

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/830/2016

Date of Reserve:18.07.2019

Date of Order:21.10.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sandip Kumar Panda, aged about 39 years,S/o.Rabindra Nath Panda, At.Qr.No.32089/2, Type-III, Second Phase, Ordnance Factory, Badmal Estate, PO-Badmal, Dist-Bolangir-767 070 – presently working as Junior Works Manager, Ordnance Factory, Badmal, Dist-Bolangir.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General, Ordnance Factor, Ministry of Defence, Ordnance Factory Board, 10A, Sahid Khudiram Bose Road, Kolkata-700 001.
3. General Manager, Ordnance Factory, Badmal, Bolangir, Odisha-767 070.
4. Director General Quality Assurance, Department of Defence Production, Ministry of Defence, Govt. Of India, New Delhi, Adm-6A, Rook No.69, H-Block, Udyog Bhawan, New Delhi-110 011.
5. Secretary, Ordnance Factory Board, Section: A/DISC 10A, Sahid Khudiram Bose Road, Kolkata-700 001.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act,

1985, the applicant has sought for the following reliefs:

- i) That the Charge Sheet dated 3.10.2012 (A/1) and the order of punishment dated 24.3.2016 (A/16) and order dated 31.10.2016 (A/19) be quashed.
- ii) And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

2. Facts of the matter in brief are that the applicant, while working as Junior Works Manager (in short JWM) under the Respondents was issued with a Memorandum of Charge dated 03.10.2012 (A/1) under Rule-14 of CCS(CCA) Rules, 1965, requiring him to submit his defence statement within a stipulated period. However, the Disciplinary Authority appointed IO and PO to enquire into the charges vide order dated 25.2.2013(A/3). On conclusion of the inquiry, the IO submitted its report to the Disciplinary Authority on 25.2.2013, copy of which was supplied to the applicant vide communication dated 28.2.2014 (A/4) to submit his representation to the report of the IO. Accordingly, the applicant submitted his representation on 22.03.2014 (A/5). Since no final order was passed by the Disciplinary Authority, the applicant went on submitting representation after representation for the same. While the matter stood thus, applicant was supplied with a copy of report of the IO dated 04.12.2015 vide communication dated 22.02.2016 (A/13) giving him an opportunity to submit his representation or submission to the said report. In response to this, the applicant submitted his representation dated 22.02.2016(A/14). The Disciplinary Authority vide Memo dated 24.3.2016 (A/15) imposed punishment on the applicant by reducing his pay by two stages in PB Rs.9300-34800 with GP Rs.4600 for a period of one year with cumulative effect. The applicant submitted an appeal on 16.4.2016 against the punishment order, but the same was rejected by the Appellate Authority vide order dated 31.10.2016 (A/19). Aggrieved with this,

the applicant has approached this Tribunal praying for the reliefs as mentioned above.

3. The grounds on which the applicant has claimed for reliefs are as follows:

- i) The charges framed against the applicant do not ex facie show misconduct within the meaning of Rule-3(1) of CCS (Conduct) Rules, 1964.
- ii) The charges suffer from vagueness since the applicant has not been told precisely as to what is the motive attributed to him and therefore, the charges are vitiated.
- iii) The report of the IO being perverse, the orders of the Disciplinary Authority as well as the Appellate Authority are not tenable.
- iv) The listed documents, i.e., sample test report dated 30.05.2011 and sample test report dated 20.06.2011 were not supplied to the delinquent official though the same were asked for.
- v) Since the entire material has been utilized after rectification, the question of charge against the applicant for rejection of bulk supplies as per Article-I of Charge of box unit load is vague.
- vi) There is no allegation of misconduct committed by the applicant in so far as Article-II of Charge Memo is concerned, rather the applicant has been charged for Article-I for the statement dated 24.4.2012.
- vii) The inquiry was conducted in a very casual manner and no rule or guideline has been followed.
- viii) The orders of the Disciplinary Authority imposing punishment as well as the order of the Disciplinary Authority rejecting the appeal are bad in law.
- ix) The punishment order dated 24.3.2016 and the order of the Appellate Authority dated 31.10.2016 based on the 2nd inquiry report dated 4.12.2015 are illegal and cannot be sustained in the eye of law.
- x) As per settled principle of law if statute provides for a thing to be done in a particular manner then it has to be done in that manner and not in any other

manner. Since the inquiry has not been conducted as per rules, the enquiry proceeding is vitiated.

