

17

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1403 of 1993

10th day of December, 1993

Mr. J.P. Sharma, Member (J)

Mr. B.K. Singh, Member, (A)

Chetan Prakash Mittal
Son of Late Lala Nanak Chand Lehia,
House No.5, 'Kha' Block,
Panchvati Colony,
Palam, New Delhi. , , , ,

Petitioner

By Advocate: None
Applicant in person.

VERSUS

1. Union of India, through
Secretary, Ministry of Defence,
Govt. of India,
New Delhi.
2. The Controller General of Defence Accounts,
West Block-V,
R.K. Puram, New Delhi.
3. The Controller of Defence Accounts
Air Force, West Block-VI,
R.K. Puram, New Delhi.
4. Shri J.S. Arya, Deputy Controller of
Defence Accounts,
Air Force, Subroto Park, New Delhi. . . . Respondents

By Advocate: Shri M.L. Verma

ORDER

(By Mr. B.K. Singh, Member (A))

This O.A. No. 1405/93 is directed against the
order No. AN/XIII/13600/(368)/92/5 dated 19.9.92 of
General
the Controller of Defence Accounts, and No. DCA/G/2/
CPM-Misc. dated 14.5.93 of the Deputy Controller of
Defence Accounts, Air Force. The applicant is working

(B)

Contd.... 2/-

8

in the office of the Deputy Controller of Defence Accounts (Air Force), New Delhi, (respondent No.4) in a supervisory capacity. He received an order from the Deputy C.D.A. on 7.1.92 (annexure 3 of the paper-book) for performing "office closing duty" on 1st, 2nd and 3rd January 1992. The applicant replied vide his protest response dated 8.1.92 (annexure 4) that he would not be in a position to perform the "office closing duty" on the aforesaid dates in view of this protest already made on the letter itself on 1.1.92. On 5.1.92 he left office at 5.41 p.m. on getting a message from his son to rush to doctor for consultation regarding some physical disturbance to his daughter-in-law. The applicant requested the respondent No.4 to send his own remarks to respondent No.3 for decision vide his reply dated 9.1.92 (annexure 6). Vide annexure 7 he requested respondent No.3 to convey his own decision on the protest of the applicant recorded on the duty letter itself sent by respondent No.4.

2. The respondent No.4 served a memo of charge-sheet No. DCA/G/2/XXXIV dated 13.1.92 (annexure 8 of the paper-book). The applicant was asked to show cause for minor penalty under Rule 16 of CCS(CCA) Rules 1965. Later on on his request a duplicate copy of the charge-sheet was served on him when he stated that he had not received the same. This is marked as annexure 14 of the paper-book. The

B

Contd....3/-

applicant was awarded a minor penalty of reduction of pay by three stages in the same scale for a period of two years without cumulative effect under Rule 16, CCS(CCA) Rules 1965. The applicant made an appeal dated 18.2.92 (annexure 16) and again on 3.3.92 (annexure 17) to respondent No.3. who rejected the same vide his order No. AN/1/37/CPM/8282765 dated 24.3.92 (annexure 18).

3. The applicant submitted a revision petition dated 9.4.92 (annexure 19) to the appellate authority, i.e. respondent No.3 whom he considered to be the revisional authority also under Rule 29(V) CCS(CCA) Rules 1965 against the decision of the appellate authority. It is averred by the applicant that the appellate authority is also a revisional authority and since he had passed an illegal order which would have affected his pension, he did not entertain the petition and passed on the same to the Controller General of Defence Accounts. The C.G.D.A. passed an order reducing the punishment to with-holding of one year's increment without a cumulative effect.

4. Against this order of the CGDA the applicant made a review petition dated 15.11.92 (annexure 20) to the President of India. The applicant was informed by the respondent No.4 that the review petition was rejected by the Ministry of Defence stating that no new material has been brought by him necessitating a review of the petition. This is

annexure 21 of the paper-book).

5. The applicant has filed this application for quashing and setting aside the orders of minor penalty imposing on him the reduction of pay by three stages (of increments) and also the annexure 1 of the respondent No. 2 and refund a sum of Rs. 1042/- on account of recovery for erroneous grant of annual increment due on 1.5.92 and paid upto 30th April 1993, and also the non-grant of annual increment due on 1.5.93 by respondent No. 3 and 4 vide respondent No. 4 order (annexure 2). The applicant has also prayed that he should be paid 12% interest on the above amount of arrears w.e.f. 1.3.92 to 1.5.92 and upto 1.5.93 respectively.

