

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(15)

O.A./T.A. No. 142 of 1992

Decided on: 15-1-96

Shri Begh Raj SinghApplicant(s)

(By Shri A.K. Sikri Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri None for the respondents Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI P. SURYAPRAKASAM, MEMBER (J)

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal? *yes*

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 142 of 1992

New Delhi this the 15th day of January, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. P. SURYAPRAKASAM, MEMBER (J)

Shri Begh Raj Singh
R/o RZ-56 Hans Park,
Sagar Pur (West),
New Delhi-46.

..Applicant

By Advocate Shri A.K. Sikri with Shri V.K. Rao

Versus

1. Union of India through
Min. of Defence,
New Delhi.
Through its Secretary.
2. Engineer-in-Chief,
Army Headquarters,
DHQ, PO,
New Delhi.
3. Disciplinary Authority,
Chief Engineer,
Western Command,
Chandimandir.
4. Commander Works Engineer,
R&R Hospital,
Delhi Cantt.

..Respondents

None for the respondents

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This application filed under Section 19 of the Administrative Tribunals Act, 1985, is directed against the impugned order dated 21.3.1991 of the respondents by which the applicant was imposed the penalty of dismissal from service.

2. The brief facts in this case are as follows.
By a common proceedings, departmental enquiry was

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held to enquire into the charges framed against 7 officials including the applicant under the respondents. The charge against the applicant was that during the period from October, 1981 to May, 1985 when the applicant was employed as Supervisor B/S Grade-I in Garrison Engineer (Project) Hissar, he had committed an irregularity in tampering with the documents by making an amendment to USR No.E 485543 dated 17th of February, 1984, in connivance with Sub V.P. Swaich and BSO Shri J.S. Kaushal as well as falsification of ledger (Cement Stock Register) in connivance with the said officials by showing the issue of 1300 bags of cement in lieu of 300 bags actually and physically issued to the contractor against CA No.CWE/PM/36/8182-provision of water supply and sewage disposal at Hissar. He was also charged that he had further committed an irregularity of amending the Gate Pass for 1300 bags in lieu of 300 bags actually issued. The Enquiry Officer in his report, on the conclusion of common proceedings, held after appraising the evidence as follows:-

"6.73 As regards the role of CO, his

initial on Ex.S-11 is the only tangible evidence. If his contention in this regard as analysed in the preceeding is accepted, it would mean that he has put his initial without taking any responsibility. This position is not acceptable. As Supervisor he should have seen the actual position before putting his initials. His defence in this respect is quite weak.

6.74 The instant charge is, therefore, considered established to the extent noted above".

In response to this finding, the applicant made a representation to the respondent No.1. On this

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representation being forwarded by the respondent No.1 to the respondent No.4, the applicant was informed that the representation should have been addressed to the disciplinary authority, namely, the Chief Engineer, Western Command and not the Desk Officer (Vig.), Government of India, Ministry of Defence by his letter dated 1.11.90. However, the disciplinary proceedings ended with the issue of the impugned order dated 21.3.91 by respondent No.1 in the name of the President. Aggrieved by this, the applicant filed a revision petition to the President under Rule 29 of the CCS (CCA) Rules, 1965 which was rejected by the order dated 20.02.92, hence this application has been filed with a prayer to the Tribunal to set aside the order of the respondents dated 21.3.1991 and also of 20.02.92 setting aside the charge-sheet and the findings recorded by the Enquiry Officer with consequential relief.

3. The main grounds advanced by the applicant can be summarised as follows:-

(i) The disciplinary proceedings, including the issue of charge-sheet have not been initiated by the competent authority and, therefore, is without jurisdiction.

(ii) The applicant has been denied principles of natural justice by denying the facility of remedy of appeal/review inasmuch as the chargesheet as well as the order of punishment have been issued by the President directly and not by the immediate disciplinary authority.

(iii) The findings of the Enquiry Officer are

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perverse and unreasonable.

(iv) There is absolutely no evidence at all against the applicant to support the charge made against him and the charge is not substantiated at all and, therefore, the findings of the Enquiry Officer in para 6.73 and 6.74 of the report is also based on no evidence.

