

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **08th** day of **August, 2018**.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J).

Original Application Number. 330/00416/2009.

Kailash Nath Tiwari, S/o Late Sri Shiv Murti Tiwari, R/o 1/19, New
Idgah Colony, Kanpur Nagar.

.....Applicant.

VER S U S

1. Union of India through Director General / Chairman,
Ministry of Defence, Ordnance Factory Board, 10 A,
Auckland Road, Kolkata - 700001.
2. General Manager / Sr. General Manager, Ordnance
Factory, Govt. of India, Kanpur Nagar.

.....Respondents

Advocate for the applicant	:	Shri B.N. Vishwakarma Ms. Sharda Vishwakarma
Advocate for the Respondent	:	Shri Arvind Singh

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

The applicant has filed this Original Application with the
prayer for the following main reliefs:-

- "i.) issue a writ, order or direction in the nature of
certiorari quashing the impugned orders dated
12/02/2009 and 02/02/1999 passed by the
respondent nos. 1 and 2 respectively.

- ii.) issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the applicant in service in pursuant to acquittal order dated 29/10/2007.”

2. The facts of this case in brief are that a case crime No. 29/1995 under section 18/20 of NDPS Act at Police Station Armapur, Kanpur was registered. However, he was granted bail. It is stated that on the basis of the criminal case, the applicant was served with a charge sheet and he was placed under suspension vide order dated 19.02.1996. Subsequently, the services of the applicant was terminated vide order dated 02.02.1999. It is contended that neither the suspension order nor the order dated 02.02.1999 were served upon the applicant. It is further stated that the applicant has been acquitted in the criminal case by the Sessions Judge/Fast Track, Kanpur vide judgment dated 29.10.2007 (Annexure A-2). Thereafter, the applicant preferred a representation dated 26.11.2007 (Annexure A-3) before respondent No. 2 requesting for his reinstatement on the basis of his acquittal in criminal case. Then the respondent No. 2 vide letter dated 18.12.2007 (Annexure A-4) advised to move appeal before the respondent No. 1. Thereafter, the applicant preferred an appeal to the respondent No. 1 (Annexure A-5) but vide order dated 12.02.2009 rejected the appeal of the applicant. Hence, the applicant has filed this OA.

3. Heard learned counsel for the applicant, who submitted that after acquittal in the criminal case, the applicant had filed an appeal before the appellate authority on the advice of respondent No. 2 and had requested through the said appeal for reinstatement in service. But the appeal has been rejected vide order dated 12.02.2009. It is further submitted by the learned counsel for the applicant that the order dated 12.02.2009 has been signed by the disciplinary authority, whereas it should have been signed by the appellate authority as per rules.

4. On the other hand, learned counsel for respondents submitted that the order dated 12.02.2009, which is impugned in this OA has been issued by the respondent No. 2 as per direction received from the respondent No. 1, who is the appellate authority. Hence, it may be deemed to be the order passed by the appellate authority.

5. During the course of arguments, learned counsel for the applicant cited the judgments of Hon'ble Supreme Court in the case of M. Paul Anthony, Capt Vs. Bharat Gold Mines Ltd. – 1999 (3) SCC 679 and State Bank of India Vs. R.B. Sharma – 2004 (7) SCC 27. He also cited the judgment of Hon'ble High Court, Allahabad in Rajesh Prasad Mishra Vs. The Commissioner, Jhansi Division, Jhansi and others – 2011(1) ADJ 135. Counsel for the applicant

specifically pointed the findings of Hon'ble Supreme Court in the case of M. Paul Anthony (Supra), which states as under: -

"22. The conclusions which are deducible from various decisions of this Court referred to above are: -

(i). Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately.

(ii). If the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge is a criminal case is grave and whether complicated questions of facts and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv). the factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v). If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

6. We have considered the submissions of learned counsels as well as the materials available on record and are unable to agree with the contentions of the learned counsel for the respondents that it is not necessary for the appellate authority to sign the order which has been passed in an appeal under CCS (CCA) Rules, 1965. It is seen from the Government of India decision dated 13.07.1981, as mentioned in Swami's Compilation of CCS (CCA) Rules under Rule 15 (page 137-138 in thirty ninth Edition – 2017 of the book), the following instructions are relevant: -

“3. Instances have also come to notice where, though the decisions in Disciplinary / Appellate cases were taken by the competent Disciplinary / Appellate Authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the Disciplinary / Appellate / Reviewing Authorities exercise quasi-judicial powers and as such, they cannot delegate their powers to their subordinates. It is therefore, essential that the decision taken by such authorities are communicated by the Competent Authority under their own signature, and the order as issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in those cases where the President is the prescribed Disciplinary / Appellate / Reviewing Authority and where the Minister of concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorized to authenticate orders in the name of the President.”

[G.I., M.H.A., D.P. & A.R., O.M. No. 134/1/81-AVD.I, dated the 13th July, 1981]

7. In view of the clear direction of the Government of India, as stated above, the impugned order dated 12.02.2009 is not sustainable on the ground that it has not been signed and issued by the competent appellate authority as per the Government instructions cited above. Accordingly, the impugned order dated 12.02.2009 is set aside and quashed. The matter is remitted to the respondents No. 1 / competent appellate authority to re-consider the appeal of the applicant. The applicant is given liberty to submit a fresh appeal to the appellate authority alongwith copy of this

order and enclosing a copy of his earlier representation and raising fresh grounds, as stated in this OA. The applicant may also enclose a copy of judgment of Hon'ble Supreme Court in the case of M. Paul Anthony (Supra) and in other cases alongwith the fresh appeal. If such fresh appeal is filed by the applicant within two weeks from the date of receipt of certified copy of this order, the appellate authority shall consider the grounds advanced in the fresh appeal of the applicant including the judgment enclosed, if any, and his earlier appeal and pass a reasoned and speaking order in accordance with Rule 27(2) of CCS (CCA) Rules, 1965 to dispose of the appeal of the applicant. It is also directed such order to be passed by the appellate authority, shall be communicated to the applicant within two months from the date of receipt of fresh representation from the applicant, as stated above.

8. OA is partly allowed in terms of above directions. No costs.

MEMBER- J.

MEMBER- A.

Anand...