

Central Administrative Tribunal
Principal Bench

O.A. 1590/2000

New Delhi this the 18 th day of September, 2001

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

Shri S.S. Bhandari,
S/o Shri M.S. Bhandari,
R/o Sector 8, House No. 911,
R.K. Puram,
New Delhi-110 022. ... Applicant.

(By Advocate Shri Ashwani Bhardwaj)

Versus

1. Union of India, through
Addl. Secretary (D) to the
Govt. of India,
Ministry of Defence,
South Block, DHQ PO,
New Delhi-110 011.
2. The Joint Secretary,
(Trg) & Chief Administrative Officer,
Govt. of India,
Ministry of Defence,
C-II, Hutmants, DHQ PO,
New Delhi-110 011.
3. The Dy. Chief Administrative Officer (P),
Govt. of India,
Ministry of Defence,
Office of JB (Trg) & CAO,
C-II, Hutmants, DHQ PO,
New Delhi-110 011. ... Respondents.

(By Advocate Shri S.M. Arif)

O R D E R

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

In this application, the applicant has prayed for quashing of the punishment orders passed against him by the respondents, namely, the disciplinary authority's order dated 12.1.1999, appellate authority's order dated 19.8.1999 and the revisional authority's order dated 22.12.1999.

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2. The brief relevant facts of the case are that the disciplinary proceedings were initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules') vide order dated 17.8.1994. According to the respondents, a Departmental inquiry has been held against the applicant in accordance with the Rules and after affording him a reasonable opportunity to represent his case. Based on the findings of the Inquiry Officer and the documentary evidence adduced in the inquiry, the disciplinary authority had stated that he is fully convinced that all the three articles of charge framed against the applicant were fully established, which were of a very serious nature. Accordingly, the punishment of reduction in his pay by two stages from Rs. 4800/- to Rs. 4600/- in the time scale of Rs. 4000-6000 for a period of two years was imposed, with a further direction that he will not earn increments of pay during this period. The appellate authority has after considering the appeal and the entire records of inquiry rejected his appeal, stating that there is no merit. The revision petition filed by the applicant was also similarly rejected by the competent authority. These orders have been impugned by the applicant on a number of grounds as set out in the O.A.

3. There were three articles of charge in the Memorandum dated 17.8.1994 against the applicant. In Article-I, it has been alleged that while the applicant was working in Service Entry Section of Addl. Dte. General Rtg.(A), Army Headquarters and dealing with PC(SL)

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Entry showed undue favour to Hav. (SKT), Suresh Kumar by intentionally sending him twice for the SSB interview for PC(SL) for 1993 quota in violation of the Rules on the subject; Article 2 relates to several procedural irregularities committed by the applicant in processing the aforesaid case which he had not brought to the notice of his superiors; and in Article-3 it has been stated that he tried to conceal the irregularities committed by him in the above case by altering/removing the records. The applicant has not denied that he was assigned the duty of processing the applications for grant of PC(SL) for JCOs/OR. As per the conditions for the SSB interview for the said post, a candidate was permitted to avail only once chance in a calendar year and he was permitted to avail four chances upto the age of 40 years. The applicant has stated that he received an application dated 17.2.1993 from Hav. Suresh Kumar. Again in August, 1993, another application was received from the same person. He has stated that he had verified from the Card Section as to how many chances Hav. Suresh Kumar had availed of. His contention is that the Card Section had intimated on 13.8.1993 that Hav. Suresh Kumar was a fresh candidate as per the records available in that Section. One of the main contentions of Shri Ashwani Bhardwaj, learned counsel, is that the applicant had, therefore, done his duty and he had no further duty in the matter. On the basis of the endorsement received from the Card Section, the applicant states that he had placed the file before the higher officer for final approval and after the final approval he despatched the application for SSB

interview. Much reliance has been placed on the notings from the Card Section that there was "No Card" in respect of Hav. Suresh Kumar to his query. In the O.A. also it has been stated that if the Card Section had performed its duty in the proper manner and indicated the correct position, then the applicant would not have committed the mistake that has happened. He has also submitted that in the fact finding inquiry in which Mr. S. Banerjee, ACSO, Recruiting Card Library Section had clearly deposed that the first action in scrutiny of the application is to find out the details of the previous candidature in respect of each application from the Card Section which the learned counsel for the applicant has stressed has been done by him.