- xi) The Disciplinary Authority has to pass order as per Rule-15 of CCS(CCA) Rules which do not provide for 2nd inquiry report (without de novo inquiry). Since the Disciplinary Authority has passed order of punishment on the basis of the 2nd inquiry report dated 4.12.2015, the order of punishment is non est in the eye of law.
- xii) In response to 1st report of the IO dated 17.2.2014, the applicant submitted his representation dated 22.3.2014 and while final order was to be passed by the Disciplinary Authority, the PO vide his letter dated 13.11.2015 and dated 16.11.2015 submitted the written brief. Thereafter, the IO in its 2nd report stated that the original report was submitted on 17.2.2014 by stating that "the undersigned received a letter in April, 2015 regarding some procedural lapses in the inquiry. The same has been corrected and report is being re-submitted herewith". Hence, the punishment imposed by the Disciplinary Authority on the basis of 2nd inquiry report is not sustainable.
- xiii) The prosecution witnesses whose statements were recorded on 6.2.2014 were cross-examined on 8.2.2014, i.e., after the applicant was examined on 6.2.2014. Therefore, the proceeding has not been conducted following the rules.
- xiv) As per settled position of law, onus lies on the prosecution is to prove the charges against a delinquent official and not the delinquent official to disprove the charges.
- xv) Since the relevant documents sought for by the applicant were not supplied the applicant was denied the reasonable opportunity and therefore, there has been a violation of the principles of natural justice.
- xvi) The Disciplinary Authority is required to make an objective assessment of the report of the IO vis-a-vis the submission of the applicant to find out if the inquiry has been conducted by violating the principles of natural justice. Failure to do so by Respondent No.2 vitiates the proceedings and therefore, the impugned orders are not sustainable.

xvii) The applicant has not been examined by the IO as required under Rule-14(18) of CCS(CCA) Rules, 1965 and therefore, the entire proceeding is vitiated.

xix) Neither the Disciplinary Authority nor the Appellate Authority has applied its mind while passing the impugned orders.

4. Opposing prayer of the applicant, respondents have filed their counter. According to respondents, consequent upon denial of charges, the Disciplinary Authority appointed IO and PO to enquire into the charges. The IO submitted his report and on examination of the same, the Disciplinary Authority observed that the report submitted by the IO was without having regard to the prosecution brief from the PO and the defence brief from the applicant. In the above backdrop, the Disciplinary Authority referred the case back to the IO for rectifying the said lacuna. After the PO submitted his brief, copy thereof was sent to the applicant for submitting his defence brief. The applicant submitted his defence brief, whereafter the IO submitted his fresh report to the Disciplinary Authority holding that both the charges have been established against the applicant. Copy of this report of the IO was supplied to the applicant to make his representation. The Disciplinary Authority after considering the representation submitted by the applicant and other facts and circumstances of the case, imposed penalty of reduction of pay by two stages in PB Rs.9300-34800 with Grade Pay Rs.4600/- for a period of one year with cumulative effect with immediate effect. The appeal dated 15.04.2016 preferred by the applicant against the punishment order and considered by the

Appellate authority the same was rejected vide order dated 31.10.2016 (A/19) as under:

"AND WHEREAS the President of India, the Appellate Authority vide order dated 31.10.2016 (Annexure-A/19 of the O.A.) has carefully considered the submission of Shri S.K.Panda, JWM in his appeal dated 16.4.2016 and the comments of OFB and relevant case records and has come to conclusion that the charges framed against Appellant are established by not only documentary and oral evidence adduced during inquiry, but also by his own statement dated 24.04.2012 given during Board of Enquiry which can be very well taken on record as per sub-rule 3(ii)(a) of Rule 14 of CCS(CCA) Rules, 1965. Thus, the points raised by appellant in his appeal dated 16.04.2012 have no merit and thus rejected".

5. Respondents have pointed out that there has been no procedural violation in conducting inquiry into the charges and adequate opportunities have been afforded to the applicant to defend his case. According to respondents, Article-I of the Charge speaks of applicant's failure on pre-despatch inspection for 63 nos. of Box Unit Load etc. resulting in rejection of bulk supplies of box unit load whereas Article-II of the charge is about showing his casualness of approach in conducting the Government work and negligence and lack of devotion to duty. Respondents have submitted that since the charges have been established against the applicant, the orders as passed by the Disciplinary Authority and the Appellate Authority should not be interfered with.

