

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

ORIGINAL APPLICATION NO.959 OF 1998.

ALLAHABAD THIS THE 5<sup>th</sup> DAY OF January 2007.

HON'BLE MR. JUSTICE KHEM KARAN, V.C.

HON'BLE MR. P.K. CHATTERJI, A.M

Sri Udai Narain Upadhyaya, Superintendent E/M Grade I, I,  
G.E (P) Air Force, Gorakhpur.

.....Applicant

(By Advocate: Sri K.P Singh)

Versus.

1. Union of India through Engineer in Chief, Army Headquarter, New Delhi.
2. The Chief Engineer, Central Command, Lucknow.
3. The Chief Engineer, Lucknow Zone, Lucknow/Chief Engineer, AIR Force, Allahabad.
4. The Commander Works Engineer, Allahabad/Commander Works Engineer, Air Force, Bamrauli, Allahabad.

.....Respondents

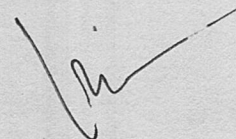
(By Advocate: Sri P. Mathur)

O R D E R

BY MR. JUSTICE KHEM KARAN, V.C.

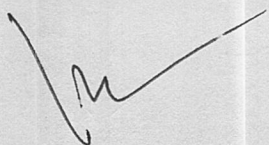
The applicant is challenging order dated 25.5.1995 (A-1) by which Chief Engineer, Central Command, Lucknow (respondent NO.2) reduction him to lower post of Superintendent E/M Grade II in the pay scale of Rs.1400-40-1800-EB-50-2300 for a period of two years with directions that he will not earn increment during this period. He is also challenging order dated 2.1.1998 (A-2) by which the respondents NO.1 namely Engineer-in-Chief rejected his appeal against the order dated 25.5.1995.

2. While being posted as Superintendent E/M Grade I at Gorakhpur, the applicant was placed under suspension by





Chief Engineer, Central Command, Lucknow Zone vide order dated 27.10.1992 (A-5) and subsequently was served on 6.11.1992, with a chargesheet by Commander Works Engineer, Allahabad, (copy of which is at A-7). The applicant sent his reply dated 26.11.1992 denying the charges levelled against him. Hence, the Commander Works Engineer, Allahabad appointed Sri A.K. Mathur, Executive Engineer, M.E.S as Enquiry Officer, vide his letter dated 18.12.1992. It appears that applicant challenged suspension order dated 27.10.1992, chargesheet dated 6.11.1992 and appointment of Enquiry Officer by filing O.A. NO. 1848/93 which according to para 4.10 of the O.A. was still pending, on the date the present O.A. was filed. After necessary enquiry, Sri Mathur submitted his report dated 1.2.1994 (A-12). He concluded that article of charges 1 and 3 were not proved and article of charge No. 2 was partly proved. The Commander Works Engineer, Air Force, Allahabad issued a show cause notice dated 8.4.1994 to the applicant asking him to submit his representation in the context of this enquiry report. The applicant sent his representation dated 21.4.1994 to Commander Works Engineer, copy of which is A-15. It appears that the Chief Engineer, Central Command, Lucknow disagreed with the enquiry officer as regards his conclusion on articles 1 and 3 and so he sent a letter dated 30.12.1994 (A-16) to the applicant, giving the points of disagreement and asking him to have his say in that context. According to him, all the three charges were fully established. The applicant sent his reply dated 20.1.1995 (A-17) trying to show that conclusions reached in letter dated 30.12.1994 were not correct. Thereafter, the Chief Engineer Central Command passed the impugned order dated 25.5.1995, imposing the penalty of reduction to lower post against which the applicant preferred an appeal (A-18) to Engineer-in-Chief, Army Headquarter, New Delhi who rejected it vide order dated 2.1.1998.





3. The main grounds for challenging the impugned punishment order dated 25.5.1995 are as under:-

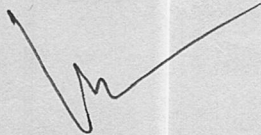
(a) his Appointing Authority being the Engineer-in-Chief, Army Headquarter, New Delhi, Chief Engineer, Lucknow Zone, Lucknow could not have imposed such a major penalty of reduction in rank.

