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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2155/95

New Delhi this the 10th Day of ~~January~~ ^{February} 1999

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)
Hon'ble Shri R.K. Ahooja, Member (A)

Shri Kanti Prasad,
Son of Late Shri Hardev Singh,
R/o 242/B, Shiv Lok puri,
Kankarkhera,
Meerut.
Last employed as Auditor
in the office of the CDA (ORs),
North (Army) Meerut Applicant

(By Advocate: Shri N.S. Verma)

-Versus-

1. The Union of India, through
The Secretary,
Government of India,
Ministry of Defence (Finance),
New Delhi.
2. The Controller General of Defence
Accounts,
West Block - V,
R.K. Puram,
New Delhi.
3. The Controller of Defence Accounts,
(Pension Disbursement),
Meerut Cantt.
4. The Controller of Defence Accounts
(ORs) North (Army)
Meerut Cantt. Respondents

(By Advocate: None)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant while serving as Auditor in the Defence Accounts Department was sent on temporary duty to the Defence Pension Disbursement Office (DPDO), Jhajjar, Haryana w.e.f. 11.8.1986. While detailed on this duty on 11.9.1986 in connection with the disbursement of Pension to Indian Military Pensioners, he was entrusted with a sum of Rs. 77,700/- (Rupees Seventy Seven

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Thousand Seven Hundred only). At the end of the day he was, however, able to account only for an amount of Rs. 67,700/- (Rupees Sixty Seven Thousand Seven Hundred only), and reported that a sum of Rs. 10,000/- (Rupees Ten Thousand only) could not be found. He was asked to make good the shortage. On his failure to do so, the matter was reported to the police who registered a case against him. While the police claimed that they recovered a bundle of cash amounting to Rs. 10,000/- (Rupees Ten Thousand only) from a trunk in his house, the applicant, on the other hand, submits that ^{he} collected this amount through his own means and had paid it to the authorities to make good the loss to the authorities. The applicant was proceeded against in a criminal case and also through departmental proceedings. On the basis of the finding of the inquiry officer, the disciplinary authority vide its order dated 11.10.1990, Annexure A-15, imposed the penalty of dismissal from service w.e.f. 1.11.1990. This order was challenged by the applicant in O.A. No. 2241/90 praying for the following reliefs:

- a) to quash the impugned order dated 11.10.90 with all consequential benefits;
 - b) to order reinstatement of the applicant in service;
 - c) to direct the respondents to wait for the verdict of the Court before imposing any other penalty;
 - d) to grant such and other reliefs as may be deemed fit in the interest of justice; and
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- e) to award the cost of application, i.e. the Counsel's fee, Court fee and incidental expenses.

Vide its ~~this~~ order dated 11.12.1992, the Tribunal concluded as follows:

"9. Admittedly, the applicant participated in the departmental enquiry in which he had contended that he was being tried in the criminal case for the very same charges which have been brought against him in the departmental enquiry. He has also stated that an amount of Rs. 10,000/- has been deposited by his wife with the Police authorities at the Police Station, Bahadurgarh out of his L.T.C. and scooter advance., He has further contended that when his LTC and scooter advance money has been adjusted against the loss of Government money, the extreme penalty of dismissal is not justified.

10. The gravement of the charge against the applicant in the departmental enquiry relates to misappropriation of Government money to the extent of Rs. 10,000/-. This precisely is the charge brought against him in the criminal case. As the departmental enquiry has already been conducted and the penalty of dismissal from service has been imposed on the applicant by the impugned order dated 11.10.1990, we are of the opinion that he cannot be granted the relief sought by him in the present application. At the same time, we are of the opinion that after the criminal court renders its judgement in the criminal case brought against the applicant, the respondents should review his case in the light of the said judgement and pass appropriate orders. We order and direct accordingly. The application is disposed of on the above lines. There will be no order as to costs."(Emphasis supplied).

