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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.1653/88

New Delhi this 15th day of March 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

Shri Kartar Singh,
Son of Shri Gurdit Singh,
B-198, West Patel Nagar,
New Delhi.

... Applicant

(By Advocate Shri B.T. Kaul)

Versus

1. Union of India,
through Secretary,
Ministry of Labour
Sharam Shakti Bhawan,
New Delhi.
 2. Chairman Central Board of Trustee,
Provident Fund,
Sharam Shakti Bhawan,
New Delhi.
 3. The Central Provident Fund Commissioner,
9th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi.
 4. The Regional Provident Fund Commissioner,
8th Floor, Sky Lark Building,
60 Nehru Place,
New Delhi.
- ... Respondents
- (Shri S.R. Bhatt, Advocate)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant who initially joined as Lower Division Clerk in the year 1964 in the office of the Regional Provident Fund Commissioner, New Delhi, was subsequently promoted with effect from 1.1.1973 to the post of Upper Division Clerk. The scale of UDC at the relevant time was Rs. 330-560. In the year 1976 the Central Provident Fund Commissioner served on the applicant memo dated 7.7.1976 whereby a common departmental enquiry was ordered against

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him and one Shri D.V. Soni for certain misconduct. On 26.7.1976 the charge sheet was served on the applicant and Shri G.M. Pandiya was appointed as Enquiry Officer and Shri R.C. Ahuja, Inspector, CBI was appointed as Presenting Officer. The Enquiry Officer submitted the enquiry report by the memo dated 25.7.1978 to the disciplinary authority and the disciplinary authority agreed with the Enquiry Officer's report gave a show cause notice to the applicant dated 1.9.1978 enclosing a copy of the Enquiry Officer's report asking the applicant to make any representation on the penalty proposed of removal from service. The disciplinary authority after considering the representation on the aforesaid show cause notice passed the order of punishment dated 7-8/11/78 imposing the penalty of removal from service from the date of the service of the order. The order was served on the applicant dated 11.11.1978. The applicant submitted an appeal to the Chairman, Central Board of Trustee Employees Provident Fund, New Delhi on 25.12.1978. The Ministry of Labour, Government of India by the memo dated 26.8.1987 replied to the representation made by the applicant on 19.12.1986 to the Secretary, Ministry of Labour regarding his appeal dated 25.12.1978 against the order of removal from service dated 8.11.1978. The applicant was informed that the appeal against the order of the Central Provident Fund Commissioner is preferable to the Central Government & not to the Chairman, Central Board of Trustee Provident Fund. Since there was no record to show that the applicant has actually filed the

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the appeal, so it was concluded that no appeal was filed by him. His request, therefore, for consideration of the appeal claimed to have been filed by him on 25.12.1978 is not acceded to. Aggrieved by the aforesaid order the applicant filed the application on 25.8.1988 praying for the grant of the reliefs that the disciplinary proceedings be quashed and it be declared that the termination of the service of the applicant by the Respondent No. 3 is wrong and contrary to the law. The respondent be directed to reinstate in service with back salary and wages.

2. This application was got amended by moving MP NO. 46/89 which was allowed and an amended application has been filed on 7.1.1989. The reliefs claimed in the amended application are also the same.

3. A notice was issued to the respondents who filed the reply and contested the grant of the reliefs prayed for by the applicant. It is stated that ~~XXXX~~ the applicant was found guilty of fraudulent payment of provident fund account of one Shri Chanan Ram Account No. DL-500/5. A departmental enquiry was initiated against him and was given an adequate and reasonable opportunity by the Enquiry Officer. Thereafter the disciplinary authority agreeing with the findings of the Enquiry Officer and after considering the representation made by the applicant of a showcause notice issued by the disciplinary authority imposed the penalty of removal from service. The Organisation is a Trust and therefore all the employees are to discharge the trust jointly and severally.

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4. It is further stated by the respondents that the applicant joined as Lower Division Clerk in the year 1964 in the office of the Regional Provident Fund Commission ~~in the year 1964~~ and was subsequently promoted as LDC with effect from 1.1.1974 and his appointing authority was Regional Provident Fund Commissioner, Delhi. His promotion to the post of Upper Division Clerk was purely ad hoc and temporary. There was a departmental enquiry against him with regard to Account No. DL 1507Rs2 and he was reverted on the punishment imposed upon him to the post of Lower Division Clerk, vide letter of Central Provident Fund Commissioner dated 4.7.1978. At the time of removal from service the applicant was in the cadre of LDC under the revised pay scale of Third Pay Commission Rs. 260-400. The order of removal was passed against him in October, 1978 which was served upon him in November 1978. The applicant is governed by the Staff and Conditions of Service Regulation 1962 by virtue of Rule 5 Sub-rule 4, the appointing authority of the applicant is the Regional Commissioner. The penalty of reduction from rank from UDC to LDC was imposed by Memo dated 21.10.1976.