6. In the written notes of submission, the applicant has pointed out that as under:

"The Article-1 of charge is a vague one as the applicant has been charge-sheeted on the allegation that the applicant failed to carry out the pre-despatch inspection, resulting in rejection of Bulk supply in Box Unit whereas the entire materials utilized after rectification as per the

written brief of the PO dated 13.11.2015[Annexure-A/21 Page 107 last two lines) but the IO in its report at Page 28 held that the applicant failed to carryout pre-despatch inspection resulting in rejection of Bulk Supply in Box Unit Load for 155 MM shell M 107 at consignee end. Hence the charge No.1 is vague one and the same cannot be sustained in the eyes of law.

So far as Article No.2 is concerned, the applicant by own submission in his statement dated 24.04.2012 carryout inspection when materials were not ready for inspection and had given his signature on paper slips for pasting on unit load after drying due to shortage of time and due to which stores were rejected. Whereas the applicant denied his statement given on 24.4.2012 as he was not in proper frame of mind (IO report last para of page 26 i.e., Annexure-A/4 to the OA). The I.O. in its report at last para of Page 27 stated that the inconsistency in statements of the applicant and as such makes difficult for the Inquiry Authority to accept which set of statements and discard which ones. However, if seen into totality, it seems logical that if he had not carried out the inspection in a correct and proper manner (as logically concluded above) he might have given his signature on paper slips for pasting on unit loads after drying due to shortage of time and therefore, next sense to accept his first sets of statements (given on 24.04.2012)".

7. The applicant has brought to the notice of the Tribunal the definition of Misconduct which means –Misconduct arising from ill motive; act of negligence, errors of judgment or innocent mistake do not constitute such misconduct. In support of his case, he has relied on the following decisions:

- i) 1997 SCC(L&S) 157 (UOI vs. J.Ahamad) AIR 1979 SC 1022.
- ii) 1995 (31) TC page-8 (Purushottam Sadasiv Kakirde vs. UOI)
- iii) AIR 1961 SC 1070 (Jagadish Prasad Saksena vs. State of MP)
- iv) AIR 1964 SC 364 (UOI vs. H.C.Goel)
- iv) 2009(I) SCC (L&S) 398 (Roof Sing Negi vs. Punjan Bank)

8. The applicant has submitted that CCS(CCA) Rules do not provide 2nd inquiry report. Against the 1st report of the IO dated 17.02.2014, the applicant had already submitted his representation. The DA in order to fill up the gap/lacuna returned back to the IO for submission of inquiry report after taking written brief from PO & DGS. The IO submitted his 2nd report on 04.12.2015 to DA without even changing a single word except three lines (Page-56 of the OA). The applicant has therefore, contended that the disciplinary proceedings having been conducted in violation of laid down procedure, the same being vitiated thereby does not stand the scrutiny of law.

9. In the written notes of submission submitted by the respondents, it has been pointed out that the applicant has been given due opportunity of hearing at every stage of the disciplinary inquiry and since he has admitted his guilt and given his statement on 24.04.2012 (R/1), there is no reason for the Tribunal to interfere in the matter. According to respondents, the applicant being a responsible employee of a disciplined wing of the defence ensuring safety, security of the counter is to be sincere and vigilant while dealing with such sensitive issues inspecting testing the materials related to safety and security concern. Any minor mistake in doing so may lead to a disaster. The applicant having failed to do so is liable to be punished. Respondents have submitted that in a domestic inquiry, the department is not required to prove the charge by clear and convincing evidence, so as to establish the guilt of the charged officer beyond all reasonable doubts. The Enquiry

Officer can accept the evidence available and can come to a finding of the fact on the basis of preponderance of probability. Respondents have submitted that there being no procedural violation in the conduct of the disciplinary proceedings, the O.A. should be dismissed being devoid of merit. In support of their case, the respondents have relied on the following decisions:

- i) Shankar Kumbhar vs. Enquiry Officer, Ahdnra Bank & ors. [2011 (Supp.I) OLR 955]
- ii) Bijay Kumar Singh vs. Union of India & Ors. [2011(2) OJR (450)]applicant,

10. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submissions submitted by the respective parties.

