

Central Administrative Tribunal
Principal Bench

O.A. No. 98 of 2000

New Delhi, dated this 6 JUNE, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri J.L. Bindra,
S/o Shri Rattan Singh Bindra,
R/o GH-8/112, Paschim Vihar,
New Delhi-110041. . . Applicant

(By Advocate: Shri S.M. Rattanpaul)

Versus

1. Union of India through
the Secretary,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan, New Delhi.
2. The Director General of Works,
Central Public Works Dept.,
Nirman Bhawan, New Delhi.
3. The Chief Engineer (NDZ) II,
Central Public Works Dept.,
Nirman Bhawan,
New Delhi.
4. The Superintending Engineer,
Central Store Circle,
Central Public Works Dept.,
Netaji Nagar, New Delhi. . . Respondents

(By Advocate: Shri D.S. Jagotra)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the charge sheet dated 13.2.91 (Annexure A-1); the E.O's report dated 20.9.95 (Annexure A-2); the disciplinary authority's order dated 27.10.95 (Annexure A-3); and the appellate authority's order dated 30.8.99 (Annexure A-4). He seeks restoration of his pay to Rs.2050/- w.e.f. 1.11.95 with all consequential benefits.

2. On 14.8.87 (Annexure A-5) applicant was

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served with a Memo signed by Superintending Engineer, Central Store Circle, CPWD informing him that it was proposed to take action against him under Rule 16 CCS (CCA) Rules. A statement of imputation of misconduct was enclosed therewith, which was called a statement of charges in which applicant was charged with claiming false LTC in regard to a journey applicant claimed was performed by his sons from Delhi to Kanya Kumari and back in June-July 1983. Applicant was given an opportunity to make a representation against that proposal.

3. Applicant contends that as he did not have any record of a four year old incident, he met the S.E., CSC, CPWD who was the disciplinary authority who assured him that if he deposited the amount of full claim with interest thereon no action would be taken against him. Thereupon applicant replied to the aforesaid Memo on 7.9.87 (Annexure A-6) stating that he was not in a position to produce any document relating to the incident after the lapse of four years of the journey availed of by his family members, and he was prepared to deposit the entire amount of the claim drawn by him with interest thereon. On 17.12.87 (Annexure A-7) the disciplinary authority, in reply to applicant's reply dated 7.9.87, ordered applicant to deposit a total sum of Rs.3808/- (which included Rs.1600/- as advance plus Rs.896/- paid to applicant as balance amount of LTC claim, plus Rs.1312/- as penal interest) in lumpsum with Executive Engineer, CPWD, which applicant did on

31.12.87, upon which the disciplinary authority (S.E., CSC, CPWD) in his letter dated 20.4.88 (Annexure A-8) addressed to S.E. Vigilance, CPWD recommended closure of the case.

4. However, by Memo dated 20.12.90 (Annexure A-9) applicant was informed that the earlier charge sheet dated 14.8.97 issued under Rule 16 CCS (CCA) Rules was withdrawn, stating that when the earlier charge sheet was served, relevant documents such as statement of imputation of misconduct, list of witnesses and their addresses etc. had not been received, and now that the same had been received, a fresh charge sheet for a major penalty under Rule 16 CCS (CCA) Rules would have to be issued.

5. Thereupon a fresh Memo dated 13.2.91 (Annexure A-1) initiating departmental proceedings for a major penalty under Rule 16 CCS (CCA) Rules was issued in respect of the same allegation of claiming false LTC in regard to journey from Delhi to Kanyakumari and back on behalf of his sons in June-July, 1983.

6. The E.O. in his findings dated 20.9.95, ^{inter alia} recorded that one Shri Raghbir Singh whom applicant claimed was co-passenger with his family, had admitted before him as PW-2 in the D.E. that he had not travelled to Kanyakumari, and he held the charge as proved. He forwarded a copy of his enquiry report to the disciplinary authority along with copies of various other enclosures, vide letter dated

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20.9.95 (Annexure A-2). Copies of his letter dated 20.9.95 but ~~copies of that letter~~ without copies of the enclosures were sent to Chief Engineer (Vig.); Executive Engineer (Hot Mix Plant), applicant; and S.E. (Vig.). There is nothing to indicate that a copy of the E.O's report was furnished to applicant to give him an opportunity to represent against the findings contained therein to the disciplinary authority, before the disciplinary authority passed final orders in the proceeding.

7. Upon receipt of the E.O's report, the disciplinary authority considered the same, and after agreeing with its conclusions, by impugned order dated 27.10.95 imposed the penalty of reduction in pay by two stages, equal to the increments last drawn, i.e. from Rs.2050/- to Rs.1950/- in the pay scale of Rs.1400-2300/- with cumulative effect w.e.f. 1.11.95. A copy of the E.O's report dated 20.9.95 was enclosed with the aforesaid order.

8. Thereupon applicant filed an appeal on 28.11.95. That appeal was disposed of by order dated 4.4.97.

9. Meanwhile applicant had filed O.A. No. 1134/97. After hearing that O.A. was disposed of by order dated 8.10.98 by which the appellate authority's order dated 4.4.97 was quashed and set aside. The matter was remanded back to the appellate authority to pass a detailed, speaking and reasoned order.

10. The appellate authority by his order dated 30.8.99 did not differ from the conclusion of the disciplinary authority, but reduced the penalty to reduction of pay by one increment from Rs.2050/- to Rs.2000/- in the pay scale of Rs.1400-2300/- with cumulative effect w.e.f. 1.11.95, leading to the filing of the present O.A.