(b) the Disciplinary proceedings could have been ordered only by the Engineer-In-Chief and chargesheet could have been issued only by that authority and so the chargesheet issued by the Commander Works Engineer, Allahabad is bad in law and consequently punishment order dated 25.5.1995 is also vitiated in law.

(c) that Enquiry Officer could have been appointed only by the Disciplinary Authority which in this case was Engineer-In-Chief and so enquiry officer appointed by Commander Works Engineer had no authority to enquire into the matter and submit a report.

(d) that Chief Engineer, Central Command, Chief Engineer, Lucknow Zone, Lucknow, Commander Works Engineer, Allahabad, Garrison Engineer, Air Force are all delegatee vide letter No.2704/E/D dated 31.8.1979 of Engineer-in-Chief, and so in view of para 5 of the said letter, none of these delegates, was competent to impose major penalty.

(e) that the finding of guilt as recorded by the Disciplinary Authority is based on no evidence and is not supported by material, received during the course of enquiry.





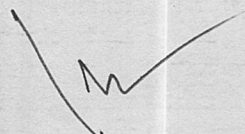
(f) that the conclusion reached by the Enquiry Officer is based on presumption and assumption and not on any acceptable material.

(g) that in case of officials of Group 'C' and 'D' category, Engineer-in-Chief is the original Appointing Authority and so Chief Engineer, Central Command, Lucknow being subordinate to him, could not have imposed such major penalty as has been done vide order dated 25.5.1995.

4. The respondents have tried to say that every thing was done in accordance with Rules, and by the competent authority. According to them, since the Chief Engineer, Central Command, was not in agreement with the Enquiry Officer so he recorded point of disagreement and apprised the applicant of the same and after, explaining his reply, passed the impugned order, in exercise of powers, conferred on him, vide order dated 16.8.1979, of the Government of India.

5. In his rejoinder, the applicant has attempted to explain the factual position. He says that the order dated 25.5.1995 as well as order passed by Appellate Authority are bad for want of reasons.

6. Admittedly, Superintendent E/M Grade 1 falls in the category of Group 'C' in the Branch of Engineer-in-Chief. The first submission of Sri K.P. Singh, learned counsel for the applicant is that the Commander Works Engineer, Allahabad (respondent NO.4) was neither competent to sign and serve the chargesheet (A-7) on the applicant nor to appoint enquiry officer, to enquire into truthfulness or otherwise of the allegations so made against the applicant, as he was neither the Appointing Authority nor the Disciplinary Authority. He says that in view of law laid down by the Apex Court in AIR 1998 SC page 300, no



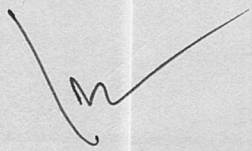


chargesheet could be served or no enquiry officer could be appointed by Authority, other than the Appointing Authority or Disciplinary Authority. Learned counsel goes on to argue that entire proceedings initiated on the basis of said chargesheet or vitiated in law and punishment order based thereon, also deserves to be quashed.

7. Sri P. Mathur, learned counsel for the respondents has tried to defend it by referring to authorization dated 16.8.1979 (SCA-III). According to him, the Commander Works Engineer was one of the Disciplinary Authorities, on the basis of said notification dated 16.8.1979.

8. A perusal of order dated 16.8.1979 (SCA-III) makes it clear that in exercise of his power under clause (a) of Sub-Rule II of Rule 12 of Rules of 1965, the President empowered the authorities described therein, to impose the penalty specified in Clause (I) to (IX) of Rule 11 of the Rules of 1965, upon Group 'C' and 'D' employees of the Branch of Engineer-in-Chief. We find that Commander Works Engineer is one of such authorities who have been empowered to inflict penalties specified in Clause (I) to (IV) of Rule 11, upon Group 'C' and 'D' employees in the Branch of Engineer-In-Chief. Rule 13 of the Rules of 1965 provides as to who can institute the proceedings. Sub rule (2) of Rule 13, says that Disciplinary Authority competent under these rules to impose any of the penalties specified in clause (I) to (IV) of Rule 11, may institute Disciplinary proceedings against any Government Servant for imposition of any of penalty specified in clause (V) to (IX) of Rule 11, notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

9. We think the Commander Works Engineer, Allahabad who served the chargesheet on the applicant and who appointed the Enquiry Officer to enquire into the allegations, was a

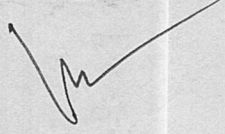




"Disciplinary Authority" within the meaning of Rule 12 of the Rules of 1965, read with order dated 16.8.1979 (SCA-III) and in view of Sub Rule (II) of Rule 13 of the said Rules, was competent to do so, though he was not entitled to inflict penalties specified in Clauses (IV) to (IX) of Rule 11. So we find it difficult to hold that Commander Works Engineer, was not competent to serve chargesheet or appoint Enquiry Officer.

