

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH AT
NAINITAL.

original Application No. 47 of 2001 (U)

this the 24th day of April 2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Bachaspatti Gairola, S/o late Sri Chakradhan Gairola,
U.D.C., Map Record & Issue Office, Survey of India, R/o
G-59, Hathibarkala, Survey Estate, Dehradun.

Applicant.

By Advocate : Sri K.K. Arora (Absent)

Versus.

1. Union of India through Secretary, Ministry of Science & Technology.
2. Surveyor General of India, Survey of India, Hathibarkala, Dehradun.
3. Director, Map Publication Directorate, Survey of India, Hathibarkala, Dehradun.
4. Officer Incharge, Map Record & Issue Office, Survey of India, Hathibarkala, Dehradun.

Respondents.

By Advocate : Sri P. Srivastava for Sri S. Chaturvedi.

O R D E R (ORAL)

BY MRS. MEERA CHHIBBER, MEMBER(J)

By this O.A., applicant has challenged the order dated 18.10.2001 whereby his appeal was rejected. He has also challenged the order dated 20.4.2001 whereby he was dismissed from service and order for recovery was made of the defalcated amount.

2. The brief facts as submitted by the applicant are that he was initially appointed as Record Keeper in the Survey of India in the year 1963. After being promoted as U.D.C. in the year 1991, he was assigned the additional



duty of preparation of bills relating to payment of wages and drawals ^{by} of cheques and maintenance of Cash Book etc. The applicant was served with a chargesheet dated 17.12.2000, on the allegations that he had defalcated Rs. 214397.75/- from the sale proceeds from the sale of Maps at the Map Sale Counter during the period from 1.1.1989 to 17.7.1999 (Annexure A-1). The applicant denied the charges as there was no truth, according to him, in the said allegations. Since F.I.R. was also lodged against him and a chargesheet had also been submitted against him after investigation, he requested the authorities not to proceed with the departmental enquiry as this would compell him to disclose his defence which would prejudic in the criminal proceedings. However, Enquiry Officer as well as Presenting Officer were appointed vide order dated 10.1.2000, against which applicant filed an appeal on 14.1.2000 to the respondent no.2 for staying the departmental proceedings, but the same was rejected vide order dated 18.4.2000.

3. It is submitted by the applicant that without affording any proper opportunity to him to cross examine the witnessess and without affording any opportunity for personal hearing, the Enquiry Officer submitted his report on 15.1.2001 (Annexure A-4) holding therein that the charges against the applicant are proved. A copy of report was given to the applicant on 2.2.2001, against which, applicant submitted his representation on 14.2.2001 (Annexure A-5) stating therein that he had never handled the cash as the same was the responsibility of the Cashier ^{& preparing the B} and he was only assigned the duties of cash memos, the proceedings were ex-parte in nature and that the matter ought not to have proceeded in view of the pendency of criminal case and the Enquiry Officer was prejudiced against the applicant, therefore, the enquiry report is vitiated because the disciplinary authority was also a



witness in the criminal case pending against him.

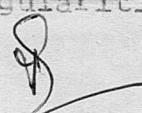
4. The applicant has also submitted that the disciplinary authority has totally ignored and over looked the legal issues and without considering his points, passed the order dated 20.4.2001 dismissing the applicant from service and further directed recovery of the defalcated amount (page 16).

5. Being aggrieved, he filed an appeal, but since the applicant was being harassed, he filed O.A. no. 27 of 2001 before this Tribunal, which was disposed off on 17.5.2001 with a direction to decide his appeal (Annexure A-7). Thereafter, the respondents rejected the appeal of the applicant vide order dated 18.10.2001 (Annexure A-2). The applicant has challenged these two orders in this O.A. basically on the following grounds:

- (a) He has been deprived of his right to defend as enquiry was conducted *ex parte*;
- (b) Since criminal case was pending, departmental enquiry could not have been continued; and
- (c) Duties of the applicant have not been dealt with by either ~~of~~ the disciplinary authority or appellate authority.

The applicant has also submitted that he has been awarded double penalty inasmuch as he has been dismissed from service and recovery has also been made against him. Applicant's counsel has also submitted that since Dr. ~~E~~ ^E been the ~~E~~ ^E B.C. Roy had ^{been} ~~been~~ head of the preliminary Board of Inquiry and also a witness ~~of~~ ⁱⁿ the criminal case, therefore, he could not have ~~been~~ ^{been} submitted the chargesheet against the applicant as he was biased.

