

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2296 of 2000

New Delhi, this the 23rd day of January, 2002

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

Vijay Kumar Wali
S/o Shri Triloki Nath Wali
Aged about 47 years,
resident of House No.367,
Street No.14,
Bhola Nath Nagar,
Shahdara,
Delhi-110 032.

(15)

AND EMPLOYED AS

Assistant in the
Ministry of Defence,
Government of India,
South Block,
New Delhi.

...Applicant

By Advocate: Shri B.B. Raval.

Versus

1. Union of India
Through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjehan Road,
New Delhi-110 011.
3. Shri B.P. Singh,
Retired Under Secretary,
Ministry of Defence,
C/o Respondent No.1.
4. Shri Faqir Chand
Senior Accounts Officer,
Controller of Defence Accounts,
"G" Block Hutments,
New Delhi-110 011.
5. Shri Yogesh Mathur
Assistant,
Ministry of Defence,
C/o Respondent No.1.
6. Shri Shiv Dayal
Deputy Secretary
Ministry of Defence,
C/o Respondent No.1.

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7. Shri Arshad Khan
Desk Officer
Ministry of Defence,
C/o Respondent No.1.
8. Shri Sunil Pant
Section Officer
Ministry of Defence,
C/o Respondent No.1.
9. Shri B.B. Thakur
Director (Establishment)
Ministry of Defence,
C/o Respondent No.1.Respondents

By Advocate Shri A.K. Bhardwaj.

O R D E R

By Hon'ble Mr. Kuldeep Singh, Member (Judl)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985, praying for the following reliefs:-

(i) To quash the impugned Annexure "A" to "E" as being illegal, arbitrary, issued against the laws of land and issued mala fide on the basis of no evidence.

(ii) Consequent to relief at (i) being granted, direct the respondent to promote the applicant to the rank of Assistant on merit with all consequential benefits including arrears of pay & Allowances with 18% interest till realisation.

(iii) Direct the respondents to release the amount recovered from the applicant from the salary of April and May 2000 vide impugned order Annexure 'C'.

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(iv) Direct the respondents to file a complaint before the Central Vigilance Commission against the respondent Nos. 3,4,5,6 and 7 on the basis of the documents already appended along with this Original Application.

(v) Award exemplary cost for this application with a further request to pass any other Order/Orders or direction/directions or grant any other relief/reliefs as deemed just and proper in the right of the facts and circumstances of the case.

2. Facts, as alleged by the applicant in brief are that a departmental enquiry was initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 on the allegations that the applicant while working as UDC in the Ministry of Defence went abroad as follows:-

(i) Bangkok & Singapore w.e.f. 3.1.87 to 7.1.87

(ii) Dubai w.e.f. 31.1.1987 to 3.2.87

(iii) Bangkok & Singapore w.e.f. 24.3.89 to 29.3.89

3. It was alleged against the applicant that he had failed to report to the Government as to how he managed his stay at abroad and how the applicant had managed the requisite foreign exchange as gifts from his friends or relations and he had failed to report to the Government about such gifts. The applicant is also

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alleged to have not obtained NOC from the competent authority. He also did not deposit DHQ I Card with the authorities before proceeding abroad which is a normal condition for obtaining such NOC and thus his conduct is stated to be unbecoming of a Government servant and contravenes Rule 3 of the CCS (Conduct) Rules.

4. It was also alleged against the applicant that he had also not obtained prior sanction of the competent authority or higher authorities for visiting the three foreign countries and this conduct has also contravened Rule 3 of the CCS (Conduct) Rules. The enquiry was conducted and Inquiry officer held charges on Article I not proved and on Articles II and III as proved against the applicant. The matter was referred to UPSC who also opined that there was some lack of evidence and there was no documentary proof in support of the charges and the charged officer was given the benefit of doubt by the UPSC. However, the disciplinary authority after carefully considering the Inquiry Officer's report and the advice of the UPSC requested the UPSC to reconsider the advice dated 11.12.1995 but UPSC again after reconsideration of their advice reiterated their earlier advice tendered in the case of the applicant. The disciplinary authority then in consultation with the DOP&T decided to disagree with the advice of the UPSC to exonerate the applicant since the applicant had failed to obtain prior permission of the competent authority before proceeding abroad and held that the charges on Articles 2 and 3 stands fully proved against the applicant and the

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penalty of withholding increments for a period of 2 years with cumulative effect was passed against the applicant vide impugned order Annexure A.

5. This is being challenged on the following grounds:-

(i) Firstly the applicant has stated that he has given due account of his source of money which has not been contested by the respondents and nothing whatsoever has transpired against him by any documentary proof or deposition of any prosecution witnesses.

