

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 20th DAY OF April 2011)

Hon'ble Dr.K.B.S.Rajan, Member(J)
Hon'ble Mr.D. C.Lakha, Member (A)

Original Application No.1592 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Vinay Kumar Chopra,
Son of Late Dev Raj Chopra,
R/o 13/3, Shakti Nagar,
Gwalior Road,
Agra Cantt.

.....Applicant

Present for Applicant: Shri A.K.Srivastava, Advocate

Versus

1. Union of India through Secretary
Government of India, Ministry of Textiles,
New Delhi.
2. The Development Commissioner (Handicrafts)
Office of the Development Commissioner(Handicrafts)
West Block VII, R.K.Puram,
New Delhi.
3. Shri S.C.Grover, the then Inquiring Authority
Then Assistant Director(Handicrafts), M&SEC
Office of the Deputy Commissioner (Handicrafts)
Barabanki (U.P.)

.....Respondents

Present for Respondents: Shri Anil Dwivedi, Advocate

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

If the points raised in the written submission by the counsel for the applicants are found to be true and valid to the facts of the case, certainly the application succeeds. The points are as under:-

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1. The charge-sheet was issued after 5 years.

2. The punishment was awarded after 8 years 9 months from the date of issuing charge-sheet.
3. The Disciplinary Authority and Appellate Authority was the same Authority.
4. The three punishments are imposed on the applicant in the same matter.
5. The theft case was not registered to Police Station.
6. The opportunity of cross-examination to witnesses was not provided to the applicant and defence brief not taken by the Enquiry Officer.
7. The original documents were not produced before the enquiry and relied upon documents not provided to applicant.
8. The Enquiry was conducted at different place at Bareilly much away the place of incident at Agra.

2. Equally dexterous is the arguments on behalf of the respondents as contained in their written arguments, where from the facts of the case, which are by and large admitted, are culled. The same are as under:-

(a) The applicant was served with a charge sheet dated 13.02.1995 under Rule 14 of CCS (CCS) Rules 1965 on the ground that while functioning as SK/AC in ATC, Barauli, Agra, he embezzled Govt. stores of woolen and cotton yarn valuing Rs. 66, 626/-. The applicant while working on the said post also failed to transfer the unused raw material and thereby showed disobedience towards the senior officer. Further charge upon the applicant was that while functioning as SK/AC, ATC, Barauli, Agra was present in the office on 30.12.1989 when the inventories of centre was prepared. But he reused to sign inventory and thereby exhibited disobedience and insubordination.

(b) That the applicant denied the charges leveled against him vide his reply dated 28.07.1995.

(c) The inquiry was completed and the Inquiry Officer submitted the inquiry report on 23.08.2002 finding the Charge No. I 'Not proved' and Charge No. II and III 'proved'. Copy of Inquiry Report with disagreement on the finding of Inquiring Authority in respect of Charge No. I was sent to the applicant vide office Memorandum dated 20/21.11.2002.

(d) The Disciplinary Authority after careful consideration of the findings of the Inquiry Officer, written prosecution and defence brief of the applicant alongwith related documents, agreed with the findings of the Inquiry Officer on Charge Nod. II and III but disagreed with finding on charge No. I of Charge Memorandum dated 13.12.1995 related with the embezzlement of Rs. 66,626/-.

(e) As the charge leveled against the applicant were found proved and as such the Disciplinary Authority has passed the order 03.11.2003 awarding the applicant penalty of reduction to lower stage in the time scale of pay for a period of two years withholding the increment of pay during the period the such reduction and the reduction will have the effect of postponing the future increments of his pay. The applicant was further awarded with the penalty of recovery of Rs. 66,626/-, which is also commensurate to the offence committed by the applicant.

(f) On appeal, the Appellate Authority has heard the applicant in person and had conveyed his decision on the order of punishment.