5. A joint enquiry was held according to Rule 14(1) of the Employees Provident Fund Staff (CC&A) Rule 1971 which lays down that if two or more employees are concerned in any case the Government or any other authority competent to impose the penalty of dismissal from service of all such employees may make an order directing that disciplinary action against all of them may be taken in a common proceedings. The applicant

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was jointly tried with Shri D.V. Soni, Provident Fund Inspector Grade II. The Central Provident Fund Commissioner has given the consent for holding enquiry. Thus, according to respondents the rules have been duly observed by the Enquiry Officer and the application is devoid of merit.

6. We have heard the learned counsel for the parties at length and perused the record. The first charge against the applicant was common with Shri D.V. Soni, Provident Fund, Inspector, Grade II. That charge is that the applicant has failed to compare the signature of the claimant on the withdrawal form 19 with his signature on the nomination form which was recorded in this office. This article of charge was not proved against the applicant as well against Shri D.V. Soni.

7. The second article of charge against the applicant is that he opened ^anew ledger card bearing forged signature of Shri B.K. Chakbraborty, Accounts Officer, in respect of Shri Chanan Ram without having followed the prescribed drill and showed the amount reflected on the Ledger card as transferred to a new account. The balance sheet for the year 1968-69, prepared by him shows that the account of Shri Chanan Ram had been settled but this entry has been shown as transferred by writing the words "Tr" by him in his own handwriting and without being attested by the concerned Head Clerk or the Accounts Officer; he even after making payment on account of settlement of claim in respect of Account No. DL-500/failed to make any endorsement on the Nomination Form 2 to show that the account has been settled;

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during his house search the file relating to M/s. Shourie Duplicators which he took without permission was recovered and at his instance Shri Punam Chand Agarwal introduced the opening of an account in the name of Shri Chanan Ram in the United Commercial Bank, Kirti Nagar, Delhi and thereby facilitated the clearing of the bogus withdrawal of Rs. 4336.50.

8. The Enquiry Officer held that all the components of the second article of charge has been proved except Component No. 5. The Enquiry Officer has given detailed reasoning on the basis of the evidence produced before him and the witnesses were cross examined by the applicant except one witness Poonam Chand Agarwal was not cited in the list of Witnesses relied upon and annexed with the Memo of Chargesheet. He was also not cross examined by the applicant but that witness only related to the fact of opening an account in the United Commercial Bank and Component 5 of the Charge was not proved against the applicant so on that account the applicant cannot raise any objection that the witness Shri Punam Chand Agarwal was not allowed to be cross examined. However, the applicant never raised any objection to the examination of that witness and ^{was} also afforded an opportunity to cross examine him but he did not avail of the same. In any case the ^{on} depositions of Shri Punam Chand Agarwal is not material regarding the fifth components of second article of charge proved against the applicant. The learned counsel for the applicant raised an objection to the procedure adopted by the Enquiry Officer in as much as the present ^{ing} officer was an employee of CBI. That objection has no meaning at all as he (P.O.) was a Central Government Employee and the applicant was also provided with Shri R.N. Goel, LDC as a defence assistant.

The respondents with their counter have filed the statement of the witnesses examined orders passed by the Enquiry Officer and that goes to show that the applicant was given adequate and reasonable opportunity to cross examine the witness. Regarding the joint enquiry there is a specific provision in the rules as envisaged under rule 14(i)(ii) where there is a power of holding joint enquiry and this is also in the interest of the delinquent employees when they are jointly tried for almost the same accusations and charges. Thus there is no illegality in holding the joint enquiry against the applicant.

9. The findings of the Enquiry Officer have been arrived at on the basis of oral and documentary evidence. The respondents were directed to produce the departmental file and we have also perused the same. The original documents could not be produced by the copy prepared thereof has been produced before us which establishes the fact that the reliance placed by the Enquiry Officer on those documents is just and fair. The conclusion drawn by the Enquiry Officer is fully justified. The Tribunal cannot re-appreciate the evidence as an Appellate Authority and has only to go through the records to find out whether there was admissible evidence which led to the conclusions arrived at by the Enquiry Officer on the basis of a reasonable man. In view of this we find that the enquiry against the applicant was fairly and impartially held and there was no harassment or victimisation of the applicant on account of the applicant being an office bearer of the Union. The charges against the applicant

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regarding fraudulent preparation of certain accounts which were already settled and all this is duly corroborated by the documents which are in the hands of the applicant himself. When an action has been finally settled then the account has to be closed finally rather than it has to be shown as transferred and because of this the payment has been made of Rs. 4336/50.