(ii) The respondents have miserably failed to produce the register containing the names and details of officials going abroad and depositing their Identity Cards. Not only this, when the Register was produced, it contained scant entries and hardly three or four names as against this the applicant, to his knowledge, was aware of at least 23 persons, who have gone abroad and whose names he has produced in writing during the course of enquiry.

(iii) It is further submitted by the applicant that he has clearly mentioned in his leave application that he is going abroad and that too well in advance of nearly 5 weeks and the same leave applications were duly sanctioned by the respondents. He has also submitted that it was mandatory on the part of the respondents to have maintained these documents particularly in view of their own contention that an enquiry against the applicant was contemplated right from 1989. He has also

heavily relied on the judgment in the case of State of U.P. Vs. Shatrugan Lal because he was clearly obstructed in defending himself properly because documents were denied to him and as such the charge-sheet should be quashed.

(iv) It is submitted by the applicant that he had submitted an appeal to the President of India against the first penalty dated 3.11.1999 but during the pendency of appeal, the Under Secretary of the respondent Ministry issued a second penalty order reverting the applicant retrospectively and that too without the order of the President of India. The second order otherwise lacks the credibility as it was not issued by the order or in the name of the President of India unlike the first order.

(v) It is also submitted by the issue of second penalty order in continuation with the first one under appeal to the President of India amounts to over-stepping the limits and propriety and going over the head of the President by pre-empting his decision. This clearly proves the mala fide of the respondent in general and the respondent No.3 Shri B.P. Singh in particular.

(vi) It is also submitted that a written complaint to respondent No.1 against respondent No.3 levelling serious allegations against him on February 1, 1999, a Vigilance Inquiry was conducted by Shri Deepak Das, Deputy Secretary of the Ministry of Defence, who summoned the applicant and conducted the inquiry. In this, the applicant clearly submitted to him that Shri

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B.P. Singh had demanded Rs.10,000/- for promoting the applicant from the post of UDC to the post of Assistant but no action was taken against the said Shri B.P. Singh.

(vii) The applicant submitted a written request to the Secretary that because he has levelled a very serious allegation against Shri B.P. Singh and a vigilance enquiry was under way, he should not allow Shri B.P. Singh to retire voluntarily but no action was taken and he was allowed to retire and paid all retiral dues which is against the principles of natural justice.

(viii) The respondents have not given any reasons for brushing aside the advice given by the UPSC completely exonerating the charges framed against the applicant. They have not given the reasons for disagreeing with the advice because the UPSC has gone deep into the matter, discussed in details and given reasons for proving/not proving the charges. However, the respondents have simply said that the advice of the UPSC is not binding on them. Assuming without admitting that the UPSC advice is not binding, they whey the respondents have referred the matter to UPSC twice seeking their advice. This pleas of the respondents is not tenable in the eyes of law and speaks itself the mala fide intention of respondents and their deal with Shri S.N. Ganguly.

6. The respondents are contesting the OA. They have filed their counter-affidavit. The respondents have submitted that the impugned order has been passed in



consultation with Department of Personnel and Training, after following the relevant procedure and provisions of CCS (CCA) Rules and this Tribunal cannot go into the basic question about the nature and quantity of penalty imposed upon the applicant. The court can only intervene if statutory provisions have not been followed or rules of natural justice have been violated or there is no evidence at all or any extraneous consideration has been taken into consideration.

7. The respondents further submitted that the applicant has made multiple unconnected prayers in a single application, which is barred under Rule 10 of the CAT (Procedure) Rules.

8. It is further submitted that the applicant while working as UDC had gone abroad on three occasions and in view of the limited foreign exchange allowed by the RBI for such foreign travels, it is evident the applicant had managed the requisite foreign exchange as gifts from some interested persons or friends/near relatives in contravention of Rule 13 of the CCS (Conduct) Rules, 1964 and has failed to produce any evidence that he was issued such NOC by the competent authority but in none of the foreign trips the applicant had obtained prior permission for leaving the headquarters. The respondents also submitted that there was an identical disciplinary case against Shri Ganguly and since during the pendency of the enquiry Shri Ganguly was promoted on the post of Assistant with retrospective effect so the disciplinary authority with regard to Shri Ganguly was also changed.



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9. Facts in case of Shri Ganguly was also identical and the enquiry authority in his case held Charges II, III and V as proved against him and in both the cases matter was referred to the UPSC for advice. The Commission in its advice agreed with the findings of the enquiry authority against Shri Ganguly and advised Ministry of Defence to impose the penalty of compulsory retirement on Shri Ganguly but in case of applicant the advice was materially different as applicant was exonerated. The case was again referred to UPSC for reconsideration but the UPSC reiterated their earlier decision. Then with the approval of the competent disciplinary authority, i.e., the Defence Minister for the purpose of imposing penalty, the matter was referred to DOP&T.