11. It is the settled principle of law that in a disciplinary proceedings the scope of interference by the Tribunal is limited. In the instant case, the applicant has alleged the charges to be vague and unspecific or the findings arrived at are perverse and based on no evidence and/or there has been procedural violation in the conduct of disciplinary proceedings to the prejudice of the delinquent.

12. It is the case of the applicant that the Disciplinary Authority without considering the relevant points raised in his representation to the report of the IO, in a sketchy and cryptic order, imposed punishment on him. Similarly, the Appellate Authority, without considering the entire facts of the matter, upheld the punishment as imposed by the Disciplinary Authority.

13. In order to come to a definite conclusion, we have perused the 1st report of the IO dated 17.2.2014 (A/4) and the representation of the applicant dated 22.3.2014(A/5) made thereto. We have also gone through the 2nd report of the IO dated 4.12.2015(A/13) and the representation of the applicant dated 22.02.2016(A/15) submitted by the applicant. At the same time, we have also gone through the impugned orders dated 24.03.2016 (A/16) and dated 31.10.2016 (A/19) passed by the Disciplinary Authority and the Appellate Authority, respectively.

14. Before considering the matter in its proper perspective, it would be profitable to quote hereunder the Articles of Charge framed against the applicant.

ARTICLES OF CHARGE I & II

- i) That the said Shri Sandip Kumar Panda, while functioning as JWM, P.No.922246 of Unit-10 at OFBL, has failed to carry out pre-despatch inspection for 63 nos. of Box Unit Load at M/s.Unipack Industries, Yamunanagar on 13.05.2011 & 27.05.2011 and for 230 nos. at M/s.Mahalaxmi Plywood Products, Yamunanagar on 15.05.2011 & 16.05.2011 in a proper and correct manner, resulting in rejection of bulk supplies of box unit load for 155 mm Sheel M 107 at consignee end, thereby showing negligence and lack of devotion to duty.
- ii) That the said Shri Sandip Kumar Panda, while functioning as JWM, during carrying out above pre-despatch inspection at M/s.Unipack Industries, Yamunanagar and M/s.Mahalaxmi Plywood Products, Yamunanagar, by own admission in his statement dated 24.04.2012, carried out the inspection when the materials were not ready for inspection and that he had given his signature on paper slips for pasting on unit loads after drying due to shortage of time and due to which the stores were rejected, thereby showing casualness of approach in conducting the Govt. Work, and negligence and lack of devotion to duty".

14. In this connection, the relevant part of the report of the IO dated 17.02.2014 reads as follows:

"During the fourth hearing on 14 FEB 2014, the Presenting Officer examined the DGS and his statements were recorded. The Presenting Officer asked the DGS about the statements given by the two witnesses. The DGS reiterated that he had done the inspection correctly and as per the PDI report submitted by him. The DGS didn't cross-examine the Presenting Officer. The DGS also submitted some documents in support of his case. The Inquiry Authority accepted the same. The hearing was completed and it was decided not to hold inquiry proceedings any further.

From the statements given by two witnesses and the examination of the DGS, it is clear that the material consignments as inspected by the DGS were deviating in the dimension and quality. This is also evident from the Noting No.8100/QC(MI)/155mm dated 02. JUL 2011 as mentioned in the Annexure-II (Point No.P.1). During the course of inquiry, the DGS and the Defence Assistant couldn't prove, at any point of time, that the material received from the firm (duly inspected by the DGS for pre-despatch inspection) was correct and didn't require rectification.

Further it was established by the Statements of the two witnesses and the examination of the DGS that these material consignments could be used only after due rectification by the firm's representatives. This could be further substantiated by the Noting No.4071/PL0200/MM dated 12 SEPT 2011 as mentioned in the Annexure-II (Po89nt No.P.6). During the course of inquiry, the DGS and the Defence Assistant couldn't prove, at any point of time that the material could be used as received from the firm (duly inspected by the DGS for pre-despatch inspection) without rectification. It is true that the shells could be packed in the unit loads received from the firm (duly inspected by the DGS for pre-despatch inspection) but only after the unit loads had undergone rectification by the firm's representatives. The rectification is not carried out in normal course but only after getting some material which is not confirming to the specification/drawing. Thus, it is reasonably clear that the pre-despatch material inspection was not done in a proper manner.

