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CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH

O.A 350/928/2012

Date of Order: 25.07.2018.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Bijan Kumar Paul, aged about 54 years, working as Labour (Semi-skilled) employee in M.M Section, Rifle Factory, Ishapore being Ticket No. MM-H73 PER No. 232012 and residing at Laxmi Nath Colony, Post Office - Ishapore-Nawabgung, Police Station-Naopara, District 24-Parganas (North)

--Applicant

-versus-

1. Union of India service through the Secretary, Ministry of Defence (Defence and Protection), Government of India, South Block, New Delhi-110001.
2. The General Manager, Ministry of Defence, Government of India, Rifle Factory, Ishapore, Post Office-Ichapore-Nawabganj, District - 24-Parganas (North); 740144
3. The Additional General Manager (Administration), Rifle Factory, Ishapore, Post Office-Ichapore-Nawabganj, District-24 Pargans (North); 743144.
4. The Additional Director General of Ordnance Factory/Member, Appellate Authority, Government of India, Ministry of Defence, Ordnance Factory Board, 10A, Shaheed Khudiram Bose Road, Kolkata - 700001.
5. Senior Manager, Allahabad Bank, Shyambazar Branch, 125, Bidhan Sarani, Calcutta 700004.

--Respondents.

For The Applicant(s): Mr. P. C Das, Counsel
Ms. T. Maity, Counsel

For The Respondent(s): Ms. D. Nag, Counsel
Ms. M. Bhattacharya, Counsel

ORDER (ORAL)

Per: Mrs. Bidisha Banerjee, Member (J):

As a sequel to an earlier O.A, this present O.A has been preferred in order to seek the following reliefs:

" a) To quash and/or set aside the impugned Charge-sheet Memo No. 78(O)/Vig. Dated 08.02.2008 issued by the General Manager, Indian Ordnance Factories, Rifle Factory, Ishapore against your applicant being Annexure A-1 of this original application;

(b) to quash and/or set aside the impugned Enquiry Report dated 11.03.2011 submitted by the Enquiry Officer being Annexure A-4 of this original application;

(c) To quash and/or set aside the impugned penalty order of removal from service dated 27.5.2011 against the applicant imposed by the General Manager of Ishapore Rifle Factory being Annexure A-7 of this original application;

(d) to quash and/or set aside the portion of the order of the appellate authority as regards to imposition of major penalty of reduction in pay from Rs. 18180/- in the pay band of Rs. 5200-20200 with Grade Pay of Rs. 1800/- by three stages for a period of two years with "cumulative effect" being No. 17127(653)/A/Disc dated 22nd March, 2012 issued by the Additional Director General of Ordnance Factory Board/Member (Appellate Authority) being Annexure A-12 of this original application;

(e) To pass an appropriate order directing upon the respondent authority that "since your applicant reinstated in service on 10.04.2012 so, from the date of removal of to reinstatement, the entire period may be counted for spent on duty and to give all consequential benefits regarding salary and back wages to that period i.e from 27.05.2011 to 10.04.2012;"

2. The gravamen of the indictments against the applicant vide charge memo dated 08.02.2008 were as under:

Statement of article(s) of charge framed against Shri Bijan Kumar Paul, T/No.MM-873, Labourer (S/Skd.), Per. No. 232012, MM Section, Rifle Factory, Ishapore.

Article -1

That the said Shri Bijan Kumar Paul, T/No.MM-873, Per. No. 232012 while functioning as Labourer (S/Skd.) in MM Section Rifle Factory, Ishapore produced some fake documents with forged signature and fake rubber stamp using name of a Senior Officer of Rifle Factory Ishapore and borrowed Rs. 5,00,000/- (Rupees Five Lakhs only) from the Allahabad Bank, Shyambazar

Branch, 125, Bidhan Sarani, Kolkata- 700004 in fraudulent manner. This amounts to GROSS MISCONDUCT on his part and is in violation of Rules 3(1)(i) & 3(1)(iii) of CCS (Conduct) Rules, 1964 on his part.

Article - 2

That the said Shri Bijan Kumar Paul, T/No. MM-873, Per. No. 232012 while functioning as Labourer (S/Skd.) in MM Section Rifle Factory, Ishapore did not intimate his employer about the said borrowing from the Bank and thus violated Rule 16(4) of CCS (Conduct) Rules, 1964.

(Annexure-II)

Statement of imputations of misconduct or misbehaviour in support of the article(s) of charge framed against Shri Bijan Kumar Paul, T/No. MM-873, Labourer (S/Skd), Per. No. 232012, MM Section, Rifle Factory, Ishapore.