10. DOP&T considered both the cases and there appears to be reason to disagree with the findings of the Inquiry Officer and UPSC in respect of charges held proved against Shri Ganguly and as such the applicant cannot be given the benefit of doubt if the same analogy is applied in both the cases. Thus the DOP&T conveyed its disapproval in disagreeing with the advice of UPSC with regard to exonerating the applicant and left the matter of impose the penalty with the Ministry. So in accordance with the advice which was received from the DOP&T disagreeing with the advice of the UPSC it was held that the charges found proved by the Inquiring Authority be held as established in disagreement with the UPSC, who had exonerated the applicant. After that it was decided with the approval of the competent disciplinary authority

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to imposing a penalty of withholding of increments for a period of 2 years with cumulative effect. Thereafter applicant preferred an appeal which too was rejected as no appeal lies against it and submitted that the OA has no merits and the same is liable to be dismissed.

11. We have heard the learned counsel for the parties and gone through the records of the case.

12. The main ground to assail the impugned orders are that the respondents had failed to produce the register containing the names and details of officials going abroad and depositing the identity cards nor the respondents have produced the leave record of the applicant since the applicant had clearly mentioned in his leave application regarding his purpose of journey going abroad and that too well in advance of nearly 5 weeks. The leave applications were diaried, processed and sanctioned. Had these been produced, the same would have spoken for themselves either for or against but the respondents intentionally and mala fide failed to produce those leave applications or even the diary register only to harass and punish the applicant only for extraneous considerations and thus it is a case of 'no evidence' at all and the applicant had thus been deprived of material documents to defend himself. The applicant has also gone to allege that the same had been destroyed by the respondents themselves and to substantiate his claim the applicant has relied upon the judgment in the case of State of Uttar Pradesh Vs. Shatrughan Lal.

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13. The applicant then further submitted that there were certain elements in the office who were in league with Shri Ganguly who was separately issued the charge-sheet. In order to save Shri Ganguly, the case of the applicant has been referred again and again to UPSC and then to DOP&T so that the punishment of Shri Ganguly be reduced and the applicant be punished.

14. As against this Shri Bhardwaj submitted that it is a case of the applicant himself that he had not applied for any regular leave but had applied for only Casual Leave. The record of his Casual Leave is only maintained for one year and permission to go abroad has to be obtained separately. In this regard the respondents have also referred to OM dated 18.5.94 which contains instructions of the Government for taking permission before leaving station on account of leave or otherwise especially for visiting abroad. It is also submitted that this OM provides that separate permission may not be necessary where the Government servant intimates of his leaving Headquarters before applying for leave but the leave application should be given on prescribed proforma under the CCS (Leave) Rules, 1972. Though proforma is applicable if an employee applies for a regular leave but the casual leave is not a kind of regular leave and there is no prescribed proforma for Casual Leave so a separate permission to visit abroad is a must.

15. In our view also it is the case of the applicant himself that he had not obtained a separate permission nor he had applied for a regular leave so if the record pertaining to casual leave had been produced

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that would have also not helped the applicant because on a Casual Leave application permission to visit abroad could not have been obtained.

16. Thus even non-production of Casual Leave record has not prejudiced the case of the applicant at all.

17. The plea of the applicant that his case has been referred again and again to the UPSC and DOP&T to help Shri Ganguly who had faced similar departmental enquiry on identical charges has no merits because the opinion of the DOP&T had been obtained in the right earnest and not with a view to help particularly Shri Ganguly. There is no material on record to show that this has been done to help Shri Ganguly.

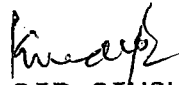
18. The applicant has also levelled allegations against respondent No.3 Shri B.P. Singh and respondent No.4 Shri Faqir Chand and submitted that since the applicant had made a complaint to respondent No.1 against respondent No.3 and has exposed certain misdeeds of Shri B.P. Singh and it is Shri B.P. Singh who had manipulated the charge-sheet on the anonymous complaint by Shri B.P. Singh. To our mind this contention of applicant has again no merits because visits to foreign countries by the applicant are admitted. Had the applicant obtained specific permission to visit foreign countries he could have placed the same on record during enquiry and since he had not obtained specific permission so he cannot say that the enquiry has been manipulated by Shri B.P. Singh, an officer of the level of Under

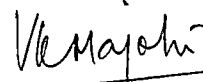
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Secretary.. Thus to our mind none of the contentions raised by the applicant in this OA has any merits and the same are liable to be dismissed.

19. We also note that the applicant in this OA has asked for multiple prayers e.g. initiating action against respondent Nos.3 to 7 besides praying for setting aside of order of punishment. This amounts to seeking plural relief which is not permissible under CAT Procedure Rules. Hence on this score also OA is liable to be dismissed. Accordingly, we dismiss the OA. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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