6. A notice was issued to the respondents who filed their reply and contested the application and opposed the grant of reliefs prayed for by the applicant.

7. Heard the applicant in person and the learned counsel for the respondents, Shri M.L. Verma. It is admitted by both the parties that the applicant refused to perform the "office-closing duty" assigned to him on 1st, 2nd and 3rd January 1992 under protest. It is also admitted by the applicant that he recorded his protest on the duty letter itself on 1.1.92. It is also admitted that he left office on 5.1.92 at 5.41 p.m. It is on the plea that he had to go ^{to} a doctor to get his daughter-in law checked up as she had some problems.

B

8. The various annexes filed by the applicant have serious infirmities since the dates of filing representations against the minor penalty imposed and also the appeal filed are practically on the same date on which the orders were issued. Ofcourse it has been averred by the applicant that it was through proper channel and therefore there might have been a delay of one to two days in receipt of the representation/appeal. Both the parties have admitted that the orders of punishment and the orders in regard to appeal have been passed by the competent authorities. The applicant, however, has challenged the authority of the Controller General of Defence Accounts to pass orders on revision-application. In para 8 of CCS(CCA) Rules 1965 (P. Muthuswamy's compilation 18th edition), the authorities competent to pass orders on revision-application have been given in 1 to 6. Sub-section (4) of 29 is relevant to this issue. It says, "the head of department directly under the Central Govt. in the case of a government servant serving in a department or office under the control of such Head of Department". It is not denied by the applicant that CGDA is Head of Department for all offices for matters of accounts and he is directly under the government. The applicant's contention that the CGDA

had no authority to pass orders in revisional matters is not acceptable. As a Head of Department he is fully competent to pass orders on a revision petition filed against the orders of the appellate authority. The appellate authority has to pass an order in revisional matter, has to do so within six months of the date of the order proposed to be revised and he will have to give show cause notice etc. The appellate authority had also passed order sustaining the orders of the disciplinary authority and he did a wise thing by referring it to the Head of Department who was fully competent to pass the orders reducing the punishment of withholding two years increments to one years increment. The appellate authority was an interested party since he had already passed an order upholding the decision of the DA and it would have been difficult for him to revise his own order. The appellate order merged with the order of the competent disciplinary authority and as such he could not have revised his own order. The applicant instead of being grateful to the Head of Department, who is competent authority and who saved him from being adversely affected in regard to pension, has come up against that order to the Tribunal to set aside calling the Head of Department as an incompetent authority. Thus the pension of the applicant is not going to be affected because the order of the appellate authority was passed on the 20th February 1992 and it has come to an end on



Contd....7/-

VB

19.2.1993. The applicant is retiring on 30th April 1994 and if the period is counted from 20th February 1993 he has more than a year's service before retirement and as such there is absolutely no force or strength in his argument that his pension is getting affected adversely. This contention of the applicant therefore is not tenable and is unacceptable.

9. As regards charge-sheet, it is clear that the applicant has acted against the rules and procedures for lodging a protest against an order. The remarks on the duty letter on 1.1.92 was a clear attempt to defy the orders of the superior authority who had assigned the office-closing duty to him and he refused to perform it and it has also been forcefully argued by the learned counsel for the respondents that he continuously defied the orders and he went away before 6.00 p.m. and made false entries in the register of having left the office at 6.00 p.m. It is only on 5.1.92 that the applicant recorded time of leaving the office at 5.41 p.m. There is also no proof to show that the respondent No.4 was prejudiced against the applicant and therefore he served the charge-sheet on him instead of referring the matter to respondent No.3. It is admitted by the applicant that the respondent No.4 was his immediate boss and he was competent authority to issue a charge-sheet and also to award him the minor/major penalties. The contention of the counsel for the



