

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 349/93

New Delhi this the 29 Day of July 1998

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri V.R. Shukla,
S/o Late Shri Arjun Prasad Shukla,
Working as Investigator in
National Sample Survey Organisation
(FOD), Dept. of Statistics,
Ministry of Planning and presently
Posted at Dairy Farm,
Junglehat, P.O. Port Blair,
Andaman & Nicobar Islands &
Family residing at Qr. No. 559/II
N.H. IV, Faridabad (Haryana) Petitioner

(By Advocate: Shri S.S. Tiwari)

-Versus-

1. Union of India, through Secretary,
Department of Statistics,
Ministry of Planning,
Sardar Patel Bhawan,
New Delhi.
2. Director,
National Sample Survey Organisation,
(Field Operations Division),
West Block No. 8, Wing No. 6,
R.K. Puram, New Delhi.

(By Advocate: None)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The facts of the case may be briefly stated. The applicant joined as an Investigator in National Sample Survey Organisation (NSSO) in 1995. While posted at Gondha in Uttar Pradesh, he was chargesheeted for imposition of a major penalty and transferred to Faridabad. On allegations of misconduct a second charge sheet for imposition of major penalty was issued at Faridabad. Both the chargesheets were enquired into by the same Enquiry Officer who submitted two enquiry reports

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on the chargesheets. The disciplinary authority, the Chief Administrative officer, however, passed a common order dated 2.3.1991 imposing the penalty of removal of service. The applicant preferred an appeal dated 17.10.1991 and simultaneously approached the Lucknow Bench of this Tribunal for quashing the order of the disciplinary authority. The O.A. No. 521/91 before the Lucknow Bench was dismissed as withdrawn. Another O.A. No. 22/92 was filed before the Allahabad Bench which came to be transferred to the Lucknow Bench. The Tribunal decided that applicant's appeal is to be first considered and disposed off by the competent authority. Accordingly, the appellate authority decided the appeal and re-instated the applicant in service by an order dated 12.5.1992 reducing the penalty from removal of service to the penalty of reduction in his basic pay from Rs. 1760/- as on 1.8.91 to Rs. 1680/- from the date of re-instatement in the pay scale of Rs. 1400-2300/-. The applicant was also transferred to the office of NSSO at Port Blair at Andaman and Nicobar Island. The present OA has been filed assailing the order of the appellate authority dated 12.5.1992 with the following prayers:

- a) Set aside and quash the appellate order dated 12.5.1992 so far as it relates to reduction of pay from Rs. 1760/- as on 1.8.91 to Rs. 1680 from the date of his reinstatement and direct the Respondents to restore his original pay scale;
- b) To direct the respondents to treat the period from 23.9.91 till the date of joining back the Division as spent on duty with full back wages and other consequential benefits;

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- c) Set aside and quash the order debarring the applicant for promotion to the next higher scale for a period of 3 years from the date of his reinstatement;
- d) Direct the respondents to re-allocate the U.P. Cadre to the applicant from Andaman and Nicobar Islands cadre;
- e) Direct the respondents to post him back to his last place of posting before removal i.e. Faridabad;
- f) Pass any other order/s as may be deemed just and proper in the facts and circumstances of the case.

2. The main ground taken by the applicant is that he has been subjected to three multiple punishments inasmuch as his basic pay has been reduced, the period between the order of removal from service and the date of re-instatement has to be treated as dies non and the applicant has been debarred from promotion for a period of three years from the date of re-reinstatement and his cadre has been changed from UP to Andaman & Nicobar Island.

3. The respondents in their reply have raised a preliminary objection that the OA is barred by res judicata as he has already filed two previous applications before the Tribunal on the same cause of action and further because the applicant has sought multiple reliefs in the same application. On merits they state that the order of the appellate authority has been passed on two separate chargesheets and this fact has been glossed over by the applicant. They also allege that the applicant has consistently been creating indiscipline and he is unauthorisedly absent from his place of posting in Andaman and Nicobar Island.

4. We have heard the counsel on both sides. We
find that two issues arise in this case:

1) Whether the applicant has been subjected to
multiple punishments on the same charge; and

2. Whether punishment order due to its wording
has the effect of much wider consequences for the
applicant than would appear to be intended.

