

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

**PRESENT**

HON'BLE MR. A.K. GAUR, MEMBER (J).  
HON'BLE MR. K.S. MENON, MEMBER (A).

ALLAHABAD this the 17<sup>th</sup> day of September, 2008.

Original Application Number. 1204 OF 2000.

V.S. Tripathi, S/o Late Nageshwar Tripathi,  
R/o H. No. K-28, Vishwa Bank Colony, Kanpur Nagar.

.....Applicant

By Advocate: Sri A. Trivedi  
Sri S.K. Mishra

**VERSUS**

1. Union of India through the Secretary,  
M/o Defence, D/o Defence Production, Govt. of India,  
New Delhi-11.
2. The Secretary, Ordnance Factory Board,  
10-A, Shaheed Khudi Ram Bose Road, Calcutta-1.
3. The General Manager, Ordnance Factory, Kalpi Road,  
Kanpur.

.....Respondents

By Advocate: Sri R.K. Tiwari

**ORDER**

**DELIVERED BY: HON'BLE MR. K.S. MENON, A.M.**

This O.A has been filed challenging the order dated 31.10.1998  
passed by the Senior General Manager, Ordnance Factory, Kanpur and  
served on the applicant on 16.12.1998 (Annexure A-I to the O.A) by

2

which the penalty of "Removal from service w.e.f. 31.10.1998" was imposed on the applicant; this O.A further challenges the order dated 25.08.1999 (Annexure A-II to the O.A) passed by the Appellate Authority by which the applicant's appeal against the punishment order dated 31.10.1998 was rejected by the Appellate Authority. The applicant has sought the following relief/ s: -

- i. *to issue a writ, order or direction in the nature of certiorari quashing the impugned order of punishment dated 31.10.98 delivered on 16.12.98 passed by the Respondent No. 3 imposing punishment of removal from service with effect from 31.10.98 as well as Appellate Order dated 25.8.99 passed by the Respondent No. 2 rejecting the appeal of the petitioner dated 27.1.99 (Annexure A-I and Annexure A-II);*
- ii. *to issue a writ order or direction in the nature of mandamus directing the respondent 2 & 3 to reinstate the petitioner back in service with effect from 31.10.98 with all consequential benefits thereof such as arrears of back wages and continuity in service;*
- iii. *To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal may deem fit and proper;*
- iv. *To award cost of the petition throughout.".*

2. The facts in brief leading to the filing of this O.A are that the applicant was initially appointed as L.D.C w.e.f. 29.05.1964 in Ordnance Factory, Kanpur in the pay scale Rs. 110-180. Subsequently in due course of time, he was promoted as U.D.C in the scale Rs. 130-300 w.e.f. 01.03.1980. While working as an U.D.C in the New Shell Machine Section/Shop of Ordnance Factory, Kanpur, the applicant was shocked to receive orders dated 18.06.1990 placing him under suspension by the General Manager, Ordnance Factory, Kanpur without assigning any specific reasons. The charge sheet was served on the applicant almost 16 months later on 22.10.1991 and that too in response to the applicant's



repeated requests. The charges (Annexure A-4 to the O.A) were as follows:-

- "i. *Conniving with Sri V.N. Agnohotri, UDC/LB;*
- ii. *Falsely identifying some one else in place of actual persons resulting in fake payment of LTC Advance Requisition Bills prepared in the name of Shri J.L. Joshi, A.N. Gupta, P.K. Das, R.K. Sonker, Z.U. Sonker, Z.U. Abbasi, S.K. Katiyar, R.D. Yadav, Ayodhya Prasad, Tipu Sultan and ;*
- iii. *Causing defalcation of Govt. Money to the tune of Rs. 1,08,500.00 under the signature of Shri R. Agarwal, Works Manager (admn.) in the name and by the order of General Manager.".*

3. The respondents appointed Sri B.C. Das, Dy. General Manager (SG)/PL as the Inquiry Officer on 02.04.1992 and after changing three Presenting Officers, they finally appointed Sri S.N. Tiwari, Foreman Estt. as Presenting Officer on 14.07.1997. Prior to this, a First Information Report (FIR for short) was lodged in Armapur Police Station, Kanpur by the Security Officer of the Ordnance Factory , Kanpur on 18.09.1991 on the basis of the Works Manager (Administration)'s confidential letter dated 12.06.1990 (Annexure A- 5 to the O.A). The confidential letter brought out instances of fraudulent preparation of medical bills for higher amounts than that submitted by the employees and misappropriation of the excess amounts from such fake bills. The aforesaid letter also highlights the involvement of the Accounts Office and its staff. The applicant submits that neither in the confidential letter nor the F.I.R his name finds mention.

4. The inquiry conducted found the charges against the applicant proved. The Disciplinary Authority agreed with the finding of the Inquiry Officer and awarded the penalty of removal from service w.e.f.



