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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-1760/2004

New Delhi this the 18th day of January, 2007.

**HON'BLE MR. JUSTICE B.PANIGRAHI, CHAIRMAN
HON'BLE MRS.CHITRA CHOPRA, MEMBER(A)**

Smt. S.Bali, Senior Auditor, A/c No.8308869
Serving in the Office of the U.A.B.S.O (Central)
R/o 184 Sector-3, R.K.Puram New Delhi.

.... Applicant

(By Advocate: Shri V.P.S.Tyagi)

Versus

1. The Union of India (Through Secretary)
Ministry of Defence,
New Delhi
2. The Controller General of Defence Accounts,
West Block-V, R.K.Puram,
New Delhi.
3. The Principal Controller of Defence Accounts,
(Western Command) Sec 9-C,
Chandigarh.
4. The Area Accounts Officer (WC)
Delhi Cantt.
5. The Unit Accountant,
Office of B.S.O. (Central)
Delhi Cantt.

.... Respondents

(By Advocate: Shri S.M.Arif)

ORDER

HON'BLE MRS. CHITRA CHOPRA, MEMBER(A)

Through this OA, the applicant has assailed the Order dated
30.12.2003 (Annexure A-1) passed by Respondent No.2 (Controller

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General of Defence Accounts) in the capacity of Revising Authority as well as the order dated 23.04.2003 (Annexure A-3) of the Appellate Authority (Respondent No.3) upholding the order dated 03.10.2002 (Annexure A-3 Colly.) imposing penalty of withholding of two increments of pay without cumulative effect for a period of two years.

2. The applicant has sought the following reliefs:-

(a) Quashing and setting aside the aforesaid three impugned orders (A-1, A-3 & A-3 Colly.) with all consequential benefits and restore the applicant's pay and allowance at the same level, with retrospective effect.

(b) Direction to respondents to expunge any adverse entry or remarks made in the applicant's service records.

(c) Payment of arrears of the pay and allowances along with 18% p.a. interest thereon.

3. The factual background, as set out in the OA, is as follows:-

i) The applicant at present is serving as Senior Auditor in the Organisation of UA BSO, Delhi Cantt. which is a sub-office of the Principal CDA (WC) Chandigarh.

ii) The applicant while serving in the same capacity during the period 16.12.2000 to 22.01.2001 was served a Memorandum of charge dated 16.07.2002 (Annexure A-4) under Rule 16 of CCS (CCA) Rules, 1965. The following Articles of charges/Imputation of misconduct (Annexure -I & II) were framed:

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"Articles of Charge

that Smt. S.Bali Auditor A/C No.8308869 while serving in pay Group-V of AAO (WC) Delhi Cantt. Received (7) seven Sy.Bills during 16.12.2000 to 22.01.2001. Out of which only three bills were submitted duly passed for payment by hr after three months on 15.03.2001 and fate of rest (4) four bills is still not known clearly shows negligence in discharging official duties and also showing incorrect position of bills by Smt. S.Bali, thus exhibiting lack of devotion to duties and she has acted in a manner unbecoming of a Government servant by infringing provisions by Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules,1964.

And

That the said Smt. S.Bali Sr. Auditor A/c No.8308869 while serving in pay Group-V of AAO (WC) Delhi Cantt., received (7) Sy. Bills during 16.12.200 to 22.01.2001 as mentioned Appendix-X and entered in her work book on dated 27.11.2000, 19.12.2000, 03.01.2001, 09.01.2001 (two bills), 18.01.2001 have been submitted duly passed for payment by her on 15.3.2001 i.e. after 2 to 4 months of receipt and where about of the remaining four bills is still not known."

- iii) The applicant has further submitted that she had been granted 30 days E.L w.e.f. 29.01.2001 to 27.02.2001 on account of proceeding to Singapore to see her ailing daughter. The application for leave was submitted on 24.01.2001 for the purpose which was duly recommended by the Officer Incharge and granted by the Group Officer. However, an application dated 22.01.2001 for grant of permission for going abroad and seeking 61 days EL was also addressed to PCDA (WC) Chandigarh. The applicant was given an understanding that the PCDA, Chandigarh