Article - 1&2

Shri Bijan Kumar Paul, T/No. MM-873, Labourer (S/Skd), Per. No. 232012, MM Section, Rifle Factory, Ishapore has taken Personal Loan (House Building Loan) of Rs. 5,00,000/- (Rupees Five Lakhs only) from the Allahabad Bank, Shyambazar Branch, 125, Bidhan Sarani, Kolkata- 700004. As understood from the documents enclosed to the Bank's Communication to RFI, Shri Paul furnished certain documents to the Bank for taking Personal Loan. On examination of the said documents viz. Verification of Present Employment, Letter to Employment by the Borrower and Letter of Confirmation from the employer to remit the amount of monthly instalment etc were found fake as the same bear forged signature and fake rubber stamp of a Senior Officer of Rifle Factory Ishapore. This amounts to GROSS MISCONDUCT on his part and is in violation of Rules 3(1)(i) & 3(1)(iii) of CCS (Conduct) Rules, 1964 on his part. Shri Paul did not intimate his employer about the said borrowing from the Bank and thus violated Rule 16(4) of CCS (Conduct) Rules, 1964.

3. In the earlier round this Tribunal, without entering into merits, disposed of the O.A with a direction upon the appellate authority to dispose of the appeal.

4. The order in appeal, dated 22.03.2012 has been assailed in the present O.A. The order is extracted verbatim herein below for clarity:

Government of India
Ministry of Defence
Ordnance Factory Board
10A, S.K Bose Road
KOLKATA-700001.

Dated, the 22nd March, 2012

No. 17127(653)/A/Disc

ORDER

Shri Bijan Kr. Paul, Ex.T. No. MM-873, Rigger (Semi-Skilled), Rifle Factory, Ishapore, has preferred an appeal dt. 6.7.11 against the penalty of "Removal from Service" ordered vide GM/RFI Order dt. 27.5.11.

The appeal has been considered with reference to the relevant records of the case. It is observed that the appellant was chargesheeted vide RFI memorandum dt. 18.2.08 on the following charges: (i) while functioning as Labourer (Semi-Skilled) in MM Section, RFI, produced some fake documents with forged signature and fake rubber stamp using the name of a Senior Officer of RFI and borrowed Rs. 5,00,000/- from Allahabad Bank, Shyambazar Branch, 125, Bidhan Sarani, Kolkata in fraudulent manner. This amounts to GROSS MISCONDUCT on his part and is in violation of Rules 3(1)(i) & 3(1)(iii) of CCS(Conduct) Rules, 1964 on his part (ii) he did not intimate his employer about the said borrowing from the bank and thus violated Rule 16(4) of CCS (Conduct) Rules, 1964.

The appellant did not submit his written statement of defence against the chargememo. Disciplinary Authority thereafter constituted a Court of Inquiry, wherein the charges levelled against the appellant were established. A copy of the Inquiry Report was forwarded to the appellant and the appellant submitted his representation dt. 18.3.10 on the Inquiry Report.

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After consideration of the facts of the case, the evidence borne on record, the Inquiry Report and the representation dt. 18.3.10 submitted by the appellant, the Disciplinary Authority imposed the aforesaid penalty, now appealed against.

Aggrieved with the orders of the Disciplinary Authority, the appellant had preferred an appeal dt. 6.7.11 on the following contention (i) that the Inquiry Officer proceeded with a closed and biased mind and was not ready to allow him to submit his written statement of defence before the inquiry proceeding started. Repeated requests for such submission of written statement of defence were ignored and the same was not even recorded in the inquiry proceedings; (ii) that the Inquiry Officer did not allow his Defence Assistant to put questions to the PWs on the ground that those questions were embarrassing for high official in a Defence establishment. A request for presenting the specimen signature for examination by handwriting expert was also dismissed by Inquiry Officer without recording the same in the minutes; (iii) that the Inquiry Officer recorded the statement of the bank officials in a twisted form and that the production of papers purported to have been issued by the factory officers were not even sought to be verified in presence of the officers of the Defence establishment and the bank officers; (iv) that the punishment imposed is disproportionate to that of the charges in the chargememo, but the consequence thereof is a total destruction of his family in all respects. (v) Finally, the appellant had requested for a personal hearing and to set aside/quash/suitably modify the penalty imposed by the Disciplinary Authority.

On request by the appellant in his appeal dt. 6.7.11, the appellant was given a personal hearing by Appellate Authority. During the hearing held on 24.2.12, the appellant also presented a written representation, in addition to his oral deposition. From the records of the case, it reveal that a departmental disciplinary proceeding was held against the appellant on the charges of producing some fake documents with forged signature and fake rubber stamp using the name of a senior officer of RFI, for borrowing Rs. 5,00,000/- from the Allahabad Bank, Shyambazar Branch, Kolkata in a fraudulent manner, without

