

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

D.A. NO. 201 of 1988

(6)

P.K. Chandana ..... Applicant.

Versus

Union of India  
and others. ..... Respondents.

.....

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. K. Obayya, Member (A) )

The applicant who is a senior store-keeper in the Ordnance Depot, Allahabad, has in this application filed by him under section 19 of the Administrative Tribunal Act, 1985 prayed for quashing the punishment dated 7.1.1988 (Annexure-6) reducing his pay by four stages from Rs 1470 to 1350 in the scale of Rs 1200-2040 for a period of four years with immediate effect, with no increments to be earned during punishment period. He has also prayed that respondents be restrained from promoting his juniors.

2. The applicant while working as senior Store-Keeper in the storage area, Return Store Sub-Depot, under the commandant, Ordnance Depot, Allahabad was served with the charge-memo for alleged acts of negligence of duties, concealing of certain facts, giving wrong advise etc. The applicant denied the charges. Thereafter, an enquiry officer was appointed and enquiry proceeded. The Enquiry Officer concluded enquiry and held the charge against the applicant is established. The disciplinary authority accepted the findings of enquiry and passed punishment order reducing the pay of the applicant by four stages for a period of four years (Annexure-6).

3. The punishment order is assailed on grounds, that the enquiry was not held properly due opportunity was not given to examine the record, documents relied upon were not supplied and witness cited in the charge memo were not examined.

4. The respondents have contested the case and in the counter filed by them, it is denied that enquiry was not properly held or documents relied upon were not made available. According to them every opportunity was provided to the applicant to present his case, and only one witness could not be examined on the department side, as he had retired from service and was not readily available. The punishment order was passed after considering the enquiry report and other material on record.

5. We have heard the counsel for the parties. The learned counsel for the applicant vehemently argued that the applicant was not responsible for the loss of government property, and that he was not incharge of the Micrometres, he was entrusted with some other stores and he was wrongly involved in the case. He pointed out that the enquiry is vitiated, as certain documents were not supplied to the applicant and witnesses were not examined. In any case the applicant can not be held responsible for negligence of duties or concealment of facts, as his duties did not involve looking after micrometres or maintainence of stores.

The learned counsel also pointed out the discrepancy in the penal order, that while the charge was for certain alleged offence, the punishment is awarded for altogether different offence. The submission of the learned counsel for respondents was, that there was no irregularity either in enquiry or punishment awarded and punishment was awarded after considering the enquiry report and relevant material. It would appear that common proceedings were drawn against the applicant and two other Senior Store Keepers and also one Deepak Kumar, Officer Ordnance (Civil).

The proceedings resulted in the dismissal of Deepak Kumar, while the applicant and one I.A. Siddique were given punishment orders. The other Store Keeper R.A. Gupta was ~~exonerated~~ on the ground that the charge is not proved in his case.

6. As the question raised is whether the punishment imposed to the applicant was for the same offence for which he was charged, we would like to notice, the charge sheet which runs as follows:-

- (i) In that the aforesaid Store Keeper Shri P.K. Chandana, while functioning as I/C LV 6 MT-14 (Cover outer only) in RSSD of O.D. Fort Allahabad during January 79 to March 79 committed gross misconduct indicating negligent performance of duties for concealing the facts of deposition of incorrect stores in salvage Sub Depot. Due to his aforesaid negligence there was loss of 62 genuine repairable micrometers amounting to Rs 1953/- (Rupees one thousand nine hundred fifty three) to the State".
- (ii) Thus he committed an act of gross negligence in performance of his legitimate duty resulting in loss of government stores and consequential loss to the State."