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had allowed the leave application for 30 days. Accordingly, the applicant had proceeded on leave. While proceeding on leave she had handed over her pending pad and work book to Shri B.S.Diana, AAO, Incharge of Group V in the Office of AAO (WC) Delhi Cantt. and reported for duty on expiry of leave on 12.03.2001. However, during her absence one Shri K.J.S. Bhatia, Sr. Auditor was posted w.e.f. 05.02.2001 to look after the work of applicant in her absence. The applicant had handed over the work book and pending pad of letters and bills to the AAO , Supervisory Officer of the applicant, in the presence of Shri Sukh Ram Singh, Sr. Auditor, who had also given a statement (Annexure A-5). Applicant's explanation was called for vide AAO (WC). Delhi Cantt.'s letter dated 27.03.2001 (Annexure A-6) in regard to grant of leave and permission to go abroad. Another explanation was called for vide AAO (WC)'s letter dated 02.05.2001(Annexure A-7) regarding non-payment of S.Pay Bills in respect of Non Industrial Personnel of Ordnance Depot, Shakur Basti. In both the cases, the applicant gave reply explaining her position. The AAO (WC), Delhi Cantt. then apprised of the position vide his letter dated 16.05.2001 (Annexure A-7 Colly.) to the PCDA (WC) Chandigarh regarding grant of E.L to the

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applicant as a very special case and recommended absence of the applicant for the period 29.01.2001 to 09.03.2001 to be regularised. But as the then Principal CDA (WC) had a grudge against the applicant on the issue of her proceeding to Singapore without waiting for formal permission and NOC to go abroad in very emergent circumstances and had got issued the Memo of Charge by an unauthorized Officer who was not even holding the charge of Dy.CDA (AN) as per the provisions of S.R.O. 43 dated 31.3.2001 (Annexure A-8). Although the applicant gave her explanation and requested the PCDA to consider her case, she was imposed penalty of withholding of two increments of pay without cumulative effect for a period of two years by an order dated 03.10.2002 under the signature of Dy. CDA (AN) who did not take his independent decision and the penalty was imposed at the behest of PCDA (WC) (Annexure A-9).

- iv) The applicant had filed statutory appeal (Annexure A-10) but the applicant's penalty was upheld by the Appellate Authority. Thereafter, the applicant had submitted revision application dated 25.07.2003 to Respondent No.2 (CGDA) who reduced the penalty to that of withholding of one increment of pay for a period of one year without cumulative effect.

4. The applicant, still being aggrieved, through this OA has challenged the impugned orders on the grounds that the memo of charge had been issued by an incompetent and unauthorized Officer beyond jurisdiction as the Officer who initiated the memo of charge was not holding charge of Dy. CDA (AN) and that the penalty vide order dated 03.10.2002 was imposed by Disciplinary Authority on the basis of conjecture and surmises with a motive of malice and bias, at the behest of the then Principal CDA (WC), Chandigarh. Further, she had handed over the pending pad of letters and bills to the Supervisory Officer in the presence of Shri Sukh Ram, Sr. Auditor before proceeding on leave. The applicant has also alleged that no proper enquiry was held nor any evidence was recorded nor she was given an opportunity to cross-examine the witnesses. She has relied upon two decisions of the Hon'ble Supreme Court, namely i) *O.K.Bhardwaj Vs. UOI(2002 SCC (L&S) 188)* and ii) *Shri Shail Bhajantri Vs. The Principal of Kendriya Vidyalaya No.2 Hubli & others (OA No.33/2002 (Bangalore Bench of CAT) decided on 13.09.2002.* A perusal of these cases shows that the facts of the cases referred to are quite distinguishable and do not apply to the present case.

5. The contentions of the applicant have been rebutted by the learned counsel Shri S.M.Arif in the counter affidavit. It has been submitted that the Officer i.e. Dy.CDA (AN), who has passed the penalty order dated 03.10.2002, was holding the post of Dy.CDA at the time of passing the penalty order and he was authorised as per SRO 43 dated 31.03.2001. It has been denied that the applicant had handed over her pending pad to the

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AAO in view of the contradictory statement dated 11.05.2001 of the AAO. Further, the applicant while replying to the explanation as well as to the charge sheet did not mention that the bills in question were handed over in the presence of Shri Sukh Ram Singh, Senior Auditor. It has further been denied that the PCDA (WC) was biased against the applicant. In fact, the charge sheet was issued by the competent Disciplinary authority. The Note below SRO 43 dated 31.03.2001 has not debarred the Hqrs. Office to initiate disciplinary proceedings against the employees posted in its sub-offices, but has also empowered that officers holding independent charge of a sub-office may exercise these powers.

6. Learned counsel for the applicant Shri V.P.S. Tyagi vehemently submitted that the charge is malafide, against the principle of natural justice and that the proceedings were initiated only on account of bias by the Principal CDA against the applicant.

