

Central Administrative Tribunal
Principal Bench

OA 2334/1999

New Delhi this the 27 th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

S.K. Singh,
S/o late Shri V.K. Singh,
R/o Qr. No.342 (Type-II),
Mirdard Lane, New Delhi-02. ... Applicant.

(By Advocate Shri M.K. Gupta)

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110001.
2. Chief Administrative Officer and Joint Secretary (Trg.), Ministry of Defence, DHQ, PO New Delhi-110011. ... Respondents.

(By Advocate Shri S.M. Arif)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).

The applicant is aggrieved by the penalty order passed by Respondent 2 dated 19.3.1999 against which appeal filed by him has also been rejected and communicated vide order dated 29.6.1999 (Annexures A-1 and A-2).

2. The brief relevant facts of the case are that the aforesaid penalty orders have been imposed against the applicant after holding the departmental proceedings against him which were initiated by the respondents by memo dated 17.10.1997. Three articles of charges were framed against him, namely, (1) that he had

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fraudulently drawn HRA w.e.f. 4.1.1993 though he was living in Government accommodation allotted to his wife by the G.B. Pant Hospital, New Delhi where she was working; (2) that he had obtained an advance of Rs.13,320/- for availing of LTC but did not perform the journey and, therefore, misutilised the said amount; and (3) that he had refused to carry out the official work assigned to him on 29.1.1997, misbehaved with Respondent 2 and left the office early.

3. The respondents have stated that the applicant had denied charges-II and III and had agreed to refund the amount drawn by him in easy instalments. They have stated that an Inquiry Officer was appointed to hold inquiry into Articles-II and III only. The Inquiry Officer in his report dated 4.1.1999 submitted that Article-I of the charge is proved to the extent that the applicant had been drawing HRA though he was living in Government accommodation allotted to his wife, but the element of fraud in drawal of HRA was not proved, Article-II of the charge regarding misutilisation of amount of LTC advance was also held not proved, although the Inquiry Officer had referred to the fact that the advance amount was recovered from his salary with penal interest. Article-III of the charge was held partly proved to the extent that the applicant had indeed left office without informing any of his superior officers, but the element of refusal to carry out official work and misbehaviour with the Administrative Officer was held not proved. The disciplinary authority did not agree with the findings

of the Inquiry Officer and under Rule 15(2) of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules') (wrongly mentioned as CCS (Conduct) Rules, 1965 in the counter reply of the respondents), he conveyed the same to the applicant by Memorandum dated 29.1.1999. The applicant has stated that he had submitted a detailed representation to his Memorandum dated 29.1.1999. The disciplinary authority vide his order dated 19.3.1999 after considering the relevant documents came to the conclusion that Articles-I and II are fully established and Article-III is partially established as given in the order and imposed on him a penalty of withholding of increment for a period of three years without cumulative effect. The appeal submitted by the applicant against this order has also been rejected by the President vide impugned order dated 29.6.1999.

4. Shri M.K. Gupta, learned counsel for the applicant has submitted that the aforesaid penalty orders show non-application of mind on the part of the disciplinary authority and the appellate authority. He has submitted that Article-I of the charge only shows that the applicant had drawn HRA for about 4 years from 4.1.1993 to 30.4.1997 but there has been no proof of this charge by production of any documents. He has also relied on the conclusion arrived at by the Inquiry Officer that there was no fraudulent intention on the part of the charged officer. Similarly, he has submitted that with regard to the amount of Rs.13,320/- taken by way of LTC advance, there has again been no proof of misutilising of the amount with any fraudulent intention. He has submitted that this element was

necessary if the applicant had to be punished for these articles of charge. which is absent., He has also submitted that in the Inquiry Officer's report on Article-III, he has only come to the conclusion that the charge is partially proved to the extent that the applicant had indeed left office without informing any of his superior officers but the other part of the charge was not proved. He has submitted that on this there was a difference of opinion by the disciplinary authority. His contention is that there is actually no difference of opinion with regard to Article-III between the findings of the Inquiry Officer and the disciplinary authority. In the circumstances, he has submitted that the charge-sheet and the penalty orders should be quashed and set aside with consequential benefits to the applicant. He has relied on the judgements of the Supreme Court in M/s. Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Ors. (1971(2) SCC 617); Yoginath D. Bagde Vs. State of Maharashtra & Anr. (JT 1999 (6) SC 62); and Kuldeep Singh Vs. Commissioner of Police & Ors. (1999(2) SCC 10).

