

Central Administrative Tribunal
Principal Bench

....

11

O.A. No. 1681/93

New Delhi, this the 29th day of November, 1995

Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Shri D.C. Verma, Member (J)

Shri M.S. Bhatnagar s/o
Shri A.S. Bhatnagar r/o
406, Konark Apartments,
Plot No. 22, Patparganj,
Delhi-92,

...Applicant

(By Shri Shyam Babu, Advocate)

Versus

Union of India through

1. The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. The Chief Controller of Accounts
(Disciplinary Authority),
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
3. The Joint Secretary & Financial Advisor,
(Appellate Authority),
Principal Accounts Office,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

...Respondents

(By Shri P.H. Ramchandani, Advocate)

ORDER (Oral)

By Hon'ble Shri N.V. Krishnan, Acting Chairman

The applicant a Junior Accounts Officer was proceeded against in disciplinary proceedings which were initiated by the Chief Controller of Accounts, Ministry of Urban Development i.e. respondent no. 2. After having an enquiry conducted by the Enquiry Officer, he passed the impugned order dated 16.7.1986 imposing the penalty of removal

12

from service on the applicant with immediate effect. The applicant preferred an appeal before the Joint Secretary and his Financial Advisor who by order dated 20.1.1993 (Annexure-K) reduced the penalty to one of compulsory retirement. A cut of one third in his pension was also imposed on permanent basis.

2. In this OA, the applicant seeks a direction to quash both these impugned orders along with a direction to reinstate with all consequential benefits.

3. Respondents have filed a reply disputing these claims.

4. The matter came up today for final hearing. Shri Shyam Babu, the learned counsel for the applicant, submitted that though the applicant was appointed as a Junior Accounts Officer i.e. group 'C' post, by the Accountant General, during the period when the accounting functions were with that authority, after separation of the accounting functions, he came within the jurisdiction of the Controller General of Accounts, who is the Head of the Civil accounting Organization in the Govt. of India. He admits that the Chief Controller of Accounts, the 2nd respondent, is equivalent to the Accountant General. However, in the schedule under Rule -122 of the CCS(CCA) Rules, 1965 specifying the disciplinary authorities and the appellate authorities. It is clearly mentioned under entry (iv) of entry 4 item under the heading "Part-III Central Civil Services Group 'C'" that the appointing authority in respect of all Group-C posts other than L.D.Cs in the departmentalized Accounts Officer is the Controller of Accounts or if there be no such functionary the Deputy

12

13

Secretary. He is also notified as the authority competent imposed all penalties specified in Rule 11. Against the order passed by such an authority, an appeal lies to the Chief Controller of Accounts or to the Financial Advisor, where there is no such functionary.

5. Keeping these provisions in view, the Ld. Counsel submitted that as the Chief Controller of Accounts i.e. the authority who passed the impugned order of dismissal, is not notified as a disciplinary authority in this schedule, that order is without jurisdiction and is to be quashed. This argument is baseless as it overlooks the provision of Rule 12(2) which empowers the appointing authority to impose all penalties. At one time the Junior Accounts Officers used to be appointed by the Accountant General. The applicant was so appointed. After separation of accounts, the equivalent of the Accountant General is the Chief Controller of Accounts, The power of appointment is, however, ^{now} vested in a ^{by} lower functionary, Controller of Accounts, but, he being a subordinate of the Chief Controller of Accounts, could not have imposed the punishment of dismissal or removal of service. Hence the impugned order of dismissal has been passed by a competent authority.

6. However, his main ground urged is different. In the aforesaid schedule, only two authorities have been mentioned as the appellate authorities. One is the Chief Controller of Accounts and the other is the Financial Advisor, where there is no Chief Controller of Accounts. The Chief Controller of Accounts, obviously, can not be the appellate authority

14

because it was he who passed the original imposing penalty order. Therefore, the applicant appealed against that order to the Financial Adviser. He submits that this is really not an appeal at all, because, as is evident from the above schedule, both these authorities hold equivalent status. The Financial Advisor is notified as an Appellate Authority only when there is no Chief Controller of Accounts. He states that the applicant has, thus, been denied the right of appeal.

