

**Reserved**  
(On 27.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

(This the **05<sup>th</sup>** Day of **October**, 2018)

**Hon'ble Mr. Justice Bharat Bhushan, Member (Judicial)**  
**Hon'ble Mr. Mohd. Jamshed, Member (Administrative)**

**Original Application No.330/422/2011**  
(U/S 19, Administrative Tribunal Act, 1985)

Om Prakash Singh S/o Shri Ram Laut Singh R/o 765 Mahaveerpuri Shivkuti, Allahabad 211004. Presently, working as Store Keeper in Ordnance Depot, Fort, Allahabad.

..... **Applicant**

**By Advocate:** **Shri S. Lal**

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, New Delhi 0 110011.
2. Director General Ordnance Services (OS-8C), Army Headquarters, DHQ-PO, New Delhi 110011.
3. Officer-in-Charge, AOC Records, AOC Records Office, Trimulgherry – PO, Secunderabad.
4. Commandant, Ordnance Depot, Fort, Allahabad.

..... **Respondents**

**By Advocate:** **Shri Dharmendra Tiwari proxy counsel for Shri Avnish Tripathi.**

**O R D E R**

**Delivered by Hon'ble Mr. Justice Bharat Bhushan, Member (Judicial)**

Present Original Application (in short 'OA') has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant, Shri Om Prakash Singh, who was serving in Ordnance Depot, Fort Allahabad as Store Keeper since 28.10.1982.

2. Shri Om Prakash Singh, delinquent employee was found involved in a Criminal Case of pilferage of 1151 qty of sparking plug 14

mm. An F.I.R. was lodged in Police station on 20.09.1997. Police raided the house of Shri O.P. Singh and recovered the stolen goods and sent him to jail. He was placed under suspension w.e.f. 20.09.1997 i.e. the date of detention in jail. He was also served charge sheet dated 06.01.1998 by the appropriate authority. The court of inquiry was ordered on 23.08.1997 to find out the circumstances under which the stores were pilfered and to fix the responsibility for pilferage. The court of inquiry opined that a loss of 1151 qty of sparking plug 14 mm amounting to Rs.60427.50 is attributable to the applicant and two other persons.

3. The applicant was served with memo of charge bearing No.6963927/Discp/SK/119/CA-6 dated 06.01.1998 framing the three charges, which are as under:-

- i. Gross negligence of duty
- ii. Lack of absolute Integrity and devotion to duty.
- iii. Theft of Govt. stores.

**(Charges proved)**  
**(Charge initially proved but found vitiated by C.A.T.  
Allahabad)**

4. One Major C.P. Balakrishnan was appointed as Inquiry Officer. Inquiry was conducted; relevant documents were admittedly given to delinquent employee. However, the applicant has claimed that he was not given copy of preliminary report. An allegation of bias was levelled against Major C.P. Balakrishnan and representation was made to Appellate Authority for change of Inquiry Officer on 27.01.1999. However, this representation was rejected by Appellate Authority.

5. Inquiry Report concluded that applicant was guilty of charges as levelled against him. The applicant was served the attested copies of proceedings and was given another opportunity of hearing by making a proposal of punishment for penalty of 'compulsory retirement from service' (Annexure A-11). The applicant submitted his reply, the Disciplinary Authority (Brig. A.K. Joshi) considered all the relevant material, thereafter, inflicted the penalty of 'compulsory retirement from service' upon the applicant from the date of service of that order i.e. 13.07.2001. It is pertinent to point out that applicant, Shri O.P. Singh was, however, given all pensionary and allied benefit as admissible to him on the date of 'compulsory retirement from service'.

6. Against the said punishment order dated 13.06.2001, the applicant preferred an Appeal under rule 23 of CCS (CC&A) Rules, 1965 but the same was also rejected by Lt. Gen. T.J.S. Gill, Directorate Gen Ordnance Service/Appellate Authority.

