

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2053 of 2001 (8)

New Delhi, this the 17th day of April, 2002

HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Sri S.C. Kapoor
S/o Shri Ram Lal Kapoor
R/o 269/3 Shestari Nagar,
Meerut.

-APPLICANT

(By Advocate: Shri S.D. Sharma)

Versus

1. Union of India
through Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. Controller General of Defence Accounts,
West Block-V,
R.K. Puram,
New Delhi.
3. Controller of Defence Accounts (Army),
Meerut.
4. Jt. Controller of Defence Accounts (Funds)
Meerut.

-RESPONDENTS

(By Advocate: Shri Rajeev Sharma, proxy counsel
for Shri M.M. Sudan, Counsel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant is aggrieved of the order passed on 12.9.2000 vide Annexure A-1 whereby a penalty of reduction by one lower stage from Rs.5900/- to Rs.5750/- in the time scale of pay Rs.5000-150-8000 for a period of one year with cumulative effect with effect from 1.10.2000 was imposed. It will also have the effect of postponing his future increments of pay by CDA (Army/Funds). The applicant has also challenged the appellate order passed by the Controller General of Defence Accounts whereby the appellate authority had upheld the order passed by the disciplinary authority.

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2. The facts in brief are that the applicant was proceeded departmentally under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation that the applicant while serving as Cashier in CSD Canteen of JCDA (Funds), Meerut during the period April, 1997 along with three other colleagues collected stores from CSD Depot, Meerut on 21.4.97 (as per four indents) and he became a party and colluded with the CSD Canteen Manager in getting diverted certain CSD Stores for illegal sale in the market. The applicant also failed to report to the office authorities of the fact of diversion of CSD Stores for illegal sale in the market and remained in CSD Depot in waiting for return of the Manager upto 2130 hours on 21.4.97. Thus he exhibited lack of integrity, lack of devotion to duty and acted in a manner unbecoming of a Government servant. An enquiry was held on the allegations which resulted in holding the charge as proved and ultimately a final order was passed vide which the pay of the applicant was reduced by one lower stage from Rs.5900 to 5750, as per Annexure-I.

3. Besides that the applicant has also pleaded that in issuing the charge-sheet, Rule 14 of the CCS (CCA) Rules, 1965 have been violated since respondent No.4, who had issued the charge-sheet was not competent to issue the charge-sheet as he is not the disciplinary authority so it is prayed that since the charge-sheet has not been issued by the competent authority so the same is

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liable to be quashed and consequently all the orders based upon this illegal charge-sheet are also liable to be quashed.

4. The respondents are contesting the OA. Respondents deny that the charge-sheet has been issued by an incompetent person. According to the department applicant along with three other colleagues collected stores from the CSD Depot, Meerut and certain stores worth Rs.1,01,750/- was illegally diverted for sale in the market by the Manager. The applicant and others remained in the depot in waiting for Manager with the balance of CSD Stores in CSD Dept till 2130 hours and being a Government servant they had failed to report the matter to the CSD Stores or to any authority of the office on the day. The office of the JCDA (Funds) where the applicant was working at the time of the aforesaid incident, is closely situated.

5. It is also denied that the charge-sheet has not been issued by any incompetent authority. It is stated that the charge-sheet has been issued by the Joint controller of Defence Accounts who remains throughout under the administrative control of one CDA and the office of the JCDA has always been treated as an independent sub office. Accordingly, the incharge of office can only exercise disciplinary powers and despite that the charge-sheet has been issued by JCDA (Funds) Meerut with the concurrence of CDA (A), Meerut. It is denied that there is any violation of any Rule 14 of the CCS (CCA) Rules, 1965.

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6. As regards the competence of the officer who had issued the charge-sheet, there is no denial that the charge-sheet has been issued under the signatures of Avinash Dikshit, Joint Controller of Defence Accounts (Funds) whereas the final order has been passed by Arvind Kaushal, Controller of Defence Accounts (Army/Funds), vide Annexure-I wherein the Controller of Defence Accounts has described himself as disciplinary authority. Referring to these two documents the learned counsel for the applicant submitted that according to Annexure-I it is the CDA who is the disciplinary authority so the Joint Controller of Defence Accounts could not have issued the charge-sheet. Thus the issue of charge-sheet itself is void ab initio to initiate and enquiry based on the same also fails.