7. The statement of imputation of misconduct in support of the charge annexed to the charge memo is as under:-

" Article -I  
NEGLIGENCE OF PERFORMANCE OF DUTY

1. In that the aforesaid Store Keeper Shri P.K. Chandana, while functioning as I/C LVG MT-14 (Cover outer only) in RSSD storage area of OO Fort Allahabad during the period Jan 79 to Mar '79 committed gross misconduct indicating negligent performance of duty for concealing the facts of depositing of incorrect stores in Salvage Sub Depot. Although he was not directly responsible for the stores (micrometers) yet it is believed that he had knowledge of the transaction. Also he is responsible for giving wrong advice to OO (Civ) Shri Deepak Kumar during Jan 79 that repairable micrometers could be adjusted by means of Transfer Voucher without clarifying that such transactions must be supported with conditioning certificate. Due to aforesaid negligence in concealing facts, there was a loss of 62 genuine micrometers from RRSD with consequential financial loss of Rs 1953.00 to the State in the following manner:

(a) During early Jan. 79 when asked by Commander RSSD OO C Shri Deepak Kumar regarding disposal of 31 micrometers found lying in the boxes as unrepairable with the stock, he tendered a wrong advice that these can be adjusted by preparing a transfer voucher thereby conditioning them as unserviceable after getting approval from DAO/Dy Commandant and then pass them to salvage. But he never advised that as per existing procedure, the stores being of technical nature, must be inspected/checked and conditions as unserviceable by EME Inspection team or a technical authority who is only competent to condition them before they are sent to salvage. Therefore, he gave wrong advice regarding documentation of adjustment to clear the discrepancy.

(b) Accordingly, a transfer voucher No. Adj/iv/F-1-230 19 Jan 79 was prepared for sending Qty 31 unrepairable micrometers to salvage as unserviceable stores.

On 27 Jan 79 he took issue voucher No. RSSD/ALD/F1-1013 dated 22 Jan 79 himself for the Store in question to salvage staff (SSK Shri DD Pant and Sub TS Rawat, JC-61645) for acceptance and to give a receipt without stores. Thus the undue interest taken by him indicates his involvement in this case of loss of 62 micrometers. Therefore all the above action committed by him shows that he was negligence in performance of his legitimate duty resulting in loss of Govt. stores.

(c) On 2 Mar 79, a surprise check of the item micrometer was carried out of security officer Capt BC Dimri and Dy Commandant Lt Col BN Sarin (also officiating Commandant) in the presence of Commander RSSD OOC Shri Deepak Kumar and 2 other storekeepers i.e, SSK Shri RA Gupta and Storekeeper Shri IA Siddiqui. As per Bin Card of the item, the balance was 115 and there was entry of Qty 31 micrometers having been issued to salvage of the authority of adjustment voucher No. Adj/iv/F-1-230 dated 19 Jan 79. The physical stock was found as under:-

Qty	43	Micrometers	packed in cases.
"	41	"	Loose
"	21	"	piece/broken component
"	10	"	imitation made of Zinc (White material)

Taking the above details into account (21 pieces plus 10 imitation) and another Qty 31 broken pieces sent to salvage, the total of 61 (62) micrometers (repairable) was not accounted for.

(d) It appears that the improper adjustment of 62 genuine micrometers was done before the surprise check by Security Officer Capt BC Dimri was carried out on 02 Mar 79. As he was working in the same building in storage area RSSd, it is believed that he was in full knowledge of the transaction but he concealed the fact. "

7. The ~~above imputation~~ in support of the charge clearly brings out that the applicant was not directly responsible for the stores (Micrometers), but somehow it was believed that he had knowledge of transaction and that he gave wrong advice that the material could be declared as unserviceable after getting approval from the D.A.O or Deputy Commandant. It is also mentioned that it is believed that he was in full knowledge of the transaction but he concealed the fact. The Presenting Officer, who rendered the brief to the Enquiry Officer after conclusion of enquiry reported as follows:-

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(a) As regards the charge framed against Shri P.K. Chandana regarding gross misconduct indicating negligence in performance of duties for concealing the facts of deposition of incorrect stores in Salvage Sub Depot, is concerned that as per records available in RSSD DD Fort Allahabad he was the incharge of LV6/MT-14 (Cover outer only) in storage area of DD Fort Allahabad during Jan 79 and can not be held responsible for the Micrometers of store.

