

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 02nd day of November, 2001.

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. C.S. Chadha, Member-A.

Orginal Application No. 1610 of 1993.

Lal Ji Tiwari S/o Late Shiv Murti Tiwari a/a 50 years. Presently posted as Section Officer (Accounts) in the office of Chief Controller of the Defence Accounts (Pension), Allahabad. R/o Village Sotapur, Post Office- Jamnipur, Distt. Allahabad.

.....Applicant

Counsel for the applicant :- Sri A.V. Srivastava

V E R S U S

1. Union of India through the Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts, West Block- V, R.K. Puram, New Delhi.
3. Controller of Defence Account, Central Command, Meerut.
4. Chief Controller of Defence Accounts (Pensions), Distt. Allahabad.

.....Respondents

Counsel for the respondents :- Sri R.C. Joshi

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A under section 19 of the Administrative Tribunals Act, 1985, applicant has challenged the order dated 15.07.1992 passed by disciplinary authority by which he awarded penalty of reduction of pay to a lower

stage in the time scale of pay by one stage for a period of one year without cumulative effect and not adversely affecting his pension. The aforesaid order was confirmed in appeal by appellate authority vide order date 13.08.1993. Applicant was served with memorandum of charge dated 29.03.1988 containing five charges against applicant. The charges were as under :-

1. Applicant failed to carry out periodical review of out-standing. Demands to liquidate them.
- 2.(a) Applicant failed to ensure the receipt of L.T.C claim through proper channel and were not being entertained direct by the task-holder
(b) He over looked the fact and passed the bills when put up to him with malafide intention by the task holder to whose task they were not pertaining. He acted in this way as an accomplice in promoting the malafide intention with task holder.
3. He failed to ensure the sending of TA/DA and L.T.C claims admitted by him to D.P. Sheet Group (An/IV A) through transit book. He also failed to ensure proper maintenance of work books by the staff under him.

Charges 4 and 5 have not been proved against the applicant hence they have not been mentioned.

2. Applicant filed his written statement of defence on 03.05.1988. He denied the charges. Enquiry Officer proceeded with the inquiry and submitted his report with findings that charge No.1 proved, charge No.2 and 3 partly proved, charge No.4 and 5 not proved. The enquiry report was supplied to the applicant and applicant filed his representation on 18.03.1991. After considering the representation, order of punishment as mentioned above was passed. Learned counsel for applicant has submitted that the persons whose L.T.C claim were/accepted, ^{not} approached this Tribunal by filing O.A 1088/88 against

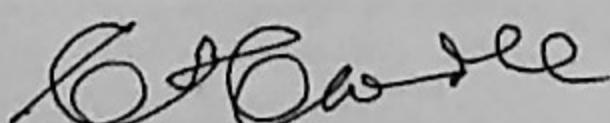
the order of recovery dated 28.07.1988 of amount on L.T.C. However, the O.A was allowed and order dated 28.07.1988 was set-aside. Respondents were given liberty to make fresh investigation into the matter and take action according to process of law. On basis of the aforesaid judgement of Tribunal, learned counsel has submitted that no investigation was done in pursuance of the order of this Tribunal dated 23.02.1990 and proceedings were directly started against the applicant by serving a memo of charge dated 29.03.1988. Learned counsel for applicant has submitted that as the enquiry was not held, the enquiry proceedings against the applicant were ^{"Wrongly"} initiated. However, we are not convinced with the submission made by learned counsel for the applicant. As clear from the findings recorded by this Tribunal, order was passed without holding appropriate enquiry and without giving an opportunity of hearing to the affected employees. The dispute before this Tribunal was about recovery of the amount which was consumed by the employees by under-taking journey. In our opinion, this order does not help the applicant in any way. The nature of charges levelled against the applicant were entirely different which have been proved by documentary evidence on record.

3. The second submission of learned counsel for the applicant is that applicant was not given a copy of preliminary enquiry on which basis the action was taken against the applicant. Reliance has been placed in the judgement of Hon'ble Supreme Court in case of Kashi Nath Dikshita Vs. U.O.I and Others, 1986 SCC (L&S) 502 = 1986 3 SCC 229. We have carefully considered this submission also. Generally, preliminary enquiry is held by the disciplinary authority for preparing the mind as to whether a full-flagged disciplinary enquiry is desirable against the delinquent employee or not. Thus the delinquent employee

can not claim the material on which basis the preliminary enquiry was done. But in case, any material evidence recorded at preliminary stage is used in enquiry for proving charge against the delinquent employee, then he is entitled for the copies of such documents and evidence. Learned counsel for the applicant has not placed before us any specific document or evidence which was used in preliminary enquiry for making mind and thereafter, it was also used in disciplinary proceedings. General and vague submission has been made that entire priliminary enquiry report should have been given to the applicant. Learned counsel for the applicant has also submitted that application was made to the authorities for supplying of the documents which was rejected on the ground that the documents demanded are not being used in the enquiry. In our opinion, the reasons stated above were justified. If the document or evidence has not been used in order to support or establish the charge, applicant could not ~~claim~~ claim a copy of same as a matter of right. In the circumstances, we are not satisfied that there was any illegality committed against the applicant or principles of natural justice have been violated. The judgement relied on by the counsel for applicant does not help the applicant.

4. For the reasons stated above, as penalty awarded to the applicant is minor punishment and commensurate to the gravity of charge after enquiry, no interference is called for by this Tribunal. O.A is accordingly dismissed.

5. There will be no order as to costs.


Member-A.


Vice-Chairman.