10. Sri K.P. Singh has next argued that Engineer-in-Chief being the Appointing authority of the applicant on the post of Superintendent E/M Grade I, Chief Engineer, Central Command being subordinate to him, could not have imposed major penalty of reduction in rank, in view of para 5 of letter dated 31.8.1979 (SCA-3) of Engineer's-in-Chief. Learned counsel for the applicant has made specific reference to opening sentence of para 1 of letter dated 31.8.1979 and to Item No.2 (v) of part V (Civil Post in Defence services) of Schedule appended to the Rules of 1965, so as to convince us that in the case of the applicant, Engineer-in-Chief was the Appointing Authority. He has also referred to letter dated 23.4.1987 of Engineer-in-Chief by which he approved the applicant and others for promotion to the post of Superintendent E/M Grade I. He wants to say that for all legal and practical purposes, the authority approving the promotion to the post of Superintendent E/M Grade 1, will be the Appointing Authority.

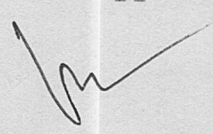
11. We must make it clear that attempt of the respondents to defend the order dated 25.5.1995, on the basis of competence of Chief Engineer, Central Command to pass authorization dated 16.8.1979 (SCA-3) does not appear to be well-founded. No doubt by this authorization under clause (a) of Sub Rule (II) of Rule 12 of the Rules of 1965, the President empowered the Chief Engineer, Central Command to impose any of the penalties specified in Sub





Rule (I) to (IX) of Rule 11 of the Rules of 1965, upon the employees of Group C of Engineer-in-Chief's Branch but this authorization was subject to Sub Rule 4 of Rule 12. Sub-Rule (4) provides that notwithstanding anything contained in this Rule, except where the penalty specified in Clause 5 or Clause 6 of Rule 11 is imposed by Controller and Auditor General of a Member of Indian Audit and Accounts Service, no penalty specified in clauses (v) to (x) of that Rule, shall be imposed by any authorities, sub-ordinate to Appointing Authority. Penalty imposed by order dated 25.5.1995 is one of the penalties specified in clauses (v) to (x) of Rule 11, so we are of the view that passing of impugned order dated 25.5.1995 by Chief Engineer, Central Command cannot be successfully defended on the basis of empowerment dated 16.8.1979.

12. Although the relevant service Rules regulating the appointment and conditions of service of Group 'C' employees of Engineer-in-Chief's Branch have not been placed before us, with a view to ascertain as to who is the Appointing Authority of Superintendent E/M Grade I but a close look at the provision contained in Rule 9 read with relevant entries in the schedule appended to the Rules of 1965, would make it clear that originally Engineer-in-Chief is the Appointing Authority of Group 'C' and 'D' employees of his Branch. This position has also been reiterated in para 1 of letter dated 30.8.1979 (SCA-3). Proviso to Sub Rule (I) of Rule 9 of the Rules of 1965, says that in respect of Class III and IV Civil services or civil post in the Defence service, appointments may be made by the officers empowered in this behalf by Authorities specified in the schedule. In other words, this proviso has enabled the Engineer-in-Chief to empower other officers to make such appointment in Class III and Class IV of his Branch. If we closely look at para 1 of Engineer-in-Chief's letter dated 31.8.1979, it becomes clear that such powers in respect of appointment