3. The applicant has filed this OA seeking the following relief(s):

- (i) The punishment order dated 3.11.2003 passed by respondent No.2 and the appellate order dated 30/2.11/12.2004 passed by respondent no.1 may kindly be set aside being perverse, malafide and illegal.

- (ii) The full service benefits and the financial benefits may kindly be granted to the applicant against the respondents with 18% interest on the financial benefits.
- (iii) The cost and expenses of the petition may be granted to the applicant against the respondents.
- (iv) Any other relief, which the Hon'ble Tribunal deems necessary in the circumstances of the case, may kindly be granted to the applicant.
- (v) Interim order, if any, prayed for

4. After the exchange of the pleadings, and on being permitted parties having filed their respective written arguments, the case has been considered.

5. The charges in brief are as under:-

Article - I: The said Shri S.C. Grover while working as Asstt. Director (H) in HM&SEC Almora during the year 1994-95 has submitted false TA bills for the period when he was very much present in the HM&SEC Almora and fraudulently drawn and embezzled the Govt. money as TA payment.

Article - II The said Shri S.C. Grover while working as Asstt. Director (H) in HM&SEC Almora during the year 1994-97 showed aberrant attitude in selecting the craftsperson of his jurisdiction for exhibition/market related programmes and favoured some selected craftsperson unfairly.

Article - III The said Shri S.C. Grover while working as Asstt. Director (H) in HM&SEC Almora during the year 1994-96 has showed a negligent attitude in performing his duty and with his connivance a Craftspersons of Sarai Tereen, Moradabad has embezzled the Govt. money amounting Rs. 40,991/- as stipend/wages of an ATS (c).

6. From a perusal of the inquiry report it is observed that the applicant did take an active part at the preliminary stages of inquiry when the issue in regard to inspection of original listed documents was the core subject. He had also inspected the documents. This goes to show that even though the charges would have been issued years ago, no prejudice has been expressed due to the delay involved. In this regard,

the decision by the Apex court in the case of **V. Padmanabham v. Govt. of A.P.,(2009) 15 SCC 537**, and **State of A.P. vs N. Radhakishan (1998) 4 SCC 154** refer. Where the loss to the Government is very high, and delay is explained, the inquiry cannot be vitiated.

7. So is the case with reference to the conclusion of penalty proceedings. Thus, from the delay point of view, there is no illegality.

8. As regards the contention that the disciplinary authority and appellate authority are one and the same, it is seen that the Disciplinary authority in this case is the Development Commissioner (Handicrafts) who had issued the penalty order vide order dated 03-11-2003. When the applicant had preferred an appeal against the same, the appeal was dismissed by order dated 02-12-2004 and according to the applicant, the authority which signed the said appellate order is also the self same disciplinary authority and hence, the orders having been passed by the same individual, the orders get vitiated. The applicant has missed one aspect in this regard. True, the order was signed by the self same Development commissioner, but the last sentence clearly shows, **"the undersigned is directed to convey the above orders of the Appellate authority to the said Shri V.K. Chopra"** Thus, this point also does not hold water.

9. Three punishments were said to have been imposed in this matter. The applicant has stated in ground No. 5.18 as under:-

"That the delinquent official has been treated with inequality while passing the punishment order whereas a nominal penalty of 'censure' was passed against the respondent No. 3 for more serious charge and

that too without holding any inquiry. The act of disciplinary authority is violative of principles of equality as envisaged in Art. 14 and 16 of the Constitution of India". As no details have been given in regard to the charges against respondent No. 3, the contention of the applicant cannot be accepted on its face value.

10. It has also been stated in the written arguments that the three punishments are as under:-

- (A) Applicant is (A) reduced to lower stage in the time scale of pay for a period of two years with immediate effect and (2) with a further direction that the said applicant will not earn increments of pay during the period of such reduction and the reduction will have the effect of postponing the future increments of his pay and
- (B) The estimated loss to the Government exchequer to the tune of (3) Rs. 66,626/- be recovered from the pay of the applicant (Annexure No.1).

