

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1167/91
T.A. No.

199

DATE OF DECISION 17-9-96

<u>Shri R.K. Bansal</u>	Petitioner
<u>Shri G.D. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & Others</u>	Respondent
<u>Mrs P.K. Gupta</u>	Advocate for the Respondent(s)

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The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr. R.K. Ahooja, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

(23)

Central Administrative Tribunal
Principal Bench.

O.A. 1167/91

New Delhi this the 17th day of September, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri R.K. Ahooja, Member(A).

R.K. Bansal,
S/o Shri Jhandu Singh,
R/o S-46, Sector IV, Gole Market,
New Delhi.

... Applicant.

By Advocate Shri G.D. Gupta.

Versus

1. Union of India through
The Secretary to the Government of India,
Ministry of Home Affairs,
North Block,
New Delhi-110 001.

2. The Director General,
Border Security Force,
C.G.O. Complex, Lodi Road,
New Delhi-110 003.

3. The Deputy Director (Accounts),
Headquarters,
Border Security Force,
Pushpa Bhawan, Madangir,
New Delhi-110 062.

... Respondents.

By Advocate Mrs. P.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the order passed by the disciplinary authority compulsorily retiring him from service dated 13.6.1990 and the appellate authority's order dated 13.3.1991 rejecting his appeal against the punishment order.

2. The above impugned orders were passed against the applicant, who was posted in the Pay and Accounts

Division, Headquarters Office of the respondents, after holding a disciplinary proceeding against him. He was charged under Rule 14 of the CCS (CCA) Rules, 1965. He alleges that the penalty order dated 13.6.1990 is liable to be quashed and set aside as it is perverse and he was not afforded a reasonable opportunity of hearing. As regards the appellate authority's order, the learned counsel for the applicant has submitted that since it does not give any reasons, it is bad in law. During arguments, Shri G.D. Gupta, learned counsel for the applicant, mainly relied on the fact that in some other cases for the same or similar offences, lesser penalty has been imposed on the other persons than what has been imposed on the applicant. The applicant, who was working as Senior Accountant with the respondents, was placed under suspension on 1.5.1989 under Rule 10 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). Thereafter, a chargesheet was issued to him on 1.7.1989 containing three charges. The first two charges related to his withdrawing amounts of Rs.7000/- and Rs.888/- in January and September, 1988, respectively, by producing fictitious and fraudulent G.P.F. statements and the third charge related to non posting of debit of Rs.2900/- in February, 1981 in his G.P.F. annual statement for the year 1981-82. According to the applicant, later on 23.8.1989 he refunded the amount of Rs.15,000/- on account of overdrawal of GPF and also sent the amount of Rs.5534/- on account of dues of GPF along with the interest. He submits that in view of the fact that he had deposited the amount, in question, his case may be considered sympathetically. However, on the evidence produced before him, the Inquiry Officer in

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his report held that all the three charges were proved beyond doubt. In the report, however, the Inquiry Officer had referred to the details of withdrawals of certain other persons and enclosed a list.

3. The learned counsel for the applicant submits that in the cases of ^{the} other persons referred to by the Inquiry Officer, they were not given a similar harsh punishment as was given to the applicant and, therefore, there is glaring discrimination in the punishment imposed on the applicant. He also submits that the impugned disciplinary authority's order does not give any finding on the plea that others have also committed similar offences whereas he chose to impose penalty of compulsory retirement on the applicant. He has relied on the judgements in Sengara Singh & Ors. Vs. The State of Punjab & Ors. (AIR 1984 SC 1499), Dalbir Singh Vs. Director General, CRPF (1984(4) JT 152 (sic), Munnikanna Vs. Union of India & Ors. (1994(6) SLR 497, Ram Chander Vs. Union of India & Ors., (1986(3) SCC 103).

4. The respondents have filed the reply controverting the above averments. They have submitted that the disciplinary authority had imposed the penalty of compulsory retirement with full pensionary benefits under the provisions of Rule 40(1) of the CCS (Pension) Rules, 1972 after taking into account the particular facts and circumstances of the case. They have ^{also} submitted that the applicant has himself accepted the guilt with respect to the charges framed against him. In the reply, they have also stated that the necessary departmental action had been taken against the other defaulters whose GPF accounts were showing minus balances under the disciplinary rules. Mrs P.K.



Gupta, learned counsel for the respondents, has also submitted that while the applicant was functioning in the Accounts Section as Senior Accountant during the relevant period, the other persons were in other sections and were, therefore, not directly connected with the maintenance of their accounts. Nevertheless, on the basis of the Inquiry Officer's report in this case, the other cases were also opened in 1991. In the reply to M.A. 1026/96 details of the action taken against these other persons have been given, including the disciplinary actions, and depending on the evidence and the nature of the misconduct proved, they have been given — punishments in accordance with the rules. The respondents have submitted the relevant records pertaining to the other persons for our perusal. In the circumstances, the respondents have, therefore, submitted that the punishment imposed on the applicant is in accordance with the rules and the application may be dismissed.

