequently show cause notice was issued alongwith the enquiry report. The applicant submitted his reply to the show cause notice on 12.04.1996 denying the charges levelled against him.

3. On the basis of the enquiry report and the submission made by the applicant the disciplinary authority has imposed the punishment of reduction in salary to the lowest stage from Rs. 3125/- in the Grade of Rs. 3050-75-3950-80-4590 to Rs. 3050/- with effect from 01.01.1998 for a period of 8 years with cumulative effect. Being aggrieved by the said order of punishment, the applicant preferred an appeal. The appellate authority has rejected the appeal vide their order dated 18.03.1999. The case of the applicant is that he had submitted an application dated 09.12.1999 to the Chief Administrative Officer for furnishing him with the punishments imposed on his co-delinquents, Shri P.M. Wankhede, Shri S.C. Verma and Shri M.L.Verma, vide Annexure A-10. The respondents have shown discrimination by imposing the punishment to the applicant on par with the said co-delinquents. The further case of the applicant is that the Rule 15(1) of the conduct rules are not applicable to the applicant, since his pay does not exceed Rs. 500/- per mensem and hold a non-gazetted post in any of the following establishments owned or managed by the Government namely : factories as defined in clause (m) of S.2 of the Factories Act, 1948. The respondents have charge sheeted wrongly against the applicant without following the rules under CCS(CCA) Rules. Hence his fundamental rights are violated under Article 14 of the Constitution of India. The applicant

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has relied on the judgment of Ram Niwas Bansal Versus State Bank of Patiala reported in 1998(3) SCT 550 (Full Bench), in which the appellate authority did not give personal hearing to the applicant. The same is against the principles of natural justice. Hence the orders passed by the respondents are illegal and violates the principles of natural justice. Accordingly, the impugned orders are liable to be quashed.

4. Per contra the respondents have filed their counter denying the averments made in the Original Application. The applicant joined in the Bank Note Press on 07.06.1973 as Mazdoor. He was promoted to the post of attendant with effect from 26.02.1978. He was then promoted to the post of Bindery Printing Assistant w.e.f. 11.07.1978 and to the post of Junior Machine Assistant w.e.f. 06.12.1978. At present the applicant is working as Junior Machine Assistant in the scale of Rs. 3050-75-3950-80-4590/-. While he was working as Junior Machine Assistant, he committed misconduct in violation of CCS(Conduct) Rules and accordingly was issued a charge sheet dated 29.04.1995. In the return statement dated 18.05.1995 the applicant denied the charges levelled against and him/for which the enquiry officer was appointed and the enquiry officer had issued the notices. During the course of enquiry the applicant categorically accepted the charges levelled against him. Accordingly, the enquiry officer has submitted his report. On perusal of the enquiry report it is seen that the charges levelled against the applicant were proved. A copy of the enquiry report was submitted to the applicant. The applicant submitted his representation. On the basis of the enquiry report and the representation submitted by the applicant, the disciplinary authority has

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imposed a ~~major~~ ^{major} penalty of bringing the applicant to the minimum of pay from Rs. 3125/- to Rs. 3050/- in the time scale of pay of Rs. 3050-75-3950-80-4590/- for a period of 8 years with cumulative effect vide order dated 31.12.1997.

5. Being aggrieved by the order of the disciplinary authority the applicant preferred an appeal. The appellate authority has confirmed the orders of the disciplinary authority. The appellate authority has gone through the main contention of the applicant, that Rule 15 of the conduct rule is not applicable in the case of the applicant. Without exhausting the remedy of filing the revision petition, the applicant has approached this Tribunal by filing OA No. 221/2000. This Tribunal has disposed of the said OA on 04.05.2000 with the direction to the applicant to make a revision application to the revising authority within 15 days from the date of the order through speed post, to avoid delay, alongwith a copy of this order and the revising authority shall be debarred to take the plea of limitation and shall dispose of the same through a reasoned order within 3 months from the date of receipt of revision application and inform the applicant promptly. The applicant shall supply a copy of the charge sheet, enquiry report, copy of representation, copy of the order of the disciplinary authority, copy of the memo of appeal, copy of the order of the appellate authority, to the revising authority alongwith his revision application. The revising authority shall dispose of the same taking into account whether on similar charged other co-members of that co-operative society are given lower punishment and as such discriminatory treatment, if any is given and also whether based on facts and circumstances of the case, a lower penalty would meet the ends of justice. The applicant has

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submitted his revision application to the revisional authority. The revisional authority has decided the application by exercising its powers conferred under Rule 29 of the CCS(CCA) Rules, 1965. Being aggrieved by the said orders the applicant has preferred this application before this Tribunal and the reliefs as prayed is not liable to be granted as the applicant has not made out any prima facie case for directing the respondents, as they have ~~not~~ violated the principles of natural justice. The advocate for the respondents have supported the action taken by the authorities in the said departmental proceedings.