4. The respondents have, however, denied the submissions that the applicant has done his work with full sincerity and honesty. According to them, the applicant was fully aware that Hav. Suresh Kumar had not qualified for grant of PC(SL) for JCOS/OR against batch No. 60899 at 34 SSC Allahabad since he had himself received the results of the said interview on 9.7.1993. The applicant has controverted this fact that the results were received by the Card Section and not by him. According to the respondents, the applicant had processed the duplicate copy of the application of Hav. Suresh Kumar dated 17.2.1993 in August, 1993. Shri Mohd. Arif, learned counsel, has submitted that even if the Card Section had given an endorsement "No Card" in the Card Section in respect of Hav. Suresh Kumar, the applicant had specific

information in his master diary to the effect that this person had failed in his previous attempt availed in the same calender year. They have also submitted that the applicant had deliberately and intentionally processed the duplicate copy of the application of Hav. Suresh Kumar through the senior Officers of his Section by suppressing the fact that he had already appeared in the PC(SL) held in June, 1993 but failed to qualify in the said test which was also within the knowledge of the applicant. They have, therefore, submitted that the applicant is vainly trying to shift the blame to the Card Section whereas he himself was responsible to process the duplicate copy of the application dated 17.2.1993 in respect of Hav. Suresh Kumar. They have also stated that the statements attributable to ACSOs of Card Library Section and Service Entry Section taken in its entirety do not support the claim of the applicant. They have further submitted that in the fact finding inquiry, Shri Panna Lal, ACSO of the Section in which the applicant was working, had stated that it was the responsibility of the dealing hand (in this case the applicant) to scrutinise the applications with a view to check the eligibility and correctness of the details filled in the application. Learned counsel for the respondents has stressed on the fact that in this case the candidate had mentioned that he had appeared earlier and the Card Library Section had mentioned that no Card exists. In such a case, he has submitted that the dealing assistant should have gone back to the Card Library to verify the same and get it corrected. It is further submitted that Hav. Suresh Kumar had mentioned in

his application that he had appeared in SSB test in 1991. This fact has not been denied by the applicant although Shri Ashwani Bhardwaj, learned counsel, has very strongly argued that the applicant cannot be blamed for the wrong information supplied by the Card Library Section which had given the endorsement "No Card" which he does not have to verify again in terms of certain further instructions issued by the respondents themselves. After the fact finding inquiry, the disciplinary authority had issued a charge-memo dated 17.8.1994 and held the inquiry under the provisions of the Rules.

5. Shri Ashwani Bhardwaj, learned counsel, has submitted that copies of the relied upon documents and those demanded by the applicant were not given to him. He has alleged that the respondents were biased against the applicant. He has, relying on the judgement of the Punjab and Haryana High Court in Ram Niwas Bansal Vs. State Bank of Patiala (1998(3) ATJ (Vol.26) 1) submitted that the principles of natural justice have not been followed as the applicant has not been given the reasonable opportunity to defend his case. He has submitted that the respondents have failed to appreciate that it was the duty of the Card Library Section to give the information about the previous candidature of any candidate and the applicant had no role whatsoever in that process. He has submitted that as he was not competent to challenge the endorsement given by that Section, any mistake that might have been committed by that Section could not, therefore,

be placed on the head of the applicant as if he was the only one responsible for the same to punish him.

6. Learned counsel for the applicant has relied on the daily order sheet passed by the Inquiry Officer dated 7.2.1997. He has submitted that it has been recorded in this order that the charged officer has objected to continuation of the inquiry as inspection of remaining 7 documents had not been given to him. Accordingly, the Inquiry Officer has stated that the Inquiry has come to a dead end and cannot be proceeded further and had recorded further that the charges framed against the CO stand not proved and the case is closed at this stage. Learned counsel for the applicant has contended that the respondents have violated the Govt. of India's Instructions No.4. However, the contention of the applicant's counsel that the charges had been dropped cannot be accepted in the facts and circumstances of the case. The Inquiry Officer had sent the case to the disciplinary authority for taking a final view in the matter. By a subsequent order dated 5.5.1997, it is further noticed that the inquiry was again commenced in which reference has been made to the documents listed/produced/not produced before the Inquiry Officer. The applicant had again called for production of additional documents in his representation dated 20.5.1997. The Inquiry Officer has noted in the daily order sheet dated 20.8.1997 that only one witness, namely, Shri S.Banerjee could be produced as one other PW has

