

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1108/2001

New Delhi, this the 13th day of March, 2002

Hon'ble Dr. A.Vedavalli, Member (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

B.S.Negi
Ex-Poen of the Officer of
Comptroller & Auditor General of India

Presently residing at :-

C-2/81, Moti Bagh-I, New Delhi.Applicant
(By Advocate Shri Anil Singhal)

V E R S U S

UNION OF INDIA : THROUGH

1. The Comptroller & Auditor General of India
10, Bahadurshah Zafar Marg, New Delhi - 2.
2. The Deputy Director (P)
O/O The Comptroller & Auditor General of India
10, Bahadurshah Zafar Marg, New Delhi - 2.
3. R.K.Malekar (Disciplinary Authority)
Sr. Admn. Officer (E)
O/O The Comptroller & Auditor General of India
10, Bahadurshah Zafar Marg, New Delhi - 2.
4. R.K.Sharma (Sr. AO & IO)
O/O The Comptroller & Auditor General of India
10, Bahadurshah Zafar Marg, New Delhi - 2.

....Respondents
(By Advocate Shri M.K.Gupta)

O R D E R

By Hon'ble Shri Govindan S.Tampi, Member (A)

The challenge in this OA is directed against the disciplinary proceedings initiated on 3-7-1999 against Shri B.S.Negi, applicant which culminated in the order dated 1-9-2000 imposing on him penalty of removal from service, Appellate order dated 23-10-2000, modifying the above to one of compulsory retirement and the order in revision dated 8-3-2000 confirming the appellate order.

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2. Considered the points raised by both the applicant and the respondents in the written pleadings as well as in oral submissions made before us on 4-4-2002 by Shri Anil Singhal and Shri M.K.Gupta, learned counsel for the applicant and the respondents respectively.

3. Facts as brought out in the OA are that the applicant who was working as a Peon in the respondents' office was chargesheeted on 30-7-1999, *alleging*, that he had misappropriated an amount of Rs. 9,595 belonging to three officers from the Department, thereby failing to maintain integrity. On his denying the charges, the enquiry proceedings followed, where the main complainant was not examined. Still the Enquiry Officer held the charge as proved by his report dated 14-7-2000, against which representation was filed by the applicant. The disciplinary authority thereafter passed the orders agreeing with the enquiry report and imposed on him, vide his order dated 1-9-2000, the major penalty of removal from service. His appeal dated 12-9-2000, was disposed of by the appellate authority on 23-10-2000 by just modifying the penalty of removal to that of compulsory retirement without any further relief, which was deserved. The Revisionary Authority by its order dated 8-3-2001 declined to interfere with the appellate order. Hence this OA.

4. The grounds raised by the applicant in the order are that the alleged failure on his part to deal with the purchase/exchange of the railway ticket for some officers, did not warrant any Departmental proceedings, as it was only a personal work ; the

disciplinary proceedings were conducted in violation of principles of natural justice and on "vague charges" ; the absence of the main witness Shri M.K.Biswas vitiated the proceedings ; the respondents had declined to appreciate his defence that the money entrusted to him was stolen by someone at the Railway Station and that the quantum of penalty imposed on him was highly unreasonable, harsh and excessive. While arguing during the personal submissions before us, Shri Anil Singhal, learned counsel for the applicant, stressed all the above points and specifically referred to the excessive nature of the penalty on a lowly paid employee like the applicant who was only a peon, for an alleged misconduct which was not proved and which in reality amounted to dismissal from service. It is in the above circumstances, he felt that the Tribunal should intervene and render him justice.

