

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2172/96

T.A. No.

Date of decision 12-10-98

Sh.R.S. Rawat

... Petitioner

Sh. Gurmeet Singh

... Advocate for the
Petitioner(s)

VERSUS

UOI through Secy.
M/O Defence, South Block,
New Delhi.

... Respondents

Sh.R.P. Aggarwal

... Advocate for the Respondents

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The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

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

1. To be referred to the Reporter or
not?.

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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Central Administrative Tribunal
Principal Bench

O.A. 2172/96

New Delhi this the 12 th day of October, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri R.K. Ahooja, Member(A).

Shri R.S. Rawat,
S/o Shri Hira Singh Rawat,
R/o 26-B, Inder Road,
New Dalanwala,
Dehradun-248001.

Applicant.

By Advocate Shri Gurmeet Singh.

Versus

Union of India through
Secretary,
Ministry of Defence,
South Block, New Delhi-11.

Respondent.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the penalty order dated 2.3.1994 passed by the respondents imposing on him a cut in pension of Rs.2500/- at the rate of Rs.100/- per month. The revision petition filed by him against the penalty order has been rejected by the order dated 16.10.1995 which has also been impugned.

2. The applicant while working as Barracks Stores Officers (BSO) with the respondents was chargesheeted under Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules') by order dated 27.7.1988. The relevant portion of the chargesheet reads as follows:

Y/V

"Shri R.S. Rawat while working as BSO of GE Tezpur from 23 June 82 onwards failed to ensure that 510 MT Cement received by him was from CCI Akaltara factory and also failed to ensure that cement in question was tested before its issue to incorporate in works.

By his above act the said Shri R.S. Rawat, BSO failed to maintain absolute integrity, devotion to duty and committed acts unbecoming of an officer thereby violating Rule 3 of CCS (Conduct) Rules, 1984".

3. The Inquiry Officer in his report dated 6.6.1990 has come to the conclusion that as regards testing of cement, the charge is not substantiated. As regards the first charge, namely, regarding receipt of 510 MT cement from CCI, Akaltara Factory, he has held the charge as proved based on the evidence, including the document Ex. 'S-1 P-55' which he has discussed in the inquiry report.

4. The learned counsel for the applicant has taken a number of grounds in the application challenging the impugned order dated 2.3.1994. He has submitted that in the 5th paragraph of the impugned order, the competent authority has stated that after careful consideration of the inquiry report and the representation of the applicant, he agrees with the findings of the Inquiry Officer and is of the opinion that it has been established beyond doubt that the charges framed against him stand proved and thereafter imposed the penalty of cut in pension. Shri Gurmeet Singh, learned counsel, has submitted that this para will clearly show that there has been non-application of mind by the competent authority as the President has not noticed the fact that the Enquiry Officer has

only found one of the charges proved and has dropped the other part of the charge. Secondly, he has submitted that what has been submitted as 'S-1 P-55' is the document dated 29.11.1985 (copy placed ~~at~~ Annexure A-5). He submits that this is ^{the} typed written version of Annexure A-4 document which is as per Appendix 'A' attached therewith which shows that 510 MT cement was supplied from Akaltara Factory. According to him, Annexure A-4 is the genuine document which refers to only 510 MT cement supplied from Akaltara Factory and not from Jamal cement factory. He has, therefore, submitted that if this document is accepted together with its annexure, nothing remains of the chargesheet. He has also submitted that in the reply filed by the respondents, they have also stated that hand written letter of GE, Tejpur dated 29.11.1985 was the replica of the original letter and copy of the typed letter marked as Sd/- is not authenticated. He has also submitted that there was no complaint received from the users of the cement in G.E. Tejpur used in the Swimming Pool, etc. In the circumstances of the case, learned counsel has submitted that the impugned penalty orders dated 2.3.1994 and 16.10.1995 may be quashed and set aside and his pension may be restored with a direction to the respondents to pay the amount already recovered with interest.

5. We have seen the reply filed by the respondents and heard Shri R.P. Aggarwal, learned counsel. Learned counsel fairly submitted that as regards the first ground taken by Shri Gurmeet Singh, learned counsel, the impugned order dated 2.3.1994 does refer to the fact that the "charges" framed against the applicant stand proved, whereas the Inquiry Officer has only found one charge as proved against the applicant. However, on merits of the case, he has submitted that it is settled law (See Commissioner and Secretary to the Govt. and

Others Vs. C. Shanmugam (JT 1998(4) SC 236), that the Courts/Tribunal should not reappreciate the evidence of the disciplinary authority and come to its own conclusion. In the reply, the respondents have submitted that some quantity of the Akaltara Cement is still lying in godown of GE, Tezpur and that they have denied that the entire quantity of 510 MT cement had been consumed. According to the respondents, therefore, the penalty vide order dated 2.3.1994 has been imposed after due consideration of the Inquiry Officer's report and the representations made therein. They have prayed that the application may be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel. Rejoinder has been filed by the applicant. According to him, the entire quantity of 510 MT cement got consumed in the Works. He has also submitted that the respondents have not denied that the cement received from Jamul Factory was also retained in the same godown and Shri Gurmeet Singh, learned counsel, has submitted that no inspection has been made of the godown.

7. In the impugned order dated 2.3.1994, it is stated that the President after careful consideration of the Inquiry Officer's report and the representation made by the applicant agrees with the findings of the Inquiry Officer and is of the opinion that it has been established beyond doubt that the charges framed against him stand proved. Consequently, the penalty of cut in pension of Rs.2500/- @ Rs.100/- per month was imposed on the applicant. As mentioned above, the Inquiry Officer himself had dropped one of the two charges and had only found one charge proved against the applicant, namely, the receipt of the quantity of cement. However, the disciplinary

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authority while imposing the penalty of cut in pension has obviously ignored this fact as it has based its conclusion on the finding of the Inquiry Officer that the charges framed against the applicant stand proved. This shows lack of appreciation of the contents of the Inquiry Officer's findings and lack of application of mind while imposing a major penalty on the applicant under Rule 14 of the Rules. We find this sufficient reason to quash the impugned order. It is also relevant that no other reasons have been given in the impugned order for taking a decision to impose the penalty of cut in pension other than stating that the competent authority agrees with the findings of the Inquiry Officer. On this ground alone, the impugned order dated 2.3.1994 is liable to be quashed and set aside. In this view of the matter, we do not think it is necessary to deal with the other grounds taken by the learned counsel for the applicant.

8. In the result, O.A. is allowed. The impugned penalty order dated 2.3.1994 based on incorrect facts and assumptions is quashed and set aside. Consequently, the impugned order dated 16.10.1995 is also quashed and set aside. The applicant shall be entitled to consequential benefits i.e. restoration of pension and refund of ^{the} amount deducted. This shall be done by the respondents within one month of the receipt of a copy of this order. In the circumstances, the claim for interest is rejected. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

"SRD"

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)