Contd....8/-

1h

respondents that the charge-sheet was served at the residence of the applicant has not been fully rebutted by the latter. However, this fact whether charge-sheet was submitted at his residence or not or whether the signatures of his son was fabricated by the messenger has no relevance since or not he was supplied with a copy of the charge-sheet served at his residence. Therefore whether this copy was not the original or it was not signed in ink has no relevance to the matter under consideration. Shri Mittal was absent from residence without information or permission and when he was not available the messenger thought it proper to hand it over to the applicant's son. The respondents have categorically stated that on his request a fresh ink-signed copy was provided to him on 21.8.92 which was acknowledged by him. This is annexure 'A' of the paper-book. There is no point in asking for the statement of the messenger when the authorities believed his version that he had not received a copy of the charge-sheet and he was provided with a fresh copy of the charge-sheet duly signed in ink. It was also contended by the learned counsel for the respondents that the letter dated 18.12.92 attached to annexure 12 of the petition was written after the issue of penalty order and is addressed to the appellate authority. It

B

Contd....9/-

is surprising that the date of award of punishment and the date of filing of the appeal are almost simultaneous. The applicant has stated that on receipt of the punishment order he immediately on the same date despatched the same to the appellate authority but as per the postal receipt it was despatched on 20.2.92. The genuineness of his statement that he despatched it on 18.2.82 is doubtful.

10. As already stated above, his fresh revision petition was not entertained by the appellate authority as an interested party and he submitted the same to the CGDA, respondent No. 2 as Head of Department, who reduced the minor penalty of with-holding two increments to one year's increment. Rule 19(4) para 8 of the CCS(CCA) Rules declares Head of Department as competent authority to decide revisional matters and it is in that capacity that the CGDA passed revision orders. Thus the relief prayed by the applicant that his pension will be adversely affected on the basis of appellate authority's orders, has been duly considered by the revisional authority who accepted the same and reduced the penalty as stated above. Thus nothing survives in regard to this relief prayed for by the applicant.

11. As regards the charge-sheet in regard to minor penalty and the show-cause submitted by the applicant, it is admitted by the applicant that he had filed a protest



Contd.... 10/-

on the duty letter itself. This is against the procedure laid down for the working of the Central Government offices. He also challenged the authority of the superior officers who assigned duty to him, which is certainly unbecoming of a public servant and amounts to disobedience of orders. It was also argued by the learned counsel for the respondents that the applicant had once been charge-sheeted for tampering with the attendance register. This has not been denied by the applicant in his rejoinder. There is no denial of the principles of natural justice and there is no point in asking for any documents or for the statement of the messenger when the applicant has himself admitted that he did not perform the duties under protest ledged by him on the duty letter itself. The protest was further translated in action by not performing the closing-duty and going away before 6.00 p.m. These were the grounds on the basis of which he was charge-sheeted. There is no illegality or irregularity in the charge-sheet and what the applicant did was certainly unbecoming of a civil servant working under Government of India. He has committed serious omissions and commissions in the discharge of his duties and responsibilities and the D.A. has taken all aspects into consideration before awarding minor penalty of withholding two year's increments. Being supervisory officer the applicant was expected to behave in a more

(S)

Contd.... 11/-

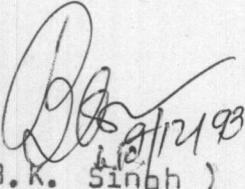
responsible and disciplined manner.

12. It has been admitted by the applicant that he was not due to cross EB when the penalty was imposed on him and Rs. 60/- allowed to him is admissible only after crossing the EB and as such grant of this increment erroneously and its subsequent recovery of Rs. 1042/- does not amount to any punishment nor is there any irregularity involved in it. It was a wrong payment and rightly recovered.

13. It was further stated by the learned counsel for the respondents that the applicant has not been cleared at the EB on the pay-scale of Rs. 2600/. The amount of Rs. 60/- would have brought him to the stage of Rs. 2660/- which is the maximum of the pay-scale. He is entitled to no increment before crossing the EB. This increment of Rs. 60/- would be admissible to him from the date he is allowed to cross EB and not before that and this has been accepted by the applicant in para 5.5 of his application. The recovery of Rs. 1042/- due to ^{wrong} grant of increment which has been accepted by the applicant, when effected resulted in its recovery and this is correct and valid. Thus there is no question of giving an interest and refunding the amount to him. The applicant himself is to blame for all the problems which are self-created and for which the Court cannot provide a relief or a remedy.



14. Taking all the facts and circumstances of the case into consideration, we find that there is no merit or substance in the present application and it is full of infirmities and inconsistencies and accordingly it is dismissed. There will be no order as to costs.


(B.K. Singh)
Member (A)

Jomane.

(J.P. Sharma) 10/12/93
Member (J)

pronounced by me.

Jomane.

VPC

10/12/93