(b) As regards wrong advice to OOG Shri Deepak Kumar for adjustment of qty 31 vide adjustment voucher No. Adj/IV/F1-230 dated 19 Jan 79 is concerned, it is stated that the item pertained to General Stores which has been confirmed by the prosecuting witness no. 3 Lt Col BN Sarin during cross examination in reply to question no. 12 of the proceeding dated 03 Apr 87. As such the advice has correctly been given by him. The adjustment voucher bearing no. Adj/IV/F1-230 dated 19 Jan 79 has correctly been prepared and approved by the Dy Commandant Lt Col BN Sarin the then Offg Comdt of DD Fort Allahabad and controlled by the Depot Account Officer.

(c) As regards to his so called visit to salvage Sub Depot on 27 Jan 79 is concerned, the records of duty slips of RSSD DD Fort Allahabad has been destroyed by burning as per RSSD letter No. 115389/GS/2867/RSSD dated 01 Apr 87 which is enclosed as Annexure "BB" to this brief and duty slip register maintained at Salvage Gate could not be made available to the delinquent official due to non availability of the same. Also the prosecution witness No. JC-61645 Sub SS Rawat could not be produced before the court as the individual did not turn up although letter No. 6955427/SSK/DOSS/EST-N1 dated 11 Mar 87 was sent to him by this depot for appearing ~~him~~ on 03 Apr 87 which is enclosed as Annexure "AA" to this brief. As such his visit to salvage Section can not be proved by the disciplinary authority and No. 6955343 SK Shri PK Chandana can not be blamed for the said visit on 27 Jan 79 also.

(d) With regards to para (i) of the defence statement submitted by the accused official Shri PK Chandana on 13 Apr 87, it is agreed that a charge sheet can only be served on the government servant when he violates any rules, which in this case has not been done.

(e) In view of the above, it is clear that Shri PK Chandana has falsely been implicated in this case. It is suggested that the charges framed against him should be dropped."

8. The Enquiry Officer after conclusion  
is  
however held that the charge established against  
the applicant. The disciplinary authority accepted  
report and awarded the impugned punishment. The  
punishment order which is contained Annexure-6  
is extracted below:-

" ANNEXURE NO. 6

No. 5/30/87/G/D (Lab)  
Government of India,  
Ministry of Defence,  
New Delhi, the 7th Jan, 88.

ORDER

Whereas, disciplinary proceedings under Rule 14  
read with Rule 18 of the CCS (CCA) Rules, 1965 were  
instituted against Shri P.K. Chandana, Stores, Keeper,  
No. 0955343, Ordnance Depot Fort Allahabad with  
3 others Vide Memorandum No. B/12060/317/OSBC(ii) /  
1558/S/IV/D (Lab), dated 23rd June, 1982 on the charge  
that he while functioning as I/CLV6 MT-14 (Cover outer  
on only) in RSSD of CD Fort Allahabad during Jan 79  
to Mar 79, performed his duties negligently concealing  
the fact of deposition of incorrect stores in the  
Salvage Sub-depot, leading to loss of sixty two micro-  
meters costing Rs 1953/-

AND WHEREAS, the said Shri Chandana submitted his  
Defence Statement denying the charge framed against him  
and thus, an oral enquiry was held to inquire into  
the charge framed against the said Sri Chandana.

AND WHEREAS, the President, after carefully consider-  
ing the report of the Inquiring Authority, has agreed  
with its findings and that the said Shri Chandana took  
undue interest in regularisation of the loss by tendering  
advise to OOC (S) Shri Deepak Kumar and influencing  
Shri DD Pant, SSK, to accept Vouchers relating to  
micro-meters and thus he was party to illegal mis-appro-  
priation of stores.

NOW, THEREFORE, the President, in exercise of the  
powers confirmed on him vide Rule 12(1) of the CCS  
(CCA) Rules, 1965 orders that the pay of the said  
Shri Chandana be reduced by four stages from Rs1200-30-  
1560-EB-40-2040 for a period of four years with imme-  
diate effect with further directions that the said  
Shri Chandana will not earn any increment of pay  
during the period of reduction and that on the expiry  
of this period, the reduction will have the effect of  
post-poning his future increment of pay.

