

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 27th DAY OF NOVEMBER, 2009)

PRESENT:

HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J)

ORIGINAL APPLICATION NO. 1226 OF 2001

(Under Section 19, Administrative Tribunal Act, 1985)

S. P. Sinha, aged about 64 years, son of Sri R. P. Srivastava, resident of Plot No. 5, Gokul Nagar, (Kanchanpur), P.O. Diesel Locomotive Works, Varanasi - 221004

.....Applicant.

By Advocates:- Shri Rakesh Verma

Versus

1. Union of India, through the Chairman, Railway Board, Government of India, Rail Bhawan, New Delhi
2. The Deputy Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi - 110 011.
3. The Joint Secretary (Establishment), Railway Board, Rail Bhawan, New Delhi.
4. The General Manager, Diesel Locomotive Works, Varanasi - 221 004.

.....Respondents

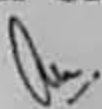
By Advocate- Shri K. P. Singh

ORDER

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

Heard Learned counsel for the parties and perused the record and perused the record.

2. The applicant/S. P. Sinha has been working as Senior Accounts Officer he was promoted on a post in Class I w.e.f. May 31, 1995. He was



placed under suspension on July 11, 1995 and retired on 30.09.1995 on attaining age of superannuation. No charge sheet was served till then. After about two years of superannuation he is served with Charge Sheet dated 25.06.1997 containing five charges, Inquiry Officer recorded following categorical finding (with respect to each charge):-

"Article-I

That said Shri Sinha had indulged himself in serious misconduct by attesting correction in the above said 10 9cheques) wherein "Pvt. Ltd." Portion from Payee's name M/s Indian Publicity Bureau Pvt. Ltd." are found corrected by drawing multiple horizontal lines as a result of which said ten cheques were encashed in the account of other than of whom said cheques were originally issued.

Inquiry Officer Finding Proved

Article II

That said Shri Sinha by his above act deprived M/s Indian Publicity Bureau Pvt. Ltd. of their legitimate amount of Rs. 4,70,158.00 against above cheques extending undue favour of other party.

Inquiry Officer Finding Not Proved

Article III

That said Shri Sinha had repeatedly violated the codal provision of Accounts Code Para 1117 by not using red ink for correction of above said 10 cheques and dating his signature against attestation of correction of these 10 cheques issued at different dates over a period of about 16 months.

Inquiry Officer Finding Proved

Article-IV

That said Shri Sinha had indulged himself in attesting correction to above 10 cheques without any valid reason as neither the said correction was sought by the Bank nor by the Cheque Writer and he had not recorded anything on the Counterfoil of the Cheques for the said corrections, causing great inconvenience to the DLW Admn. to furnish the documental evidence of payment to M/s Indian Publicity Bureau Pvt. Ltd. of their outstanding bills demanded vide their letter dated 10.3.1995.

Dr.

Inquiry Officer Finding

Partially Proved

Article-V

That said Shri Sinha filed to exercise reasonable prudence and caution as an officer by repeatedly (ten times) making corrections on above said ten cheques without giving a thought as to why similar types correction needed to be made repeatedly."

Inquiry Officer Finding

Partially Proved

4. Being aggrieved the applicant submitted 'Explanation' before the Disciplinary Authority (Annexure A-3 to the O.A) categorically contending that one Aroop Dutta (the Bank Agent) had admitted before Members of 'fact - finding' enquiry that words 'Pvt. Ltd' were scored out by him. The applicant also referred to the case of B. N. Singh (who was subjected to similar charges) wherein the Inquiry Officer categorically held that charges were not proved. The Applicant, in his defence refers to the finding of Inquiry Officer on Article-II, which reads:

"As per the system the Cheques were collected by the agent of the firm Mr. Amar Dutta, Arup Dutta, their local representative. He has further given a document (D-1) dated 10.1.98 in which the firm has confirmed the receipt of payment of Rs. 4,58,090.00 out of Rs. 4,70,158.00 due to them from their local representative. On the date of issue of the charged memorandum, the amount of Rs. 4,70,158.00 was outstanding. This letter dated 10.1.98 (D-1) has been received subsequently. The charge of depriving the firm stood till the issue of letter dated 10.1.98. On the other hand, the charge of extending undue favour to the party is not clear whether the correct cheques or otherwise were received by other than authorised representative of the firm. Defence Document (DS) shows that the cheques were received personally by firm's representative. Hence in view of the firm's letter dated 10.1.98 (D-1) this charge is not sustained."

Mr.

6. The applicant in his support/defence also refers to the order dated 31. 07.2000 passed by Union Public Service Commission in the case of said B.N Singh (Annexure filed as part of Annexure-A-6/compilation-II).

7. It is to be appreciated that in the case of B. N. Singh (who was subjected to 'similar charges') UPSC had acquitted him with following observation:-

"In view of the above the Commission hold that Article I, II, IV & V of the charge are not proved and Article-III is technically proved. Since the technical fault of the CO under Article III of the charge does not constitute grave misconduct, the commission observe that the penalty of cut in pension should not be imposed on the CO.

In the light of the findings as discussed above and _____ taking into account all other aspects to the case, the commission observe that ends of justice will be met in this case if the proceedings against Shri B. N. Singh are stopped and he is exonerated from the charges leveled against him. They advise accordingly.

A copy of the order passed by the Ministry in this regard may be endorsed for Commission's perusal and record."

8. Learned counsel for the Respondents, however, refers to the pleadings contained in the Counter Affidavit/Reply. One ground or the other can not be supported by means of fact pleaded by fact brought on pleadings.

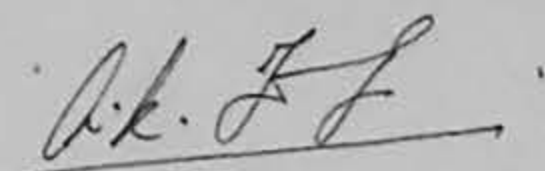
9. In the instant case there is no charge the Applicant has – with deliberate intention (mens – rea) committed illegality and thus intentionally abetted by helping – third party to 'Mis-appropriate' the money under cheques in question. The Inquiry Officer categorically observed that "It is also not clear whether the correct cheques or otherwise were received by other than authorized representative of the firm".

Ans

10. There is no charge of causing damage/loss to the Government. In similar circumstance one B. N. Singh has been acquitted. Since charge No. 2 failed no other charge can stand and there is no justification/good reason to sustain order of punishment.

11. Consequently impugned order dated 14.05.2001 (Annexure-A-1) is hereby quashed and set aside with direction to the respondents authorities to ensure payment arrears alongwith 7.5% Simple Interest payable to the applicant within three months of receipt of certified copy of this order.

12. O.A. is allowed subject to above observations/directions. No Costs.


Member-J

/Dev/