(v) The authority, by the impugned order, had passed a non-speaking and non-tenable order without dealing with the contention raised by the applicant against the findings of the Enquiry Officer.

(vi) The presumption of the disciplinary authority which passed the order that the charge proved against the applicant was falsification of the documents which was not the charge at all proved against the applicant in the first place in the enquiry and, therefore, the punishment was based on wrong presumption.

4. The applicant contends in his averments that the sum and substance of the charge, namely, that he has falsified the documents by showing issue of 1300 bags of cement in lieu of 300 bags is not at all proved in the enquiry. He contends that the Exhibit S-11, which is the Cement Stock Register was not maintained by the applicant but by the Supervisor and was also checked by the Garrison Engineer and BSO only. The applicant contends that he had initialled the Register only on 12.3.84 and 20.03.84 in token of verification of issue of cement bags on these particular dates made by the stock holder and such an initialling on the date, had only limited relevance and it did not mean that he had certified the ledger balance on these dates. He also contends

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that there is no evidence of tampering at all on these dates in the relevant document and the Register had been checked by two senior officers on 10.03.84 and 13.3.84 and the balances were also checked and, therefore, the applicant could not be attributed any negligence in balancing of the cement bags on the relevant dates when it had already been done on 10.03.84 and 13.03.84 and there had been no tampering of the entries by the applicant on these two dates when he was asked to look after the work. He also contends that the correction of the entries were made on 22.03.84, whereas he had not seen the cement stock register after 20.03.84 and was in no way connected with these errors and his initials on the earlier dates did not have any bearing on the entries connected with the charge and, therefore, the finding of the Enquiry Officer was erroneous. In short, the applicant pleads that there had been absolutely no evidence at all to support the charge and, therefore, the order of dismissal was based on non-application of mind on the basis of the charge which has not been proved in the enquiry when the Enquiry Officer had not himself returned the finding in support of the charge.

5. Respondents in their reply have averred that all the grounds urged in the application are misconceived, wrong and have denied the allegations. However, specifically, reply against the grounds taken individually in para 5 of the application have not been given by the respondents. They have also raised the preliminary objection that the application deserves to be dismissed in that

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the Tribunal does not sit in appeal over the facts recorded by the Enquiry Officer and the Tribunal can only see whether there is any material on the basis of which the findings are recorded. If the material does exist, it is not permissible for the Tribunal to go into the conclusions of the enquiry. In the averments, the respondents have stated as follows:

" Though there is no direct and clinching proof that the applicant had misappropriated 1000 bags of cement either himself or in cooperation with other officials, but as regards role of the applicant, his initial on Stock Register of Cement (Exhibit S-11) is the only tangible evidence where he has put his initials without taking any responsibility. As a Supervisor the applicant was supposed to have seen the actual position before putting his initials".

They have also contended that the applicant was required to check the ground balance whenever he initialled the stock register, even on behalf of the Superintendent B/S Grade.II. They further contend that the applicant should not have relied solely on the initials of his subordinates on Stock Register before putting his initials. On the question of tampering with the documents, the respondents have averred in their reply that the same has been analysed by the Enquiry Officer and after careful consideration of the evidence available on records, it was found that the charge was established against the applicant.

6. The learned counsel for the applicant strenuously argued that there has been absolutely non-application of mind in this case by the competent authority and also by the Enquiry Officer. From the Enquiry Officer's report, it is clear that the charge has not been proved. The fact that at

one or two places, the applicant had initialled the stock register and the observations of the Enquiry Officer that he should have been more careful does not amount to the charge of falsification of ledger in connivance with the two other officials having been specifically proved in the enquiry. The learned counsel has also drawn our attention to the reply of the respondents that there is no direct and clinching proof that the applicant had misappropriated 1000 bags of cement either himself or in connivance with two other officials and his initialling is the only tangible evidence of his action without taking any responsibility. The learned counsel submitted that the only point allegedly proved against the applicant was that he had initialled the Stock Register of cement without any responsibility and the charge of misappropriation was not proved. The learned counsel stated that the charge which was allegedly provided viz. that he had initialled the stock register without responsibility was not the charge levelled against the applicant at all and there was no evidence to prove such a charge and, therefore, the findings of the Enquiry Officer were clearly preverse. In short, the learned counsel for the applicant argued that the punishment was imposed for a charge which had not been proved at all and there was absolutely no evidence to support this charge. The learned counsel for the applicant specifically drew our attention to the findings recorded by the Enquiry Officer in para 6.67, 6.68 and 6.89 which completely exonerated the applicant and particularly para 6.69.