already retired and the other was a combatant. It was further recorded in that order that the prosecution case was closed and was called upon the charged officer to submit his defence statement as per Rule 14(16) of the Rules. Learned counsel for the applicant has submitted that the manner the respondents have conducted the disciplinary proceedings, they have violated the provisions of Rule 14(4) of the Rules as the relied upon documents have not been given to him.

7. Learned counsel for the applicant has contended that the Inquiry Officer has also violated the provisions of Rule 14(18). This rule provides that after the Government servant closes his case, the inquiring authority, if the Government servant has not examined himself, may and shall generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him. After considering the written statement of defence submitted by the Government servant, the respondents have submitted that the slight lapse on the part of the Inquiry Officer regarding this Rule in not examining the charged officer should not go against the respondents as reasonable opportunity of hearing has been fully afforded to the applicant. The respondents have, however, contended that the applicant was fully aware that Hav. Suresh Kumar had not qualified for grant of PC(SL) for JCOs/OR earlier. They have also submitted that merely because the Card Section had stated "No Card" only means

that the Card has not been opened in the name of Havaldar. They have also submitted that the applicant was also maintaining a Master diary in which the results of PC(SL) of 34 SSC Allahabad were available. Shri S.M. Arif, learned counsel has submitted that the contention of the applicant that he was maintaining a personal diary for his own purpose is not tenable as, according to him, the applicant was required to maintain a proper diary. He has submitted that the applicant himself has stated in his written brief with regard to Article of Charge-I that unfortunately and inadvertently few duplicate copies of the applications were got mixed up with this lot. He has also stated that possibly with the mistake of Group 'D' staff or may be his own, the entire lot, including a few duplicate application copies were sent to Card and Library Section for Card action. Learned counsel has also submitted that the register maintained by the applicant was the only register and no other register was there. He has also pointed out that the disciplinary authority's order dated 12.1.1999 has dealt with all the issues raised by the applicant in his detailed order, including how the Inquiry Officer earlier closed the case on 7.2.1997 because of non-production of all the documents which was resumed later in which the applicant himself had participated. He has also pointed out that later copies of all the documents were either supplied to him or shown to him in original and there was no infirmity on this ground. The reason why out of three witnesses only one witness was examined, who was also cross-examined by the applicant has also been explained. Learned counsel has,

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therefore, submitted that the contention of the applicant that he had no role or duty cast on him to check the applications received from the candidates for the examination, in question, is not correct. The master register (Exhibit PE-6) was a register which was maintained by the applicant in the course of his official duties and the learned counsel has also contended that the applicant cannot maintain what he calls, was a register for his own reference. He has also submitted that the disciplinary authority's order as well as the appellate authority's order and the order passed in the revision petition are all detailed and speaking orders. He has emphasised that the mere lapse on the part of the respondents in not strictly complying with the provisions of Rule 14(18) of the Rules, i.e. the failure on the part of the inquiring authority to examine the applicant after he closes his case, should not be taken as such a serious lapse so as to justify setting aside the entire inquiry, especially considering that the applicant has been given all reasonable opportunities to put forward his case which opportunity he has also availed of.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We have also seen the official records submitted by the respondents.

9. The disciplinary authority has reduced the pay of the applicant by two stages for a period of two years during which the applicant will not earn increments

of his pay vide his order dated 12.1.1999. The subsequent orders passed by the appellate authority and the order passed in revision have rejected the applicant's appeal thereby upholding the disciplinary authority's order.

