

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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O.A./T.A. No. 1076 of /19 95 Decided on: 29.3.96

S.C.L. Kardam

..... APPLICANT(S)

(By Shri R.G. Aggarwal Advocate)

VERSUS

U.O.I. & Anr.

..... RESPONDENTS

(By Shri M.S. Ramalingam Advocate)

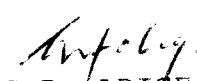
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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~XXXX/XXX~~/ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? Yes

  
(DR. A. VEDAVALLI)  
Member (J)

  
(S.R. ADIGE)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.1076/1995

New Delhi : this the 29<sup>th</sup> March, 1996. (9)

HON'BLE MR.S.R.ADIGE, MEMBER (A).

HON'BLE DR.A.VEDAVALLI, MEMBER (J).

Shri S.C.L.Kardam,  
Senior Map Curator,  
General Staff Branch(MO/GSGS),  
Army Headquarters,  
New Delhi-110011 .....Applicant.

By Advocate Shri R.G.Agarwal.

Versus

1. The Union of India through the  
Defence Secretary, Ministry of Defence,  
South Block, New Delhi-110011.
2. The Joint Secretary (Training)  
and Chief Administrative Officer,  
Govt. of India,  
Ministry of Defence, C-II, Hutments, Behind South  
Block,  
New Delhi-110011 .....Respondents.

By Departmental Representative Shri M.S.Ramalingam.

JUDGMENT

By Hon'ble Mr.S.R.Adige, Member (A).

We have heard Shri R.G.Agarwal for the applicant  
and Shri Ramalingam, departmental representative  
for the respondents.

2. The applicant has assailed the Disciplinary  
Authority's order dated 30.6.93 (Annexure-A3) imposing  
the penalty of withholding of increments of pay for  
3 years without cumulative effect and recovery of LTC  
fraudulently claimed by him from his pay and allowances;  
with penal interest; as well as the appellate order  
dated 16.11.93 (Annexure-A2) rejecting the appeal; and  
the review order dated 27.6.94 (Annexure-A1) rejecting  
the review petition on various grounds.

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3. The first ground taken is that the LTC claim once passed could not be reopened. Reliance has been placed on DPAR's letter dated 11.7.85, but the respondents have correctly pointed out that those instructions do not preclude disciplinary action in case of fraud/malpractices committed in such claims, and as the applicant's name appeared in the list of 135 suspected cases of false LTC claims as scrutinised by CGDA for verification of genuineness of LTC claims, this ground has no force.

4. Secondly, it has been urged that when the E.O. had given his finding of 'not guilty', the Disciplinary Authority's rejection of those findings was illegal and invalid. The respondents have pointed out that the I.O. based his findings on the possibility of a second page of the list of passengers existing and being misplaced. The repeated confirmation by STA that there was only one page and the number of passengers for a deluxe bus on a long tour was clear evidence not to accept the photo copy of the second page submitted by the applicant without any corroborating evidence. It is well settled that the Disciplinary Authority is not bound to accept the findings of the E.O., but may disagree with the same for sound and cogent reasons, and provided the defaulter is informed of the reasons for such disagreement and is given an opportunity to show cause against the same, the action of the Disciplinary Authority cannot be faulted.

5. Thirdly, it has been urged that the rejection of the I.O.'s report was barred by time. This ground is baseless because, as correctly pointed out

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by respondents the DOP's Memo dated 8.1.71 relied upon by the applicant is only directory and not mandatory.<sup>1</sup>

6. The next ground regarding reliance being placed on one document, and not on the other, involve reappraisal of evidence. As the Tribunal is not an appellate forum, we are precluded from reappraising the evidence.<sup>2</sup>

7. The other grounds taken, namely the number of persons who could or could not have travelled such a long distance in a deluxe bus again hinges on the appreciation of evidence and the balance of probabilities. It is well settled that unlike in a criminal prosecution where the guilt of the accused has to be proved beyond all reasonable doubt, in a departmental proceeding, if on the basis of preponderance of probability the Disciplinary Authority concludes that the defaulter is guilty of the misconduct, his conclusions cannot be faulted. In the present case, if on the basis of the available evidence, the Disciplinary Authority concluded that it was highly improbable that such a large number of passengers underwent such a long journey in a deluxe bus, and hence disbelieved the applicant's contention that the passenger list consisted of not one but two pages, the Disciplinary Authority's conclusion, which was upheld both in appeal and revision cannot be faulted.

8. The next ground taken that the applicant was singled out for punishment is equally untenable. The plea of discrimination cannot be advanced to defeat

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enforcement of the law or the rules.

9. The next ground taken that the orders of the disciplinary authority, appellate authority and revisionary authority betray non-application of mind is without merit. These orders are reasoned and speaking ones, which have been passed after careful consideration of the available evidence and materials on record.

10. The next ground taken that Shri K.S.Dhingra was interested in opening the applicant's case, is also without merit. The respondents have stated that Shri Dhingra was acting in accordance with the lawful directions/instructions of his superiors and we are satisfied that this was indeed so.

11. The last ground taken is that two punishments have been imposed for the same offence, namely stoppage of increments and payment of penal interest which is illegal, unjustified, untenable and liable to be quashed. While recovery of the sum fraudulently claimed as LIC from the applicants' pay and allowances is legally sound, and the claim of interest on this sum for the period for which the respondents were deprived of its benefits is also fully in order, we are of the view that instead of saying that "the amount of LIC fraudulently claimed by Shri Kardam be recovered from his pay and allowances with penal interest", the interest chargeable be quantified, and the amended order read "..... the amount of LIC fraudulently claimed by Shri Kardam be recovered from his pay and

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allowances with simple interest not exceeding 10% per annum."

12. Subject to the above, we hold that this is not a case where the impugned action of the respondents is arbitrary, malafide, perverse, based on no evidence, illegal or unreasonable which would warrant our judicial interference. We may add that during hearing, despite opportunities being given, the applicant was unable to produce a shred of evidence to refute the charges against him.

13. In the result, the OA fails and is dismissed, subject to the contents of paragraph 11 above. No costs.

*A. Veda Valli*  
( DR.A.VEDAVALLI )  
MEMBER (J).

*S. R. Adige*  
( S.R.ADIGE )  
MEMBER (A).

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