From the statement given by the DGS on 24 APR 2012, it is clear that the DGS had carried out the inspection when the material consignments were not ready for

inspection and that he had given his signature on paper slips for pasting on unit loads after drying due to shortage of time. However he had retracted from his own statement during the second hearing of COI on 06 FEB 2014. This shown the inconsistency in the statements of DGS and as such it makes difficult for the Inquiry Authority to accept which set of statements and discard which ones. However, if seen in totality, it seems logical that if he had not carried out the inspection in a correct and proper manner (as logically concluded above) he might have given his signature on paper slips for pasting on unit loads after drying due to shortage of time and therefore it makes sense to accept his first set of statements (given on 24 Apr 2012).

In the circumstances, the article of charge that the said "(i)Shri Sandip Kumar Panda, while functioning as JWM, P.No.922246 of Unit-10 at OFBL, has failed to carry out pre-despatch inspection for 63 nos. of Box Unit Load at M/s.Unipack Industries, Yamunanagar on 13 MAY 2011 and 27 MAY 2011 and for 230 nos. at M/s.Mahalaxmi Plywood Products, Yamunanagar on 15 MAY 2011 and 16 MAY 2011 in a proper and correct manner, resulting in rejection of bulk supplies of Box Unit Load for 155mm Shall M 107 at consignee end, thereby showing negligence and lack of devotion to duty and (ii) Shri Sandip Kumar Panda, while functioning as JWM, during carrying out above pre-despatch inspection at M/s.Unipack Industries, Yamunanagar and M/s.Mahalaxmi Plywood Products, Yamunanagar, by his own admission in his statement dated 24 APR 2012 carried out the inspection when the materials were not ready for inspection and that he had given his signature on paper slips for pasting on unit loads after drying due to shortage of time and due to which the stores were rejected, thereby showing casualness of approach in conducting the Govt. Work and negligence and lack of devotion to duty & therefore conduct unbecoming of a Government Servant and violation of Rule 3(1)(ii) and Rule 2(1)(iii) of CCS(Conduct) Rules, 1964' is established beyond doubt".

15. The applicant in his representation dated 22.03.2014(A/5) to the report of the IO, inter alia, had raised the following points for consideration by the Disciplinary Authority.

"4. The following mistakes/blunders have been committed by the I.O. in his final report dated 17.02.2014. The I.O. closed the inquiry in the

fourth hearing without giving due opportunity to the GDS to produce his defence and thus violated many mandatory procedures of Rule-14 inquiry and the inquiry report clearly indicates that the inquiry authority was perhaps blissfully unaware of the real position of CCS(CCA) Rules, 1965. He completely forgot that it is also not his duty to somehow prove the charge. It is not for him to assume that the delinquent officer is guilty and try to bring out admission from the delinquent officer so that the charge against him is proved. Such act on the part of I.O. clearly indicating him as bias.

- i) In the second hearing, DGS did not produce himself as his witness but the IO allowed Presenting Officer to cross examine directly to the D.G.S. even before start of the prosecution case. The same has clearly mentioned in the report of the IO & the deposition of GDS is also enclosed in the report of IO. There is no such provision in the Rule-14 of CCS(CCA) Rules to cross examine the DGS by the Presenting Officer, when he did not produce himself as a witness on his behalf and even before start of the defence case. This act on the part of IO clearly indicates that he has try to bring out admission from the GDS so that the charge against him is proved.
- ii) IO directed Presenting Officer to produce himself as a witness and further directed DGS to cross examine Presenting Officer. Accordingly in the second hearing DGS cross examined the presenting officer. (Deposition of Presenting Officer is also enclosed in the report of IO. There is no such provision in the rule-14 of CCS(CCA) Rules to cross examine the Presenting Officer, who do not have any direct relation with the alleged mis-conduct of the DGS).
- iii) Most importantly the I.O. did not given any due opportunity to the DGS to produce his defence case. He closed the inquiry even before start of the defence case. As a result the DGS deprived to obtain his legitimate right to produce his defence. The said act on the part of IO is clear violation of the procedure laid down in the Article 311 of Indian Constitution. The very first principle of natural justice also demands that proper and reasonable opportunity has to be given to the very charged

officer. No man should be condemned or punished without a reasonable opportunity to defend himself. This act on the part of IO amounts to denial of reasonable opportunity which is guaranteed by Article-311.