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5. In the reply, filed on behalf of the respondents and endorsed by Shri M.K.Gupta, learned counsel, the pleas of the applicant are strongly rebutted. On the main facts leading to the disciplinary proceedings, the respondents do not contest but they state very clearly that the entire proceedings had been gone through in an absolutely correct manner and that the applicant had been given all reasonable and proper opportunities to defend his case and explain his case till the revision level. The disciplinary authority, the appellate authority and the revisional authority had considered all the points raised by the applicant and arrived at their decisions through reasoned and speaking orders. The applicant's misdemeanour amounted

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to misappropriation of the amount of Rs.9,595/- given to him by two officers to purchase/exchange railway tickets for the purpose of performing official journeys. The defence taken by him that this was not a part of the official duty does not merit acceptance as has been clearly pointed out by the revisional authority in his orders dated 8-3-2001 as follows :-

"On this issue it must first be noted that the duties of officials such as the charged employees are no where exhaustively listed nor can they be listed. There have been and will continue to be issues on which the employee and employer will dispute whether a particular action was the duty or cannot be the duty of an official. However, all such arguments would be valid in cases where an official declines to perform the duty on the ground that it is not his duty. If on the other hand, an official when entrusted with a function agrees to perform a function, it is no longer available to him to argue that his action was not part of his duty. A request made to him during office hours on behalf of an official performing official actions and undertaking travel in discharge of his official function, cannot be regarded as a personal transaction between the individual and the charged official. On those facts and on the acceptance by the charged official to perform that function it can scarcely now be argued, or at any stage, that it was to his duty and that it was a private transaction. I, therefore, have no hesitation in concluding that the charged official was asked to perform certain actions, which by the nature of actions and by his own conduct became his official duty and, therefore, their non-performance was failure to maintain devotion to duty and integrity. Therefore, it cannot be accepted that the chargesheet was vague".

It is also worth mentioning that the mere failure to produce Shri M.K.Biswas, as a witness for the prosecution did not vitiate the proceedings as it is proved that the amount for purchase/exchange of the tickets had ^{in fact} been handed over to the applicant and that he had neither returned the ticket nor the money. The applicant has not proved that the money was stolen from him as he is attempting to make out and,

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therefore, his plea cannot be accepted. It is also not correct to say that the punishment imposed on the applicant was either harsh or excessive keeping in mind the gravity of the proven charge. The proceedings which culminated in the imposition of penalty of removal from service, ordered by the disciplinary authority, modified by the appellate authority did not merit any interference by the Tribunal, urges Shri Gupta. 12

6. We have carefully considered the matter. In this OA, what is being challenged is the imposition of penalty on the applicant on the ground of misappropriation of an amount handed over to him for purchase/exchange of railway ticket for performance of official duties by senior officers, which amounted to failure to maintain absolute integrity. The applicant does not deny that the amount of Rs. 9,595/- had been handed over to him for purchase/exchange of tickets, and that he had not returned either the money or the tickets to the concerned individuals, as according to him, his pocket was picked while he was in the Railway Station. Interestingly, however, he has not filed any F.I.R. immediately ^{thereafter} or even on the next day through the office and his only plea is that none was prepared to take the F.I.R. in the Railway Station and that after reaching office, he had attempted to raise loans from others to repay the amount. This, to say the least cannot be believed. When an individual has been given a task, it is his responsibility to perform it diligently and if he fails to do so, he would have to pay the price for the same. The applicant has failed in the task assigned to him and,

therefore, he cannot assail the proceedings initiated against him which culminated in the imposition of penalty. That being the case, we are convinced that the action of the respondents so far as they relate to the initiation of the proceedings and the imposition of penalty cannot be called in question. However, we note that in the circumstances of the case and the fact that the applicant is only a low paid employee for whom, in the circumstances of the case, compulsory retirement amounts to almost dismissal/removal from service, it was not warranted and imposition of any lesser penalty would have met the requirement of law. In coming to this conclusion, we are fortified by the decision of the Hon'ble Supreme Court in the case of B.C.Chaturvedi Vs. UOI (JT 1995 (8) SC 65)

7. In the above view of the matter, while upholding the vires of the proceedings initiated against the applicant and imposition of the punishment on him, we quash and set aside the appellate order dated 23-10-2000 and the revisional order dated 8-3-2001 and remand the matter to the appellate authority to consider imposition of any appropriate penalty lesser than compulsory retirement. This is the only modification, we direct while disposing of this OA. This excercise should be completed within three months from the date of the receipt of a copy of this order.

No costs.

(GOVINDAN S.TAMPI)~
MEMBER (A)

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(DR. A.VEDAVALLI)
MEMBER (J)