

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 320/2004

This the 6th day of ^{April} March, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)

Shri Harcharan Singh, Senior Auditor,
A/c No.8307763 serving in the
Office of CDA (Army), Meerut.

(None).

Versus

1. The Union of India (Through Secretary)
Ministry of Defence South Block,
New Delhi.
2. The Secretary cum Financial Advisor
in the Ministry of Defence (Finance Division)
South Block, New Delhi.
3. The Controller General of Defence Accounts
West Block V, R.K.Puram,
New Delhi.
4. The Controller of Defence Accounts (Army)
Balvadier Complex,
Meerut Cantt.

(By Advocate: Ms. R.O.Bhutia)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has assailed the order of the disciplinary authority Dy. CDA (AN) dated 28.6.2002 and the order of the appellate authority Controller of Defence Accounts (Army) Meerut dated 30.5.2003 whereby in a proceeding for minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 (Rules 1965) a penalty of reduction of one lower stage of pay from Rs.7250/- to Rs.7100/- in the time scale of pay of Rs.5000-8000 w.e.f. 1.7.2002 was awarded.

2. Briefly the facts are that the applicant was working as Senior Auditor with the respondents at Meerut. He submitted certain medical claim for reimbursement in respect of treatment received by his daughter and other

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members of the family some of which were rejected. Applicant made several representations but in vain. He was proceeded against under Rule 20 of CCS (CCA) Rules, 1965 for having approached the senior authority instead of submitting them through proper channel. On 3.12.2001 Dy. Controller of Accounts (Administration) decided to take disciplinary action against the applicant under Rule 16 of the Rules 1965. The article of charge dated 28.12.2001 (Annexure A-10) served on the applicant is reproduced as under:-

“Charge I:- Shri Harcharan Singh, SA while serving in CDA (Army) Meerut during 12/96 to 4/98 got deleted the name of his family members from his CGHS Card on the ground that his family members had shifted to his native place. However, the said Shri Harcharan Singh, SA immediately after deletion of names of his family members from CGHS Card, submitted several medical re-imbusement claims where all his family members were shown as suffering from TB. In all these claims his family members remained under treatment of District Govt. Hospital, Meerut despite the fact that all of them had been shifted to his native place in District Bijnore. The said Shri Harcharan Singh had got the names of his family members deleted from CGHS Card deliberately so that he could submit false medical claims of his family members by showing their treatment for TB from District Hospital Meerut. After these medical claims were rejected because of doubt regarding their genuineness, the said Shri Harcharan Singh again got the names of his family members included in his CGHS Card in 1998. The fact that he has not claimed any amount regarding any medicine/tests related with TB since then clearly indicates that the said Shri Harcharan Singh had taken all above actions with the motive to defraud Govt. by submitting false medical claims.

Shri Harcharan Singh by his above acts clearly exhibited lack of integrity and has behaved in a manner unbecoming of a Govt. servant thereby violating provisions of Rule 3(1)(i) and 3 (1)(iii) of CCS Conduct Rules.”

3. Applicant submitted reply to the above charge. The disciplinary authority after considering the representation held that the article of charge was proved against the applicant and imposed the penalty as aforesaid by order dated 28.6.2002 (Annexure A-2) which is impugned in this OA. Applicant preferred an appeal, which has been dismissed by the appellate authority vide order dated 30.5.2003 (Annexure A-1). The revision filed by the applicant was not considered as it was sent to the authority which was not competent to decide it (Annexure A-4). Thereafter an order giving effect to the penalty imposed upon the applicant was issued by Dy. CDA (AN) vide order dated 17.9.2002

(Annexure A-3). Applicant has challenged the above orders on the ground that the orders were passed mechanically without application of mind and that no effective opportunity of hearing was provided to him which is violation of the principles of natural justice. He has relied upon the judgment of the Hon'ble Supreme Court in O.K.Bhardwaj vs. Union of India and others (2002) SCC (L&S) 188 and an order of the Bangalore Bench of this Tribunal reported as 2003 (2) ATJ 388 wherein it has been laid down that even in the case of disciplinary proceeding for minor penalty if the charges were factually and they were denied by the charged official an enquiry was called for as it was the minimum requirement of principles of natural justice and said requirement cannot be dispensed with.