5. We have carefully considered the pleadings, arguments of the learned counsel and the material on record.

6. In the impugned order dated 13.6.1990, the disciplinary authority has referred to the reply given by the applicant in which he has admitted that he has withdrawn Rs.7000/- and Rs.8000/- for repair of his house with the intention to recoup the amount towards the GPF at the earliest. Reference is also made that he had pleaded that other persons had also withdrawn the amount of the G.P.F. in this manner even though it was against the rules. It

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is clear from the perusal of the disciplinary authority's order that not only the disciplinary authority has given reasons for his agreement with the findings of the Inquiry Officer, but taking into account the facts and circumstances of the case he has imposed only a penalty of compulsory retirement with full pensionary benefits under Rule 40(1) of the CCS (Pension) Rules, 1972. The applicant has pleaded guilty during the course of the inquiry. In the facts and circumstances of the case since the applicant was himself working as Senior Accountant in the concerned Section and he had pleaded guilty ^{to} of the charges, even though he might have later on made up his mind after the chargesheet was issued to return the due amounts to the Government, the punishment given by the disciplinary authority cannot be held to be either arbitrary or perverse. In fact, from the nature of the offence and punishment imposed on the applicant to allow him full pensionary benefits under the provisions of Rule 40(1) of the Pension Rules, it shows that the disciplinary authority has already taken a lenient view in the matter. Besides, normally this Tribunal cannot reappraise the evidence or sit as an appellate authority over the findings of the competent authority except, in cases where the punishment order is either arbitrary or perverse, which is not at all applicable to the facts in this case (See. Union of India Vs. Parma Nanda, (AIR 1989 SC 1185) and Government of Tamil Nadu & Ors. Vs. S. Subramaniam (JT 1996(2) SC 114).

7. The learned counsel for the applicant relying on the judgement of the Supreme Court in Ram Chander's case (supra) has submitted that the appellate authority's order is vitiated because no reasons have been given in that order. In that case itself, the Supreme Court has held that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of the affirmance. In the present case,

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as mentioned above, the disciplinary authority has given a detailed and reasoned order and in the circumstances of the case, the impugned appellate authority's order cannot be set aside merely on the ground that no reasons have been given.

8. The other main argument advanced by the learned counsel for the applicant was on the ground of discrimination in the punishment order given to the applicant which, according to him, was severe as compared to the punishments given to other similarly situated persons. The facts in Sengara Singh's case (supra) are distinguishable from the present case. That case pertained to an agitation which at its height was in the form of a procession and some policemen. demonstration by/ The State of Punjab initiated disciplinary action and dismissed about 1100 members of the Police Force and a criminal case was also registered against them. However, about 1000 former members of the Police Force were reinstated and criminal cases pending against some of them were withdrawn. The remaining had filed writ petitions which had been dismissed and on their filing a Special Leave Petition, the Supreme Court held that they found not an iota of evidence which would distinguish the case of the present appellants from those who were the beneficiaries of the recommendations of the committee and the orders of the State. In the circumstances, the Court held that there was no justification in treating the appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. That case is distinguishable from the present case as also the other case of Munnikanna (Supra) relied upon by the applicant.

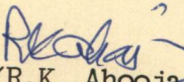


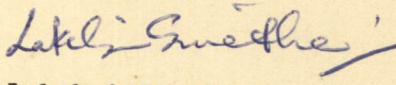
9. In the present case, admittedly the applicant was Senior Accountant working in the concerned section dealing with the GPF accounts of employees working with the respondents. After the institution of the disciplinary proceedings against the applicant, when the applicant revealed the names of other persons who had also been benefitted from certain manipulations of the GPF statements and accounts, the respondents have taken necessary action against them in 1991. We have also seen the records submitted by the respondents and are satisfied that the respondents have proceeded against the other persons in accordance with the rules taking into account the facts and circumstances of each case. Further, it is also relevant to mention that while the applicant was himself working in the GPF section from where the funds were misappropriated, the respondents have submitted that none of the other persons were in the particular section, who had misused their position and manipulated the funds. The applicant has not disputed these facts nor has any material been placed on record to show that the case of the applicant is absolutely indistinguishable from the facts in the other cases unlike the case of Sengam Singh. Therefore, this case as well as the other cases relied upon by the applicant on this point will not assist him, as the cases of the other persons are not on all fours with his. The other cases were opened later on and punishments imposed depending on the facts. In this case also, the disciplinary authority has taken into account all the relevant facts before imposing on him the punishment order of compulsory retirement with full pensionary benefits which is not only according to the rules but fair and reasonable which does not justify any interference in the matter. In the circumstances, the plea of glaring discrimination sought to be made out by the learned counsel for the applicant, is

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without any basis and is rejected.

10. In the result, we find no merit in this application and is accordingly dismissed. No order as to costs.


(R.K. Ahooja)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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