11. We have heard both sides.

12. We have already noted that the E.O. in his letter dated 20.9.95 addressed to the disciplinary authority forwarded a copy of his enquiry report dated 20.9.95 together with copies of other enclosures, but while endorsing a copy of that letter to various other officers, as also applicant, it was explicitly stated that the enclosures were not being annexed. The disciplinary authority's order dated 27.10.95 addressed to applicant specifically makes mention of the I.O's report in 5 pages being enclosed therewith. From this it is apparent that copy of the E.O's report was not furnished to applicant to give him opportunity to represent against the findings before the disciplinary authority passed the penalty order dated 27.10.95, but instead, ~~and instead~~ the copy of the E.O's report was furnished to applicant along with the disciplinary authority's report. Indeed if applicant had been supplied with a copy of the E.O's report before the disciplinary authority passed the penalty order dated 27.10.95

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itself, there should have been no need for him to enclose a copy of the report along with his penalty order.

13. Is the non-supply of the E.O's report, before the disciplinary authority passed the penalty order, fatal to these proceedings? In Managing Director ECIL Vs. B. Karunakar & Others JT 1993 (6) SC the Hon'ble Supreme Court has held that non-supply of the report would not be fatal when the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given. Again in S.K. Singh Vs. Central Bank of India & Others 1996 (6) SCC 405 it has been held that non-supply of the enquiry report is inconsequential if no prejudice is caused, and the employee has to establish that prejudice was caused to him by non-supply of the enquiry report to warrant judicial interference.

14. We note that neither in applicant's appeal dated 27.11.95 (Annexure A-13) nor indeed in the present O.A. has applicant specifically pleaded that non-supply of the Enquiry Report prejudiced him in his defence. In the result, following the aforesaid few rulings we are not inclined to interfere in this O.A. merely on account of non-supply of the enquiry report to applicant before the disciplinary authority passed the penalty order.

15. A perusal of the grounds taken by applicant in the O.A. reveals that the main ground taken by him is that once the disciplinary authority had decided, on the basis of the first charge sheet dated 14.8.87 to direct him to deposit Rs.3808/- (Rs.1600 + Rs.869 = Rs.2496/- plus interest of Rs.1312) in lumpsum vide Office Memo dated 17.12.87 (Annexure A-VII), and on that basis in his letter dated 20.4.88 (Annexure A-8) addressed to Superintending Engineer (Vig.) had decided to treat the matter as closed, the issue of fresh charge sheet dated 13.2.91 and initiation of fresh disciplinary proceedings thereon was illegal.

16. We are unable to agree with these contentions. By the first charge sheet dated 14.8.87 applicant was informed that it was proposed to take action against him for a minor penalty under Rule 16 CCS (CCA) Rules in respect of false LTC claim on behalf of his sons' journey to Kanyakumari and back, during June-July 1983. Applicant in his reply dated 7.9.87 offered to deposit the entire LTC advance with interest, which was accepted on 17.12.87 with penal interest thereon. If indeed applicant was innocent, there was no need for him to have agreed to deposit the entire LTC advance with interest. Furthermore, the charging of penal interest by the disciplinary authority is not one of the penalties prescribed in the CCS (CCA) Rules. Further the letter dated 20.4.88 from the disciplinary authority to the S.E. (Vig.) is an internal communication, and cannot be said to be an order of the disciplinary authority

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passed under the CCS (CCA) Rules closing the D.E. against applicant. Under the circumstances the withdrawal of the charge sheet under Rule 16 CCS (CCA) Rules by Memo dated 20.12.90 giving reasons, and informing applicant that a fresh charge sheet under Rule 14 CCS (CCA) Rules would be issued, cannot be legally faulted. Hence this ground fails.

17. It has next been contended that the word 'embezzlement' of money has been used in the appellate order which is wrong and false as there was no embezzlement. Even if the word embezzlement was wrongly used that does not vitiate the findings itself that applicant was guilty of claiming false and bogus LTC claim. Hence this ground also fails.

18. It has next been contended that the proceedings were greatly delayed, which prejudiced applicant in his defence. It is true that the incident relates to June-July 1983 but applicant has not been able to establish successfully that merely for that reason the proceedings deserve to be interfered with. Indeed during the course of the proceedings applicant sought to produce certain receipts etc. in support of his defence but the same were held to be false and fictitious.

19. The parameters of judicial intervention in disciplinary proceedings are by now well settled. The Tribunal would interfere only in cases when there is no evidence or where the penalty order is manifestly illegal or perverse in the sense that no

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reasonable person would pass it; or when it is illegal and arbitrary ~~as~~ being contrary to any rule/instruction; or was passed by an authority not competent to pass the same, or was violative of the principles of natural justice in as much as applicant was not given adequate opportunity to defend himself. It is not a case of no evidence, because while applicant had submitted a list of co-passengers which include Shri Raghbir Singh and his family, Shri Raghbir Singh who was PW-2 in the D.E. has admitted that he did not travel in the said bus, and other evidences against applicant is also available. Applicant has not succeeded in establishing that these proceedings are hit by any of the other aforementioned vices either, so as to warrant judicial intervention.

20. In the result the O.A. warrants no interference and is dismissed. However, as the realisation of Rs.1312/- as penal interest by the disciplinary authority vide order dated 17.12.87 is not one of the prescribed penalties under the CCS (CCA) Rules, the same should be refunded to applicant within three months from the date of receipt of a copy of this order together with ^{-Compound?} interest @ 12% per annum thereon from the date it was deposited by applicant till the date it is actually refunded. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

Karthik

S.R. Adige
(S.R. Adige)
Vice Chairman (A)