6. Subsequent to filing of the reply the applicant has submitted his rejoinder. In the rejoinder he has taken some contention regarding discrimination shown to him on par with the other co-employees. Hence the respondents have shown discrimination which causes mis-carriage of justice to the applicant. In the said rejoinder he has further contended that Rule 15 of the Conduct Rules have not been taken into consideration by the respondents which permitted an employee who drew salary of less than Rs. 500/- per month was allowed to engage himself in any trade or business. This rule was subsequently substituted by Government of India, Department of Personnel and Training notification dated 10.09.1996. Hence the action taken by the respondents is illegal and vitiates.

7. After hearing the advocate for the applicant and the advocate for the respondents, after perusal of the pleadings and the documents on record, we decide this Original Application finally.

8. Regarding legal issue taken by the applicant that Rule 15 of the Conduct Rules prohibits to initiate proce-

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dings against the applicant, since his pay does not exceed Rs. 500/- per month and hold a non-gazetted post in any of the following establishments owned or managed by the Government namely : factories as defined in clause (m) of S-2 of the Factories Act, 1948, the respondents have contended that the salary of the applicant is ~~Rs 3050 - 4590/-~~ ^{in the pay scale & gen} which exceeds the amount of Rs. 500/- as contended by the applicant. Hence we hold that the grounds urged by the applicant regarding rules are not applicable to initiate the proceedings against the applicant ^{and} ~~is~~ is not tenable in the eye of law. Accordingly, the contention of the applicant is rejected, on the ground that his pay scale was ~~Rs 3050 - 4590/-~~ ^{an ample} ~~sp.~~ ^{sp.}

9. Regarding initiating the common proceedings under Rule 18, Rule 18 provides that the authority may exercise its powers to initiate the common proceedings. In the instant case the authority has exercised its powers to conduct enquiry proceedings against the applicant. Hence there is no illegality in conducting the enquiry against the applicant.

10. On perusal of the enquiry report we find that ^{an ample} ~~sp.~~ opportunity was given to the applicant to appear before the enquiry officer and to participate in the proceedings, which the applicant has not made use and at this stage he cannot say that no opportunity was given to the applicant to appear before the enquiry officer and to participate in the proceedings. The enquiry report does not violate the principles of natural justice.

11. We have perused the impugned order of punishment ordered by the disciplinary authority and we find that the disciplinary authority has exercised its power by consider-

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ing the enquiry report and also the submission made by the applicant. There is no illegality or irregularity committed by the disciplinary authority. The applicant has preferred an appeal. All the grounds taken by the applicant in the appeal memo has been considered by the appellate authority and a reasoned and considered order has been passed. We find that there is no illegality or irregularity has been committed by the appellate authority.

12. On the direction of this Tribunal the applicant preferred a revision application. The contentions urged in the revision petition has been considered by the revisional authority and it has passed a considered and reasoned order. All the legal grounds and factual things are considered by the revisional authority. Hence we do not find any irregularity or illegality has been committed by the revisional authority.

13. The learned counsel for the applicant has cited a decision in support of his claim reported in 1990(3)SCT550 (Full Bench) (Punjab & Haryana High Court). The said judgment is not applicable to the facts of this case. Accordingly, the contention taken by the applicant is not tenable.

14. After perusal of the procedures followed by the respondents, we find that there is no violation of principles of natural justice. The impugned order are passed following following the principles of natural justice. The grounds taken by the applicant regarding discrimination while imposing the punishment by the disciplinary authority, we find that the disciplinary authority has exercised its

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powers vested in him. There is no illegality committed while imposing the punishment. Accordingly, there is no discrimination is shown to the applicant while imposing the punishment.

15. Original Application stands dismissed accordingly.

No costs.

G. Shanthappa

(G. Shanthappa)
Judicial Member

M.P. Singh

(M.P. Singh)
Vice Chairman

"SA"

15-1-04

Copy forwarded to

(1) Shri D.M. Kulkarni, Lawyer for
Applicant, Indore

(2) Shri B. Dasilva, Adv. for
Resps. Jalandhar

कृतिकाल सं ओ/वा..... ज्येतपुर, दि.....
प्रतिलिपि दिनांक (मित्र) :-

(1) श्री डी. म. कुलकर्णी, एवं श्री डी. ए. दासिल्वा, ज्येतपुर

(2) श्री डी. म. कुलकर्णी, एवं श्री डी. ए. दासिल्वा, ज्येतपुर

(3) श्री डी. म. कुलकर्णी, एवं श्री डी. ए. दासिल्वा, ज्येतपुर

(4) श्री डी. म. कुलकर्णी, एवं श्री डी. ए. दासिल्वा, ज्येतपुर

सूचना एवं अधिकारी कार्यालयी हेतु

(B. Dasilva)
उपर राजिरद्वारा 27/1/04

*Enclosed
27/1/04*