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In para 6.69, the Enquiry Officer had recorded, that the arguments of the charged officer that he had initialled the issue entry to show that the specific issue of cement was in his knowledge and this did not mean that he had actually checked the ground balance had got force. The Enquiry Officer had further observed in the above para that Shri IJ Verma, SW-2, was primarily connected with Ex.S-1, Ex.S-11 and S-12(a), S-12(b) and S-12(c) and had observed " it is strange that such a person has been produced as a listed witness by the prosecution. Even a careful study of his deposition reveals that he cannot escape the larger share of culpability with regard to the interpolation/tampering with the concerned documents." The learned counsel, therefore, argued that the culpability in regard to the tampering of the documents did not lie with the applicant at all and, therefore, the charge could not ^{be} said to have been proved nor was it the conclusion reached by the Enquiry Officer. All that the Enquiry Officer had said was that he had observed that his initialling on Ex.S-11 on the relevant date was only the tangible evidence and that the contention of the applicant that he had simply put his initials without taking the responsibility could not be accepted. The learned counsel stated that this was not the charge in any case. The charge was that he had falsified the documents which had not been proved at all in the enquiry. The learned counsel argued that the Enquiry Officer had clearly said in para 6.71 " the interpolation /tampering of the documents had been made in a crude manner. Had it

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been an honest amendment, the wrong entry should have been cut, crossed, amended and duly initialled. Nothing of the this sort has been done either in Ex.S-11 or in S-12(a), S.12(b) and S-12(c)". The Enquiry Officer himself had said that it was not the applicant who was primarily connected with these documents by his observations in para 6.69. The learned counsel also contended that the applicant's revision petition had not been considered and the authority has not applied its mind before rejecting the revision petition. The learned counsel for the applicant relies on the decisions in Nand Kishore Prasad Vs. State of Bihar & Others, (1978) 3 SCC 366; Ananda Prakash Singhal Vs. Union of India, 1991(1) All India Services Law Journal (CAT, Principal Bench) page 137; 1990(7) SLR page 718 G.A. Sivakumar Vs. Union of India & Others in support of his contentions. The learned counsel for the respondents while contesting the arguments of the learned counsel for the applicant stated that the revision application of the applicant was also dismissed by the competent authority. He has strongly relied on the Apex Court's decision in AIR 1995(3) SC page 561 Government of Tamil Nadu and Another Vs. A. Rajapandian, wherein their Lordships have clearly held that the Tribunal cannot reappraise the evidence and cannot arrive at an independent finding on the material placed in the enquiry and the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. The competent authority has concluded that

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the article of charge is proved after careful consideration of the report and the inquiring authority and the evidence on record and, therefore, this cannot be reexamined by the Tribunal.

7. We have heard the learned counsel for the parties and have perused the records.

8. It is necessary at the outset to dispose of the contention of the applicant on the question of appellate/revisional authority having passed the final punishment order instead of the disciplinary authority in this case thereby denying him the right of appeal to the appellate authority.

9. As mentioned earlier in the facts of the case, the enquiry conducted against the applicant is in a common proceeding. Under Rule 18 of the CCS (CCA) Rules, 1965, where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding (emphasis added). In this particular case, the disciplinary action against the applicant was taken in a common proceedings. The President was competent to impose the penalty of dismissal on all the Government servants included in the common proceedings. Besides, under Rule 12(1) of the aforesaid rules, the President may impose any of the penalties specified in Rule 11 on any Government servant. In the light of this provision, the contention of the applicant that he was proceeded against by an order directly passed by the

President initiating the disciplinary action and was also dismissed by an order of President directly without being passed by the competent authority in the case, is not tenable. Besides, the opportunity of revision against that order, as provided under the rules, has also been availed of by the applicant and, therefore, it cannot be said that the disciplinary proceedings have been seriously vitiated in this case.

