

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4369/2013

Reserved on : 23.11.2015.

Pronounced on : 08.12.2015.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Sh. Dinesh Kumar Joshi,
S/o late Sri Hans Raj Joshi,
R/o C-6/4, New Type-III,
O.F. Estate Raipur,
Dehradun-248008(U.K.).

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Applicant

(through Sh. G.S. Chauhan, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Defence,
Department of Defence Production,
New Delhi.
2. Director General,
Ordnance Factory, Armoured Vehicles,
Hd. Qtr. Avadi, Chennai-600054.
3. General Manager,
Opto Electronics Factory,
Ordnance Factory,
Dehradun-248008.
4. Sri Chunni Lal, C.M.II S.O.
Opto Electronics Factory,
Ordnance Factory, Dehradun-248008.
5. Sri Mukul Gaud, Junior Clerk,
Opto Electronics Factory,
Ordnance Factory, Dehradun-248008(U.K.)
6. Sri Ashok Kumar, G-12,
Opto Electronics Factory,
Ordnance Factory, Dehradun-248008 (U.K.)
7. Sri Sher Singh Pal, G-60,
Opto Electronics Factory,
Ordnance Factory, Dehradun-248008 (U.K.)
8. Sri Denesh Chandra, G-57,

Opto Electronics Factory,
Ordinance Factory, Delhidun-248008 (U.K.)

9. Sri Babu Lal, G-19,
Opto Electronics Factory,
Ordinance Factory, Delhidun-248008 (U.K.)
 10. Sri Dewan Singh, G-36,
Opto Electronics Factory,
Ordinance Factory, Delhidun-248008 (U.K.)
 11. Sri P.C. Bohra, Guard Commander DSC,
Opto Electronics Factory,
Ordinance Factory, Delhidun-248008 (U.K.)
 12. Smt. Pushpa Miyan, Ladies Searcher,
Opto Electronics Factory,
Ordinance Factory, Delhidun-248008 (U.K.)
- Respondents

(through Sh. M.S. Reen, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working in Ordinance Factory, Dehradun when on 28.05.2009, he was served with a charge sheet containing the following charges:-

"ARTICLE-I

That Sri Dinesh Kumar Joshi P.N. 00073, while functioning as Store Keeper-Grade-C in Store Section of OPTO Electronics Factory, Dehradun, committed gross misconduct- in that Sri Dinesh Kumar Joshi on 26-05-09 evening at about 05:35 to 05:40 near Main Gate of the Factory, by using un-parliamentary language against Sri Pawan Kumar Nautiyal, CM-I, misbehaved with him, tried to manhandle him and also threatened to harm him afterwards. As such Sri Dinesh Kumar Joshi P.N. 00073, Store Keeper has committed the violation of Govt. Servant (Conduct) Rules 1964 Rule-3 sub rule (1) Part(ii) & (iii), which is integrity doubtful in work.

ARTICLE-II

That the said Sri Dinesh Kumar Joshi P.N.00073, while functioning as Store Keeper- Grade-C in Store Section of OPTO Electronics Factory, Dehradun, committed gross misconduct-in that by the above act on 2005-09 inside the Factory, Sri Dinesh Kumar Joshi has threatened and tried to create fear in Shri Pawan Kumar Nautiyal, who is a responsible officer of

sensitive section like Security Section. This act of Sri Dinesh Kumar Joshi is against the integrity and has committed the violation of Govt. Servant (Conduct) Rules 1964 Rule-3 sub rule (1) Part (ii) & (iii), which is integrity doubtful in work.

ARTICLE-III

That Sri Dinesh Kumar Joshi P.N.00073, while functioning as Store Keeper- Grade-C in Store Section of OPTO Electronics Factory, Dehradun, committed gross misconduct-in that- No. Improvement in his habit-Despite being penalized on three occasions for his misbehavior against B-Gate JCO/DSC, Sri Dinesh Kumar Joshi has not improved his habit. This act of Sri Dinesh Kumar Joshi is against the integrity and has committed the violation of Govt. Servant (Conduct) Rules 1964 Rule-3 sub rule (1) Part (ii) & (iii), which is integrity doubtful in work."

2. The applicant denied the charges vide his letter dated 15.06.2009. The Disciplinary Authority (DA) then appointed an Enquiry Officer (EO) on 10.07.2009 and an enquiry into all the charges was conducted. The EO submitted his report on 27.02.2010 in which he found all the charges to have been proved (pages 56 to 59 of the paper-book).