10. The contentions of Shri Ashwani Bhardwaj, learned counsel, have been minutely considered. His contention that because the Inquiry Officer had at one stage closed the inquiry because of non-availability of the relevant documents cannot assist him. Later on, when the Inquiry Officer sent the file to the disciplinary authority for his orders, the disciplinary inquiry was ordered to be re-opened. Learned counsel for the respondents has submitted that whatever relevant documents have been relied upon by the Inquiry Officer have been shown to the applicant or copies given. He has submitted that the Inquiry Officer had earlier closed the case due to non-production of original of certain documents. After these documents were arranged to be procured, the disciplinary authority had directed the Inquiry Officer to proceed with the inquiry and the remaining documents were also shown to the applicant excepting one document. In the facts and circumstances of the case, we, therefore, find that no prejudice has been caused to the applicant as the inquiry has been reopened on orders of the disciplinary authority and thereafter the relied upon

documents have been made available to the applicant. We are also unable to agree with the contentions of Shri Ashwani Bhardwaj, learned counsel that the applicant can pass on the entire blame for not checking the documents regarding the details given by Hav. Suresh Kumar in his application to the Card Library Section. He has himself admitted that certain papers have got mixed up. Besides, Hav. Suresh Kumar had indicated in his application that he had previously applied for PC (SL) which fact cannot be denied by the applicant. It is relevant to note that the disciplinary authority in his order dated 12.1.1999 has discussed all the relevant facts and contentions of the applicant and has given cogent and proper reasons for his conclusions. He has in the circumstances of the case imposed a penalty of reduction of the pay of the applicant by two stages for a period of two years. When the disciplinary authority had disagreed with the findings of the Inquiry Officer on Article-I, he has given the reasons and the same have been communicated along with the Inquiry Officer's report. The appellate authority vide his order dated 19.8.1999 has also dealt with the relevant points raised by the applicant and has passed a reasoned and speaking order while dismissing the appeal. We find that the order passed on the revision petition filed by the applicant has also been dealt with by the revisional authority by a detailed and speaking order. The master register maintained by the applicant was a register which

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was required to be maintained by him in the course of his official duties and the contention of the learned counsel for the applicant to the contrary cannot be accepted that the same was being maintained by the applicant for his own private use. Considering the nature of his duties, we are also not impressed by his arguments that there is no duty whatsoever cast on the applicant to re-verify the documents when there was apparent contradiction in the information received from the Card Section that what the candidate Hav. Suresh Kumar had himself stated in his application about his previous appearance in the PC/SL examination. Such an argument advanced by the applicant cannot be accepted as he was also assigned the duties of processing the applications for grant of PC/SL for JCOs/OR.

11. It is settled law that the Tribunal is not to sit as if it is a court of appeal against the decision of the competent authority. (See. Union of India Vs. Parma Nanda (AIR 1989 SC 1185), Govt. of Tamil Nadu Vs. A. Rajapandian (AI 1995 SC 561) and B.C. Chaturvedi Vs. Union of India (JT 1995(8) SC 65). In the facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicant that there has been any violation of the principles of natural justice or laid down procedure in the conduct of the disciplinary proceedings. He has contended that there has

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been violation of Rule 14(18) of the Rules. In this case, the accused Government servant has not examined himself and, therefore, under this Rule the inquiring authority was to examine him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. Taking into account the totality of the facts and circumstances of the case and particularly noting that the applicant had been given ample opportunity to defend his case, we respectfully follow the judgement of the Hon'ble Supreme Court in **State Bank of Patiala & Ors. Vs. S.K. Sharma** (JT 1996(3) SC 722). We do not consider that in the circumstances of the case, the mere fact that the Inquiry Officer had not put general questions to the applicant is sufficient to vitiate the entire inquiry wherein charges levelled against him have been otherwise proved by the documents on record and by the applicant's own statements. As already stated above, we are unable to agree with the applicant's contentions that he does not have any role in processing the application of the previous candidature of the concerned candidate once he gets an endorsement from the

Card Library Section which is contrary to what Hav. Suresh Kumar has stated in his application which was within the knowledge of the applicant. The judgement of the Punjab and Haryana High Court in Ram Niwas Bansal's case (supra) will also not assist the applicant because in the present case, the principles of natural justice have been complied with as the applicant had been given ample opportunity to put forward his case. As this is not a case of no evidence or any perverse or arbitrary finding against the applicant, we do not find any justification to interfere in the matter. We have also considered the other contentions raised by the applicant but do not find any merit in the same.

12. In the result, for the reasons given above, the O.A. fails and is dismissed. No order as to costs.

Govindan S. Tamai
Member (A)

'SRD'

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