31.10.1998. The applicant being aggrieved with the punishment order, preferred an appeal dated 27.1.1999 to the Appellate Authority mainly on the ground that the punishment order was served on him on 16.12.1998, whereas the punishment itself was effective from 31.10.1998 and the disciplinary authority, it is alleged, accepted the findings of the Inquiry Officer in toto without recording any reasons on each of the findings before passing the punishment. Besides there is no assessment of the witnesses and conclusions have not been derived on the basis of evidences adduced. Without reference to any of the above, the Disciplinary Authority has merely stated:

“ From the above it is evident that the charges made against Sri V.S. Tripathi in Article I & II are correct and the charges against Sri V.S. Tripathi stand.”

5. The applicant alleges the Inquiry Officer did not give any opportunity to produce defence witnesses like the Private Handwriting Expert whose report was submitted by the applicant or cross examine the prosecution witnesses. Many other infirmities in the inquiry proceeding have been pointed out by the applicant in para 4 of the O.A and holds the view that the whole inquiry report is not a finding but a narration of the inquiry proceedings with a simple conclusion that the charges stand proved besides no opportunity was given to the applicant to explain his stand. Hence the inquiry proceedings and the report is biased, and violative of the principles of natural justice. Similarly the disciplinary authority's acceptance of the inquiry report and awarding of the punishment clearly shows no application of mind and it is not a speaking order. Being aggrieved the applicant filed an appeal on

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27.01.1999 which he admits was not effective as he could not counter the reasons for the punishment order as no such reasons were given by the disciplinary authority while accepting the inquiry report and passing the punishment order. This appeal was also rejected by a non-speaking order, which is full of contradictions and not based on facts and circumstances, specific instances have been cited at para 40 of the O.A. Being aggrieved with the impugned appellate order, the applicant submitted a review/revision petition to the competent authority on 22.01.2000 as also a request for personal hearing vide representation dated 17.07.2000, which are still pending with the respondents.

6. The applicant has filed Written Arguments and has placed reliance on the following judgments: -

- i. C.A.T Jabalpur ATR 1986 (2) CAT 577 (Shankar Lal Vishwakarma Vs. U.O.I & Ors.);
- ii. ATR 1986 (2) SC 316 (Swami Singh Vs. State of Rajasthan);
- iii. 1974 SC 2335;
- iv. AIR 1998 Supreme Court 3038;
- v. AIR 1968 Supreme Court 158 (V SCC 41), State of U.P. & Anr. Vs. C.S. Sharma;
- vi. 1990 (12) ARC 863- C.A.T Ernakulam Bench K.K. Santosh Vs. Regional Passport Officer, Cochin and another;
- vii. 1991 (15) ATC 362- CAT Ernakulam Bench, N.V Shivnandan Vs. Supdt. Of P.Os, Irinjalakuda and three others;
- viii. O.A No. 262 of 1986 Narpat Lal Vs. U.O.I & Ors.



Besides the above, the applicant has relied on several Govt. instructions on the subject. In order not to overburden this judgment they are not being cited herein detail.

7. The respondents in their Counter have refuted the averments made in the O.A. They maintain that the applicant while working as an U.D.C in Ordnance Factory, Kanpur was found charged with gross misconduct as he identified some one in place of the actual person for receiving payment towards L.T.C claim and thus caused defalcation of government money to the tune of Rs. 108500 in connivance with another UDC Sri V.N. Agnihotri and was charged with acting in a manner unbecoming of a Government servant under rule 3(i) (iii) of CCS (Conduct) Rules, 1964. Since the charges were denied by the applicant, an inquiry was held under one Sri B.C. Das, Dy. General Manager as Inquiry Officer. Respondents admit that the Presenting Officer had to be changed on three occasions due to various administrative reasons and finally one Sri S.N. Tiwari, Foreman/Estt was appointed as Presenting Officer on 14.07.1997. They maintain that change of Presenting Officers had no significant / adverse impact on the inquiry proceedings. The Inquiry proceeding was completed after considerable delay caused due to the non-cooperation of the applicant/delinquent official.

8. On the issue of various infirmities and procedural lapses alleged by the applicant in the O.A, the respondents submit that ample opportunities were given to the applicant to defend himself. All the documents listed and requisitioned were provided and for additional documents, for which no justification was given, were denied/not provided as per rules. The respondents further allege that the applicant



on his part kept submitting several representations and clearly tried to delay the inquiry proceedings on one pretext or the other.

9. The applicant appears to have engaged the services of one Sri V.C. Mishra a Forensic and Handwriting Expert, who in turn submitted his report without the same having been called for by the Inquiry Officer. The same was, therefore, not taken on record and relied upon. Hence the applicant's request for providing Sri Mishra as a witness for cross examination was denied by the Inquiry Officer. There are several other minor instances cited by the applicant, which vitiated the inquiry proceedings, which the respondents have controverted. We are consciously not dwelling on the same here.

