

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(13)

O.A.No.1794/2001

Hon'ble Shri S.R.Adige, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 2nd day of ~~April~~^{May}, 2002

Shri K.N.Gupta
Ex-Sr. AO (R.No.536)
Compulsorily Retired from DAD.
r/o H.No.336 H-Block
Shastri Nagar, Meerut. ... Applicant

(By Advocate: Shri V.P.S.Tyagi)

Vs.

1. Union of India through Secretary
Min. of Defence
New Delhi.
2. The Financial Advisor in the
Ministry of Defence (Finance Division)
New Delhi.
3. The C.G.D.A.
West Block-V
R.K.Puram
New Delhi.
4. The Principal C.D.A. (Erst while CDA Hqrs)
'G' Block Hutments
K. Kamraj Marg
New Delhi.
5. The C.D.A. (R&D)
L-Block
New Delhi. ... Respondents

(By Advocate: Shri Mohar Singh)

ORDER

By Shanker Raju, M(J):

Applicant impugns a penalty order dated 22.7.2000 (Annexure A2) wherein after holding disciplinary proceedings, he has been retired compulsorily and also the appellate order dated 8.1.2001 (Annexure-A1) upholding the decision of the disciplinary authority.

2. Applicant was proceeded against departmentally under Rule 14 of the CCS (CCA) Rules, 1965 on the following 4 Articles of Charges vide Charge Memo. dated 5.10.1998 (Annexure A-4):

Article-1:

The said Shri K.N.Gupta, while functioning as SAO in CDA (HQrs) was assigned the duties of Sr. Accounts Officer-in-Charge, "Miscellaneous Section" during 7/94 in the absence of the officer holding regular charge. Accordingly, he was deemed to have been authorised to pass bills required to be dealt with in 'M' Section i.e. miscellaneous and contingent claims debitible to Minor Head 800 "Other Expenditure" as per Chapter-VIII of OM Part-XII read in conjunction with Chapter-VI of OM Part-II Vol.I. The said Shri K.N.Gupta, SAO in total disregard of the provisions in the Office Manual authorised payment of four (4) contingent bills listed in the Enclosure-I to the tune of Rs.2.80 lakhs approximately all debitible to Minor Head 110 "Store" for which he had no authority. The said Shri K.N.Gupta, SAO also failed to discharge effectively the general duties of Sr. Accounts Officer-in-Charge of a section as listed in Appendix-I to OM Part-I particularly in regard to sampling. Thus the said Shri K.N.Gupta, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure devotion to duty of all Govt. servants for the time being under his control and authority thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

Article-II:

The four fraudulent bills listed in Enclosure-I were raised against the authority of fake sanctions purported to have been issued by DGOS. The procurement agency was shown as I&BC Cell of DGOS which is responsible for only inventory and budget control and has no role in procurement. The CRVs enclosed with the fraudulent claims were also prepared by I&BC Cell of DGOS which is not a store holding unit or depot. Although even the fake sanctions stipulated procurement by following the

prescribed procedure, only three quotations were obtained and sketchy supply orders placed in all the four cases on the concerned firm. The supply orders did not contain any of the standard clauses like payments terms, liquidated damages, inspection etc. which, the said Sh. K.N.Gupta, SAO failed to notice as unused when the supply orders were placed by DGOS, who is responsible for the procurement of ordnance stores and is intimately familiar with the procedure. Thus the said Sh. K.N.Gupta, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed in the performance of his official duties in the exercise of powers conferred on him, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(ii) of CCS (Conduct) Rules, 1964.

Article-III:

The said Shri K.N.Gupta, SAO authorised the payment of 4 fraudulent claims amounting to Rs.2.80 lakhs approximately, although the expenditure as per the fake sanctions was debitible to Minor Head 110 "Stores" which did not fall within the purview of 'M' Section as per Chapter-VIII of OM Part-XII. The said Shri K.N.Gupta, SAO did not even get the local purchase bills as listed in Enclosure-I noted in the Accounts Section as required vide Para 437 of OM Part-II Vol.I. Thus the said Shri K.N.Gupta, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure devotion to duty of all Govt. servants for the time being under his control and authority, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

Article-IV:

That the said Shri K.N.Gupta, SAO while functioning as Sr. Accounts Officer-in-Charge 'M' Section in the office of the C.D.A. (HQrs) New Delhi during 7/94 in the absence of the officer holding regular charge of 'M' Section authorised the payment of 4 fraudulent claims amounting to Rs.2.80 lakhs approximately. The said four bills were got supervised by an AAO other than the regular one in 'M' Section though the said AAO was present on that day and supervised all other bills passed for payment on that date.

Thus the said Shri K.N.Gupta, SAO failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. Servant, thereby violating the provisions of Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

3. The Inquiry Officer in his finding dated 12.10.1999 (Annexure-A7) held Charge No.1 as proved; Charge No.2 as partially proved to the extent that applicant failed to notice unusual source of sanction orders and unusual supply orders by not carrying proper audit; Charge No.3 as proved and Charge No.4 as not proved.

4. The Disciplinary Authority disagreed with the findings in respect of Charge No.4^{also} and held applicant guilty of the same. He communicated the reasons for disagreement vide Memo. dated 20.1.2000 (Annexure-A7) along with a copy of the Inquiry Officer's report to applicant and gave him an opportunity to file representation if any.

5. Applicant filed his representation on 4.2.2000 (Annexure-A7).

6. The disciplinary authority by an order dated 22.7.2000 (Annexure-A2) held the applicant guilty of Charge No.4^{also} and imposed upon him a penalty of compulsory retirement. The punishment was upheld in appeal by an order dated 8.1.2001, giving rise to the present OA.