10. We next move on to the other contentions of the learned counsel for the applicant regarding absence of any evidence to support the charge. It is necessary to repeat at this stage the actual charge that has been framed against the applicant. The charge reads as follows:-

" That the said Shri Begh Raj Singh while employed as Supervisor B/S Grade I in Garrison Engineer (Project) Hissar during the period from October, 1981 to May, 1985 has committed an irregularity or tampering with the USR No. E 485543 dated 17th February, 1984 in connivance with Sub V.P. Swaich and BSO Shri J.S. Kaushal as well as falsification of ledger (Cement Stock Register) in connivance with the said BSO and Shri I.J. Verma, Storekeeper by showing issue of 1300 bags of cement in lieu of 300 bags actually and physically issued to the contractor M/s Deepak Electrical and Trading Co. against CA No. CWE/PM/36/81-82-Provision of water supply and sewage disposal at Hissar. The said Shri Begh Raj Singh further committed an irregularity of amending the Gate Pass for 1300 bags in lieu of 300 bags actually issued.

Thus the said Shri Begh Raj Singh has failed to maintain absolute integrity; and devotion to duty which act on his part tantamounts to violation of the provisions of Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964."

The documents relied upon in the above case on which the charge was to be sustained are unstamped receipt

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NO. E-485543 dated 17.2.1984, stock register of cement, site cement issue register and Gate Pass. From para 6.70 of the Enquiry Report it is seen that the site cement register which was cited as one of the listed documents was not made available. In fact, the Enquiry Officer had observed " had it been available, it could have thrown more light on the receipt of the number of cement bags and its day to day consumption". Regarding the other document, namely, the unstamped receipt which is exhibited as S-1, the Enquiry Officer had recorded in para 6.67 of his report as follows:

" On careful persual of the related documents it is found that since the Charge Officer was in the B/S Sub-Division, he had nothing to do with Ex.S-1, i.e., the USR in question. SW-2 as the Storekeeper of Cement and B/R Sub-Division were directly concerned. SW-2 had deposed that the USR had been amended by Subedar V.P. Siwach. The cement was issued and received by B/R Suptd. Grade-II and the contractor".

The aforesaid document concerned is of no relevance in sustaining or proving the charge. Next comes the Gate Pass. It is exhibited as S.12(a), S12(b) and S.12(c). In para 6.69 of the Enquiry Officer's report, the Enquiry Officer has recorded that it was SW-2, i.e., Shri I.J. Verma who was primarily connected with Ex.S-1, Ex.S-11 and Ex.S-12(a), S-12(b) and S-12(c). He had not recorded any evidence that the Gate Pass in question was handled by the applicant nor was he concerned with its preparation or issue. Therefore, this document is also not of any assistance in proving the charge. In any case, there is no finding in the enquiry that the Gate Pass had been amended by the applicant. In

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regard to the last document Exhibit S.11, which is the stock register of cement, we have carefully perused this document. annexed as Annexure A-11 to the paper book which is an extract of the stock register. The applicant had initialled the last entry on the 12.3.1984 showing an issue of 200 bags of cement and the first entry of ^{16th} March, 1984 showing an issue of 25 bags of cement. The alleged tampering or falsification of the entry related to the correction of 300 bags of cement into 1300 bags on 17.2.1984. There is no corresponding correction of balance of stock on that date whereas there is an entry after 22.3.1984 indicating "correcting entries adjusted" showing 1000 bags of cement issued and the balance has also been shown as reduced by 1000 bags on that date. It is pertinent to observe here that the entries have been attested by other officers on 10.03.84 and 13.3.84. There is no evidence of any tampering or correction of entries. The Enquiry Officer in his report had observed as follows:-