3. After considering the report of the EO, the DA passed the impugned order dated 23.09.2010 imposing punishment of reduction of basic pay by two stages for a period of one year on the applicant. The applicant was also not to earn any increment during the period of punishment. The applicant preferred an appeal on 02.11.2010 but the same was rejected on 04.04.2011 by the Appellate Authority (AA). He then preferred a revision petition on 08.09.2011. However, this was rejected on 11.06.2013 by the President. Hence, the applicant has now filed this O.A. seeking the following relief:-

- “(A) Issue order or direction to the respondents to quash the impugned order dated 23-09-2010 in league with order dated 11-06-2013 along with its effect and operation also along with all consequential proceedings based on the impugned order after calling entire record from the respondents declaring the same against the rules and law and also to give all consequential service benefits.
- (B) Issue order or direction to the respondents to allow the dues and salary and whatsoever may be benefit and other service benefit

including promotion. Had it been the impugned order was never in existence.

- (C) Issue appropriate order or direction suitable in the nature to award damages and compensation to the petitioner for malicious and malified act of the respondents, be which the petition is facing grave mental agony and financial hardship and the amount of the damages and compensation which may be quantified by this Hon'ble Tribunal and further be directed to the respondents the amount to be recovered from the salary of the erring officer.
- (D) Issue any other suitable direction or order as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (E) Award costs of the claim petition of the petitioner."

4. The applicant has alleged that the orders passed by the respondents were violative of Constitutional provisions and, therefore, deserved to be set aside. The respondents have acted in a mechanical manner without application of mind. The DA did not afford any opportunity to the applicant to represent against the enquiry report, thereby, violating the law laid down by the Hon'ble High Court of Calcutta in the case of **Shyamal Kumar Sarkar Vs. Bangiya Gramin Vikash Bank & Ors.**, C.O. No. 10290(W) of 1993 on 21.04.2010. The EO has not taken evidence of any private witnesses and has only taken the evidence of all the persons who signed the complaint against the applicant. According to him, this was violative of the law laid down by Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank & Ors.**, CIVIL APPEAL NO. 7431 OF 2008 (Arising out of SLP (C) No. 14429 of 2007) on 19.12.2008 and in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Ltd.**, AIR 1999 SC 1416. Further, by not giving an opportunity to the applicant to represent against the enquiry report as well as the quantum of punishment the respondents violated the law laid down by Hon'ble Supreme Court in the case of **State of Uttranchal & Ors. Vs. Karak Singh**, Civil Appeal No. 4531 OF 2007 dated 13.08.2008, in para-11 of which the following has been held:-

"M.D. ECIL Hyderabad & Ors. V/s B. Karunakar & Ors., it was held:

"where the enquiry officer is other than the disciplinary authority the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employees reply to it. The 2nd stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary Authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the enquiry viz- before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions."

4.1 The applicant has further stated that the incident for which he has been punished occurred outside the office and beyond office hours. He has alleged that initially the respondents had suspended him but they had to revoke his suspension order the very next day because of this reason.

5. In their reply, the respondents have stated that a written complaint against the applicant was received from Sh. Pawan Kumar Nautiyal, Chageman, a non-gazetted officer posted at Security Section of the factory on 27.05.2009 in which it had been alleged that when the applicant was stopped by the complainant from leaving office at about 1735-1740 hours, the applicant had threatened and misbehaved with the complainant and used un-parliamentary language. He had also attempted to manhandle the complainant but was prevented from doing so by other staff present at that time. An enquiry was held after which the DA, finding that all the charges have been proved in the enquiry, imposed a penalty of reduction of pay by two stages for one year on the applicant. The applicant's appeal was also

considered and rejected by the competent authority. Thereafter, he submitted a revision petition to the President, which was also rejected.

5.1 The respondents have submitted that the charges proved against the applicant were serious and it was only after taking a lenient view that the DA had imposed the punishment mentioned above. They have also stated that the enquiry has been conducted in accordance with law and reasonable opportunity has been given to the applicant to defend his case. Thereafter, the respondents have quoted several judgments regarding the limitation on the powers of the Tribunal to interfere in disciplinary proceedings in judicial review.

6. We have heard both sides and have perused the material on record.

6.1 On going through the orders passed by the DA, AA and the President in review, we find that the orders are detailed and reasoned. We, therefore, do not agree with the applicant that the respondents have acted mechanically without application of mind. Further, the contention of the applicant that he was not given an opportunity to represent against the report of the officer is not supported by facts. In fact, in the impugned order of the DA itself it is mentioned that a copy of the enquiry report was made available to the applicant vide letter dated 22.03.2010 with a view to enabling him to make a representation against the same. It has also been mentioned that applicant submitted such representation on 05.04.2010, which has been considered by the DA. Not only this in Para-4.7 of his O.A. the applicant himself has mentioned that the enquiry report was given to him vide letter dated 22.03.2010. Further, in Para 4.8 of the OA the applicant has himself mentioned that he replied to the same vide his letter dated 05.04.2010.

