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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 1229/2004

New Delhi, this the 14th day of January, 2004

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

1. Smt. Chandrakha,
Widow of late Shri Ram Dayal,
Mazdoor (Civilian),
Office of the Commandant,
1, Corps, O.M.C. C/o 56 A.P.O.

Resident of

Village: Bhola Nath Ka Purwa,
PO: Dhauli Piao, Near Narayan Puri,
Mathura (U.P.)

2. Smt. Har Pyari,
Widow of late Shri Soran Singh,
Mazdoor (Civilian),
Office of the Garrison Engineer,
(Military Engineering Services),
Mathura – Cantt.

Resident of

Village & PO: Maholi, Post Office: Krishna Nagar,
Mathura (U.P.)

Applicants

(By Advocate : Shri D.N. Sharma)

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Versus

1. Union of India,
Through The Quarter Master General (ST-12),
Quarter Master General's Branch,
Army Headquarters, D.H.Q. Post Office,
New Delhi
2. The Major General Incharge (ST),
Army Supply Corps, Headquarter Central Command,
Lucknow (U.P)
3. The Commandant,
338- Coy (Supply) Type 'A',

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Army Supply Corps, Mathura Cantt.

... **Respondents**

(By Advocate : Shri D.S. Mahendru)

O R D E R

BY MR. S.K. MALHOTRA :

The present OA has been filed by the applicants with the prayer that the impugned orders dated 11.3.2002 (Annexure I & II) imposing penalties on the applicants for recovery from their pay of the amount of pecuniary loss caused to the Government and withholding of one increment of pay with cumulative effect, may be quashed and set aside and the amount already recovered may be refunded to them.

2. The applicants have been working as Industrial Mazdoors. There were allegations of preferring false medical reimbursement claims against them and several other employees. A Court of Inquiry (COI) was convened in which the medical reimbursement claims of the applicants were found to be false. A departmental enquiry was ordered based on which punishment of with-holding of one increment with cumulative effect and recovery of the amount given on account of medical reimbursement claim preferred by them, was imposed on the applicants. The applicants filed an OA No.1020/1998 against the imposition of the penalty by the Officiating Commandant mainly on the ground that the Officiating Commandant was not the competent disciplinary authority in the common disciplinary proceedings conducted against them, which included Groups 'C' and 'D' employees. The order of penalty was set aside by the Tribunal vide order dated 16.11.2000 and the case was remitted back to the respondents for reconsideration in accordance with the relevant rules. The respondents, accordingly have passed a fresh order dated 11.3.2002 imposing the penalties as mentioned above. This order has been passed by Major Officer Commanding, who is lower in rank to Lt. Col. who had earlier passed the order of punishment, which was set

aside by the Tribunal on the ground that the order was passed by an incompetent authority. According to the applicants, in common disciplinary proceedings Major General, Central Command is the competent disciplinary authority. In this connection, an order dated 28.5.1997 passed by the Ministry of Defence has been annexed with the OA (Annexure A/3) in which it has been stated that in common disciplinary proceedings the competent disciplinary authority in the case of Group 'C' and Group 'D' employees is M.G., A.S.C., Central Command. It has, therefore, been alleged that this order of punishment dated 11.3.2002 which has been passed by Major Officer Commanding who is an incompetent authority, and this order also deserves to be quashed and set aside on this account.

3. The respondents have filed a counter reply in which they have taken the stand that common disciplinary proceedings in the instant case were regulated by M.G., A.S.C. Headquarters, Central Command and an enquiry officer, by name, was detailed by him. The enquiry proceedings were approved by the above Officer and accordingly Group 'C' employees were dealt with by the M.G., A.S.C. HQs, Central Command and Group 'D' employees were dealt by respondent No.3 (The Commandant, ASC) as authorized by QMG Branch, Army Headquarters policy letter dated 31.10.2001. It has been contended that as per this letter, the Officer Commanding of the Unit/Establishment of the rank of Major and above is the appointing authority as well as disciplinary authority for Group 'D' employees.

4. We have heard both the learned counsel for the parties and have also gone through the pleadings on record.

5. The only question to be decided in this case is whether the order dated 11.3.2002 now passed by Major Officer Commanding is the disciplinary authority in the case of the applicants who are Group 'D' employees. Our attention has been drawn to the order dated 31.10.2001

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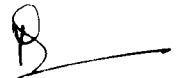
(Annexure R/1) in which a reference has been made to an earlier order dated 30.3.1984. This order dated 30.3.1984 has been perused by us. In this order it has been very clearly stated that Commandant, ASC Centre (Major and above) is the competent authority empowered to make appointment in the case of Group 'C' and Group 'D' employees. As such he will be the disciplinary authority in case of all employees in Group 'C' and 'D'. The learned counsel for the applicant has not been able to produce before us, in support of his claim, the relevant Rules that in a common disciplinary proceedings in respect of Group 'C' and Group 'D' employees, Major General is the disciplinary authority. He is only relying on the order dated 28.5.1997 (Annexure A/3) passed in another case by the Ministry of Defence. It may be stated that an averment made in an order, which is not supported by the relevant Rules, cannot become the basis of taking the decision. This letter cannot over rule the order dated 30.3.1984 passed by the Government in exercise of the powers conferred under Rule 9 (i) of the CCS (CCA) Rules, 1965, according to which, Officer Commanding of the rank of Major and above is the appointing authority in respect of Group 'C' and Group 'D' employees and consequently the disciplinary authority. In the instant case, in the common proceedings, one of the employees involved is stated to be an LDC which is a Group 'C' post and as such, according to this order, the Commandant of the rank of Major and above will be the competent disciplinary authority. Even otherwise it was admitted by the counsel for applicant during the course of arguments that as far as applicant is concerned, his appointing authority is Officer Commanding of Major rank. If that be so, applicant cannot have any grievance because no prejudice can be said to have been caused to the applicant. We cannot, therefore, find any fault on this count also in the order dated 11.3.2002 passed by the respondents.

6. In view of the above, the OA turns out to be devoid of any merit and substance and the same is accordingly dismissed. No costs.



(S.K. Malhotra)
Member (A)

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(Mrs. Meera Chhibber)
Member (J)