- iv) The GDS was further deprived to submit his oral Arguments/Written brief and the IO has clearly violated the procedure of Rule 14(9) of CCS(CCA) Rules, 1965.
- v) No written brief was filed by Presenting Officer and no written brief of Presenting Officer was made available to DGS. The IO may have taken the oral arguments of Presenting Officer at the back of the DGS.
- vi) The prosecution completely failed to produce even a single piece of defective material which was inspected by the DGS. The inquiry was conducted for the alleged mis-conduct of failure in inspection of container box but during the course of inquiry and even before the start of court of inquiry the GDS have repeatedly demand before the Presenting Officer as well as IO to produce even a single piece of defective material so that I can prove my innocence but all of them were unable to produce the defective material. When no defective material was produced before the Court of Inquiry then how the IO believe and came to a conclusion that the inspected container box was defective even without seeing/verifying the said defective material.
- vii) Before start of the inquiry the DGS asked for supply of some relevant documents to prove his innocence. Some important documents were not provided to the GDS which were very much essential on defence point of view. Failure to furnish copies of relevant documents amount to violation of Article 311(2) of the constitution. Regarding this, judgment pronounced by the Supreme Court on Raizada Trilock Nath vs. The Union of India.
- viii) No any defence documents was submitted by DGS but IO on his own cited some documents as Defence Documents & hence failed elaborate the documents on defence angle.

- ix) The most cardinal point has been forgotten by the IO is that in a departmental inquiry the onus of establishing the charge is on the Presenting Officer. In the word of Supreme Court also burden of proof rests entirely on prosecution to establish beyond reasonable doubt is neither taken away nor discharged nor shifted the burden of disprove the charge on the DGS & when the IO places the onus of disproving the charge on the DGS the case of the department would straight away fall.
- x) Before the starts of the inquiry DGS projected some lacuna and asked vide It.No.Nil dated 17.12.2012, i.e., two witnesses are not capable to clear the below mentioned queries.

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16. Thereafter, it reveals from the record that the applicant went on preferring representation after representation, the last being dated 13.01.2016 (A/12) to the DGOF & Chairman, Defence Factory Board/Disciplinary Authority to conclude the disciplinary proceedings as early as possible, so that he could be able to take up the new assignment in the post of Senior Scientific Officer, Grade-II (Engineering), in pursuance of recommendations made by the UPSC. While the matter stood thus, the applicant vide letter dated 22.02.2016 (A/13) received a copy of the report of the IO dated 04.12.2015, requiring him to submit his representation within a period of 15 days from the date of receipt of the said letter failing which no further opportunity would be given. However, the applicant against submitted his representation dated 22.02.2016 (A/14) to the Disciplinary Authority, highlighting a number of points including those as quoted above, while submitting his representation to the first report of the IO. Thereafter, the

Disciplinary Authority vide order dated 24.03.2016 (A/16) passed order of penalty, the relevant portion of which reads as follows:

"AND WHEREAS a Court of Inquiry in the case had been instituted to inquire into the Articles of charge imputed against the said Shri Sandip Kumar Panda. The Inquiring Authority has submitted Inquiry Report dated 04.12.2015 wherein the Articles of Charge imputed against the said Shri Sandip Kumar Panda have been established.

AND WHEREAS copy of the Inquiry Report was served upon the said Shri Sandip Kumar Panda, enabling him to make written representation, if any thereon, for consideration before a final decision is taken in the case. The said Shri Sandip Kumar Panda has submitted his written representation dated 22.02.2016. Apart from this he has also submitted his representation dated 24.03.2014, 13.02.2016, 19.01.2016, 04.02.2015 and 23.02.2016.

AND WHEREAS after considering the written representation of the said Shri Sandip Kumar Panda, the Inquiry Report, the facts and circumstances of the case and evidences borne on record, the undersigned holds that the articles of charge impugned against the said Shri Sandip Kumar Panda, vide memorandum dated 03.12.2012 stand established.

NOW, THEREFORE, the undersigned hereby imposes the penalty of reduction of pay by two stages in the Pay band of Rs.9300.00-Rs.34800.00 and Grade Pay of Rs.4600.00 for a period of one year with cumulative effect on the said Shri Sandip Kumar Panda, Junior Works Manager, Ordnance Factory, Badmal with immediate effect".

17. As already mentioned and quoted above, the appeal preferred by the applicant against the orders of the Disciplinary Authority was rejected by the Appellate Authority vide order dated 31.10.2016 ((A/19).