10. The inquiry report found both the charges against the applicant 'stand'. The applicant was given an opportunity to represent against the inquiry report which he did. The Disciplinary Authority found no merit in the said representation and imposed the penalty of Removal from Service on 31.10.1998. Responding to the delay in serving the punishment order dated 31.10.1998 and 16.12.1998, the respondents claim that the aforesaid punishment order was forwarded to the known address of the applicant, but the same was returned back un-served. The said order was once again sent on the request of the applicant on 16.12.1998. The appeal of the applicant dated 27.01.1998 (should be 27.01.1999) was considered by the Appellate Authority and a reasoned order was passed on 25.08.1999. The basic point taken by the appellate authority is that Government monies were paid to the wrong people based on identification done by the applicant in connivance with Sri V.N. Agnihotri another U.D.C. It was treated as a case of preplanned



defalcation of government money which is a serious offence. The appeal was accordingly rejected on 23.08.1999 by the Appellate Authority after applying his mind and recording his own reasoning to arrive at the conclusion of rejecting the appeal. The respondents have averred in para 62 of the CA that the Appellate Authority did not consider it necessary to grant a personal hearing to the petitioner as the charge which stood proved pertains to an offence which was one of cheating the Government by causing defalcation of government money by wrong identification, hence not a fit person to be retained in Government. In conclusion respondents submit the applicant was involved in the defalcation of government money which was proved in an inquiry and has been rightly removed from service. The averments to the contrary made by the applicant are misconceived and misleading and the O.A is without merit and is liable to be dismissed and have prayed for its dismissal.

11. Heard S/Sri S.K. Mishra and Sri Anubhav Trivedi , learned counsel for the applicant and Sri R.K. Tewari for the respondents and perused the pleadings and the written arguments of the applicant.

12. The case made out by the respondents is that one Sri V.N. Agnihotri, U.D.C prepared the false LTC advance bills totaling Rs. 1,08,500/- and the payments were effected by the Cashier based on the identification of wrong person done by the applicant resulting in defalcation of Government money to the above extent. Shri V.N. Agnihotri filed O.A No. 510/1997 before this Tribunal against the charge that he had prepared false L.T.C bills in respect of 16 industrial employees of the factory in connivance with Sri V.B. Tripathi, (the applicant in the current O.A) and caused embezzlement of government money to the tune of Rs.



1,16,930/- The operative portion of the order passed by the Tribunal is reproduced below: -

*"6. At the cost of repletion it is stated that during enquiry as many as 15 witnesses were examined against the applicant but none of them supported the case of the prosecution and denied that it was the applicant who prepared the claim of LTC bills. Therefore, the Enquiry Officer has clearly stated in his report that the indirect involvement of the applicant could not be approved by any of the witnesses and it is only the opinion of the handwriting expert (private) which confirmed that the disputed bills were prepared and produced by the applicant. Thus it can safely be held that this finding arrived at by the Enquiry Officer is not based on any evidence and is, therefore, does not consider this important aspect of the case and has confirmed the findings of the Enquiry Officer/Disciplinary Authority without applying his mind and the same also deserves to be quashed."*

13. In the present case also the applicant is alleged to have connived with Sri V.N. Agnihotri leading to defalcation of Government Money here again the Inquiry Officer as well as the disciplinary authority have relied upon the uncorroborated evidence of the hand writing expert. Interestingly here also the opinion of the handwriting expert was obtained from a private agency instead of a Government agency. The respondents submit that the applicant's contention that the private handwriting expert was never examined is misconceived as the applicant himself chose not to challenge the private handwriting expert's report or summon those records sent to the private hand writing expert for obtaining his opinion and hence the question of having the handwriting expert cross examined did not arise. They further contend that all these points on the private handwriting expert is an after thought of the applicant in order to confuse the issue. Scrutiny of the pleadings indicate that the Inquiry Officer has based his finding mainly on the report of the private handwriting expert, which is merely an opinion 'and cannot be relied upon' without any other evidence. Once the Enquiry Officer has

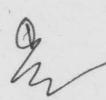


placed reliance on the report of the handwriting expert, he cannot deny the right of the applicant to cross examine the private handwriting expert. Relevant abstract of the order of the C.A.T , Ernakulam Bench (N.V. Sivnandan Vs. Supdt. Of Post Offices, Irinjalakuda and 3 others) referred in 1991 (15) A.T.C 362- is reproduced below: -

*"The appellate authority has rejected his contention on the basis of a report of a handwriting expert , that the handwriting in the dispute written statement of defence was that of the applicant. The procedure adopted by the appellate authority is also erroneous because the applicant was not given an opportunity to cross-examine the handwriting expert who has allegedly given the opinion that the handwriting in the disputed written statement was that of the applicant. The Hon'ble Supreme court has in Bareilly Electricity Supply Co. Ltd. Vs. Workmen held as follows:*