2. The Judicial Magistrate, Bahadurgarh, in his judgement dated 22.4.1992 acquitted the applicant of the criminal charge against him observing as follows:

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"18. For the reasons recorded above, prosecution has failed to prove its case beyond every shadow or reasonable doubt. I, hereby acquit the accused to the charge preferred against him giving benefit of doubt. File be consigned to record room."(Emphasis supplied).

3. Thereafter, the respondents reviewed the order of the disciplinary authority in accordance with the direction of the Tribunal in O.A. No. 2241/90 and passed the impugned order, Annexure A-19, in the name of the President. Holding that the acquittal of the applicant by the Criminal Court has no bearing on the departmental proceedings as the same was purely on technical ground as distinct from merits, order of the reviewing authority maintained the order of the disciplinary authority. It is aggrieved by this decision, that the applicant had now come before the Tribunal challenging the order of the disciplinary authority as also of the revising authority.

4. The learned counsel for the applicant has argued before us that as the Court of Judicial Magistrate had observed, the applicant had not tried to hide the facts of the shortage of cash nor he had tried to put the blame on anyone else. ~~For for that~~ He pointed out that the applicant had at the end of the day himself noted in the cash register regarding the shortage of cash. He had also not run away and had come to the office on the following working day. The learned counsel pointed out that the Criminal Court had concluded

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that there was no 'mens-rea' and it was only a question of civil liability whereby the applicant was required to make good the loss of Rs. 10,000/-. It was also pointed out by the learned counsel that the Criminal Court had not accepted the case of the prosecution that the amount of Rs. 10,000/- had been recovered from the house of the applicant and hence the version of the applicant that the amount had been made good by the applicant himself had to be accepted. In view of these findings of the Court of Law, the respondents, according to the learned counsel, were bound to set aside the earlier order of the disciplinary authority and to reinstate the applicant in service. According to the learned counsel, the order of the revising authority shows total lack of application of mind as well as lack of regard to the findings of the Criminal Court.

5. Although, the learned counsel stressed on various shortcomings of the inquiry conducted by the respondents and the impugned order of the disciplinary authority, we are of the view that this question cannot be gone into at this stage as the applicant has already agitated the relevant reliefs in O.A. No. 2241/90. The applicant has also sought a direction to the respondents to grant him the increments due to him from 1987-90. These are again matters which the applicant could have raised in his earlier O.A. but failed to do so. We, therefore, find that his prayer on this account is also barred by the principle of

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constructive res judicata. Essentially, therefore, we are left with the applicant's case in regard to the order of the revising authority dated 15.11.1994, Annexure A-19. The point to be decided is whether the revising authority had applied its mind in reversing the order of the disciplinary authority in accordance with the direction of the Tribunal in O.A. No. 2241/90.

6. In the disciplinary proceedings, there were two charges against the applicant. They are:

" Article of Charge No. 1

that Shri Kanti Prasad Pt. Auditor A/c No. 8289531 was on temporary duty in the office of DPDO Jhajjar during the period from 11.8.1986 to 12.9.1986. He was allotted the task of mustering Auditor vide SI. 8 of Section Order no. 68 dated 01-9-86 by the DPDO, Jhajjar. But he refused to note the orders for performing the duties of mustering Auditor saying that he did not know this work at all and insisted for cashier's duty. Thus by the above act Shri Kanti Prasad, Pt. Auditor exhibited lack of devotion to duty by violating the Rules 3(i), (ii), (iii) of CCS (Conduct) Rules 1964.

Articles of Charge No. 2 that Shri Kanti Prasad Pt. Auditor A/c No. 8289531 was on temporary duty in the office of DPDO Jhajjar from 11-8-1986 to 12-9-86. He while discharging the duties of the Cashier at Bahadurgarh Payment Centre on 11-9-86 had misappropriated Government money to the extent of Rs. 10,000/- out of Rs. 77,700/- handed over to him by the DPDO Jhajjar for disbursement to the Indian Military Pensioners at Bahadurgarh Payment Centre.