18. It is the case of the applicant that the Article of Charge No.1 that the applicant had failed to carryout the pre-despatch

inspection, resulting in rejection of Bulk supply in Box Unit is vague inasmuch as, the entire materials had been utilized after rectification as per the written brief of the PO dated 13.11.2015 (A/21) and therefore, the findings of the IO in his report (Page-28) that the applicant failed to carryout pre-despatch inspection resulting in rejection of Bulk Supply in Box Unit Load for 155 MM shell M 107 at consignee end per se is perverse and not based on record. To make it more specific, the findings of the P.O. in his brief vide A/21 reads as follows:

“But based on the letter of QC(MI) the entire material reutilised after rectification and joint inspection by the firm representative and OFBL representative”.

19. Besides the above, the applicant, as already quoted above, had urged a number of grounds in his representation to the report of the I.O. But, to our utter surprise, the Disciplinary Authority did not take into account a single point while passing the order of penalty. The Disciplinary Authority also did not consider the legality of submission of a second inquiry report by the IO behind the back of the applicant, which according to applicant, was purportedly to overcome the deficiency noticed in the 1st report and this is the reason while the second inquiry report was completely in a paraphrased manner as that of the first one, only contains three sentences at the bottom portion of the report, which are as follows:

“The original report was submitted on 17 February 2014. However, the undersigned received a letter in April 2015 regarding some procedural lapse in the inquiry. The same has been corrected and the report is being re-submitted herewith”.

20. Prima facie, it appears that the misconduct alleged to have been committed by the applicant does not have any prejudicial effect either on the interest of the Respondent-Organization or by any such act of omission or commission, some undue benefit at the cost of the respondent-organization had been passed on to M/s.Unipack Industries or M/s.Mahalaxmi Plywood Products, as the case may be. The indictment of charge also does not ex facie show that by his act of misdemeanour, he has failed to bring out transparency and integrity in the discharge his duties. At the cost of repetition, it is pertinent to note that the IO in his report dated 17.02.2014 had mentioned as under:

“From the statement given by the DGS on 24 APR 2012, it is clear that the DGS had carried out the inspection when the material consignments were not ready for inspection and that he had given his signature on paper slips for pasting on unit loads after drying due to shortage of time. However he had retracted from his own statement during the second hearing of COI on 06 FEB 2014. ***This shown the inconsistency in the statements of DGS and as such it makes difficult for the Inquiry Authority to accept which set of statements and discard which ones.*** However, if seen in totality, it seems logical that if he had not carried out the inspection in a correct and proper manner (as logically concluded above) he might have given his signature on paper slips for pasting on unit loads after drying due to shortage of time and therefore it makes sense to accept his first set of statements (given on 24 Apr 2012)”.

21. From the above, it is quite clear that the IO based on presumption held that the charges levelled against the applicant have been proved. This Tribunal is not oblivious about the settled position of law that in the matter of disciplinary proceedings it cannot re-appreciate the findings arrived at by the I.O. or the D.A.,

as the case may be. But at the same time, this Tribunal cannot brush aside the fact that although all those points were within the domain of the Disciplinary Authority, but, for the reasons best known, the latter did not consider the same while passing orders of punishment. Conversely, the Appellate Authority also did not consider while affirming the orders passed by the Disciplinary Authority.

22. In a disciplinary proceedings, while exercising quasi-judicial authority, it is incumbent upon the Disciplinary Authority to consider the representation made by a delinquent employee to the report of the IO with due application of mind. In the instant case, as mentioned above, the applicant had urged a number of legal flaws/procedural violation in the conduct of inquiry, while submitting his representations to both the reports of the I.O. and the same have been quoted in Para-15 of this order. But the Disciplinary Authority without considering and discussing those points, in a non-speaking order passed the order of punishment, which in our considered view, is nothing but unreasonable, arbitrary, causing serious prejudice to the applicant, and hence, not sustainable in the eye of law. As a necessary corollary, the order passed by the Appellate Authority stands vitiated.

23. For the discussions held in the preceding paragraphs, we quash and set aside the Memorandum of Charge dated 04.10.2012 (A/1), both the reports of the IO, order dated 24.03.2016(A/16) passed by the Disciplinary Authority and the order dated 31.10.2016 (A/19) passed by the Appellate Authority and

consequently, direct the respondents to grant all consequential and service benefits in favour of the applicant within a period of 120 (one hundred twenty) days from the date of receipt of this order.

24. In the result, the O.A. stands allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

