

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 26th day of August, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 1190 of 1998

1. Bindeshwari Devi W/O Late K.L. Verma.
2. Km. Jyoti, D/O Late K.L. Verma.
3. Kapil S/O Late K.L. Verma.

All resident of 10/9, Juhi, Lal Colony, Kanpur Nagar.

..... Applicants.

Counsel for applicants : Sri K.K. Mishra.

Versus

1. The Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Joint Director/V.I.G., Ordnance Factory Board, 10-A, S.K. Bose Road, Calcutta.
3. The General Manager, Ordnance Factory, Kanpur.

..... Respondents.

Counsel for respondents: Sri A. Sthalekar.

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for setting aside the orders dated 27.10.99 and 3.1.97 by which the Disciplinary Authority dismissed him from service which was upheld by the Appellate Authority (Annexures A-1 & A-2). He has further prayed for issuance of direction to the respondents for his reinstatement in the service with all consequential benefits including the arrears of pay with interest @ 18% per annum.

2. During the pendency of this O.A., the applicant died and by an order of this Tribunal dated 18.9.2003, the legal heirs of the deceased have been substituted. The applicant, at the relevant time, had been working as Cashier in Ordnance Factory, Kanpur since 88. The discip-

D.R. Tiwari

linary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 was initiated against the applicant. He was served with a chargesheet dated 8.11.91 (Annexure A-3). The article of charges are as under :-

" ARTICLE : I

That the said Shri K.L. Verma, while functioning as Cashier/Cash Office, now UDC/LB during the period of his employment is charged with Gross Misconduct in that he in connivance with S/Shri V.S. Tripathi, UDC/NSM and Rajendra Prasad, Clerk/Accounts Office/OFC, made the payment of forged SAR No.168, dt. 29/1/90, initially prepared for Rs.267.00 towards pay fixation arrears in respect of Shri Ram Narain, T.No.859/MME from 3/88 to 4/89 and subsequently fraudulently amended to Rs.13,267/- by adding the figure "13" preceding the figure 267 to wrong person i.e. not to Shri Ram Narain, T.No. 859/MME without taking into cognizance that the SAR was not routed through LB Section and released the payment.

ARTICLE : II

Shri K.L. Verma, Ex-Cashier now UDC/LB, is further charged for Gross Misconduct in that he in connivance with S/Shri V.S. Tripathi, UDC/NSM & Rajendra Prasad, Clerk, Accounts Office/OFC caused defalcation of Govt. Money to the tune of Rs.13,267/-

Shri K.L. Verma, Ex-Cashier/Cash Office/now UDC/LB has thus, acted in the manner unbecoming of Govt. servant and did not maintain absolute integrity which is in violation of Rules 3(1)(iii) & (i) of CCS(Conduct), Rules, 1964."

3. The applicant submitted his written statement of defence dated 1.11.1991 denying all the charges. On denial of charges, the Disciplinary Authority appointed court of enquiry vide order dated 3.4.92. The full fledged enquiry was conducted and the enquiry report was submitted to the Disciplinary Authority and the applicant was forwarded a copy of the enquiry report by memorandum dated 23.6.95 and he was requested for making representation on the enquiry report. The applicant made the representation by letter

Hein

dated 10.7.95. After analysing the enquiry report, and the representation dated 10.7.95 as well as the evidence on record, the Disciplinary Authority imposed on the applicant the penalty of dismissal from service. The applicant preferred an appeal vide memo of appeal dated 10.12.95. The Appellate Authority rejected his appeal and maintained the order of the Disciplinary Authority.

4. Aggrieved by these orders, the applicant filed this O.A. and has challenged the orders on various grounds as indicated below :-

- i) He was not at all fault in making the payment to the alleged payee as the same was duly checked by the Accounts Office and the payment was made on the basis of signature of the identifier.
- ii) The circular dated 31.8.90 presented during the course of enquiry is not applicable in this case as the alleged payment was made on 20.3.90 when there was no such instruction in respect of the payment of bills.
- iii) The responsibility of adding the word "13" (Thirteen) in figures and words cannot be fastened to him without tallying the handwriting of the person concerned, who had added these words. As such, the findings recorded by the Inquiry Officer is in violation of principles of natural justice.
- iv) The impugned orders are arbitrary, illegal and bad in law which are not sustainable.

5. The respondents, on the other hand, have opposed the contention of the applicant and have argued that the applicant has failed to strictly follow the procedure/standing instruction for making the payment towards S.A.R. They have further submitted that he has made the payment to a different person other than the actual person on the basis of signature of identifier. This has resulted in loss of Rs.13,267/- to the Govt. exchequer as the S.A.R. was prepared and passed for Rs.267/- only to be paid to Sri Ram Narain. Hence the payment on the basis of identification made by the identifier

Deia

is not acceptable and he cannot be absolved from the responsibility of payment made to wrong person on a tempered SAR. They have submitted that the order is not arbitrary and illegal as that has been passed after a full fledged enquiry in which the applicant also participated and the charges were held to be proved.