6.2 Regarding applicant's contention that as laid down by Hon'ble Supreme Court in the judgments cited by him, namely, **State of Uttaranchal & Ors.** (s) and **M.D. ECIL Hyderabad & Ors.** (s) that the applicant should have been given an opportunity to represent against the quantum of punishment as well, we find that this contention is not supported by the aforesaid judgments. This is because from Swamy's Compilation of CCS CCA Rules we find from Instructions issued by Government of India under Rule-15, Instruction-6(A) reads as follows:-

"Supply of copy of Inquiry report to the accused Government servant before final orders are passed by the Disciplinary Authority.- Reference is invited to O.M.No. 11012/13/85-Estt.(A), dated the 26th June, 1989 (*not printed*), on the subject mentioned above wherein it has been prescribed that in all cases, where an inquiry has been held in accordance with the provisions of Rule 14 of the CCS(CCA) Rules, the Disciplinary Authority, if it is different from the Inquiring Authority, shall before making final order in the case, forward a copy of the inquiry report to the Government servant concerned requiring him to submit within 15 days, his representation, if any, on the report of the Inquiring Authority.

2. It was also stated that the said instructions will be viewed after the final decision of the Supreme Court in the matter. The Supreme Court has decided the matter finally in its judgment, dated 1-10-1993, in the case of *Managing Director (ECIL), Hyderabad v. B. Karunakar* [JT 1993(6)SC.1.]. It has been held by the Supreme Court that wherever the Service Rules contemplate an inquiry before a punishment is awarded and when the Inquiry Officer is not the Disciplinary Authority, the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment. Necessary amendment providing for supply of copy of the inquiry officer's report to the delinquent employee has been made in Rule 15 of the CCS(CCA) Rules, 1965, vide Notification No. 11012/4/94-Estt.(A), dated 3-5-1995 [*sub-rules(1-A) and (1-B)*]. All Disciplinary Authorities are, therefore, required to comply with the above-mentioned requirement without failure in all cases."

Thus, Government of India have amended Rule-15 to incorporate the judgment of Hon'ble Supreme Court in the case of MD(ECIL, Hyderabad (*supra*) relied upon by the applicant and the amended Rule-15(4) reads as follows:-

"If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to

give the Government servant any opportunity of making representation on the penalty proposed to be imposed."

Thus, it is specifically provided in the Rule that it shall not be necessary to give an opportunity to the government servant concerned for making a representation on the penalty proposed to be imposed.

6.3 The applicant has also contended that the EO did not examine any independent witness and only examined the witnesses who had signed the complaint. He asserted that signatories to the complaint cannot be treated as independent witnesses as they were likely to support the complaint which they had signed. In this regard, we have examined the nature of the complaint. It was that the applicant had misbehaved and used un-parliamentary language when the complainant Sh. Pawan Kumar Nautiyal had not permitted him to leave the factory premises. Thus, the allegation of misbehaving was only against Sh. Nautiyal. Other persons, who witnessed this incident, signed the complaint as they had witnessed the altercation that took place between the applicant and the complainant. They cannot be said to have any vested interest in the matter and as such have to be regarded to be as independent. Moreover, the applicant's assertion that all the signatories of the complaint were from the security section to which the complainant Sh. Nautiyal belonged and, therefore, cannot be regarded as independent witnesses, also does not merit consideration. This is because the incident took place at the gate of the factory where the security section was located. It was, therefore, understandable that only the staff present in the security section would notice the incident and would become witness to the altercation. The judgment of Hon'ble Supreme Court in the case of **UOI Vs. Naman Singh Shekhawat** relied upon by the applicant would not apply in this case.

6.4 Next the applicant has asserted that the incident took place outside the office and beyond office hours. As such, he cannot be punished in disciplinary proceedings for the same. This contention also cannot be accepted. The complaint against the applicant was that he was not permitted to leave the factory premises by the security guard and that was the reason why the altercation took place. Clearly the incident was within the factory premises and during factory hours only. As such, the misconduct committed by the applicant would squarely fall within the purview of disciplinary rules.

6.5 Thus after examining all the grounds taken by the applicant, we are of the opinion that none of them merits consideration. The O.A. is accordingly dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

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