4. It is also contended that the charge was vague and unspecified since the matter related to factual position, no documents² was cited on the basis of which the charges were framed and that mere suspicion or doubt cannot take the place of proof. Moreover, it is submitted, the respondents have not intimated the reason on account of which his medical reimbursement claim was rejected. Summary procedure has been adopted for conducting the disciplinary proceeding although the article of charge was that the applicant was of doubtful integrity and he had submitted false medical claim for defrauding the Government. It is prayed that the orders impugned in the OA be quashed.

5. The respondents in the counter reply controverted the allegations of the applicant. It was denied that the reason for rejection of the medical reimbursement claims was not intimated to the applicant. The claims were rejected since they were not found genuine and the reason for rejection were conveyed to the applicant vide letters dated 18.8.98, 13.10.98, 21.12.98 and 13.1.99, copies of which were filed collectively as Annexure R-4. The disciplinary as well as the appellate authority both have passed reasoned orders after due consideration of the representation of the applicant. It is stated that Rule 16(1) (b) of the Rules 1965 gave discretion to the disciplinary authority to

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decide whether the enquiry should or should not be held in cases where a minor penalty is proposed to be imposed. The Government of India decision No.2 does not make it obligatory on the part of disciplinary authority to give the delinquent government servant an opportunity to inspect the relevant records unless such an inspection is asked for to enable him to submit the defence. Applicant never requested for any document to be made available or to be heard in person. It was denied that the orders of the disciplinary authorities or the appellate authorities were passed mechanically or without application of mind. IDL Chemist Lyd. Vs. T.Gattaiah (1995) supp 3 SCC, 573 was cited in support of the contention that the disciplinary authority had a discretion to decide whether to hold the enquiry in case of proceeding under Rule 16 of Rules 1965.

6. We have heard the learned counsel for the parties and have perused the record.

7. Certain medical reimbursement claims for treatment of the daughter and other members of the family were submitted by the applicant which were rejected by the respondents on the ground that they were not genuine. It appears that in 1996 applicant got the names of members of the family deleted from his CGHS Card and thereafter he submitted medical claims for treatment of his daughter for Tuberculosis in Government hospital Meerut. Applicant got the names of his family members included in CGHS card again in 1998. In his representation dated 28.12.2001, which was submitted in reply to the Article of Charge (Annexure A-9) served on him by the disciplinary authority vide order dated 3.12.2001, he has stated as under:-

“With due respect I beg to submit my representation in against the memorandum in question.

1. Sir, consequent on my Transfer from Chandigarh to Meerut on 31/5/94, I along with my members initially shifted to Meerut. But for the reasons of my children's education who were studying in class 5th, 7th, 9th, 10th and 12th under the CBSE pattern prevailed in Chandigarh region I could not get them admitted in the Central school i.e. where there is CBSE pattern. Further I may to add that I was not in a position to get my children admitted in private school



affiliated to CBSE due to my financial constraints and for the above reasons I was compelled to send back some of my family members to Chandigarh along with the school going children for completion of their Annual term education and some of the family members to my native place viz. to Bijnore to look after my ancestral property and due to some other domestic obligations under intimation to my office. The details of stay in r/o my family members with regards to their stay in Chandigarh and my native place is indicated below.