*"..... no material can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used".*

14. We are, therefore, of the opinion that under the circumstances the applicant was denied an opportunity to defend himself during the disciplinary proceedings which vitiates the findings of the Inquiry Officer and the conclusion arrived at by the Inquiry Officer are not based on concrete evidence and the same are liable to be quashed. The applicant's request to have the report of the independent handwriting expert Sri V.C. Mishra was also denied by the Inquiry Officer on the grounds that these were submitted after conclusion of the prosecution proceedings besides the independent hand writing expert's report was sought to be brought on record without challenging the report of the prosecution's private handwriting expert Quazi M. Junaid.

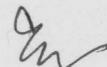


15. The respondents have taken the stand that the right of inspection of additional documents is not absolute. Inspection of these additional documents was denied to the charged official as he could not establish the relevance of these documents. It is seen that the applicant vide his letter dated 1.2.1993 had submitted a list of 37 additional documents alongwith their relevancy for inspection. It is, therefore, not correct for the respondents to say that relevancy could not be established. The respondents have also failed to establish how the aforesaid additional documents were not relevant for rejecting the applicant's request for inspection of these documents. This stand of the respondents cannot, therefore, be accepted.

16. There are several infirmities cited by the applicant in the disciplinary proceedings, the report of the Inquiry Officer, the disciplinary authority's punishment award and the order of the appellate authority and he has relied on several judgments in support of his contentions. There appears no necessity to deal with all these in detail here. We are of the considered opinion that the main allegation of the applicant that he was denied an opportunity to defend himself and present his case effectively would cover all other infirmities identified in the Inquiry proceedings. We therefore proceed to address this issue of denial of opportunity.

17. Relevant extract of the Rule 27 Sub Para (5) of the (CCS) Rules, 1965 is reproduced below:

*"(5) Rule 27 of the CCS (CCA) Rules 1965 does not specifically provide for the grant of personal hearing by the Appellate Authority to the Government Servant before deciding the appeal preferred by him against a penalty*



imposed on him. The principle of right to personal hearing applicable to a judicial trial or proceeding even at the appellate stage is not applicable to departmental inquiries, in which a decision by the Appellate Authority can generally be taken on the basis of the records before it. However, a personal hearing of the appellant by the Appellate Authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the Appellate Authority in deciding the appeal quickly and in a just and equitable manner. As Rule 27 of the CCS (CCA) Rules does not preclude the grant of personal hearing in suitable cases, it has been decided that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the Appellate Authority may after considering all relevant circumstances of the case, allow the appellant at its discretion, the personal hearing.

18. The applicant submitted a detailed appeal on 27.1.1998. The Appellate Authority rejected the appeal without a reasoned speaking order and giving detailed reasons for upholding the order of punishment of the disciplinary authority besides no opportunity of a personal hearing was given for the applicant as mentioned above as per Rule 27 (5) of the CCS (CCA) Rules 1965. The respondent on their part justify their action of not giving a personal hearing purely on the ground that the charges against the applicant were serious and these have been proved in the Inquiry proceedings and a punishment commensurate with the charges has been awarded. This action on the part of the respondents is not tenable. The Rules on the subject lay down that whenever a major penalty is awarded a personal hearing should be given to the Charged Officer. There are several judgments which have been delivered by the Apex Court in which it has been held that the appellate authority is duty bound to give a personal hearing to the applicant and is obliged to give a reasoned order after considering the entire material on record. In this connection, reference is made to judgment rendered in O.A. NO. 353 of



1996, Shri Narpat Lal Vs. U.O.I and others ATJ 1986, page 34 and Ram Chandra Vs. U.O.I and others AIR 1986 SC 1973. We, therefore, are constrained to observe that the appellate authority considering that the applicant did not get a reasonable opportunity to present his case effectively and that a major penalty was awarded to the applicant should have in the interest of natural justice afforded the applicant a personal hearing in order to decide the appeal quickly in an equitable manner. This was, however, not done and the punishment order was upheld thereby indicating that there was no application of mind and the same deserves to be quashed. The applicant filed a Review Petition dated 22.1.2000. No action appears to have been taken on the aforesaid revision petition as the applicant filed this O.A. in the meantime. This review petition has become redundant at this point in time, hence no directions regarding its disposal are being given in this order.

19. For the reasons stated above, we quash the punishment order dated 31.10.1998 and the appellate order dated 25.8.1999. Since the applicant has already retired, he will be entitled to all consequential benefits as per Rules.

No costs.

*J. Anand*  
Member (A)

*D. Jagannath*  
Member (J)

Anand/-