5. We have seen the reply filed by the respondents and also heard Shri S.M. Arif, learned counsel. The respondents have controverted the above submissions and have stated that the applicant had been given/reasonable opportunity of hearing, including opportunity to make a representation on the memo dated 29.1.1999 issued by the disciplinary authority. Shri S.M. Arif, learned counsel has submitted that the respondents have acted in compliance with the rules in conducting the procedure and there is no infirmity on

this ground. The respondents have also submitted that the applicant had drawn HRA to which he was not entitled and hence, the same was recovered from him and not refunded by him. They have submitted that the recovery of this amount does not, therefore, absolve the applicant from the misconduct committed by him for which he was proceeded against. In the order-sheet of the Inquiry Officer dated 12.1.1998, the applicant has admitted the charge under Article-I and denied only Articles-II and III (Page 49 of the paper book). Shri S.M. Arif, learned counsel had also drawn our attention to the Note of the respondents dated 30.5.1997, that the LTC claim of the applicant inquired into in the present case was not the first of its kind, but as the earlier incident which occurred for the block year 1994-97 was not part of the charges here, it is not considered necessary to deal with that matter further. Shri Arif, learned counsel has submitted that the punishment order is not at all perverse because only a minor penalty has been issued to the applicant where some of the charges have been held proved by the disciplinary authority and the appellate authority. In the circumstances, he has prayed that the application may be dismissed.

6. We have considered the pleadings, submissions made by the learned counsel for the parties and the relevant cases relied upon by the learned counsel.

7. The applicant has relied on the findings of the Inquiry Officer in his report dated 4.1.1999. We are unable to hold that in the present facts and circumstances of the case, the disciplinary authority

acting under the provisions of Rule 15 (2) of the Rules has in any way violated the said provisions while disagreeing with the findings of the Inquiry Officer. In the memo dated 29.1.1999 that authority has given adequate reasons, after assessment of available evidence as to how he has disagreed with the findings of the inquiring authority in respect of Articles I and II. It would be relevant to note that the Inquiry Officer in his report had found that Article-III is partially proved to the extent that the applicant had left office without informing any of his superior officers. That fact cannot, therefore, be ignored. As regards Article-I, it is clear that the applicant had admitted this charge, namely, that he was drawing HRA w.e.f. 4.1.1993 while living in Government accommodation allotted to his wife for a number of years which are clearly against the relevant rules. The reasoning given by the disciplinary authority that the applicant cannot be allowed to take a plea of inappropriate knowledge of the Rules is unexceptionable, as ignorance of law cannot help him. Therefore, the conclusion of the disciplinary authority on the findings in Article-I of the charge that it stands fully established cannot be faulted. The contention of Shri M.K.Gupta, learned counsel is that as fraudulent intention has not been proved against the applicant, he cannot be punished. In the facts and circumstances of the case, this plea cannot be accepted as he has admittedly drawn HRA for several years while living in the Government accommodation allotted to his wife which he cannot do under the Rules, which itself shows his intentions. Similarly, the conclusions arrived at by the disciplinary authority regarding the

second article of charge involving misutilisation of LTC advance is also based on the evidence on record. The applicant had given an undertaking that if he did not perform the journey, he would refund the LTC amount which was not done and the amount had to be recovered from his salary. Here again, the contention of the learned counsel that there is no proof of fraudulent intention to utilise the LTC amount begs the question because if the applicant had not utilised the amount for the journey, he ought to have refunded the same to the respondents in accordance with the rules. He had not done this and the same had to be recovered from his salary. Therefore, the conclusion of the disciplinary authority that he had in fact, misutilised the amount of LTC amount is neither illegal nor perverse justifying any interference in the matter. The judgement of the Supreme Court in M/s. Bareilly Electricity Supply Co. Ltd. (supra) will not assist the applicant in the present facts and circumstances of the case where the charges have been fully proved by the documents or the applicant's own admission.

8. The mere fact that the disciplinary authority had disagreed with the Inquiry Officer's findings will not have the effect of absolving the applicant from the other charge also. In Kuldip Singh's case (supra) relied upon by the learned counsel for the applicant, it has been held that while normally the court will not interfere with the findings of "guilt", it can interfere if the same is based on no evidence or is perverse. In the present case, in exercise of the powers of judicial review we are unable to agree with

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the contentions of the learned counsel for the applicant that any of these ingredients are present in the present case to justify our interference in the findings of the disciplinary or the appellate authorities. Those authorities have dealt with the case with clarity and in accordance with the rules and there is no perversity in the penalty orders. As pointed out by the learned counsel for the respondents, the final penalty order passed against the applicant is a minor penalty of with-holding of increment for a period of three years without cumulative effect, even though the disciplinary proceedings were originally initiated under Rule 14 of the Rules which is for a major penalty. The other judgements relied upon by the applicant will also not assist the applicant in facts and circumstances of the case.

9. In the result, for the reasons given above, we find no merit in this application. O.A. fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member(A)

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)