

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 7th day of December 2006

Original Application No. 1059 of 1998

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Jeewan Lal Sonkar, S/o Shri Ram Prasad,
R/o H. No. 48-A, Barsaitpur, Kalyanpur,
Kanpur Nagar.

. . . Applicant

By Adv: Sri R.K. Shukla

V E R S U S

1. The Union of India through Secretary,
Ministry of Defence, Government of India,
New Delhi.
2. The Secretary, Ordnance Factory Board,
10-A, Shaheed Khudi Ram Bose, Road,
Kolkata.
3. The Chief Comptroller of Accounts (Fys),
10-A, Shaheed Khudi Ram Bose, Road,
Kolkata.
4. The General Manager, Field Gun Factoary,
Kalpi Road,
Kanpur.

. . . Respondents

By Adv: Sri A. Mohiley

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The dispute involved in this OA is regarding
the scope of major penalty of reduction to a lower
Grade/Scale of pay under the CCS (CCA) Rules 1965.

The applicant was proceeded against under Rule 14 of

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CCS (CCA) Rules 1965, for the alleged misconduct of fraudulent booking of OT in respect of certain officials who were not present on duty. The applicant at that time was working as UDC in the Field Gun Factory, Kalpi Road, Kanpur. After the disciplinary proceedings the applicant was pounished with reduction to the post of LDC in the time scale of pay Rs. 950-1500 w.e.f. 4.6.92 until he was found fit by the competent authority for promotion to the higher post. It was further ordered that in the post of LDC the applicant would draw pay at the minimum of the scale of pay w.e.f. the date of reduction and will earn annual increment at that stage. The seniority of the applicant in the post of LDC will reckon from the date of reduction. It was further ordered that on re-promotion to the post of UDC, if and when ordered, his seniority and pay should not be restored to the stage at which it existed before reduction and shall be fixed on the normal rules as per date of such promotion.

2. The applicant filed an appeal against the decision of the Disciplinary Authority. The Appellate Authority modified the punishment by specifying that the penalty of reduction would be operational for two years instead of an indefinite period and the other conditions in the order of punishment would remain unaltered. The applicant made a Revision Petition to the appropriate

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authority after the decision of the Appellate Authority. The Revision authority however, upheld the order of the Appellate Authority.

3. Being aggrieved the applicant has approached the Tribunal seeking the following relief:

- a. to issue direction to the respondents to make proper fixation of pay at the stage and post of UDC.
- b. To issue direction quashing the order passed by respondent No. 4 i.e. the Disciplinary Authority.
- c. Any other direction as the Tribunal would consider necessary.

3. The grounds on which the orders of the respondents are assailed are as follows:

- a. Consequent upon the modification of the punishment order the applicant is entitled to be restored to the post of UDC to his original pay as per provision of FR 29 (2).
- b. At the end of the penalty period he was entitled to regain his original seniority of UDC as per DOPT letter dated 03.07.1996,
- c. The order of the Dictionary Authority is ab initio void in this context the applicant has stated that the enquiry was biased and violative of the principles of natural justice as he was denied adequate opportunity of defence.

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4. As the applicant has relied upon DOP&T circular dated 03.07.1986, it would be pertinent to reproduce the same as follows:

"In cases, where the reduction is for a specified period and is not to operate to postpone future increment the seniority of Govt. servant may unless the terms of the order of punishment provide otherwise, the fixed in the higher services Grade or Post or the Higher time scale at which he would have been but for his reduction."

5. The applicant has also relied upon Rule 29 (2) of the FR which is as follows:

"If the order of reduction lays down that the period shall not operate of postpone future increment, the Govt. servant shall be allowed the pay which he would have drawn in the normal course, but for his reduction to the lower post."

The respondents denied the allegations by maintaining that the disciplinary proceedings was conducted as per rules giving full opportunity to the applicant and it was not vitiated by any bias. The respondents have further averred that the respondents i.e. the disciplinary, appellate and reversionary authority were well within their right under the rules in their respective decisions. The learned counsel for the respondents cited the relevant provisions of the CCS (CCA) rules.

7. The learned counsel for the respondents also stated that the present OA is barred by res-judicata for the reason that earlier the applicant had filed OA No. 947 of 1998 seeking the same relief as the present OA. In OA 947/98 also he requested for proper fixation of his pay in the scale of UDC after

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restoration While arguing on the aspects of res-judicata the learned counsel cited from the following judgment:

- a. (1988) 7 ATC 365 CAT Madras C. Subramanian Vs. Director of Accounts (Postal)
- b. AIR 1997 SC 809 State of Punjab Vs. MS Surendra Kumar
- c. 1997 SCC (L&S) 135, Commissioner of Income Tax Bombay Vs. T.P. Kumaran

The essence of the decision in all these case are that fresh applicant cannot be entertained on the same relief. The learned counsel for the applicant however, denied that the relief was on the same ground. While in the earlier OA relief was sought on pay fixation, in the present OA it is on the quantum of punishment and the authority of the respondents. However, by taking a look on the relief clause in the present OA we see that here also the relief is on the question of re-fixing his pay at the appropriate stage. We decided that before looking into the question whether resjudicata will apply or not, we shall proceed to see whether there are any merit on the argument of the applicant that the order of punishment was violative of the provisions of CCS (CCA) Rules 1965.

8. The punishment of reduction to a lower grade is the second category of punishment under major penalty as laid down in Rule 11. According to the

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rule an order of reduction to a lower grade/post or time scale must specify the following:

- i. "the date from which it will take effect;
- ii. if for a specified period, the period in years and months for which the penalty shall be operative; and
- iii. if for a specified period, the conditions for restoration to the grade, post, time-scale of pay, or service from which reduced; his seniority and pay on such restoration i.e., extent (in terms of years and months) if any, to which the period of reduction shall operate to postpone future increments on restoration after the specified period."

9. We have examined the order of the Disciplinary authority carefully and we find no infirmity therein. The DOP&T instructions and Rule 29 (2) of FR only specify that when the reduction is not to operate to postpone future increment, the seniority of the Govt. servant may unless the terms of order of punishment provide otherwise, be fixed in the higher service at which it would have been but for his reduction. In the punishment order it is made adequately clear that the reduction would operate to postpone the future increment also. There is no ambiguity in the order although it is not specified that it would postpone future increment. The condition and riders attached to the restoration

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make it obvious that the intention of the disciplinary authority was to postpone future increment.

10. Having decided this we thought it was not necessary to look the aspect of res-judicata. We are unable to find any merits in the OA which we dismiss. No cost.

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Member (A)

Chawla
7.12.86

Vice-Chairman

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