

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

ORIGINAL APPLICATION NO. 467 OF 2001

ALLAHABAD THIS THE 13th DAY OF DECEMBER, 2006

HON'BLE DR. K.B.S. RAJAN, J.M.
HON'BLE MR. A. K. SINGH, A.M.

D. K. Yadav, Son of Late H.N. Yadav,
Resident of 350/A, Faithfulganj Cantt.,
District-Kanpur Nagar-208 004,
(retired from the post of Technical Investigator in
the office of Textiles Commissioner 48,
New Marine Lines, New CGO Building, Mumbai-400 021)

..... .Applicant

By Advocate: Shri M. K. Upadhyay

Versus

1. Union of India, through its Secretary,
Ministry of Textiles, New Delhi.
2. Textiles Commissioner,
Govt. of India, Ministry of Textiles office of
Textiles Commissioner, 48, New Marine Line, New
CGO Building, Mumbai-400 020.

..... .Respondents

By Advocate : Shri R. K. Tewari

O R D E R

HON'BLE DR. K.B.S. RAJAN, J.M.

The applicant had been served with annexure 3
charge sheet dated 20-07-1992 for a major penalty and
the charges are as under:-

"ARTICLE-I

That the said S/Shri J.S. Pandit, B.K. Gour
and D.K. Yadav, while functioning as Deputy
Director, Assistant Director and Technical
Investigator respectively in the Regional
Office of the Textile Commissioner, Kanpur
during the period 1987-1988 had issued
provisional Actual User Certificates in
terms of para 230 of Hand Book of Import
Export Procedure 1985-88 to some non-
existent units on the basis of the
provisional S.S.I. Registration Certificate

62

issued by the State Authorities without verifying the facts as to whether the units were really in existence and were actual users of the raw materials to be imported.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said S/Shri J.S. Pandit, Deputy Director, B. K. Gour, Assistant Director and D.K. Yadav, Technical Investigator had registered contracts of some non-existent units for import of woolen/synthetic rags under O.G.L.meant for A.U. without verifying whether the said raw materials were actually required for working of the said non-existent units and also without taking into consideration the guidelines issued by the Headquarters office from time to time in this regard. The actual requirements of the said units were also not verified at any time.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri D. K. Yadav, Technical Investigator and processed the cases initially and did not exercise proper care while submitting the file to the superior officer.

Thus S/Shri J.S. Pandit, Deputy Director, B.K. Gour, Assistant Director and D.K. Yadav, Technical Investigator displayed utter negligence towards their duties and failed to maintain devotion to duty. The said act of S/Shri J.S. Pandit, B.K. Gour and D. K. Yadav is in contravention of clause (ii) of sub-rule I and clause (ii) of sub-rule 2 of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

2. Applicant having refuted the charges vide representation dated 28-08-1992 (Annexure 4), he was proceeded against by holding a common inquiry, and his request for engagement of a Defence Assistant was rejected. Having conducted the inquiry and after the exchange of the Presenting officer's brief and the Defence Brief, the I.O. had furnished his Annexure 15

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inquiry report dated 05-07-1996 and the charges against the applicant had been held to be proved. As the inquiry report is in respect of three persons (Shri Pandit), in respect of one of whom by virtue of his status, opinion of the UPSC was to be obtained, records were accordingly sent and the UPSC while stating that the said Pandit was charged with two charges, in respect of applicant, as a passing reference the UPSC had stated "the third article related to Shri D.K. Yadav (the applicant herein) and rendered its report in respect of the said Pandit and recommended compulsory retirement for the said officer.

3. The applicant was also meted with the penalty of compulsory retirement vide order dated January 8, 2001 (Annexure A-1). The applicant was compulsorily retired by order dated January 11, 2001 (Annexure A-2).

4. The applicant preferred an appeal to the Secretary, Textiles on behalf of the President on 18-01-2001 but the same was rejected by order dated February 8, 2001 (Annexure 20) stating that since it was a common proceedings and the penalty was imposed upon the applicant by the President himself, no appeal lies against the same.

5. The applicant has challenged the penalty order Annexure A-1 and A-2 through this O.A.



6. Respondents have resisted the OA. According to them, since the charges were proved and there is no legal lacuna in conducting the inquiry, the OA is liable to be dismissed.