7. On the other hand, learned counsel for the respondents Shri S.M.Arif strongly submitted that the allegations of bias and malafide are not borne out of the record and that in so far as the clearing and payment of bills etc. is concerned, the applicant did not exercise due care or diligence in the matter of handing over the bills before proceeding on leave. Out of seven bills which were pending with her for payment, she cleared only three bills after joining duty from which it can be concluded that she had not properly handed over these bills to the AAO.

8. We have heard the rival contentions of learned counsel for both the parties and have perused the pleadings placed on record.

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9. In so far as the Article of charges is concerned, it is very specifically stated that the applicant received seven bills during 16.12.2000 to 22.01.2001 out of which only three bills were submitted duly passed for payment by her after three months on 15.03.2001 and the position of rest four bills were still not known. In the statement of imputation, the dates of all the bills pending with the applicant had been indicated. It has also been stated that the applicant could not indicate the whereabouts of rest of the four bills which were pending with her for payment.

10. In para 2 of the penalty order dated 03.10.2002 (Annexure A-3 colly.), all the grounds taken by the applicant in her representation dated 02.8.2002, have been listed and on the basis of record, it was found that the three bills had been cleared by her on her returning from leave and the same were in her custody. After taking into account her aforesaid representation as well as the facts and circumstances of the case, the Disciplinary Authority found the allegations leveled against the applicant to be correct and imposed the penalty of withholding of two increments of pay without cumulative effect for a period of two years.

11. The Appellate Authority (Pr. CDA) vide his order dated 23.04.2003(Annexure-A3) upheld the penalty awarded by the Disciplinary Authority. However, the Revising Authority, namely CGDA has reduced the penalty of withholding of two increments to that of one increment of pay for a period of one year without cumulative effect. A perusal of order dated 30.12.2003 of the Revising Authority (Annexure A-1) shows that it is a

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detailed and speaking order and the Revising Authority has considered all the pleas taken by the applicant including alleged bias against the Principal CDA. The Revising Authority in Para 5 of his order has admitted that in the EL Register on which the leave had been sanctioned to the applicant, no remarks as to who would look after her work during her leave has been endorsed which was required to be done by the concerned AAO or by the Officer Incharge of the Group. It has also been mentioned in the order that

“As such, the contention of the petitioner that the pendency of the work was in the notice of her supervisor cannot be denied.”

The Revising Authority has explained and clarified all the remaining contentions of the applicant. Initially, the explanation of the applicant was obtained and after receipt of her explanation an investigation was carried out. It is only thereafter that a Memo of charge had been issued. It would be pertinent to highlight the conclusion arrived at by the Revising Authority which reads as under:

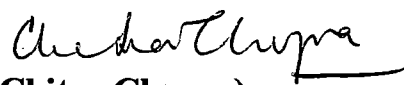
“6. And whereas after taking into consideration all the facts of the case, the undersigned considers that it is the bounden duty of a task-holder to hand over all pending work to the pro term designate of the task or to his/her supervisor, which she failed to do. However, the penalty of ‘withholding of two increments of pay without cumulative effect for a period of two years’ imposed by the Disciplinary Authority viz. Dy. CDA (AN), office of the Pr. CDA (WC), Chandigarh vide order dated 03.10.2002 and upheld by the Appellate Authority viz. Pr. CDA (WC), Chandigarh vide her order dated 23.04.2003 is not commensurate with the gravity of the lapse committed by Smt. S. Bali, Senior Auditor. Accordingly, the

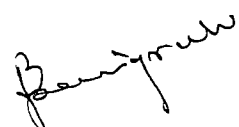
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undersigned is satisfied that modification of the existing penalty to that of "withholding of one increment of pay for a period of one year without cumulative effect" would meet the ends of justice."

12. After hearing the exhaustive arguments and contentions of both the parties, and after careful consideration of facts and circumstances of the case, we find that there has been some negligence and carelessness on the part of the applicant in the matter of handing over the bills/timely examination etc. Such delay in handling and processing bills is a serious matter as it is the main task of a Senior Auditor. We do not find any fault in the order of the Revising Authority which is a detailed and speaking order and whereby the penalty has also been reduced. We feel that there has been no miscarriage of justice and ,therefore, there is no adequate ground to interfere with this impugned order

13. Accordingly, the OA is dismissed. No costs.


(Chitra Chopra)
Member (A)


(B. Panigrahi)
Chairman

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