

Reserved on 25.07.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1567 of 2004

Allahabad this the, 21st day of August, 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member (A)**

Padam Singh Chauhan S/o late Sri Phool Singh Chauhan, R/o 66 E, Shivpur Maula Nagar, Post Office – Shamatganj, Distt. Bareilly.

Applicant

By Advocate: Sri M.K. Upadhyay

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Air Officer Commandant, Air Force, Bareilly.
3. The Chief Administrative Officer, Air Force station, Bareilly.

Respondents

By Advocate: Sri Ajay Singh

O R D E R

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.

By the instant O.A., following relief(s) have been claimed by the applicant: -

“(a) to issue an order, rule or direction for quashing and setting aside the impugned order dated 1.10.04 by which the respondent No. 3 terminated the services of the applicant from the post of Manager/Accountant S.I. Fund Air Force Station, Bareilly (Annexure No. 1 to this Original Application).

(b) to issue any other order, rule or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

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(c) To award the costs of the application to the applicant."

2. The brief facts of this O.A. are as follows: -

That the applicant retired from the Army Service on 01.02.1992 from the post of Honorary Captain. Thereafter, he was appointed on the post of Manager cum Accountant under Air Force Commanding, Air Force Station, Bareilly on 17.05.1994. On 27.09.2004, the respondent No. 3 issued a show cause notice against the applicant as to why the disciplinary action be not taken against him for such a serious lapse on the part of applicant. It is alleged in the show cause notice that the applicant did not keep the cheques pertaining to S.I. Fund in safe custody O.I.C. S.I. as a result of which cheques amounting to Rs.3,20,531/- were missed from his custody. Neither preliminary inquiry was conducted against the applicant nor any disciplinary proceedings were initiated against him. The applicant submitted his reply to the show cause notice. The respondent No. 3 without considering the reply, submitted by the applicant, terminated his services on 01.10.2004. After receiving the termination order, the applicant represented to the higher authorities against the illegal and arbitrary action of the respondents in the month of October, 2004 but, no action was taken on his representation. Hence, this O.A. was

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filed by the applicant mainly on the grounds that the service period of the applicant had always been satisfactory, without considering his reply to the show cause notice and without initiating any disciplinary proceedings his services have been terminated arbitrarily on 01.10.2004 by the respondent No. 3; The representations, given by him, have also not been considered and replied by the respondents.

3. The respondents have filed the Counter Affidavit, denying the allegations made by the applicant in the O.A. mainly contending that the applicant was appointed as Manager cum Accountant for Service Institute of this station w.e.f. 01.06.1994 in terms of Para-33 (b) Chapter I of IAP 3503. He was appointed as Non Public Fund (for short NPF) employee. The terms and conditions of service of the NPF employees are governed as per Directive Accounting Circular List (hereinafter referred as DACL) 29/99 issued by Director of Accounts, which is governing authority for all NPF employees of the entire Indian Air Force other than employees of Air Force School and Air Force Canteen. According to which, all NPF employees do not get the status of Government employee at any stage and remain as NPF employee till the superannuation, or till date of resignation/termination of service. The

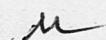
termination of service of such an employee is determined by Rule 24 read with Rule 25 of DACL 29/99, wherein the appointing authority may terminate the services of an employee by giving three months' notice in writing or pay in lieu thereof without assigning any reason. The superannuation of NPF employees is determined by Rule 26 wherein an employee shall be superannuated on attaining the age of 58 years. The applicant as a Manager cum Accountant had attained the age of 58 years on 20.01.2004. The applicant did not inform the authorities regarding his attaining the age of superannuation. The Local Audit Office of the department raised an objection on employment of the applicant who was supposed to have superannuated on attaining the age of 58 years. Since the applicant had already crossed the age of superannuation, his services were terminated in accordance with the provisions of Rules 24, 25, and 26 of the DACL 29/99. The applicant was paid three months' salary on termination of his services. Similar termination orders were issued in respect of other employees also under the aforesaid Rules on attaining the age of superannuation.

4. The applicant as Manager cum Accountant had received the advance interest cheques of various NPFs



from IA FBA on 23.08.2004 and failed to keep them in safe custody of Officer In Charge SI, resulting in loss of 15 cheques amounting to Rs.3,20,531/- . The matter was not brought to the notice of the Officer In Charge SI or any other authority by the applicant, Hence, the show cause notice was issued to the applicant on 27.09.2004 for the lapses in safeguarding the cheques and his casual attitude in not informing the higher authorities in time about the loss. The reply to the show cause notice was submitted by the applicant on 29.09.2004, and the same was examined at appropriate level and no further action was considered necessary in that regard. There is no correlation between the loss of cheques, subsequent show cause notice and termination of his services. The applicant had attained the age of superannuation for which his services were terminated. The applicant has got no case and the O.A. deserves to be dismissed.