5. Shri S.S. Tiwari, learned counsel for the
applicant contended before us that the appellate authority
has instead of confining itself to one punishment of
reduction in pay scale followed it up with three more
punishments namely, treating the intervening period
between removal and re-instatement as dies non; stopping
promotion for 3 years and transferring the applicant to a
far off place. He cited DGP&T instructions No. 9 under
Rule 11 (Swamy Compilation of CCS (CCA) Rules 1965, 1995
(2nd Ed.) which provides that normally there will be no
need to impose two statutory penalties at a time though
penalty of recovery from pay in whole or part of loss
caused by an official to the Government by negligence can
be imposed with another penalty. Here we do find that
the appellate authority has imposed two statutory
penalties in the same order. These are firstly reduction
of basic pay from Rs. 1760/- as on 1.8.1991 to Rs.
1680/- from the date of re-instatement in the same pay
scale allowing the applicant to draw the annual increment
in the usual manner and secondly debarring him from
promotion to the next higher level for a period of three
years from the date of his reinstatement. But we also

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find that the Appellate authority has clarified in para 4 of its order that it was dealing with two enquiry reports. When the disciplinary authority and the appellate authority had been dealing with two enquiry reports based on two separate charge sheets it would have been appropriate to consider the two separately and to pass two separate orders of punishment. This procedure would have had the merit of clarifying as to which punishment was being imposed for which misdemeanor enabling the charged officer to better represent his case before any other forum available to him under law. Despite this, we do not consider that the order of the appellate authority can on this point alone be set aside or modified. Firstly, we find no statutory prohibition against imposition of more than one punishment though Government's instructions do exist that normally such a procedure should not be adopted. Secondly, the appellate authority was dealing with two separate charge sheets and two separate enquiry reports in both of which the applicant had been found at fault. Thirdly, the punishment of reduction in pay scale having been imposed the applicant would not have ^{even} ~~been~~ otherwise any practical chance of promotion during the next three years. For these reasons we do not accept the contention of the applicant that the order of the appellate authority is bad because of multiple penalties.

6. We note that the appellate order also deals with the period between removal from service and re-instatement. Declaring this period as dies non is not in the nature of an additional punishment; the disciplinary authority had to decide as to how this period should be treated and since the finding of the

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disciplinary authority was accepted and only the punishment was modified it was well within its powers to treat the intervening period as dies non.

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7. The fact that the order of transfer from Uttar Pradesh to Andaman and Nicobar Island Circular has also been included in the order of the appellate authority cannot make it an order of punishment. The appellate authority itself has stated in its order that in the normal course a separate transfer order on the administration side should have been given but the same was being mentioned in the appellate order itself in view of the practical difficulties in implementing the two separate orders. This explanation is quite tenable in the circumstances of the case; no more need to be said thereon.

8. The second issue raised by Shri S.S. Tiwari is in regard to the effect of the punishment order which according to him has been more rigorous and severe than would appear from the order of punishment itself. It has been contended that the order of reduction to a lower stage in the same pay scale without specifying the period for which such reduction would be effected is contrary to the provisions of Rule 11 (v) which reads as follows:

Rule 11(v)

(v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the

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reduction will or will not have the effect of postponing the future increments of his pay;

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9. It was urged before us that as no period has been specified it has resulted in the applicant being permanently deprived of further increments, and in fact this has resulted in difficulties in his pay fixation on transfer. However, we are unable to appreciate either the argument of the learned counsel or the difficulties encountered by the authorities in fixing the pay of the applicant. The punishment provides for reduction from the date of re-instatement; the applicant being allowed to draw increment in the usual manner. When no period is specified the reduction in pay has to be treated as reduction ~~on~~ a permanent basis. It is as if the pay of the applicant had been reduced to Rs. 1680/- for all times to come. It was provided that annual increments will be drawn in usual manner. Such increments have to be from the stage of Rs. 1680/- on the same pay scale instead of from the stage of Rs. 1760/-. In short the applicant would be treated as drawing the pay of Rs., 1680/- instead of Rs. 1760/- on the date of his re-instatement, earning thereafter his annual increment in the normal manner. The position would have been different if the reduction in pay had been for a specific period say by three years which would have had the effect of restoring the pay at the expiry of the stipulated period. We therefore do not find that the order of punishment has more severe consequences than were intended.

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10. In the light of the above discussion, we find
that the OA is liable to be dismissed and we order
accordingly. In the circumstances the parties will bear
their own costs.

JK

(K.M. Agarwal)
Chairman

R.K. Ahuja

(R.K. Ahuja)
Member(A)

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