That by the above act. Shri Kanti Prasad Pt. Auditor A/C No. 8299531 was exhibited lack of integrity; lack of devotion to duty and conduct unbecoming of Govt. servant thereby violating Rule 3(i), (ii), 3(i) (ii) and 3(i) (iii) of CCS Conduct Rules 1964."

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7. The inquiry Officer held that the Charge No. 1 was not substantiated but Charge No. 2 was proved. The essence of Charge No. 2 is that the applicant had "misappropriated Government Money". The Judicial Magistrate in his order, Annexure A-17 observed as follows:

"The FIR was recorded on 13.9.86 from record EXPB and EXPC made in day book EXPI clearly indicates that this is a case of simple shortage of cash and heavy disbursement was made by the accused. During the day and further the accused was not cashier of the department and being auditor in the departmental still performing the duty of cashier and a person doing duty of a cashier without holding that post, accused cannot be convicted u/s 409 IPC. In this case there was no dishonest intention to misappropriate the amount worth Rs. 10,000/- but after making necessary entries in day book EXP I regarding all payment and remaining balance the amount Rs. 10,000/- was found short and on that very moment in day book was reported by this accused and note regarding this shortage made by the accused is EXPB and it has ben counter signed by the Officer. Hence there was no dishonest intention proved from the record of the accused that he misappropriate the amount worth Rs. 10,000/. This is the essential ingredient of offence u/s 409 IPC and when dishonest intention has not been proved, then it is simple a case of civil liabilities and department has right to recover this amount from the accused and this very view has been taken by Hon'ble Supreme Court in authority Vasu Dev Kulkarni Vs. Surya Kanti Bhatt and another 1978 CLR (SC) (I). The same view has been taken in authority Kapil Devi Narain Vs. Imperor AIR 1930 Patna 221 (Division Bench)." (Emphasis supplied).

8. The revisional authority as already pointed out, on the other had, confirmed the order of the disciplinary authority on the sole ground that the Judicial Magistrate had acquitted the applicant as prosecution had failed to prove its

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case beyond every shadow of reasonable doubt and that the standard of proof required in the disciplinary authority being different, the findings of the inquiry officer and the disciplinary authority were sufficient for their respective conclusions. We are unable to agree with this reasoning. That there was shortage of cash was admitted by all concerned including the applicant. It is however the case of the applicant that he reported the shortage and that he had not ~~tried~~ to hide this fact or to put the blame on anyone else. The Court of the Judicial Magistrate also gave a definite finding that the applicant had no intention to hide this fact.

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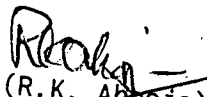
9. It is also not the case of the respondents that the applicant denied his liability to make good the loss. It was, therefore, necessary for the revising authority to apply its mind to this fact of the case and to come to a reasoned conclusion as to whether the findings of the disciplinary authority regarding 'misappropriation of the money' required a revision in view of the judicial ~~verdict~~. The revising authority, however, did not do so and confirmed the earlier order of the disciplinary authority only on the ground that the acquittal in the criminal case was on technical grounds and not on merits. As the extract of the order of the Judicial Magistrate would show, the Criminal Court had also come to certain conclusions on the allegation of misappropriation but these were not

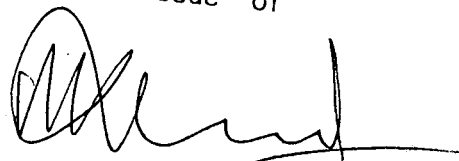
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taken into account by the revising authority in the context both of the conclusion as well as the punishment imposed by the disciplinary authority.

10. In the light of the above discussion, we are of the view that the revising authority had not reviewed the order of the disciplinary authority in the light of the orders in the Criminal case in accordance with the direction of the Tribunal in O.A. No. 41/90. In the circumstances we allow the O.A. partly setting aside the order of the revising authority dated 15.11.1994 and remit the case to the revising authority for passing a fresh order in the context of the various findings and conclusions of the Judicial Magistrate. This will be done within a period of four months from the date of issue of this order.


(R.K. Arboja)
Member (A)


(A.V. Haridasan)
Vice Chairman(J)

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