" The CO had, however, initialled in Ex.S-11, i.e., the Cement Stock Register In that respect, he argued that Ex.S11 was being maintained by SW-2 as Stock Holder of cement under Subedar R-Ganeshan Supervisor B/S II vide Ex.D-191. This register was being checked by GE & BSO. Sometimes when the initial of supervisor was necessary against issue in the cement stock register in case of urgent issue of cement and Supervisor B/S II was not available, the Register was being brought to him so that the work was not held up. In such case the CO submitted that he had initialled the issue entry to show that the specific issue of cement was in his knowledge. It did not mean that he had actually checked the ground balance. The responsibility to check the ground balance was that of the stock holder of cement (i.e. SW-2) and Subedar R. Ganeshan, i.e., Supervisor B/S II.

The CO's argument has got force. It is SW-2. i.e., Shri IJ Verma who was primarily connected with EX.S-1, EX.S-11 and S.12(a), S.12(b) and S.12(c). It is strange that such a person has been produced as a listed witness by the prosecution. Even a careful study of his deposition reveals that he cannot escape the larger share of culpability with regard to the interpolation/tampering with the concerned document".

In the report relating to the applicant, the enquiry had also not stated that there had been any falsification of the document by the applicant. He had made following observation in para 6.72:-

"There is, however, no direct and clinching proof to conclude that the CO had misappropriated 1000 bags of cement either himself or in cooperation with other concerned".
In para 6.73 as regards the role of the Charged Officer, the report of the Inquiry Officer ^{was as} follows:-

His initials on Exhibit S.11 is the only tangible evidence.

If his contention in this regard as analysed in the preceding paragraphs is accepted, it would mean that he has put his initials without taking any responsibility. This position is not acceptable. As Supervisor, he should have seen before putting his initials. His defence in this respect is quite weak. Therefore, the Charged Officer concludes "that the charge is established to the extent noted above".

11. We are constrained to observe that the charge against the officer, i.e., falsification of documents in connivance with certain other officials and misappropriation of 1000 bags of cement with ulterior motive, is stated to have not been proved at

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all by the Enquiry Officer and, therefore, the conclusion at the end of para 6.74 of the report relating to the applicant that the charge is proved, is without any basis. The Enquiry Officer himself has admitted that the Charged Officer's argument that his initials on the two dates was only to show the issue entry with the specific issue of cement was in his knowledge and that he did not mean that he checked the ground balance which was the responsibility of the stock holder of cement, has got force and, therefore, no culpability can be directly attributed to the applicant. The remarks viz. "as Supervisor he should have seen the actual position before putting his initials" can at best be an observation and there is no charge to this effect that he had failed to actually check on the dates when he had initialled the issue of cement, in regard to the balance stock and had violated any procedural instructions in this regard. In view of this, we cannot help concluding that the finding of the Enquiry Officer is perverse.

12. Admittedly, the enquiry revealed that there had been no direct or clinching proof to conclude that the applicant had misappropriated 1000 bags of cement either by himself or with the cooperation of others as was made out in the articles of charge and this was recorded in the Enquiry Officer's report and at the same time, it cannot be said that the charge is proved.

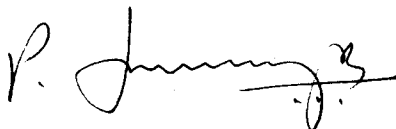
13. Thus, there is absolutely no evidence against the applicant in support of the charge

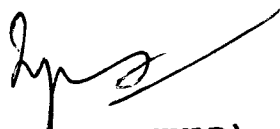
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as revealed in the enquiry and, therefore, the order of punishment is based on no evidence at all.

14. In the conspectus of the above discussion, we are of the view that the ^{impugned} orders of the disciplinary authority indicated as Annexure A-1 and the rejection of the review petition cannot be sustained and, therefore, they are set aside. In the result, the application is allowed and the respondents are directed to reinstate the applicant forthwith with all consequential benefits relating to the arrears of pay including increments, treating the period of absence from the date of dismissal to the date of reinstatement as duty.

15. In the circumstances of the case, there shall be no order as to costs.


(P. SURYAPRAKASAM)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

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