intimating his employer about the said transaction with the bank. The appellant had admitted the charge that he had taken a loan of Rs. 5,00,000/- from Allahabad Bank, Shyambazar Branch, Kolkata for purchasing a flat at Barrackpore, without giving intimation to his official superiors. The appellant had stated that all the requisite documents were submitted to the Bank authority through his promoter. The Presenting Officer produced oral & documentary evidence before the court to prove the charges framed against the appellant. During the inquiry proceeding, Shri Anjan Roy & Shri Tarak Nath Shaw, both employees of Final View Room/RFI, were produced by Presenting Officer as PW-1 & PW-2. They stated that they did not know about loan borrowed by the appellant and the signatures borne in the documents, submitted by the appellant to the Bank Authority were not theirs. During enquiry about signature, Shri Tarak Nath Shaw as PW confirmed that the appellant told him that he himself had forged the signature of Shri Tarak Nath Shaw. In the inquiry proceeding, the Presenting Officer produced PW-4, Shri D.R. Ghosh, Ex-Addl. GM/RFI, who stated with reference to the letters titled "IRREVOCABLE LETTER OF AUTHORITY" and "VERIFICATION OF PRESENT EMPLOYMENT" that he never signed the said documents. The signatory's name in the aforementioned documents has been mentioned as Durga Ranjan Ghosh, Assistant GM, but he stated that his full name was Dilip Ranjan Ghosh and that the post he held at that material point of time was Additional GM. He also stated that the appellant had never approached him about loan. On a demand by the Assisting Officer, PW-4 put a token signature which shows that the attesting signature on the documents were not of Shri Dilip Ranjan Ghosh. The Presenting Officer also produced Shri Priyabarta Chowdhury, Assistant Manager of the Allahabad Bank as PW-3, who stated that it was not possible to grant any loan to the appellant without the latter having approaching the bank personally. After scanning the above evidence, alongwith the records of remaining examination and cross-examination conducted during the inquiry proceedings, the Inquiry Officer established the charges framed against the appellant.

Thereafter, the appellant in his representation dt. 18.3.10 on the Inquiry Report denied the charges of submission of fake documents with forged signature and fake rubber stamp of a Senior Officer of RFI. The appellant also had stated that the Bank authority and the Promoter were involved also had stated that the Bank authority and the Promoter were involved in forging papers to facilitate grant of the bank loan to the appellant. The appellant in his representation dt. 18.3.10 has also mentioned that the bank authorities and the promoter were the real culprits and not he.

In the course of personal hearing the appellant stated that he had not forged any signature. He had given a signed document to the promoter for obtaining the loan. The Bank Manager had asked him names of people he worked with and that the names of such persons were written by agent/promoter/bank and their signature forged by them. This possibility cannot be ruled out. The employee has been gullible, not unlikely in view of his limited education level. He has also been a good sportsman during his career and had submitted copies and photographs of certificates/proficiency in football during the personal hearing. He had also submitted during the hearing that he had a son and daughter to raise and the loss of his job was preventing him for taking care of them.

In view of the foregoing, I am of the view that taking job away from the appellant would be harsh. Ends of justice and need to enforce discipline would be met by setting aside the penalty of "Removal from Service" and imposing the penalty of "Reduction in pay from Rs. 8180/- in the pay band of Rs. 5200-20,200/-, with Grade Pay of Rs. 1800/-, by three stages for a period of two years with cumulative effect". It is further directed that the period between Removal from service and re-instatement in service shall not be considered for any purpose except for determination of terminal benefits.

The appeal dt. 6.7.11 stands disposed of accordingly.

(SK BERI)
Addl. DGOF/Member
Appellate Authority "

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5. The challenge to the order on appeal is on the following grounds interalia:

- (i) "The Enquiry Officer found the applicant guilty on the basis of his assumptions because nothing was proved that the documents have been engineered by the applicant as there is no eye-witness or evidence."
- (ii) "The appellate Authority believed that 'the Bank Manager had asked him the names of people he worked with and that names of such persons were written by agent/promoter/bank and their signature forged by them. This possibility cannot be ruled out. The employee has been gullible; not unlikely in view of his limited education level. He has also been a good sportsman during his career and had submitted copies and photographs of certificates of proficiency in football during the personal hearing'. In view of the foregoing it has been proved that your applicant is innocent and he did not forge any signature to engineer the documents moreover he did not get any training to acquaintance about CCS (CCA) Rules, 1965 as well as no factory order has been published by the employer that had to give prior intimation to employer before taking loan from outside Financier/Banks."
- (iii) "The imposition of major penalty against the applicant by the respondent authority is unjustified upon revealing of all the facts that he is innocent, good sportsman and responsible person."

6. We heard the ld. counsels and perused the materials on record.

7. It has been held in the following decisions that appellate orders should be reasoned:

- (i) **Cyril Lasrado Vs. Juliana Maria Lasrado & Ors., (2004) 7 SCC 431**
- (ii) **Rajkishore Jha -vs- State of Bihar (2003) Vol. 11 SCC 519**
- (iii) **R. P Bhatt vs. UOI (1986) 2SCC 651**

8. Rule 27 of CCS (CCA) Rules stipulate as under:

27. Consideration of appeal.

2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-

(a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) Whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

9. A bare perusal of the impugned appellate order would reveal, exemplify and demonstrate that although the appellate authority reduced the punishment from removal to reduction in pay, it has not bothered to scan the evidence to come to a definite conclusion whether the applicant had in fact or was found having forged the documents in question and whether the charges were sustainable and stood substantiated to justify imposition of penalty.

10. In as much as the Appellate Authority has miserably failed to conclude even on the basis of preponderance of probabilities much less absolute proof that the charges of fraud were established, the appellate order is quashed and the matter is remanded back to the Appellate Authority for issuance of appropriate order on the appeal, in the light of the decisions cited supra and O.A is accordingly disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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