5. The applicant in addition to the contents made in the O.A. has placed reliance on certain documentary evidence i.e. annexure A-1 to annexure A-6, filed on record including the appointment letter, show cause notice issued to the applicant and the order terminating the services of the applicant.



6. On the other hand, the respondents have placed reliance on certain documentary evidence ranging from annexure CA-1 to annexure CA-9 including the appointment letter, documents containing the terms and conditions of service of NPF employee, show cause notice issued to the applicant, reply to the show cause notice and termination of appointment of the applicant.

7. We have heard the learned counsel for the parties and perused the documents on record.

8. The main submission on behalf of the applicant is that a show cause notice was issued to the applicant by the respondents and a reply was given to that show cause notice by the applicant but, without considering that show cause notice and without doing any inquiry against the applicant, and without initiating any disciplinary proceeding against the applicant, his services have been terminated on 01.10.2004. It is also submitted that the impugned order was passed without affording any opportunity to the applicant to explain his stand, which is against the principle of natural justice. Learned counsel for the applicant has drawn our attention towards the appointment letter and show cause notice issued to the applicant, and also towards the order of termination of services of the applicant. The termination order



(annexure-1) of the applicant is worth to be mentioned here, which is as follows: -

“1. In accordance with the provisions of DACL 29/99, it has been decided by the appointing authority that your services as SI Manager are terminated with effect from 02 Oct 04 (forenoon) with payment of three months salary amounting to Rs.17,475/-.

2. You are to hand over all the inventory held in your charge including all files and office items by 14.00 hrs on 02 Oct 04. Your dues will be cleared after completion of handing/taking over.

Sd./-

(R. Kapur)
Wg Cdr
C Adm O
For AOC”

On the strength of above facts, it has been submitted by the applicant's counsel that the applicant should have been given reasonable opportunity to explain his conduct but the same has not been given rather his services have been terminated.

9. Learned counsel for the respondents has rebutted this contention, stating that the applicant was a NPF employee. He was not the Government servant. The terms and conditions of NPF employee are governed as per DACL 29/99 issued by the DTC of Accountant vide letter No. AIR/HQ/2605_Accts/PC-II dated 30.11.1999, which is the governing authority for all NPF employees of entire Indian Air Force other than Air Force School and Air Force Canteen. It is specifically mentioned therein that all NPF



employees do not get the status of Government employee at any stage and will remain as NPF employee till the age of superannuation, resignation or termination of service. It is further submitted by the respondents' counsel that under Rule 24 read with Rules 25 and 26 of DACL 29/99, the appointing authority may terminate the services of an employee by giving three months' notice in writing or pay in lieu thereof without assigning any reasons. Similarly Rule 26 thereof provides that the NPF employee shall superannuate on attaining the age of 58 years. It is further submitted that the applicant had already crossed the age of superannuation but he had not informed the department about the age of superannuation. It was only on the objection raised by the Local Audit Office of the department as to how he is continuing after attaining the age of 58 years, the department had to take a decision superannuating him under the provisions cited above by paying three months' salary on termination of his services.

10. As regards the contention of applicant's counsel that after issue of show cause notice, no inquiry proceeding was initiated nor any disciplinary proceeding was initiated against the applicant but, his services were terminated, learned counsel for the respondents has drawn our

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attention towards the letter dated 06.12.2004 (annexure CA-8), which reads as follows: -

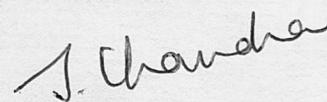
- “1. Please refer your letter dated 23 Nov 04.
2. The show cause notice served to you, asked for reasons from you that why “disciplinary action should not be taken against you” and not that “disciplinary action will be taken against you”. On receipt of your reply, it was decided that no disciplinary action was required to be initiated against you.
3. Your services were terminated under DACL 29/99.”

On the basis of the provisions contained under Rules 24, 25 and 26 of DACL 29/99, the applicant was superannuated as he had already crossed the age of 58 years i.e. age of superannuation, No action was taken against him in pursuance of show cause notice given to him. Therefore, neither any inquiry was initiated nor any disciplinary proceeding was initiated against the applicant. It is not disputed by the applicant that he has already crossed the age of 58 years i.e. age of superannuation.

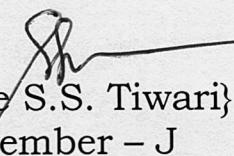
11. In view of the above discussions, it is concluded that since the services of the applicant were terminated not on the ground of show cause notice, issued to him for loss of 15 cheques but, on the ground of his age, as he had already crossed the age of superannuation and an



objection was raised by the Local Audit Office regarding his continuation in the service even after attaining the age of superannuation. Accordingly, it is also concluded that there is no violation of principles of natural justice or any other provisions of law in terminating the services of the applicant. The O.A. has got no merits and accordingly it is dismissed. No order as to costs.



(Ms. Jayati Chandra)
Member - A



{Justice S.S. Tiwari}
Member - J

/M.M/