Serial No.	Name	Class+School	Stay period			Supports instrument no.
			Chd	Native Place	Meerut	
1.	Ashvender	9 th , 10 th , 11 th , 12 th from JNV	1994-98		1998 to date	1 to 7, 25 R
2.	Km. Pratibha	12 th from SSS Kersan	1994-95		8/95 to date	8, 9, 10, 25
3.	Akhilesh	7 th from CGHS	1994-95		- do -	8, 12, 25
4.	Km. Anita	5 th from GHSS Hallomajra	1994-95		- do -	8, 11, 25
5.	Smt.Sona Devi		1994-95	95 to 10/98	10/98 to date	1, 25 R
6.	Km. Chander Prabha	11 th , 12 th and BA		1994 to 10/98	10/98 to date	8, 13 to 16 18 to 25R, 26
7.	Smt. Bhagwanti			- do -	- do -	27, 25R
8.	Self			- do -	10/6/94 to date	25, 28, 29, 30 and 31

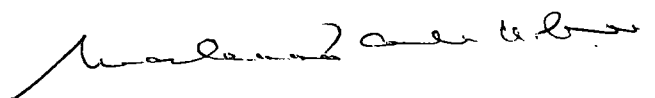
2. Sir, in the above circumstances, on joining of my duties in CDA (ARMY) Meerut on 10/06/94, I initially got included the names of my family members in C.G.H.S. card, but due to non admission of my children in the central school as well as J.N.V., Sardhana school Meerut my wife and four children who were studying in class 5th, 7th, 9th and 12th respectively were sent back to Chandigarh for completion of their studies under C.B.S.E. Board and two members viz. my mother and one daughter viz. Km. Chander Prabha, who completed. Passed her Board examination of class 10th from C.B.S.E. Chandigarh, were shifted to my native place. Sir, for the above reasons their names were therefore got deleted from the C.G.H.S. card and not with any malafide intention to defraud Govt. of India.

3. Sir, No. T.B. claim has been submitted by me regarding my family members shifted to my native place, except in r/o my daughter Km. Chander Prabha w.e.f. 12/96 to 04/98 under Regd no.79982 dated 06/02/96 and other treatments pertain to BRONCHITIS not for T.B. as stated. In this connection it is stated that my wife and my daughter met with an incident on 02/01/96 at my native place. They were,

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therefore, admitted in Singh Nursing Home at Bijnore in an emergency and after discharged from "Singh Nursing Home" my daughter Km. Chander Prabha, who was studying in class 12th at Najibabad had accompanied me in Meerut for better case. She, while staying with me at Meerut she got unbearable pain in her chest on 06/2/1996 she, being non-CGHS beneficiary, was consulted in Govt. Hospital P.L.S.H. (OPD) in an emergency state, where after necessary check up and tests, the doctor diagnosed her as a patient of PULMONARY TUBERCLOUSIS under Regd No.79982 dated 06/2/9 and was advised to take precaution at least for one and half years with immediate effect to save her life. Her treatment was further extended upto 05/05/98 (i.e. 6+3 months). The other treatment for the period from 12/96 to 05/97 has been taken by my other family members viz. wife and mother from OPD P.L.S.H. Meerut for the ailment of BRONCHITIS and not of T.B., as stated and that too have been taken in unavoidable circumstances and only during the period, whenever they used to stay at Meerut to look after my minor family members in my absence.

4. Sir, the treatment of PULMONARY TUBERCLOUSIS in r/o my daughter had to be contained in the unavoidable circumstances and only on the advice of the specialist and was stopped in completion of the prescribed period of treatment of T.B., as per the advice of the specialist. After curing of the disease VIZ., PUL TB there was no necessity to continue her treatment of T.B. Therefore, no further medical claim i.e. after 05/05/98 was preferred by me.
5. As regards inclusion of names of family in CGHS card, it is stated that the names of my three family members viz., Km. Pretibha, Km. Anita and Akhilesh Kumar were included in the CGHS card during the month of 08/95 i.e. on completion of their studies at Chandigarh and the names of another three members of my family, who were staying in my native place, on division of my parental property in 09/98 and to take self treatment in AIIMS N/D, they were shifted to Meerut. As such their names were included in CGHS card only in 10/1998. One of my son sh. Ashvender Kumar who completed his 12th standard in JNV Sec 25, Chandigarh had also accompanied me in Meerut during 1998. His name was also included in CGHS card in 10/1998. Therefore, it is not correct to state that I have included the names of my family members in CGHS card only on the grounds of my medical claim being rejected. The fact regarding not claiming any amounts regarding medicine/test related to PUL TB since then i.e. 04/98 to 10/98 has already been clarified vide para 4 anti. Therefore, the motive to defraud govt. by submitting false medical claims may not stand against me.
6. Sir, being legally and morally bounds to provide the basic requirements, such as medical and other requirements to save the life of any family members, had acted keeping in view the circumstances demanded in a very unavoidable circumstances and, therefore, never acted with a motive to defraud Govt. by illegal names of false medical claims which would mean of false medical claims which would have exhibited lack of integrity as I have never behaved in a manner unbecoming of a Govt. servant, as blamed by always acted with my best knowledge and capacity in accordance with my official status in the interest of the depts. And nation. In view of the above,



