

(27)

18/05/2012

O A No. 339/2008

Mr. R. S. Bhadania, Counsel for applicant.
Mr. Anupam Aggarwal, Proxy Counsel for
Mr. R. G. Gupta, Counsel for respondents.

Heard.

O.A. is disposed of by a
Separate order on the separate
sheets for the reasons recorded
therein.

✓ Anil Kumar
[Anil Kumar]
Member (A)

J. S. Rathore
[Justice K. S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of May, 2012

ORIGINAL APPLICATION No.339/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANILKUMAR, MEMBER (ADMV.)

P.T.Raghvan
s/o Shri Thiruvan P.T.,
aged about 40 years,
Ex-Mazdoor, CSD Depot,
Jaipur now serving in CSD Depot,
Jalandhar (Punjab),
r/o 22A/B, Laxminagar,
Near Netaji Ki Chakki,
Niwaru Road, Jhotwara,
Jaipur.

... Applicant

(By Advocate: Shri R.S.Bhadauria)

Versus

1. The Union of India
Through Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.
2. The Chairman,
Canteen Store Department,
Government of India,
Ministry of Defence,
ADELPHI 119, M.K. Road,
Mumbai.
3. The Area CSD Depot,
Jaipur through its Manager

... Respondents

(By Advocate : Shri Anupam Agarwal for Shri R.G.Gupta)

ORDER (ORAL)

This is second round of litigation. Earlier, the applicant filed OA No. 514/2003 before this Tribunal and this Tribunal vide its order dated 11.8.2005 allowed the OA by quashing and setting aside the impugned orders. The applicant was held entitled to all the consequential benefits, as if no punishment was imposed upon him. However, the Inquiry Officer was given liberty to proceed in the matter from the stage of submissions of the written arguments of Presenting Officer to the applicant or his defense assistance as per law.

2. The present OA is directed against the impugned order dated 18th July, 2007 passed by the Disciplinary Authority by which the punishment of 'withholding of annual increment of pay for a period of two years with cumulative effect' has been imposed upon the applicant and the appeal preferred by the applicant against this order was rejected by the Appellate Authority vide order dated 30th April, 2008.

3. The main challenge to the order passed by the Disciplinary Authority dated 18th July, 2007 as well as the order passed by the Appellate Authority dated 30.4.2008 is on the ground that as per the practice in CSD Depot, Jaipur, half day holiday is observed on



the day of Dhulandi of Holi Festival, as such, Godown of CSD Depot was closed at 3.00 PM on 1st March, 1999 by the group holders. There was no role of the applicant in closing the Godown of the CSD Depot. This act on the part of the employees was treated as misconduct. The Manager, CSD Depot, Jaipur sought explanation from all 37 employees including the applicant in their individual capacity for unauthorizedly leaving the place on second half of 1st March, 199 without permission/grant of leave with intent to hamper government work. The explanation was required to be finished within two days with a rider as to why the absence should not be treated as dies-non and salary is deducted.

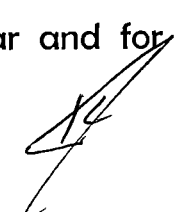
4. This action on the part of the Manager, CSD Depot, Shri A.K.Verma did not go well with the employees and they decided to meet the Manager in his office on 3.3.1999. The applicant being Branch Secretary of CSD Employee Union was deputed to meet the Manager to explain the factual status. The explanation was given by the applicant in the capacity of Branch Secretary of the CSD Employees Union that the employee has no role in the so called absence. The Manager rather to accept the explanation submitted by the applicant has issued letter dated 4.3.1999 alleging therein that the applicant has used unparliamentary language in the office of the Manager and this behaviour on the part of the applicant was considered insulting and insubordination to such a degree as to be incompatible with continuation of relation of master and servant



and subversive of discipline resulting in violation of Rule 3(1)(iii) of CCS (Conduct) Rules and the applicant was asked to give explanation within two days.