7. The applicant, thereafter, filed OA No.641 of 2002 (Om Prakash Singh vs. Union of India & Ors.) before Central Administrative Tribunal, Allahabad challenging the orders of Disciplinary Authority as well as Appellate Authority. This OA was partly allowed on 29.09.2005 by Division Bench of this Tribunal. The operative portion of this order is extracted herein under:-

*"19. In the end, the O.A. is partly allowed. The order of the Disciplinary Authority dated 13.06.2001 and of the Appellate Authority dated 08.03.2002 are quashed and set aside. The respondents shall consider afresh the Inquiry Report along with the representation of the applicant and pass suitable orders treating that finding against article 3 have been vitiated on account of*

extraneous matters having been taken into account by the Inquiry Authority. Since the earlier punishment no longer subsists, the applicant is to be 'reinstated in service' but without any back wages and the Disciplinary Authority may pass suitable orders as stated above in respect of the charges. Needless to mention that the applicant shall have further statutory remedy available to him under the CCS (CC&A) Rules, as well as the legal remedy, if he is aggrieved that the order may be passed by the disciplinary authority. No costs."

8. The aforesaid order indicates that the Tribunal held that findings of Disciplinary Authority on Article of Charge No.3 were vitiated on account of extraneous matters having been taken into account by the Inquiry Authority. Therefore, the Tribunal remitted the matter back to the Disciplinary Authority and asked them to consider the findings against Article of Charge No.3 vitiated on account of extraneous matters having been taken into account by the Inquiry Authority. Disciplinary Authority was asked to pass afresh orders on Article 1 and 2 of the charge.

9. This order was challenged by the respondents by filing Civil Misc. Writ Petition No.6230/2006 (Union of India vs. Om Prakash Singh & Another) which was dismissed on 07.05.2008 by the Division Bench of Hon'ble High Court.

10. The Disciplinary Authority after considering the entire matters again passed an order dated 15.12.2009 whereby the punishment of reduction of pay by one stage lower from Rs.7630/- + 1900 (Grade Pay) to Rs. 7350/- + 1900 (Grade Pay) in the time scale of pay of Rs.5200-20200/- for a period of 03 years w.e.f. 01.01.2010. It was also ordered that applicant will not earn increment of pay during the period of such reduction and that on the expiry of this period; the

reduction will have the effect of postponing the future increments of his pay.

**11.** The applicant again submitted a departmental appeal before the Appellate Authority on 29.01.2010 on various grounds. The Appellate Authority vide order dated 06.07.2010 remitted the matter back to the Disciplinary Authority for reconsideration of the case and to pass a fresh order. In pursuance of the aforesaid order, the Disciplinary Authority sent a memorandum dated 12.08.2010 to the applicant seeking his reply within 15 days. The applicant again submitted reply raising several points. Disciplinary Authority on 30.10.2010 passed the punishment order and this time, the gravity of punishment was further reduced. The Disciplinary Authority inflicted the punishment of reduction of pay by one stage lower in the time scale of pay drawn by the applicant for a period of two years w.e.f. 10.01.2011. It was, further, ordered that applicant was not to earn any increment of pay during the aforesaid period of reduction and on expiry of this period the reduction will have the effect of postponing the future increments of his pay.

**12.** The applicant filed departmental Appeal against the aforesaid punishment order dated 30.10.2011, which was dismissed vide order dated 14.02.2011. The order of Disciplinary Authority dated 30.11.2010 passed by respondent No.3 and Appellate Authority dated 14.02.2011 passed by respondent No.2 are under challenge before this Tribunal and applicant is seeking following relief(s):-

- "a. To issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 14.02.2011 passed by the respondents No.02 &*

order dated 30.10.2010 passed by the respondent No.03 (Annexure No A-1 and A-2 to the compilation No.1).