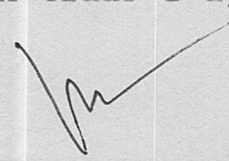




of Group 'C' and 'D' posts were delegated to the lower authorities vide Headquarter letter NO.27804/ED dated 7.6.1974. Unfortunately the copy of that letter dated 7.6.1974 is not on record so as to give a clear picture. The applicant himself has not filed copy of letter by which he was promoted and posted as Superintendent E/M Grade I. The respondents have shown to us copy of the order dated 12.8.1987 issued by the Engineers Branch HQ Central Command, Lucknow approving the promotion and proposing the posting of certain persons on the post of Superintendent E/M Grade I and directing the Zonal Chief Engineers of Lucknow, Bareilly and Jabalpur Zone to issue formal promotion and posting letters accordingly and send a copy to the Headquarters. The name of applicant is at Sl. NO. 1. It can be presumed that in due course, promotion/posting letter must have been issued by Zonal Chief Engineer.

13. Sri K.P. Singh has contended that since promotion was approved by Engineer-in-Chief vide his letter dated 23.7.1987 so for all legal and practical purposes, he would be treated to be an Appointing Authority of the applicant.


14. Sri P Mathur, learned counsel for the respondents says that mere approval of the name of the applicant by Engineer-in-Chief for promotion will not make him appointing authority. According to him, the Authority who issued promotion/posting letter will be the Appointing Authority. He has relied on decision dated 7.9.2000 of this Bench in O.A. NO.1517/1992, Ratan Chandra Pathak Vs. Union of India and others. It appears that there was a similar controversy. There the Tribunal was not impressed by argument that approving authority will be treated as an Appointing Authority. We see no reason to take a different view. This much appears to be a fact that the applicant was promoted and posted as Superintendent E/M Grade I by





the Chief Engineer, Central Command as is evident from letter dated 12.8.1987. The expression "Appointing Authority" is defined under Clause (a) of Rule 2 of the Rules of 1965 and according to Sub Clause (III), the authority which appointed the Govt. servant to such service, grade or post as the case may be, shall be the Appointing Authority. We take the view that in the case of the applicant, it was the Chief Engineer, Central Command, Lucknow who was the Appointing Authority and he was fully competent to inflict the penalty referred to in the order dated 25.5.1995. So the Contention of Sri K.P. Singh that Chief Engineer, Central Command had no power to impose such penalty on the applicant cannot be accepted.

15. Sri K.P. Singh, has also contended that the finding of guilt is based on no material but is based on presumption and assumption and so is not sustainable in law so as to entitle the Disciplinary Authority to inflict the major penalty. Sri K.P. Singh has taken us through the material on record with a view to convince that the applicant committed no misconduct. It stands well settled after a catena of decision of Apex Court that in exercise of power of judicial review, the Court or Tribunal cannot interfere with the finding of guilt recorded by Disciplinary Authority or Appellate Authority as the case may be, unless the same has been recorded without affording reasonable opportunity of hearing or unless it is shown that relevant provisions were violated or it so perverse that no reasonable person would come to that conclusion. The Tribunal or the Court will not be sitting in appeal so as to re-assess the material. After having gone through the relevant papers on record including the note of disagreement recorded by the Disciplinary Authority and explanation etc. of the applicant thereto, we find it difficult to accept the contention of Sri K.P. Singh that finding of guilt is based on no evidence. The Disciplinary Authority was the best judge. He took the

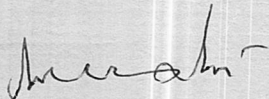




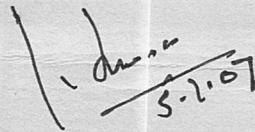
view that all the three authorities were well proved. The Appellate Authority had power to examine the correctness of this finding but that authority was also not convinced to take a different view. There is no good basis to say that the finding of guilt is based on no evidence.

16. The last submission is that the impugned order dated 25.5.1995 is non-speaking and so deserves to be dismissed. We fail to understand as to how the impugned order dated 25.5.1995 can be said to be non-speaking. The Disciplinary Authority has fully applied its mind and has passed a detailed order. He was not expected to repeat all that which he said in the note of disagreement. The criticism that the appellate order is without application of mind or is cryptic, also does not appear to be well-founded. It cannot be said that Appellate Authority did not apply its mind to the facts of the case. He was not required to pass a detailed order.

17. In the result, we find no substance in this O.A. and it deserves to be dismissed. It is accordingly dismissed but with no order as to costs.



Member-A



Vice-Chairman.

Manish/-