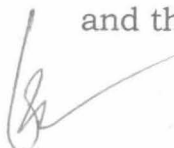
11. The law is clear on the subject. So far as the first two penalties are concerned, it is as per the provisions of Rule 11(vi) of the CCS (CC&A) Rules, 1965. In the case of *Commr. of Rural Development v. A.S. Jagannathan*, (1999) 2 SCC 313 wherein the rules applicable are comparable to the CCS(CC&A) Rules, providing for both recovery and stoppage of increments, and where, both recovery of the loss caused to the State Government as well as stoppage of increment were imposed as penalties, the Apex Court has held that the same would not mean double jeopardy. The Apex court has, thus, held as under:-

5. The Tribunal clearly had no jurisdiction to interfere with the punishment imposed by the disciplinary authority under the order of 4-6-1991. The Tribunal has purported to pass the order on the ground that three punishments cannot be imposed for

the same charge. Now, the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules prescribe various penalties that may be imposed under Rule 8. One of the penalties under Rule 8 is of withholding of increments. Another penalty which can be imposed under Rule 8(v)(a) is recovery from pay of the whole or part of any pecuniary loss caused to the State Government by negligence or breach of orders. Under the Tamil Nadu Pension Rules, Rule 9(1)(b), such pecuniary loss can also be recovered from the pension of the employee if the pecuniary loss is caused by negligence or grave misconduct while in service and the employee has been found guilty of such misconduct or negligence. In the present case, the disciplinary authority has clearly found that there were serious charges against the respondent which were established against him in a disciplinary enquiry which was properly conducted. The disciplinary authority has rightly observed that looking to the serious nature of the charges proved, a minor punishment of only stoppage of two increments without cumulative effect has been imposed on the respondent by taking a ³¹⁶ lenient view since he is about to retire. The order for recovery of the loss caused on account of the respondent's negligence and misconduct is also permissible under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules as also under the Tamil Nadu Pension Rules, the former permitting recovery from pay and the latter permitting recovery from pensionary benefits after retirement. The Tribunal is wrong in holding that if an order is passed for recovery of the amount lost from the employee, no punishment can be imposed on him. The disciplinary authority, in the present case, was entitled to impose the punishment of stoppage of two increments without cumulative effect. At the time of passing the final order, the disciplinary authority was also entitled to pass order relating to the suspension period pending enquiry. It has directed that the period during which the respondent was under suspension be treated as service period but without pay. The order must be read as a whole. In the present case, the disciplinary authority has awarded punishment and given directions looking to the nature of the charges proved. The Tribunal was not entitled to interfere with the punishment so accorded.

12. The next ground is that the theft case was not registered in the Police Station. This cannot in any event absolve the applicant from the charges and in any event, with reference to such charges I and II. Hence, this ground also meets its Waterloo.

13. Opportunity to cross examine the witnesses had not been given and the defence brief had not been entertained by the inquiry officer.



Para 27 of the counter together with Annexure 3 to the counter gives a different version. The Daily order sheet dated 19-04-2002 clearly indicates that the witnesses were cross examined and re-examined on 08-05-9-2002 and 09-05-2002 and the daily order sheet had been duly signed by the applicant and his defence witness. They had, however, not availed of the opportunity to cross examine during the proceedings on the aforesaid days.

14. And lastly, the ground is that the alleged incident took place at Agra whereas, the inquiry was conducted at Agra. The inquiry was initially conducted at Agra and later on due to the change of inquiry officer, at the instance of the applicant, the inquiry was to be conducted at Bareilly. The applicant tendered a communication to the Inquiry officer for change of place of inquiry but the same was not entertained. Para 4.17 refers. However, since the authority to order change of place of inquiry is only the Disciplinary Authority, the applicant ought to have approached the Disciplinary Authority in this regard. Even if the Disciplinary authority declined, the same would not have made the proceedings fatal.

15. In view of the above, no case has been made out by the applicant. Hence, the OA is dismissed.

16. No cost.



Member (A)



Member (J)

Shashi