10. The counsel for the applicant, however, argued that the appointing authority is the Central Government and not the Regional Provident Fund Commissioner. In the present case the Central Provident Fund Commissioner the higher authority passed the impugned order of punishment dated 8.11.1978 the enquiry was initiated against the applicant by the Central Provident Fund Commissioner by the memo dated 28.7.1976 annexed the article of charges, statement of imputation of misconduct, list of documents. The order for holding joint enquiry against the applicant and Shri D.V. Soni, Provident Fund Inspector Grade II was ordered by the Central Provident Fund Commissioner by Memo dated 7.7.1976. Shri J.M. Pandiya was also appointed as Enquiry Officer by the Central Provident Fund Commissioner by the memo dated 8.10.1976. Shri R.C. Ahuja was also appointed as Presenting Officer by the same authority. The contention of the learned counsel is solely based on interpretation of Section 5 D of the Employees Provident Fund and Miscellaneous Provision Act, 1952 that provision is quoted below:

5D. Appointment of Officer:

The Central Government shall appoint a Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief Executive Officer of the Central Board and shall be subject to the general control and superintendence of that Board.

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The Central Government may also appoint as many Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners and other officers whose maximum monthly salary is not less than five hundred rupees, as it may consider necessary to assist the Central Provident Fund Commissioner in the discharge of his duties.

11. The contention of the learned counsel, therefore, is that under Sub-clause (2) of Section 5 D the Central Government is the appointing authority for Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner and other Officers whose maximum monthly salary is not less than Rs. 5,00/-. Firstly the UDC is the cadre in the ministerial grade and he cannot be classified as an officer and that fact is evident from the perusal of sub-clause 3 of Section 5 D. In this sub-section the word employees has been used after the word officer. The arguments of the learned counsel is primarily based on a decision of the Central Administrative Tribunal, Division Bench in the case of Laxman Singh Vs. Union of India and ors. reported in 1988 (4) CAT P 906. The relevant para is 35. The same is quoted below:

Last, but not the least, the legality and the validity of the impugned orders of dismissal of the applicants from service have also been challenged on the ground that the same have not been passed by the Central Government, who alone is the competent authority to impose the penalty of dismissal/removal or reduction in the rank of the applicants as required by Article 311(2) of the Constitution of India. The learned counsel for the applicants has adverted in this context to Section 5-D(2) of the EPF Act, which provides that "the Central Govt. may also appoint as many as Deputy Provident Fund Commissioners and other officers whose maximum monthly salary is not less than five hundred rupees as it may consider necessary to assist the Central Provident Fund Commissioner in the discharge of his duties". Since the maximum monthly salary of all the applicants in the cases on hand is more than Rs.500/-, the respondents have frankly and fairly conceded

that the Central Government alone is the competent authority to impose the penalty of dismissal/ removal of reduction in rank of the applicants. Indeed, as noticed above, either the orders of dismissal had been issued in some of these cases by the regional Provident Fund Commissioner, but the same had to be revoked as not having been passed by the competent authority. So far so, there is no controversy between the parties.

12. This observation appears to have been made in any other context and also on the supposition that the matter was conceded by the counsel^{who} appeared for the respondents and it was further observed that there was no controversy with regard to this fact between the parties. In fact there are the Service Rules, a copy of which has been annexed by the respondents with their counter and these are staff and conditions of service regulations 1962. These rules specifically laid down the appointing authority for the post of LDC and UDC is the Central Provident Fund Commissioner in the Headquarters office and the post of Head Clerk and Provident Fund Inspector Grade II while in the regional Office the Regional Provident Fund Commissioner for all posts is the appointing authority in the respective regions. The counsel for the applicant argued that these regulations cannot over rule the provisions of the 1952 Act and has also supported his contention by an authority of the Hon'ble Supreme Court, in the case of Dr. Dattaraya Mahadev Nadkarni Vs. Municipal Corporation of Greater Bombay. In that case the order of dismissal from service was challenged and it was held as the order was not ^{ap.}proved by the Standing Committee, the Commissioner was not authorised to pass the order of dismissal without such approval. In the case of removal it was necessary to obtain the prior