- b. *To issue an order or direction to the respondents to pay the applicant full wages for the entire period from 30 Sept 2005 to 15th Oct 2008 on which he was kept away without any fault with all consequential benefits including pay, allowances and promotion etc from the date from his juniors have been promoted.*
- c. *The Hon'ble Court may be pleased to issue any such other and further orders/directions in favour of the applicant for which this Hon'ble Court may deem just and proper in the facts & circumstances of the case and for which the applicant may be entitled under Law.*
- d. *To award the costs of the application to the applicant."*

**13.** Respondents have filed counter reply, wherein they have delineated the entire sequence of events. They have confirmed that initially the applicant was awarded the penalty of 'compulsory retirement from service' thereafter on account of order of this Tribunal, the applicant was awarded punishment of reduction in pay scale for a period of three years but Appellate Authority remitted the matter back to the Disciplinary Authority and thereafter, the impugned final order was passed involving reduction of pay for two years and stoppage of increment.

**14.** Respondents have denied the allegation of bias and submitted that all the relevant material including documents and statements of witnesses recorded during the court of inquiry were given to the applicant before the start of formal departmental inquiry and that orders of this Tribunal have been fully complied with in letter and spirit.

15. Applicant/delinquent employee has filed Rejoinder, reiterating his arguments taken in OA.

16. Heard Shri S. Lal, counsel for the applicant and Shri Dharmendra Tiwari proxy counsel to Shri Abhinav Tripathi, counsel for the respondents and perused the record.

17. Counsel for the applicant has argued that he was not provided the copy of report of courts of inquiry which was foundation of entire disciplinary proceedings. We are not in agreement with the argument of the learned counsel for the applicant. Fact of the matter is that proceedings were drawn against applicant for serious case of pilferage, gross negligence of duty, lack of absolute integrity and devotion to duty. Court of inquiry itself was conducted because of pilferage of Ordnance Depot Fort, Allahabad. Therefore, it is apparent that foundation of inquiry is in fact the allegations of pilferage and negligence of duty.

18. Applicant himself has admitted that in Para 4.6 of his OA that all relevant copies of documents were provided to him except copy of report of court of inquiry. The court of inquiry was conducted merely to gather information and to fix, *prima facie*, responsibility, if any, for misconduct and misbehavior. This report is usually intended to satisfy the Competent Authority whether any further action in the nature of departmental inquiry or action is called for. Ordinarily, these reports are not used for disciplinary proceedings. We believe that it was not necessary to get access to such report. We also believe that right of access to official record is not unlimited. If, in the opinion of authority such records are not relevant to the case or their disclosure is not

desirable in public interest then the authority can deny the access to such reports.

**19.** It is pertinent to point out that statements of all witnesses and all exhibits recorded and collected during the course of court of inquiry were provided to the delinquent employee. It is also necessary to point out that Disciplinary Authority as well as Appellate Authority awarded punishment to the delinquent employee only on the basis of open inquiry conducted in presence of applicant. The record reveals that applicant was asked to nominate three persons in order of precedence for defending his case and the delinquent employee, in fact, used this opportunity and named the following persons:-

- a. Shri Mohammed Usman – 6957618  
Depot Acct office, OD Fort, Allahabd.
- b. Shri S.K. SC Phulairiya - 6962448  
MTSSD, OD Fort, Allahabad.
- c. 6957133 SSK Shri Moimmdin Traffic Branch,  
OD Fort, Allahabad.

**20.** Most of these statements are also available on record. These statements were not only recorded in presence of delinquent employee, he was in fact allowed to cross examine these witnesses. This opportunity was used by delinquent employee to subject these witnesses to the cross examination. There is nothing on record to demonstrate that report of Court of inquiry/preliminarily inquiry was ever made use of during final inquiry or in awarding punishment.

**21.** We are, therefore, convinced that refusal to give copy of report of court of inquiry has not adversely affected the right of delinquent employee to defend himself. A careful perusal of records indicates

that Disciplinary Authority as well as Appellate Authority were concerned only with the material gathered during final inquiry and report of inquiry officer.