7. Applicant has furnished his rejoinder against the counter filed by the respondents.

8. Written arguments were submitted and the applicant has contended that in so far as the applicant is concerned, the charge is only Art. III as contained in the UPSC Report, as extracted above. He has also contended that the charges were vague and no penalty had been proposed by the UPSC. The respondents contended that the decision by the authority is fully justified.

9. The entire pleadings were considered and the written arguments perused. In so far as the contention of the applicant that UPSC has stated that it is only Art. III that relates to the applicant, is concerned, it is to be clarified that the applicant being one of the supervisory staff and not a Gazetted officer, the UPSC was not consulted. Reference to UPSC was only with reference to the said Shri Dixit and it was only to state that in so far as the said Shri Dixit was concerned, charges were confined to Art. 1 and 2, while the common charge sheet contained three charges that the UPSC referred to the third one

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to state that it related to the applicant. By virtue of the same it cannot be stated that Articles I and II do not apply to the applicant. A perusal of the charge sheet would go to show that while in the case of Dixit and another, the first two charges applied, in respect of the applicant all the three charges were framed. In so far as the contention that the UPSC did not recommend any penalty against the applicant, it is to be clarified that reference to UPSC was made only with reference to Shri Dixit.

10. The main issue involved in this case is when a common inquiry is conducted, whether the otherwise available right to appeal could be deprived to the applicant on the ground that the penalty order was passed on behalf of the President of India. It is trite law that there must be a provision for appeal. It has been held in the case of *A. Sudhakar v. Postmaster General*, (2006) 4 SCC 348, the Apex Court has held as under:-

18. It is now trite that an authority higher than the appointing authority would also be the designated authority for the purpose of Article 311 of the Constitution. Even the Appellate Authority can impose a punishment subject, of course, to the condition that by reason thereof the delinquent officer should not be deprived of a right of appeal in view of the fact that the right of appeal is a statutory right.

If the appellate authority assumes the role of the disciplinary authority and that authority has no higher authority as in this case, then also, the individual is not remediless. For, notwithstanding the fact that there lies no appeal, there is always a provision for revision. This opportunity available

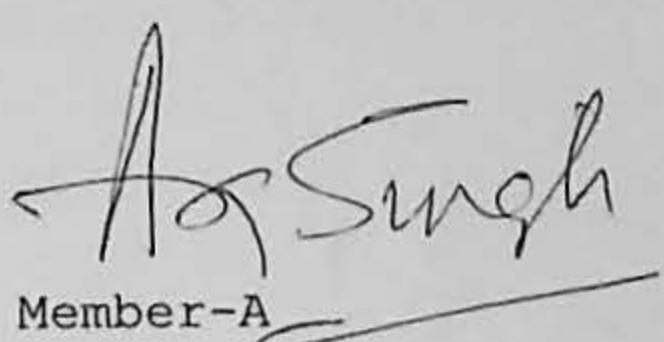
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under the Rules, in all fairness, ought to have been made known to the applicant through the order of Penalty itself by the respondents but the same was not made known.

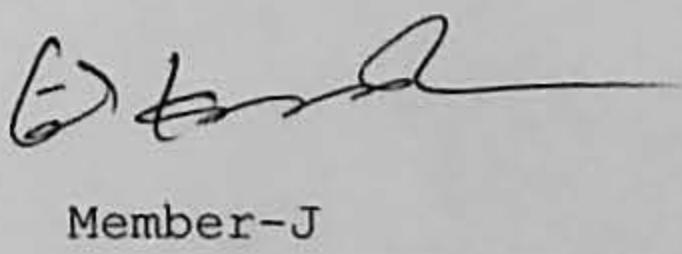
11. In view of the above, with a view to affording the applicant an opportunity to avail of the provisions for revision, it is felt appropriate that the **OA be disposed of** (and so it is ordered) with the direction to the respondents to consider the revision applicant if filed within three weeks from the date of communication of this order. And the limitation is liable to be ignored as the applicant had filed the OA on 17-04-2001, which is within the time limit available for filing Revision petition from the date of communication of rejection of appeal, vide order dated February 8, 2001.

12. In view of the fact that the above opportunity has to be made available to the applicant to file revision petition, the facts of charge etc., have not been dealt in this order.

No cost.



Member-A



Member-J

/ns/