7. As this issue ^{he goes} ~~is~~ to the root of the matter, we felt that it should be first disposed of.

8. The learned counsel for the respondents was requested to indicate whether in the background, the Financial Advisor before whom, the appeal was submitted ought not ^{to} have advised the applicant to prefer an appeal before the competent authority or if he himself had any doubt in the matter, he should not have obtained instructions, before disposing of the appeal. It was pointed out to the learned counsel that, in part-II of the same ^Schedule under the Heading "PART-II Central Civil Services Group-B Post" in entry 33 dealing with Accounts Officers of the departmentalized Accounts Offices of the Govt. of India, the Chief Controller of Accounts and also the Financial Advisor have been notified as the appointing authority of some officers. In these instances it has been provided that the appeal would lie to the General Controller of Accounts.

9. The learned counsel for the respondents was fair enough to admit that if the Chief Controller of Accounts [>] ~~namely~~ who is otherwise the Appellate Authority, under the

15

schedule, has passed the original order because of the fact that he happened to be the equivalent of the appointing authority, and he alone^u could impose the punishment of dismissal or removal from service, then the appeal should have been heard by the Controller General of Accounts who would be the Competent Authority in this respect. This would be clear from the analogous provisions contained in Part-II as mentioned above. He felt that a remand of the appeal to that authority would be in order. We have cross checked this from Rule 24 which describes who is the appellate authority. The appellate authority is the authority specified in the schedule. If no such authority is specified, then where the Govt servant is a member of the Central Civil Service Class III (i.e. group 'C') the appeal shall lie to the authority to which the authority making the order appealed against is immediately subordinate. That authority is the Controller General of Accounts.

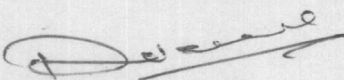
10. We are, therefore of the view that the impugned Annexure-K order dated 20-1-93 of the third respondent is without jurisdiction and further that, in the circumstances, the applicant has been denied the right of appeal. It is, therefore, not necessary for us to consider any other ground as the matter has to be remanded. The Ld Counsel for the applicant draws our attention to the judgement of the Supreme Court in Surjeet Ghosh Vs Chairman and Managing Director United Commercial Bank and Others JT 1995, (2) SC 74 where in similar circumstances the applicant was reinstated and there could be no further demand. We have considered this case. The provisions of the regulations considered in that case are totally different. It is seen that there was no further provisions of appeal against the

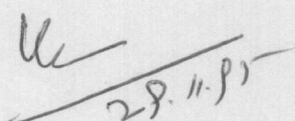
W

order already passed. It is for that reasons the Supreme Court directed to reinstate the applicant. In the present case there are atleast two higher Appellate Authorities viz; the Controller General of Accounts and the President of India.

11. In the circumstances the other issues on the basis of which the impugned orders have been challenged to quash the Annexure-K order of the third respondent are not being considered on merits. The Annexure-K order is quashed. The third respondent is directed to submitted the entire appeal proceedings to the Controller General of Accounts, alongwith a copy of this order, for disposal of the appeal in accordance with law with three months from the date of receipt of this order by that authority. After the Annexure-K order is quashed the original order of penalty of removal normally revives. But, as penalty has been reduced to one of compulsory retirement, this penalty shall, nevertheless, continue. Until the appellate order is passed as directed above. The penalty will abide by the final order of the Appellate Authority. In case the applicant is aggrieved thereafter it is open to him to seek such redress as may be advised and to agigate the issues not considered by us.

12. OA disposed of accordingly.


(D.C. VERMA)
Member (J)


(N.V. KRISHNAN)
Acting Chairman

cc.