

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1019/1992

New Delhi this the 15TH day of September, 1997.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI S. P. BISWAS, MEMBER (A)

Raghubir Singh S/O Kehar Singh,
working in CDA (ORS) Meerut,
Kankarkhera,
Meerut.

... Applicant

(By Shri N. S. Verma, Advocate)

-Versus-

1. Union of India through
Secretary, Government of
India, Ministry of Defence,
New Delhi.
2. The Financial Advisor (DS),
Government of India,
Ministry of Defence
(Finance Division),
New Delhi.
3. The Controller General of
Defence Accounts,
R. K. Puram (West Block-V),
New Delhi-110066.
4. The C.D.A. (PD),
Meerut Cantt.

... Respondents

(By Shri P. H. Ramchandani, Sr. Advocate)

O R D E R

Shri Justice K. M. Agarwal -

By this O.A. the applicant has made a prayer for quashing the impugned order of penalty of removal from service passed by the disciplinary authority and affirmed in appeal by the appellate authority.

2. Briefly stated, in a common disciplinary proceedings against the applicant and one S. V.

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Singh, Accounts Officer for embezzlement of a sum of Rs.5,000/-, both of them were found guilty. Accordingly, an order of removal from service was passed against the applicant, whereas an order of dismissal from service was passed against S. V. Singh. S. V. Singh first filed O.A. No. 3323/1992 which was dismissed as withdrawn on 23.12.1992. The second O.A. No. 1093/93 filed by him was dismissed on 18.8.1993 on ground of res judicata as also on ground of delay. The present O.A. was initially heard by us on 27.8.1997. After hearing the learned counsel for the parties, we came to the conclusion that the misconduct was proved and, thereafter, for further hearing on the question of quantum of penalty, the case was adjourned so as to enable the learned counsel for the respondents to seek instructions from the respondents, if it was possible to take a lenient view in the matter of penalty in the light of the fact that Shri S. V. Singh was inflicted the penalty of dismissal from service whereas taking a lenient view, the applicant was subjected to a penalty of removal from service. The case was thereafter again heard on 10.9.1997 and closed for orders.

3. We may reiterate that no irregularity or illegality could be pointed out by the learned counsel for the applicant in the conduct of enquiry proceedings by the enquiry officer. After supplying a copy of the enquiry report and obtaining reply of the applicant, the disciplinary authority imposed a penalty of removal from service, which was affirmed in

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appeal by the appellate authority. Under these circumstances and in view of the fact that we cannot sit in judgment as a court of appeal against the findings recorded by the enquiry officer and accepted by the disciplinary authority, we are of the view that no case is made out for interference with the finding that the misconduct was proved against the applicant.

4. In so far as the quantum of punishment is concerned, the learned counsel for the respondents submitted that the respondents are not agreeable to further reduce or minimise the quantum of penalty imposed on the applicant. He also submitted that this Tribunal cannot, in the circumstances of the case, interfere with the quantum of penalty. In reply, the learned counsel for the applicant cited a decision of the Supreme Court in **Ram Kishan vs. Union of India, JT 1995 (7) SC 43** to submit that interference in the quantum of punishment is possible where the court or the tribunal finds that it is disproportionate to the gravity of the charge against the delinquent officer.

5. In **Union of India vs. Parma Nanda, 1989 (1) SCALE 606**, the Supreme Court specifically held as follows :-

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or not utterly perverse. It is appropriate to remember that the power

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to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In view of this decision of the Supreme Court, we find it difficult to interfere with the quantum of penalty imposed on the applicant. Similar view was expressed by the Tribunal in O.A. No. 1388/1997 decided on 28.7.1997 between Shri Sujan Singh vs. Union of India.

5. Ram Kishan's case (supra) relied on by the learned counsel for the applicant is quite distinguishable. The disciplinary authority did not agree with certain findings of the enquiry officer without notice to the applicant. The Supreme Court, therefore, looked into the gravity of the misconduct and imposed a lesser penalty of imposition of stoppage of two increments with cumulative effect. Secondly,

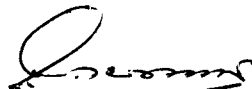
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the decision of the Supreme court in Parma Nanda's case was of a larger Bench. For these reasons, we find no merit in this O.A.

6. In the result, this O.A. fails and it is hereby dismissed, but without any order as to costs.



(K. M. Agarwal)
Chairman



(S. P. Biswas)
Member (A)

/as/