

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.OA-2241/90

Date of decision: 11.12.1992

Shri Kanti Prasad Applicant

Versus

Union of India through
Controller General of
Defence Accounts & Ors. Respondents

For the Applicant Shri R.P. Oberoi, Advocate

For the Respondents Shri K.C. Mittal, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who has worked as Auditor in the Office of Controller of Defence Accounts, Meerut, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (a) to quash the impugned order dated 11.10.90
with all consequential benefits;

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- (b) to order reinstatement of the applicant in service;
- (c) to direct the respondents to wait for the verdict of the Court before imposing any other penalty;
- (d) to grant such and other reliefs as may be deemed fit in the interest of justice; and
- (e) to award the cost of Application, i.e., the Counsel's fee, Court fee and incidental expenses.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The respondents have produced the relevant records relating to the disciplinary proceedings initiated against the applicant. The facts of the case in brief are that the applicant entered Government service in April, 1962. He was promoted in 1966 as U.D.C. and as Auditor, in 1972. He has rendered over 28 years of service.

3. The applicant was placed under suspension w.e.f. 12.9.1986 as a disciplinary proceeding against him relating to misappropriation of Government money was contemplated. On 31.10.1986, a memorandum proposing to hold an enquiry against him under Rule 14 of the C.C.S. (CCA) Rules, 1965, was issued to him. The two Articles of Charge brought

against him were the following:-

"Article of Charge No.1

that Shri Kanti Prasad, Pt. Auditor A/C No.8289531 was on temporary duty in the office of DPDO, Jhajjar during the period from 11.8.1986 to 12.9,86. He was allotted the task of mustering Auditor vide Sl.8 of Section Order No.68 dated 01.9.86 by the DPDO, Jhajjar. But he refused to note the orders for performing the duties of mustering Auditor saying that he did not know this work at all and insisted for Cashier's duty.

Thus by the above act Shri Kanti Prasad, Pt. Auditor exhibited lack of devotion to duty and conduct unbecoming of a Govt. servant thereby violating the Rule 3(i) (ii) & 3(i) (iii) of CCS (Conduct) Rules, 1964.

Article of Charge No.2

that Shri Kanti Prasad, Pt. Auditor, A/C No.8289531 was on temporary duty in the office of DPDO Jhajjar from 11.8.86 to 12.9.86. He while discharging the duties of the Cashier at Bahadurgarh Payment Centre on 11.9.86 had misappropriated Government money to the extent of Rs.10,000/- out of Rs.77,700/- handed over to him by the DPDO, Jhajjar for disbursement to the Indian Military Pensioners at Bahadurgarh Payment Centre;

that by the above act, Shri Kanti Prasad, Pt. Auditor A/C No.8289531 has exhibited lack of Integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant thereby violating Rule 3(i) (i), 3(i) (ii) and 3(i) (iii) of CCS (Conduct) Rules, 1964."

4. After holding an enquiry against the applicant, the Enquiry Officer submitted his report to the disciplinary authority holding that Article of Charge No.1 was not fully established. He concluded that even if it was assumed that the applicant insisted or requested for Cashier duties instead of the Mustering duties, he had not violated the provisions of CCS(Conduct) Rules, 1964. As regards Art.2,

the Enquiry Officer concluded that while discharging the duties of Cashier at Bahadurgarh Payment Centre on 11.9.1986, the applicant had misappropriated Government money to the extent of Rs.10,000/- out of Rs.77,700 handed over to him for disbursement to the Indian Military pensioners at Bahadurgarh Payment Centre. Thus, he exhibited lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant, thereby violating Rule 3 of the C.C.S. (Conduct) Rules, 1964.

5. On 11.10.1990, the respondents have passed the impugned order whereby the penalty of dismissal from service was imposed on the applicant w.e.f. 1.11.1990. The present application was filed in the Tribunal on 30.10.1990 without preferring an appeal to the appellate authority against the impugned order of punishment.

6. It is pertinent to mention that on 12.9.1986, the respondents had instituted a criminal case against the applicant under Section 409 of the I.P.C. and the same is still sub judice in the Court of the Magistrate, Bahadurgarh. The respondents have stated in their counter-affidavit that the criminal case is as a result of the F.I.R. which was the direct consequence of the applicant's failing to make good the shortage of cash.

7. In our opinion, the departmental enquiry initiated against the applicant as well as the criminal prosecution

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launched against him, are founded on the same facts. In Kusheshwar Dubey Vs. M/s. Bharat Coaking Coal Ltd., AIR 1988 SC 2118, the Supreme Court has observed that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. Where the criminal action and the disciplinary proceedings are grounded upon the same set of facts, the disciplinary proceedings should be stayed.

8. In the instant case, the applicant had prayed for interim relief to the effect that the operation of the impugned order dated 11.10.1990, be stayed. The interim order never came up for consideration of the Tribunal after the filing of the application.

9. Admittedly, the applicant participated in the departmental enquiry in which he had contended that he was being tried in the criminal case for the very same charges which have been brought against him in the departmental enquiry. He has also stated that an amount of Rs.10,000/- has been deposited by his wife with the Police authorities at the Police Station, Bahadurgarh out of his L.T.C. and scooter advance. He has further contended that when his LTC and scooter advance money has been adjusted against the loss of Government money,

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the extreme penalty of dismissal is not justified.

10. The gravamen of the charge against the applicant in the departmental enquiry relates to misappropriation of Government money to the extent of Rs.10,000/-. This precisely is the charge brought against him in the criminal case. As the departmental enquiry has already been conducted and the penalty of dismissal from service has been imposed on the applicant by the impugned order dated 11.10.1990, we are of the opinion that he cannot be granted the relief sought by him in the present application. At the same time, we are of the opinion that after the criminal court renders its judgement in the criminal case brought against the applicant, the respondents should review his case in the light of the said judgement and pass appropriate orders. We order and direct accordingly. The application is disposed of on the above lines. There will be no order as to costs.

B.N. Dhoondiyal
 (B.N. Dhoondiyal)
 Administrative Member

P.K. Kartha
 (P.K. Kartha)
 Vice-Chairman(Judl.)