**22.** Learned counsel for the applicant has drawn the attention of this Tribunal toward the direction issued by CAT Allahabad Bench in OA No.641 of 2002 and stated that this direction has not been complied with by the respondents. We have carefully perused the order dated 29.9.2005 passed in OA No.641 of 2002 in which the Tribunal held that Article of Charge No.3 was vitiated on account of consideration of extraneous material by inquiry officer. After this order of Tribunal, Article of Charge No.3 was not taken into consideration by the Disciplinary Authority as well as by the Appellate Authority. They had been instructed to pass fresh order with regard to the Article of Charge I and II and they have done precisely that.

**23.** Learned counsel for the applicant has argued that this Tribunal had not directed that Disciplinary Authority shall give its separate findings other than, the findings given by the Inquiry Officer. This contention is baseless. Inquiry Officer had given his report earlier. The Tribunal issued instruction to the Disciplinary Authority and Disciplinary Authority (Brig. R.K. Saiwal) passed a detailed order considering all material available on record. It is pertinent to point out that Para 10 of Chapter- 10 of CCS (CC&A) Rules, 1965, the findings of Inquiry Officer are not binding upon Disciplinary Authority who can give its own findings on the article of charge. The report of Inquiry Officer is only enabling document which helps the Disciplinary Authority in formulating his opinion and is intended to assist the Disciplinary

Authority in coming to a conclusion about the guilt of delinquent employee. The Tribunal itself directed the Disciplinary Authority to consider the finding of inquiry report afresh along with representation of applicant excluding the article of Charge No.III. It is pertinent to point out that applicant had filed an Appeal dated 29.01.2010 against the earlier order dated 15.12.2009 passed by the Disciplinary Authority, wherein one of the main argument of the applicant was that Inquiry Officer did not give his finding on each of charge separately. Therefore, the Appellate Authority vide order dated 06.07.2010 had remanded the order dated 15.12.2009 passed by the Disciplinary Authority for giving the finding particularly on Article of Charge Nos. I and II. CCS (CC&A) Rules, 1965 also provide special power to the Disciplinary Authority to give its own finding in inquiry report submitted by Inquiry officer.

**24.** In fact, the Tribunal vide its order dated 29.09.2005 had also directed the Disciplinary Authority to consider the entire matter afresh. Rules also provide sufficient power to the Disciplinary Authority to pass its own order irrespective of the findings of Inquiry Officer.

**25.** We, also, do not approve of the argument of learned counsel for the applicant that Tribunal merely directed the Disciplinary Authority to pass final order only. No such instruction was issued. We believe that directions issued by the Tribunal have been complied with by the Disciplinary Authority. They have considered the entire inquiry report afresh. The argument of learned counsel for the applicant that pleas raised in second letter dated 08.02.2001 have not been considered by Disciplinary Authority is also not acceptable. The

Appellate Authority had earlier remitted the case back to the Disciplinary Authority to give separate assessment of evidence in respect of Article of Charge No. I and II and to forward the report of assessment to the applicant. Appellate Authority, in fact, also asked the Disciplinary Authority to obtain fresh representation from the delinquent employee before inflicting any penalty upon him. Disciplinary Authority, in compliance of the aforesaid directions, has discussed in detail the points raised in both representations dated 08.02.2001 and 14.09.2010 submitted by the delinquent employee.

**26.** We have carefully considered all the material on record. The order dated 30.10.2010 passed by Brig. R.K. Saiwal/Disciplinary Authority and order dated 14.02.2011 passed by Lt. Gen. Pradeep Bhalla/Appellate Authority are consistent not only with prevailing rules, principles of natural justice but also with the direction given by this Tribunal dated 29.09.2005 passed in OA No.641 of 2002.

**27.** In view of the discussion made above, the OA is devoid of merit and is liable to be dismissed. Accordingly, the OA is dismissed with no order as to costs.

**(Mohd. Jamshed)**  
Member (A)

**(Justice Bharat Bhushan)**  
Member (J)

Sushil