( By order and in the name of the President)

Sd/- illegible

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9. The charge and the punishment order, taken together brings out inconsistency in the case of the respondents. While the charge is for "negligence in performance of duties", the punishment order mentions that the applicant was also a party to the 'illegal misappropriations of stores', there being no charge of misappropriations, the punishment order to that extent can be considered as a 'Void Order'. Besides this, there is one more aspect to be considered, and that relates to the duties and responsibilities assigned to the applicant. The applicant was not in charge of the "stores" in question. He was in charge of some other stores namely "cover cutters". This is an admitted position.

it means

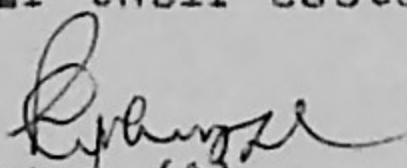
10. That being the case, that the applicant was made liable for the loss of certain stores viz. 'micrometres' which were neither under his charge nor his duties enjoined accountability for the same. In other words, for the acts of commission and omission of some other persons who were looking after that particular stores, the charge has been fastened on the applicant of negligence in performance of 'legitimate duties'. Clearly accountability for the loss or fraud lies on the doors of others who were in charge of the stores. In these circumstances we find that the contention of the applicant that he was not in charge of the particular stores and that he was in no way responsible for whatever fraud was committed, is not without substance. The charge against the applicant was founded not on firm footing and punishment imposed on the basis of that charge is liable to fall. The presenting officer, in his brief, after examination of witnesses who were examined in support of the charge against the applicant, summed up by saying that the applicant cannot be held responsible for the loss of 'micrometres' stores and whatever advice was given

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by him were accepted by the commandant that was valid in respect of general stores and that his visit to the salvage depot has not been established and that he was of the view that the applicant has been implicated in the case on false charge, and recommended that the charge against the applicant be dropped. For the reasons best known to the <sup>Enquiry</sup> Officer, he has held otherwise and the disciplinary authorities accepted the finding and passed the punishment order. It has not been explained by the respondents as to how the applicant who was not dealing with the stores in question at all was made responsible for the loss or the fraud. The record also discloses that the transfer voucher was adjusted at the instructions of the officer Shri Deepak Kumar and another Store Keeper Shri I.A. Siddiqui was the person who went to the stores for effecting the transfer of the 'micrometres'. Both these officers were charge sheeted and they were also punished. Shri Deepak Kumar was dismissed from service. It would appear that the department involved all those who were working in the stores in this fraud and that is why the charge has been framed against the applicant also. Another Store Keeper Shri Gupta was exonerated. Taking these facts and circumstances of the case we hold that the charge against the applicant has no basis. It has no firm footing. The imputation mentions that though he was not directly responsible for the stores, yet it was believed that he was in the know of the transactions and that he was responsible for wrong advice given to the officer concerned. There is no direct link of the applicant with the fraud nor was he responsible for the stores in question. On mere presumption or surmises a charge cannot be sustained.

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11. The punishment order mentions besides that the applicant was a party to misappropriation and there was no charge of misappropriation against the applicant. In Union of India Vs. Parmanand (AIR 1989 S.C.1105) it was held by Supreme Court that the Tribunal cannot interfere with the penalty ~~if~~ <sup>as</sup> the conclusion of Enquiry Officer or the competent authority is based on evidence even if some of its findings are found to be irrelevant or extraneous to the matter. But in this case we find that the penalty has been imposed without the charge being established and the charge being made on presumption and surmises and not on firm footing. Consequentially the punishment imposed is without any material or evidence <sup>and is</sup> cannot be sustained and is liable to be set aside. Accordingly we quash the punishment order dated 7/1/88 (Ann. VI) and we direct the respondents to ignore the punishment order and restore his scale and grant him increments which are due to him. The applicant will also be entitled for other consequential benefits like promotions, if any, which would have been available to him but for the punishment and same should be granted to him as per law. The application is allowed as above. Parties to bear their costs.

  
Member (A)

  
Vice Chairman.

Dated: 21/8/ <sup>19</sup> January, 1993, Allahabad.

(tgk)