6. We have carefully heard counsel for the parties and perused the records.

7. During the course of the argument, counsel for the applicant placed reliance on the following judgments of the Apex Court :-

i) Union of India & others V. B.C. Chaturvedi
(1995) 6 SCC 750.

ii) State of U.P. V. Jai Karan Singh.
(2003) 9 SCC 228.

8. Sri K.K. Mishra, counsel for applicant stated that the applicant had put in 30 years of service with full satisfaction of his superiors and there was no complaint in respect of work and conduct of the applicant while he was working in the Ordnance Factory. He has contended that during the pendency of the O.A., the applicant died also and in view of the fact that the punishment of dismissal from service would not even entitle the legal heirs to any pensionary benefit as if his long years of service has been wiped out. He has stated that in the case of Jaikaran Singh (Supra), the Apex Court taking into consideration 12 years of service in that case, has altered the punishment of dismissal to that of compulsory retirement. He has further stated that in case of B.C. Chaturvedi (Supra), the Apex Court has held that if the punishment soaks the conscience of the Court/Tribunal, it would appropriately mould the relief either directing the Disciplinary/Appellate Authority to reconsider the penalty imposed or to sorten the litigation it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

D. K. Mishra

9. The crucial question which falls for consideration is that the punishment of dismissal from service is justified or not. The fact situation briefly stated is that the applicant is allegedly involved in connivance leading to the payment of Rs.13,267/- to a wrong person against the tampered SAR. After the enquiry, it was held that he is responsible for not following the correct instructions/practices prevalent in his office. The respondents have averred in para 7 of the counter affidavit that the SAR has been tampered during its movement from Accounts Section to Cash Section. It has been stated that payment made on the basis of identification by the identifier was against the instruction and he should have done so on the basis of identity card. It has further been averred that he should have seen that the routing of SAR has been direct from Accounts Section to Cash Section and the L.B. Section has been bypassed. The contention of the applicant that in urgency, the SARs are received direct from Accounts Section to Cash Section, does not evoke any response from the respondents. The so called instructions contained in the circular dated 31.8.90 is subsequent to the date of incident. It is not the case of respondents that the applicant has misappropriated the money. The Inquiry Officer has also not disclosed the reasons for accepting the prosecution evidence. Be that as it may, at the most one may conclude that the applicant is guilty of committing some irregularities in following unwritten instruction in his office. Viewed in this perspective we the question whether he deserves the extreme penalty of dismissal is to be decided. It may not be out of place to mention here that quantum of punishment should be commensurate with the gravity of the charge. Ordinarily the maximum penalty resulting in an economic death of an employee could be awarded only in case of grave charges where lesser punishment would be inadequate and may not have curative effect or where the charge is such that in the exigencies of the case a lesser punishment may not be

Deia

found fit in the interest of administration or the charge indicate the conduct of the delinquent has been incorrigible. We get support in our views from judgment of the Supreme Court in the case of Kailash Nath Gupta Vs. Inquiry Officer - JT 2003(3) SC 322 wherein it has been held that where the charge is of some procedural irregularities, the same cannot be termed to be a negligence of such high degree as may warrant the extreme penalty of punishment of dismissal from service.

10. The question of proportionality of punishment has been equally engaging the attention of the Competent Authorities and the judiciary. So far, no hard and fast rule has been formulated in this regard. However, one of the factors to be taken into account is the unblemished service record of the delinquent employee coupled with the number of years he has put in that organisation. It is noticed in this case that the applicant has served that organisation for long 30 years and at no point of time he has even been reprimanded. Keeping in view his past records and long years of service, the punishment of dismissal for not following certain instructions appears to be very harsh and shockingly disproportionate to the delinquency proved against the applicant. Our this view gets support from the case of Jaikaran Singh (Supra) in which case the Supreme Court has held as under :-

"Having regard to the facts and circumstances of the present case and also taking into account the fact that the respondents had served the appellant organisation for about more than 12 years we think that the ends of justice would be met if the order of dismissal is altered to one of compulsory retirement."

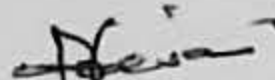
11. In view of the facts mentioned above, in the normal course, we would have remitted the case to the Competent Authorities to reconsider the quantum of punishment. However, in this case, during the pendency of the O.A., applicant has died and therefore, the question of remitting the case does

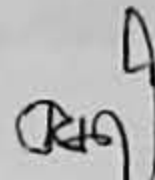
Deva

not arise. In view of the discussions made earlier and the reasons given, we are of the considered view that it is one of the exceptional case where the punishment should be altered.

12. Accordingly, the O.A. succeeds to the extent that the punishment of dismissal is converted into that of compulsory retirement. The respondents are directed to process for grant of retiral benefit to the legal heirs of the deceased applicant within a period of three months from the date of receipt of a copy of this order.

No order as to costs.


A.M.


V.C.

Asthana/