

**Central Administrative Tribunal
Principal Bench**

OA No.3957/2014

New Delhi, this the 29th day of August, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri V.K. Chaudhary, Age 51 years,
Joint General Manager,
Ministry of Defence,
R/o Ordnance Factory,
Muradnagar,
District-Ghaziabad.

...Applicant

(By Advocate : Shri Sachin Chauhan)

Versus

1. Union of India Through,
The Secretary,
Ministry of Defence,
Govt. of India, South Block,
New Delhi.
2. The Director General,
Ordnance Factories,
Govt. of India,
Ministry of Defence,
Ordnance Factory Board,
10-A, S.K. Bose Road,
Kolkata-70000 01.
3. The Desk Officer (Vigilance),
Govt. of India,
Department of Defence Production,
Ministry of Defence,
New Delhi.
4. The Additional Director General,
OEF Group Headquarter,
G.T. Road, Kanpur,
Uttar Pradesh.

5. The General Manager,
Ordnance Parashute Factory,
Napier Road, Kanpur Cantt.,
Uttar Pradesh-208004.
6. The Advisor,
Central Vigilance Commission,
Satarkta Bhawan, G.P.O. Complex,
Block-A, INA, New Delhi-23.

...Respondents

(By Advocate : Shri Ashok Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant joined the service of the Ordnance Factory, Kanpur, under the Ministry of Defence, as Assistant General Manager, on 14.09.1992. In the year 2004, he worked as Deputy General Manager. He was issued a charge memo dated 28.04.2008 alleging that he was instrumental in placing as many as 27 development orders, in violation of the prescribed procedure and, in particular, para 28.4.4 of the OFB Material Management Manual 1993, during that period. Several other related charges, contained in Articles I to VI, were also alleged. The applicant submitted his explanation denying the allegations. The Disciplinary Authority (DA) appointed the Inquiry Officer. Through his report dated 18.12.2009, the Inquiry Officer held the articles of charges as not proved.

The DA, however, issued a disagreement note through memorandum dated 30.05.2012. He required the applicant to explain as to why, the charges be not taken as proved, in view of the reasons contained in the disagreement note appended thereto. The applicant submitted his representation and after taking the same into account, the DA passed an order dated 12.06.2013, imposing the punishment of reduction of pay scales by two stages, to be in force for a period of two years, with cumulative effect. This OA is filed challenging the memorandum of charge, the disagreement note and the order of punishment.

2. The applicant contends that the charges themselves were without any basis and not a single witness was examined in the course of the inquiry. He submits that the Inquiry Officer recorded a categorical finding to the effect that none of the charges are proved, but the DA has issued a disagreement note, without any basis. He submits that in the absence of any oral evidence, it was not open to the DA to re-appreciate the entire issue and to come to a totally different conclusion. He submits that the punishment imposed against him is totally uncalled for and, is at least, disproportionate.

3. The respondents filed counter affidavit opposing the OA. It is stated that the applicant was instrumental in splitting some orders, which were otherwise, to be placed after inviting tenders and that there was a clear violation of the prescribed procedure. It is stated that the Inquiry Officer proceeded just by referring to the contentions and without taking the purport of the relevant provisions of law and obviously for that reason, the DA has taken a decision to issue disagreement note.

4. We heard Shri Sachin Chauhan, learned counsel for applicant and Shri Ashok Aggarwal, learned counsel for respondents, in detail.

5. The applicant was part of the establishment in the Ordnance Factory, in the context of procurement of materials. He was issued a charge memo dated 28.04.2008, which contained six articles of charges as under :-

“Statement of Articles of charge framed against Shri V.K. Chowdhury, Ex. DGM, OEF Hazaratpur, now Jt. GM/OPF, Kanpur

Art.I

Sri V.K. Chowdhury, while functioning as DGM/OEFHZ

recommended placement of 27 development orders in systematic violation of provisions of Para 28.4.4 of OFB Material Management Manual, 1993 in placement.

Art.II

Sri V.K. Chowdhury, while functioning as DGM/OEFHZ, recommended placement of 27 development orders on certain firms, which were identified in a completely arbitrary manner.

Art.III

Sri V.K. Chowdhury, while functioning as DGM/OEFHZ, recommended splitting of the requirement of the 6 items into 27 development orders in an irregular manner, so as to bring them within the financial powers of GM for development orders.

Art.IV

Shri V.K. Chowdhury, while functioning as DGM/OEFHZ, played a crucial role in the definite modus operandi followed to arbitrarily place supply orders as development orders in a series of 27 cases, by having recommended placement of orders in all the 27 cases.

Art.V

Shri V.K. Chowdhury, while functioning as DGM/OEFHZ, was a party to falsification of records, so as to facilitate placement of supply orders (development orders) in the above 27 cases.

Art.VI

By the above acts of omission and commission, Sri V.K. Chowdhury exhibited lack of integrity and devotion

to duty and thus acted in a manner unbecoming of a Govt. Servant and thereby violated Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.”

6. Since the applicant denied the allegations contained in the charge memo, the Inquiry Officer was appointed. Through his report dated 18.12.2009, the Inquiry Officer held the charges as not proved. The DA has chosen to disagree with the findings and, accordingly issued a disagreement note.

7. Normally, in a case of this nature, the DA either straightway indicates that he arrived at a different conclusion or give the reasons on account of which he proposes to differ with the findings of the Inquiry Officer. This is a rare case, in which the DA has meticulously followed the procedure. He furnished extensive reasons, in a separate memo in support of his proposed disagreement. He referred to relevant provisions of law and the facts borne by record. We do not find from the record, that the applicant was able to contradict any of the statements, contained in the disagreement note.

8. One strong ground urged by the learned counsel for applicant is that no witnesses were either cited or

examined in the inquiry, and thereby it cannot be said that it was properly conducted. It is further submitted that there did not exist any opportunity for the applicant to cross examine the witnesses.

9. It is true that the Rule 14 of the CCS (CCA) Rules requires that the charge memo must be accompanied by list of documents and list of witnesses. Where, however, the charges against an employee are not based upon any external material or information, the necessity to examine may not arise at all. If the charges are based upon the undisputed documents, the occasion to examine witnesses does not exist. In this case also, the respondents have simply referred to the relevant proceedings through which as many as 27 orders were placed. They would have been certainly under obligation to examine the witnesses, if the applicant disputed the very issuance of orders.

10. The gravity of the charges was only about the violation of the procedure, prescribed under the manual. Not a single document, relied upon by the respondents is disputed by the applicant. Added to that, the respondents did not rely upon the statement recorded from any third party. One of the principles of law of evidence is that

undisputed facts need not be proved and oral evidence becomes relevant only when document originating from the individual is presented. In such cases, the person who is the author or the custodian of the documents must be examined. Another occasion is if the charges are based upon the statements recorded from any individual. None of these ingredients are present in this case.

11. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Roop Singh Negi Versus Punjab National Bank & Ors.*** Civil Appeal No.7431 of 2008 and that of the Hon'ble High Court of Delhi in ***Union of India Vs. Shameem Akhtar*** WP(C) No.8726/2015. However, the principles laid down by the Hon'ble Supreme Court do not get extracted to the facts of the case.

12. Another argument of the learned counsel for applicant is that his client has just submitted the proposals and the ultimate decision was taken by the General Manager. The record discloses that not only the applicant but also the General Manager were subjected to disciplinary proceedings, and that punishment of cut in pension was imposed against the General Manager. The one imposed against the applicant cannot be said to be

disproportionate, if the nature of charges, framed against him are taken into account.

13. We do not find any merit in the OA and the same is accordingly, dismissed.

There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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