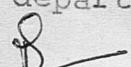
6. The respondents have submitted that during the internal audit of Map Record & Issue Office, Survey of India, Hathibarkala, Dehradun, the audit party noted serious financial irregularities on account of sale



proceeds of sale of map Sale Counter, which was intimated vide letter dated 17.7.96 stating therein that the sale proceeds of maps at Map Sale Counter appears to be mis-appropriated and not being deposited in Government account in accordance with rules on the subject. Thereafter Board of Officers was constituted who after rigorous checking of receipt and deposit etc., and found that there is a decalculation amounting to Rs.230575/- . The applicant was issued show-cause notice dated 9.9.96. Thereafter, another Board was constituted on 20.9.96 to conduct preliminary enquiry and also it fix up the responsibilities of mis-appropriation of Govt. money, in question. This Board submitted its preliminary report and held that Sri B.P. Gairola, U.D.C., who was functioning as Sales Clerk was solely responsible for the ^h defalcation of govt. money amounting to Rs. 214397.75/- as difference of Rs.16177.25/- had been deposited by Sri Gairola which had inadvertently not been accounted by the previous Board. Accordingly, an FIR under Section 409 IPC was lodged on 15.11.1996 at Habibkala police station, Dehradun, and a case was registered under Crime no. 31/96. Simultaneously, applicant-B.P. Gairola was placed under suspension on 7.2.97.

7. Since it was a case of huge defalcated amount, it was also considered necessary to initiate departmental action against the applicant, as such a charge memo dated 17.12.99 under rule 14 of CCS (CCA) Rules 1965, was served to the applicant. Charges were denied by the applicant, therefore, Enquiry Officer as well as presenting officer were appointed vide order dated 10.1.2000.

8. Enquiry officer issued a letter dated 6.4.2000 to the applicant to appear before him, but he neither appeared, nor asked for any defence assistance instead ^h ^h he had submitted a representation before the authorities for staying the departmental proceedings, but



the same was rejected vide order dated 18.4.2000.

9. Since the applicant chose not to appear before the Enquiry Officer, he concluded the enquiry ex-parte on the basis of records, evidence of witnessess as listed in Annexure A-3 of the charge memo and submitted his report recording therein that Sri B.P. Gairola was solely responsible for the defalcation of Govt. money amounting to Rs.213940-75/-. Even-though the applicant had not participated in the enquiry, yet he was given copy of the report vide letter dated 8.2.2001 with a view to afford him opportunity to submit representation against the enquiry report, if any.

10. The applicant filed his representation on 14.2.2001 stating therein that loss had occurred due to lack of supervision and procedure lapse and he did not accept the findings of the Enquiry Officer.

11. The disciplinary authority considered all these facts and looking the findings given by the Enquiry Office the evidence available on record and the representation of the applicant, imposed the penalty of dismissal from Govt. service and ordered for recovery of defalcated amount of Rs.213940.75/- from the delinquent sri B.P. Gairola, U.D.C. in 21 instalments.

12. Being aggrieved, applicant filed an appeal, but even that was rejected vide order dated 18.09.2000. The respondents have submitted that since the opportunity was given to the applicant to participate in the enquiry, but he chose not to appear before the Enquiry Officer therefore he has to face the consequence thereof and cannot be heard of saying that he has been denied the right to defend himself. The **findings** are based on the evidence, which are available on record, therefore, the penalty has rightly been imposed on the applicant. They have further submitted that preliminary enquiry is a fact finding enquiry and simply because Sri B.C. Roy happened

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to be chairman of preliminary enquiry, it would not affect the ultimate findings given by the Enquiry Officer as thereafter the chargesheet was issued to the applicant wherein he had full opportunity to defend himself, but he chose not to appear before the Enquiry Officer. They have further submitted that each and every documents which are mentioned in the chargesheet in support of the charges, were supplied to the delinquent. They have also submitted that three letters were issued to the applicant on 28.4.2000, 16.5.2000 and 1.6.2000, which were duly served upon him, but he avoided the enquiry, therefore there is no force in the contention of the applicant now. They have also submitted that the applicant has never challenged the order dated 18.4.2000 in any Court of law by which his request for deferring the departmental enquiry was rejected, therefore, the order has become final and binding on the applicant. They have, thus, submitted that there is no procedural lapse in the enquiry. They have further submitted that in accordance with CVC's letter dated 6.9.99 the departmental and criminal proceedings can run simultaneously. They have further submitted that the disciplinary authority was not a witness in the instant case as is evident from Annexure A-4 of the charge memo. They have submitted that the disciplinary authority ^{was} ~~had~~ empowered to conduct preliminary enquiry himself before issuance of the charge memo. In the instant case, the disciplinary authority ^{who} ~~had~~ issued charge memo was earlier functioning as Dy Surveyor General and subsequently he became the disciplinary authority in the instant case as such there is no irregularity committed in issuing the charge memo to the applicant. They have further explained that the ^{charge} applicant during the relevant period was given exclusive ~~power~~ for sale of maps, receipt payment from the purchaser, issue receipt under his ^{own} signature.



own signature and thereafter deposit the sale proceeds to the Cashier of MRIO. He deposited less amount than actually received by him from the purchasers as sale proceeds. The receipt issued to the purchaser in form 461 G bears his signature and he had not deposited the full amount for which he had issued the receipts to the purchaser in form 461 G under his signature. It is submitted by the respondents that since the applicant had mis-appropriated Govt. money, he has rightly been awarded the penalty of dismissal from service and since he has himself responsible for embezzlement, he has rightly been given the order of recovery of defalcated amount in 21 instalments.