sanction of the Standing Committee in view of Section 83 of the Bombay Municipal Corporation Act, 1988 where proviso 2(a) provided that no officer whose monthly emoluments exceeds Rs. 4,00/- shall be dismissed by the Commissioner without the previous approval of the Standing Committee. The facts of this case are totally different. In the present case there is a specific rule which lays down the service conditions and the appointing authority in the case of LDC and UDC in the office of the Provident Fund Commissioner, the Appointing Authority is ~~the~~ the Central Provident Fund Commissioner if the post is at the Headquarters or the Regional Provident Fund Commissioner if the post is in the region. However, for Inspector Grade II as well as for Head Clerk the appointing authority is Central Provident Fund Commissioner. Both these class of employees are not covered under Section 5-D of the Act, 1952. It is further clear from the provisions or of sub-clause 4 of Section 5-D which lays down that the post of Central Provident Fund Commissioner or Deputy Provident Fund Commissioner or Regional Provident Fund Commissioner or any other post under the Central Board carrying a maximum monthly salary of not less than Rs.500/- shall be made except after consultation with the Union Public Service Commission. It is therefore evident that Section 5-D of the Act of 1952 covered in its scope Class II post and not the post in the ministerial cadre. Further when the Act of 1952 was passed the scale of LDC/UDC even of Inspector Grade II was not carrying a maximum monthly salary of not less than Rs. 500/-. It was only on the recommendation of the Third Pay Commission with effect from 1.1.1973 that the pay scales were revised, and the

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scale of UDC was Rs. 330-560 and that of LDC was Rs 260-400. In view of the revised fixation under the statutory provisions there shall be a deemed enhancement of the scale of the maximum monthly salary and it is because of this that in April 1978 in stead of the word Rs.500/- by notification this amount has been raised to Rs.1200/-. The arguments of the learned counsel, therefore, that the order passed by the disciplinary authority is illegal and it was not passed by the Central Government has no basis. The learned counsel for the applicant could not show the appointment letter of the applicant that he was appointed by an uauthority higher than the punishing authority. Another fact cannot be lost sight of that the applicant was reverted in another departmental enquiry before the order of the removal was passed i.e. he was LDC on 4.7.1978 and the punishment of reduction in rank was imposed on 21.10.1976. In view of the above facts and circumstances we are not convinced that the applicant is entitled to any benefit of the judgement of Laxman Singh case. In the Laxman Singh case the order has been passed regarding the appointing authority on a consensus submission by the respondent's counsel. In this case the respondents have taken a definite stand that the appointing authority of the applicant was Central Provident Fund Commissioner/ Regional Provident Fund Commissioner. Moreover, the case is also distinguishable on the point that the applicant was working in the grade of LDC in the scale of Rs. 260-400 and in that event also the Central Government cannot be his appointing authority.

The next contention of the learned counsel is that the disciplinary authority has not considered the representation made against the show cause notice issued to him. The show cause notice was restricted to the penalty to be imposed on the applicant but by virtue of amendment of Article 311 (2) of the Constitution of India, in 1976 no showcasuse notice was required on the proposed penalty.

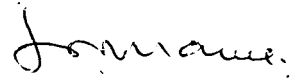
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The disciplinary authority still considered the representation of the applicant dated 5.10.1978 and observed that the pleas put forth by Shri Kartar Singh show more of his cleverness but are lacking in substance. It is further stated that the disciplinary authority has gone through the entire case ~~and the relevant case-de-reve-~~. Thus, this contention of the learned counsel also has no force. The learned counsel also referred to the fact that the appeal of the applicant has not been disposed of by speaking order. It appears from the record that the applicant has submitted the appeal to the Chairman, CBT on 25.12.1978. The respondents in their memo dated 26.8.1987 have stated that no such appeal dated 25.12.1978 was ~~not~~ traceable in their office as the appeal from the order of CPFC is preferable to the Central Government and not to the Chairman, Central Board of Trustees. The applicant has not filed any evidence to show that he has submitted the appeal to the competent authority within time. If the applicant did not receive any reply to his appeal of December 1978, then he should not ^{have} waited for 8 years as he has made the representation in the year 1986 for the disposal of his appeal and thereafter he has been making the representation one after the other. The grievance of the applicant is that if he had addressed the appeal to wrong authority as envisaged under the rules then they should have informed the applicant well in time. In fact after the applicant received the memo of August 1987, he has filed this application for redress of his grievance. Since the matter has been considered thoroughly and the quantum of punishment is also commensurate with the misconduct alleged it is not fair and proper to remit the case for ^{re-}consideration of appeal. In any case we have

gone through the record and the findings of the Enquiry Officer cannot be faulted with.

13. In view of the above facts and circumstances, the application is devoid of merit and is dismissed, leaving the parties to bear their own costs.


(B.K.SINGH)
MEMBER (A)


(J.P.SHARMA)
MEMBER (J)

Mittal