

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.448/2000

Friday, this the 18th day of May, 2001

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri J.B.Gupta, Sr. Auditor
A/C. No.8312329 (since retired compulsorily)
from LAO (CVD) Delhi Cantt.,
R/O X/3368/6, Gali No.6, Raghavar Pura No.2,
Gandhi Nagar, Delhi-31.

..Applicant

(By Advocate: Shri V.P.S. Tyagi)

Versus

1. Union of India (Through Secretary)
Min. of Defence, New Delhi.
2. The Controller General of Defence Accounts
West Block-V, R.K. Puram, New Delhi.
3. The Controller of
Defence Accounts (Hqrs) 'G' Block,
New Delhi
4. The Controller of Defence Accounts,
Western Command,
Sector 9C Chandigarh.

..Respondents

(By Advocate: Shri D.S.Jagotra)

O R D E R (ORAL)

By Hon'ble Shri Kuldip Singh, Member (J):

The applicant in this OA has challenged the impugned order dated 8.2.2000 (Annexure A-1) passed by the respondent No.2 whereby the penalty of removal from service has been modified by the respondent No.2 in exercise of powers under Rule 27 of CCS (CCA) Rules, 1965.

2. The applicant was proceeded departmentally and the following articles of charge were framed against the applicant:-

"Article-I

That the said Shri J.B. Gupta, SA while functioning as Senior Auditor in 'M' Section during the period 15.11.1996 to 29.10.1997

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failed to discharge his duties effectively as provided for in Defence Audit Code & Defence Accounts Department office Manual Part-II Vol.-I which led to processing of payment against 10 fraudulent claims to Shri Venkateshwara Enterprises to the tune of Rs.2.23 crores approx. Thus the said Shri J.B. Gupta, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant thereby violating the provisions of Rules 3 (1) (ii) and 3 (1) (iii) of the CCS Conduct Rules, 1964.

Article II

That during the aforesaid period and while functioning in the aforesaid office the said Sh. J.B. Gupta, SA failed to detect that (I) the fraudulent claims have been floated against fake sanctions purported to have been issued by Ministry of Defence, that (ii) the contingent bills have not been preferred by officers of DGOS authorised to do so, and that (iii) the appropriate procurement procedure relevant to the value of the stores procured has not been followed. The said Sh. J.B. Gupta, SA also failed to ensure that budget allotment was available for effecting the procurement. Thus the said Sh. J.B. Gupta, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Government servant thereby violating the provisions of Rules 3 (1) (ii) & 3 (1) (iii) of CCS Conduct Rules, 1964.

Article III

That during the period and while functioning in the aforesaid office, the said Sh. J.B. Gupta, SA, processed the payment of the 10 fraudulent claims to the tune of Rs.2.23 crores approx. as Senior Auditor in 'M' Section, although the expenditure as per the fake sanctions was debitable to the Revenue Head "Ordnance Store", contrary to the functions of the 'M' Section as prescribed in Chapter VIII of OM Part XII read in conjunction with chapter VI of the office Manual Part II Vol-I and without even getting the bills of Sl. No.1 to 3 noted in Accounts Section as prescribed vide para 437 OM Part II Vol. I. Thus, the said Sh. J.B. Gupta failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant thereby violating the provisions of Rules 3 (1) (ii) & 3 (1) (iii) of CCS Conduct Rules, 1964.

Article IV

That during the period and while functioning in the aforesaid office, the said Sh. J.B. Gupta, SA, processed payments against 10

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fraudulent claims to the tune of Rs.2.23 crores approx. with undue haste without reasonable care & caution. The bills were authorised for payment either on the same day or the next day of the receipt of the claim. Although even the fake sanctions attached with the fake bills stipulated procurement by the following the prescribed procurement procedure yet the payment was made without ensuring that the prescribed procurement procedure had been followed. Thus the said Sh. J.B. Gupta, SA, failed to maintain devotion to duty, conducted himself a manner unbecoming of a Govt. servant thereby violating the provisions of Rules 3 (1 (ii) & 3 (1) (iii) of Central Civil Services (Conduct) Rules, 1964." 11

3. That the applicant after concluding of enquiry awarded penalty of removal from service w.e.f. 31.8.1999 (A/N) vide impugned order dated 17.8.1999 and the same was served the applicant through respondent No.4. Aggrieved by the aforesaid order of the respondents, the applicant filed appeal on 22.9.1999 (Annexure A-10) requesting for grant of personal hearing. After considering the appeal, the appellate authority passed an order dated 8.2.2000 modified the penalty of removal from service to that of compulsory retirement with 20% cut in pension for five years and 20% cut in gratuity.

4. The applicant in this OA has challenged the findings of the enquiry officer as well as the order passed by the disciplinary authority and then order passed by the appellate authority. One of the grounds taken to assail the order of the appellate authority is that though the applicant has asked for a personal hearing in his appeal before the appellate authority but the said right has been denied to the applicant and it violates the principles of natural justice. So, on that score, the applicant prays that the order of the appellate authority

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is liable to be quashed and set aside. In support of his contention, he places reliance on the order passed by the Full Bench of this Tribunal in the case of Ram Niwas Bansal Vs. State Bank of Patiala and Anr., reported as 1998 (3) ATJ Vol.26 1 which reads as follows:-

"(G) Hearing-Natural Justice-Held right of hearing before the Appellate Authority cannot be denied unless the said right is specifically excluded by use of unambiguous language or such inference is inevitable on the principle of necessary implication, while viewed from any settled principles of interpretation of statutes."

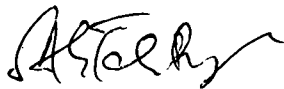
5. In addition to this, the learned counsel for the applicant has placed reliance in the case of Bhoop Singh Vs. Union of India & Ors. (OA-2412/1998 with two connected OAs), decided on 20.12.1999, wherein the Tribunal has also followed the Full Bench order in Ram Niwas Bansal's case (supra) and again upheld the plea of the applicant that the right of personal hearing before the appellate authority cannot be denied unless the said right is specifically excluded by use of unambiguous language or such inference is inevitable on the principle of necessary implication. The Tribunal has also considered the CCS (CCA) Rules read with relevant instructions and came to the conclusion that the denial of right of personal hearing was fatal to the orders passed by the appellate authority. In view of the above, we do not find any reason to defer for the same and in the light of the same, we are also of the view that since the applicant in his appeal had specifically asked for grant of personal hearing, the appellate authority should have granted the same before disposing of the appeal.

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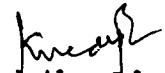
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6. In the circumstances, the OA is partly allowed and the impugned orders dated 8.2.2000, 17.8.1999 and 7.9.1999 are quashed and set aside and to take the applicant back in service. This case is remanded back to appellate authority with the direction to re-hear the appeal of applicant and also provide opportunity of personal hearing to the applicant. The respondents are further directed to pass necessary order in accordance with instructions and judicial pronouncements with regard to the intervening period on the subject within a period of three months from the date of receipt of a copy of this order. No costs.



(S.A.T. Rizvi)
Member (A)



(Kuldip Singh)
Member (J)

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