5. In response to this letter, the applicant submitted his explanation. Ultimately, a charge sheet dated 29.2.2000 was served on the applicant alleging misconduct on the part of the applicant. For the first time, it was averred in the memo of charge that the aforementioned derogatory and unparliamentary language against the Manager, Shri A.K.Verma, was used in the presence of Mazdoor Shri Hanuman Singh, who was in the Manager's cabin to obtain his signatures on some official documents. It is further averred that Shri B.P.Pareek had heard threatening and shouting by the applicant while approaching Manager's room for some official work. This witness was a planted witness, which is proved by statement of Hanuman Singh who has categorically averred that 'Nobody was there except Raghavan and Manager'. In this view of the matter, no reliance can be placed on the statement of Shri B.P. Pareek.

6. In the first round of litigation, the order dated 23.1.2003 by which penalty of withholding of increment for two years with cumulative effect has been imposed on the applicant and the order dated 11.7.2003 by which the Appellate Authority has rejected the appeal of the applicant, have been challenged with prayer for reversing his transfer from Jaipur to Jalandhar and for grant of



selection grade due on completion of 12 and 24 years service from the due date and payment of arrears with 12% interest thereon.

7. This Tribunal having considered the rival submissions of the respective parties quashed and set-aside the impugned orders but a liberty was given to the Inquiry Officer to proceed in the matter from the stage of submission of the written arguments of Presenting Officer to the applicant or his defence assistant, as per law.

8. Pursuant to the direction issued by this Tribunal vide its order dated 11.8.2005, the Inquiry Officer has further inquired into the matter. We have perused the inquiry report and the findings given by the Inquiry Officer as well as the order passed by the Disciplinary Authority dated 18th July, 2007, which the Appellate Authority has followed vide order dated 30th April, 2008. It appears that the respondents have not cared to consider the observations made by this Tribunal in its earlier order passed in OA No.514/2003 and same order has been passed by the Disciplinary Authority which has been upheld by the Appellate Authority awarding the same punishment of 'withholding of annual increment of pay for a period of two years with cumulative effect'. It also appears that the applicant being office bearer of the CSD Employees Union, the Inquiry Officer has given more weightage to the statement given by the Manager and not even carefully examined statement of Shri Hanuman Singh, but only placed reliance on the statement of Shri B.P.Pareek, who was



admittedly not in the cabin of the Manager, but was just passing outside the cabin of the Manager.

9. The respondents controverted the submissions made on behalf of the applicant.

10. In our considered view, even considering allegation alleged by the respondents, it was not a solitary act of the applicant but as many as 37 workers were there. The applicant only represented the Union before the Manager. The applicant wanted to explain difficulties of 37 employees and as per convenience specifically on the day of Dhulandi, the CSD Godown was closed only for half day.

11. We have carefully perused the enquiry report and the order passed by the Disciplinary Authority dated 18th July, 2007 as upheld by the Appellate Authority vide order dated 30th April, 2008 as well as the earlier order dated 11.8.2005 passed by this Tribunal whereby the impugned order dated 23.1.2003 and 11.7.2003 were quashed and set-aside with liberty to proceed in the matter from the stage of submission of the written arguments of Presenting Officer to the applicant or his defence assistant as per law. In our considered view, the liberty as granted by this Tribunal has not been properly exercised while appreciating the inquiry report and the statement recorded during the enquiry. As discussed herein above, the applicant was only representing 37 employees before the Manager



in the capacity of Branch Secretary of the CSD Employees Union. The respondents without properly appreciating the statement recorded during the inquiry arrived at the conclusion affirming the finding, which was earlier given by the Disciplinary Authority and upheld by the Appellate Authority. In such circumstances, the order passed by the Disciplinary Authority as upheld by the Appellate Authority cannot be said to be the orders passed in the light of the direction given by this Tribunal. Therefore, the penalty of 'withholding of annual increment of pay for a period of two years with cumulative effect' is, in our considered view, shockingly disproportionate looking to the charges leveled against the applicant and required to be reduced as 'Censure' or 'Warning' with the stipulation that the applicant should remain careful in future while behaving with the seniors.

12. In view of the observations made hereinabove, the OA stands party allowed and the order passed by the Disciplinary Authority and the Appellate Authority are accordingly modified. No costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/