13. The respondents have further submitted that the Hon'ble Supreme Court has repeatedly been holding that the Tribunal should not re-appreciate the evidence and once the charge is proved, the court should not interfere with the quantum of punishment. They have relied on the latest judgment given by Hon'ble Supreme Court in the case of Regional Manager, UPSRTC, Etawah & ors. vs. Hoti Lal & Another (JT 2003(2)SC 27). This was a case where the Conductor of State Road Transportation had mis-appropriated money inasmuch he took the money from the passengers, but he did not issue the tickets. After holding the enquiry, his services were terminated. Single Bench had upheld the punishment, but Division Bench had interfered with the quantum of punishment. On appeal, the Hon'ble Supreme Court has held that "misconduct in cases where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity has to be dealt with by iron hands". It was, therefore, held that order of Division Bench setting aside the termination is not sustainable, dismissal was accordingly restored.

14. In this case, applicant has taken the main ground that he has been denied the right to defend himself inas-

much as he was not allowed to cross examine the witness, nor he was given the documents. The applicant in the C.A. has not stated specifically ^{in his} as to which document was denied to him, whereas in the Counter, the respondents have stated categorically that all the documents relied-upon in the chargesheet were given to the applicant, which has not been disputed by the applicant as he has not even filed any Rejoinder in this case. The respondents have further stated categorically that the applicant was repeatedly asked to appear and to participate in the enquiry and all the three letters were ^{R duly} served on the applicant, but yet he chose not to appear or to participate in the enquiry. This fact has not been controverted by the applicant as no Rejoinder has been filed by the applicant at all. It would be relevant at this stage to refer the judgment given by the Hon'ble Supreme Court in the case of Raufan Kumar Mitra vs. Andrew Yule (1997 (10) SCC 386) wherein the Hon'ble Supreme Court has held that if an employee chooses not to participate in the enquiry, it cannot vitiate consequent termination. Since the applicant was given full opportunity to appear before the Enquiry Officer to defend the allegations made against him, but he chose not to appear before the Enquiry Officer, therefore, it is not open ^{to him} now to say that he has been denied the right to defend himself. He has not been able to point-out any other irregularity in the enquiry. The enquiry report was also given to the applicant, against which he filed his representation, which has also been taken into consideration while passing **which is** the order, ^{as impugned in this case} therefore, the contention that **R he has been denied right to defend is rejected.** **R**

15. It is also settled by now that it is not necessary to stay the departmental enquiry in every case where the criminal case is pending. In any case, in the instant case the applicant had given a representation to stay the enquiry till the disposal of the criminal case, which was

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rejected by the authorities, ~~and~~ ^{if} ~~the~~ applicant was aggrieved by ~~which~~, he ought to have challenged the said order in a Court of law, but he never challenged the said order. Therefore, once his request was rejected by the authorities, he ought to have appeared and participated in the enquiry to defend himself or should have taken stay from a Court of law if such a case was made-out, but not having done so, he cannot now say that since the criminal case was pending, the disciplinary case could not have been conducted especially when the enquiry is over and he has also been imposed with a penalty. We would also like to refer the judgment reported in 1999 (11) AISLJ CAT 341 wherein the Hon'ble Supreme Court has held that once the charges are proved, other considerations are not at all ⁱⁿ relevant and the Court cannot interfere even ~~in~~ the quantum of punishment. In the instant case, it would be ~~a~~ more ^{because} ~~case where~~ important ⁱⁿ the applicant had defalcated Govt. money to the tune to Rs. 214397.75/- Therefore, once the charges are proved, we do not think that it would re-appreciate ^{the} evidence or ^{to} interfere with the orders passed by the authorities. ~~the~~ Applicant has tried to state that he was not handling ^{the} cash, whereas the respondents have stated ^{that} he was incharge for sale of maps. In any case, these facts the applicant should have placed before the Enquiry officer, if he wanted to defend himself, therefore we cannot look ^{all} these points at this stage, nor ^{we} can sit as an Enquiry Officer in the matter.

16. In view of the above discussions, we find no merit in this case. The O.A. is accordingly dismissed with no order as to costs.


MEMBER (J)


MEMBER (A)

GIRISH/-