the provision of Rule 3 (i)(ii) and 3 (i)(iii) of CCS Conduct Rules in no way has been violated by me."

8. It is evident from the above that the applicant has explained the factual position and has stated certain material facts refuting that the reimbursement claims were bogus and not genuine. Perusal of the order of the disciplinary authority and the appellate authority, Annexure A-2 and A-1 respectively do not show that the facts stated by him were taken into consideration and discussed ~~upon~~^{by} by them before concluding that the explanation was meritless. Applicant has not been given an opportunity of personal hearing or even an opportunity to produce the material and documents to corroborate the allegation and the facts which were stated in the representation. This is a clear denial of an opportunity of hearing and violation of principles of natural justice.

9. True Rule 16 (1)(b) of the Rules, 1965 does give a discretion to the disciplinary authority to decide whether an enquiry was necessary or not but the discretion vested in him by aforesaid rule has to be exercised judiciously. When the applicant has stated certain facts in his reply to the show cause notice, which needed to be proved by some documentary or oral evidence, they could not have been brushed right lightly and ignored whimsically and capriciously by the disciplinary authority before imposing the penalty. The present case is covered by the judgment of the Hon'ble Supreme Court in O.K.Bhardwaj (supra). It will be advantageous to reproduce the judgment which is as under:-

"1. Leave granted.

2. The High court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty": a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the

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delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispense with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High court to consider whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs."

10. Bangalore Bench of this Tribunal in the case of Shrishail Bhajantri (supra) following the above cited judgment has observed, "in the absence of oral enquiry and without evidence on specific lapses it was not possible to establish the guilt of the applicant especially when the disciplinary authority in its impugned penalty order had stated that he on several occasion observed that the applicant was not punctual in attending the classes and not completed the syllabus within the prescribed time.

11. In the present case, the Article of charge served on the applicant stated that the medical reimbursement claims for treatment of the members of the family submitted by the applicant were rejected because there was "doubt regarding their genuineness". Reasons for such doubts have been stated, which raised disputed questions, finding on which could not have been recorded without providing reasonable opportunity of hearing to the applicant. For this proper enquiry was necessary. As held by the Hon'ble Supreme Court in the cited judgment it was the minimum requirement of principle of natural justice and the said requirement cannot be dispensed with. The disciplinary authority, as such, has not exercised its discretion under Rule 16(i)(b) of Rules, 1965 judiciously and in the process had caused great prejudice to the defence of the applicant. For this reason the order of the disciplinary authority and the

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appellate authority and the orders, which have been passed to implement the order are vitiated and illegal. They are not sustainable.

12. As a result, OA succeeds. The order of the disciplinary authority dated 28.6.2002, Annexure A-2 and the appellate authority dated 30.5.2003, Annexure A-1 and the office order dated 17.9.2002 whereby the penalty order was given effect to, Annexure A-3 are set aside. Case is remitted back to the disciplinary authority to exercise its discretion vested by Rule 16 (1)(b) of Rules, 1965 in the light of the observations made hereinabove afresh and to proceed in the matter further in accordance with law. The disciplinary authority will take a decision in the matter within two months from the date on which certified copy of the order is received by it. OA stands disposed of with the above direction. No costs.



(M.A KHAN)
Vice Chairman (J)

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