7. The first contention of the learned counsel for applicant is that the documents attached with the Articles of Charge have no nexus with the

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allegations, and therefore it is contended that the present case is of 'no evidence' as the charges cannot be substantiated on the basis of these documents. On the other hand, the respondents, in the reply, have denied the allegations and stated that the documents are very much relevant to the charges levelled against the applicant conclusively established his guilt. In our considered view, the documents annexed with memorandum have nexus with the allegations and have been duly proved in the proceedings. This ground fails.

8. Shri Tyagi contended that the disciplinary proceedings is a result of pre-determined mind and the procedure envisaged under CCS (CCA) Rules, 1965 has not been followed. It is contended that disagreement note was not communicated by the disciplinary authority himself but was communicated by an authority, having no jurisdiction and was not connected with the inquiry. On the other hand, respondents have contended that the disciplinary authority has himself recorded the reasons for disagreement and the communication was sent on behalf of the disciplinary authority. As the final decision has been arrived at by the disciplinary authority himself, no prejudice has been caused to the applicant. We have given careful thought to the rival contentions of both the parties. In our considered view, in the letter dated 20.1.2000, the disciplinary authority himself recorded the reasons for disagreement, which were communicated on his behalf.

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As the final decision has been taken by the disciplinary authority himself, no prejudice has been shown to be caused. Hence the ground fails.

9. Another contention of Shri Tyagi is that the inquiry officer has relied upon extraneous matters beyond the record and based his conclusion on surmises and conjectures without appreciating the evidence. According to him, the findings are perverse and the charges are therefore vague and non-specific. The respondents contended that the laid down requisite procedure under CCS (CCA) Rules, 1965 has not been followed. On perusal of the pleadings, we are of the considered view that the charge is neither vague nor non-specific. From the documents produced in evidence and other material brought on record it has been conclusively proved that the applicant while authorising the payments in 'M' Section, acted hastily and the claim was processed against the rules on supervision by an incompetent authority despite availability of regular AAO, the aforesaid decision taken by the applicant, was contrary to the requisite procedure. There exists some evidence against the applicant which has not been rebutted by him. In a judicial review, it does not lie with the jurisdiction of this Court to re-appraise the evidence or to act as an appellate authority. We have perused the findings of the inquiry officer which are founded on evidence and are not perverse. Hence the aforesaid ground also fails.

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10. Next contention of Mr. Tyagi is that though OM Part-XII was published in 1996, on function of 'M' Section contained in Chapter VI of OM Part-II Vol.I, the same has been made applicable upon the applicant retrospectively for a misconduct of the year 1994. On perusal of the record, we agree with the contention of the respondents as much as though OM Part-XII was published in 1996, Chapter VI of OM Part-II Vol.I was already in existence in 1994, the same was rightly applied to the case of the applicant. As such we find no infirmity in the action of the respondents. This ground also fails.

11. Shri Tyagi has also contended that disagreement arrived at by the disciplinary authority is perverse, based on no evidence and extraneous material. Respondents denied the same by contending that the sufficient material was available with the disciplinary authority as well as requisite procedure was followed before disagreement. We have given careful thought to rival contentions. In our considered view, though the inquiry officer has not proved Charge No.4 pertaining to the supervision of four Bills by another AAO other than the regular one of 'M' Section, the same has been disagreed to and proved, on the basis of sufficient evidence indicating that regular AAO Shri. Stephen George was present on the crucial date, whereas the bills have been supervised by Shri Chandana who was not a regular AAO of 'M' Section. Applicant has acted with ulterior motive by accepting and authorising the payment. It is also noted that no directions have been issued by the superior authority to proceed the bills on



priority basis and the hasty manner adopted, clearly and conclusively points towards the motive behind the action taken by the applicant which resulted in passing of four fraudulent bills amounting to Rs.2.80 lacks. The disciplinary authority recorded the tentative reasons and after affording a reasonable opportunity to the applicant to show cause, punished him on this charge. As the punishment is on the basis of evidence we refrain from interfering with the same in a judicial review. In this connection, we are fortified by the decision of the Apex Court in Kuldeep Singh Vs. Commissioner of Police, JT 1998 (8) SC 603.

12. Shri Tyagi has contended that penalty as well Appellate orders are non-speaking and passed without application of mind. We have perused the orders and find that the contentions of the applicant have been duly considered and thereafter detailed orders have been passed. We do not find any legal infirmity in the orders.

13. It is also contended that the CBI has exonerated the applicant as such he should not have been subjected to a disciplinary proceedings. In our considered view, the criminal proceedings have no bearing over the disciplinary proceedings. The charge against the applicant has been independently proved from the evidence and documents brought on record.


14. Lastly, it is contended that the punishment is highly disproportionate and excessive. We have given careful thought to the aforesaid contention and find that by not following the




procedure, applicant has authorised the payment, resulting into loss to the Government to the tune of Rs.2.80 lacks. We hold that punishment is neither excessive nor harsh. Moreover, a lenient view has been taken to compulsorily retire the applicant, protecting his retiral benefits. Appellate authority has also dealt with the proportionality of punishment in its order.

15. No other valid legal grounds have been raised by the applicant to assail the proceedings.

16. From the foregoing discussion, OA is found bereft of merit and is accordingly dismissed. No costs.


(Shanker Raju)
Member(J)

/rao/


(S.R. Adige)
Vice-Chairman(A)