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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1812 of 1994

New Delhi this the 29th November, 1994

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
SHRI S.R.ADIGE, MEMBER(A)

Shri R.K.Bansal,
Sr. Accountant, Pre-
Check Section,
Head Quarters, New Delhi.
(By advocate Shri A.K.Bhardwaj)

Applicant

Versus

Union of India through

1. The Secretary,
Ministry of Food, Krishi Bhawan,
New Delhi.
2. The Additional Secretary &
Financial Advisor,
Ministry of Food,
Krishi Bhawan,
New Delhi.
3. Shri A.S.Chauhan,
Controller of Accounts,
Ministry of Food,
1688, Kasturba Gandhi Marg,
New Delhi.
4. The Controller General of Accounts,
Ministry of Finance,
Lok Nayak Bhawan,
New Delhi.
(By advocate Sh. V.S.R.Krishna).

Respondents

JUDGEMENT(ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The applicant is a Senior Accountant, Pre-check
Section, Headquarters, New Delhi in the office of
Controller of Accounts, Ministry of Food. The grievance
of the applicant is against the order dated 29th

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July, 1993 by which without holding a disciplinary proceedings under the relevant rules, the penalty was imposed of withholding three increments for certain alleged misconduct which is said to be in violation of the Official Secret Act and also CCS (Conduct) Rules, 1964. Though the aforesaid order was passed after giving a show cause notice to the applicant, the applicant appealed against the aforesaid punishment order to the Appellate Authority and the Appellate Authority by order dated 22nd September, 1994 recalled the order of punishment dated 29th July, 1993 and the case was remitted to the disciplinary authority for re-casting the statement of imputation and article of charges and holding an enquiry based on which further action be taken under CCS(CCA) Rules, 1965.

2. However, this order of the Appellate Authority has been passed after the present application was filed by the applicant on 2nd September, 1994. In the aforesaid application the applicant has prayed for the grant of reliefs as follows:-

- (a) to quash the order No., PAO(food)/Admn./Vig./92-93/289 dated 29th July, 1993, passed by the respondent No.3, imposing the penalty of withholding increments of the applicant for three years with cumulative effect.

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- (b) to quash the Memo dated 29.4.1993, 21.6.93, 14.7.1993 and the chargesheet dated 8.7.1993, delcaring the same as void.
- (c) to mandate the respondents to release the increments of the applicant as withhold vide order dated 29.7.93, with all consequential benefits;
- (d) to mandate the respondents No. 1 & 2 to take disciplinary action against the respondent No.3, Shri A.S.Chauhan, the Controller of Accounts for all his act of issuing baseless unfounded & illegal memos to the applicant;
- (e) to allow the Original Application to the applicant with cost of the litigation.
- (f) to pass such other and further order which their lordships of this Hon'ble Court deem fit and proper.

3. A notice was issued to the respondents and the Department representative appeared on 25th October, 1994 but the reply was not as per the prescribed rules laid down in A.T. Procedure Rule, 1987 and the Tribunal directed that it should be filed in the prescribed proforma as laid down under the Rules. The department representative Shri Ram Chander, AAO is present, however, he says that the lawyer is nominated today.

4. We heard the counsel of the applicant Shri A.K.Bhardwaj and perused the order dated 22nd September, 1994.

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5. We heard Shri A.K.Bhardwaj learned counsel for the applicant on admission. The relief (a) prayed for by the applicant stands allowed by the Appellate Authority by order dated 22th September, 1994 so this relief has already been granted by the department in the administrative appeal filed by the applicant and so the application for this relief has become infructuous. The relief prayed for in para (b) has been pressed by the applicant's counsel for quashing certain memos given to the applicant in April, May & June, 1993 and chargesheet dated 8th July, 1993. Since the appellate authority has remitted the matter to the disciplinary authority, the question of quashing these memos does not arise. No grievance is left to assail against interim order by which certain misconduct is alleged and likely to be proceeded in a departmental enquiry under the relevant rules, and the tribunal cannot enter into the proceedings of administration for the purpose as laid down by the Hon'ble Supreme Court of India in the case of Union of India Versus Upendra Singh reported in (1994) 27 ATJ Page 200.

6. In para (c) of the relief clause the applicant has claimed that the increments which has been withheld may be restored. In order dated 29th July, 1993 as ^{recalled.} ~~recorded~~ it is mandatory on the record to restore the withheld increments as there is no subsisting order of imposing penalty against the applicant. It is expected that the respondents will do it forthwith.

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7. The relief prayed for in clause (d) para No. 8 of the relief clause is as follows:-

"To mandate the respondents No. 1 & 2 to take disciplinary action against the respondent No.3, Shri A.S.Chauhan, the Controller of Accounts for all his act of issuing baseless unfounded & illegal memos to the applicant".

8. The Tribunal cannot sit as an appellate authority over such orders passed in the administrative capacity, judicial review in such matters does not call for. However, the action of Shri A.S.Chauhan, if considered malafide, arbitrary etc. would be considered when the applicant is effected either by giving any adverse entry in the character roll or by taking any disciplinary action culminating in punishment which is ofcourse assailed by the applicant. There is no provision whether a judicial review can be taken for directing the respondents to proceed against his supervisory authority under whom the applicant is working. If judicial review enters into that sphere the discipline expected shall be marooned. In another way also the Tribunal is an creation of a Statute ^{has no} ~~ve~~ powers as laid down ^{for} ~~by~~ the Hon'ble Supreme Court under Article 142 of the Constitution of India. The Tribunal is also not a 'Court of Equity'. Thus relief (d) claimed by the applicant cannot be considered by the Tribunal.

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9. The other relief claimed in clause (e) is grant of cost of litigation. Since the respondents without filing the reply and deciding the application have recalled the impugned order dated 29th July, 1993, there is no question of award of any cost.

10. In view of the above facts and circumstances the present application has become infructuous and is, therefore, dismissed as such with liberty to the applicant to assail any of his grievance against Shri A.S.Chauhan ^{before} in the competent authority if the occasion arise.

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

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)