7. In reply to this, the learned counsel for the respondents submitted that JCDA has a delegated authority to issue the charge-sheet.

8. The counsel for the respondents referred to Defence Accounts Office Manual Part-I and submitted that according to Schedule B of Chapter VI of this Defence Accounts Manual Read with R-III Colly., the Joint Controller of Defence Accounts had been delegated powers to issue the charge-sheet.

9. It is an admitted case that on the relevant day the applicant was working as Senior Auditor and had been assigned the job of canteen cashier. Post of Senior

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Auditor is a Group 'C' post and according to the Office Manual, Joint Controller of Defence Accounts was competent to issue charge-sheet.

10. In this regard we may also refer to judgment reported in 1997 (2) SLJ page 307 entitled as Steel Authority of India and Another vs. Dr. R.K. Diwakara & Others wherein the Court had held as under:-

"Disciplinary Proceedings - Charge sheet - The Director, Medical and Health services was the Controlling Authority of the respondents who issued charge-sheet - Disciplinary proceedings cannot be challenged on the ground that their appointing authority was Managing Director".

11. The Hon'ble Supreme Court while holding as above, had also referred to its earlier decision in the case of Director General of, ESI vs. T. Abdul Razak, 1996 (4) SCC 708 which has been quoted as under:-

"With regard to initiation of disciplinary proceedings by the Regional Director, we find that the legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority (See: State of M.P Vs. Shardul Singh; P.V. Srinivasa Sastry Vs. Controller & Auditor General and Inspector General of Police V. Thavasiappan). The Regional Director, being the officer-in-charge of the region, was the controlling authority in respect of the respondents. He could institute the disciplinary proceedings against the respondents even in the absence of specific conferment of a power in that regard".

12. The above quoted passage would show that it is not necessary that the authority competent to impose penalty may not initiate disciplinary proceedings and the proceedings can be initiated by any superior authority who can be the controlling authority and may be an officer subordinate to the appointing authority. In this

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case also the charge-sheet was issued by the JCDA, though he is subordinate to the disciplinary authority but he being the overall controlling authority of the canteen, could issue the charge-sheet, so we find that this ground to assail the competence of the authority who issued the charge-sheet is without any merit.

13. The other ground taken up by that applicant is that the disciplinary authority as well as the appellate authority has failed to take note of the confession of Manager of the Canteen and none of the articles which was diverted by the applicant has been found in the market which was sold by the Manager. But on this aspect we may mention that the charge against the applicant was not only about the illegal sale of canteen items but applicant was also stated to have not informed the superior officers working in the CSD Depot or in the JCDA office. The charge against the applicant was that he had failed to report the office authorities of the fact of diversion of CDA stores for illegal sale in the market though he remained in CSD Depot waiting for return of Manager upto 2130 hours on 21.4.97.

14. As far this part of the allegation of the applicant is concerned, the same stands proved as held by the disciplinary authority and the disciplinary authority had assigned reasons also before awarding punishment to the applicant and has specifically mentioned about the fact that the applicant kept on waiting for return of Manager upto 2130 hours which is located just in front of JCDA (Funds) Meerut Office where he should have reported the matter to any officer in the JCDA office. By not

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reporting, the applicant has also submitted that there is no misconduct on his part but we find that when the Manager was away for about 4-5 hours and had taken along with him the canteen stores so by not informing the superior officer amounts to misconduct on the part of the applicant, which has been rightly held by the disciplinary authority as well as by the appellate authority. Hence we find that there is no ground to interfere with the impugned orders.

15. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.


(KULDEEP SINGH)
MEMBER (JUDL)


(V.K. MAJOTIA)
MEMBER (A)

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