

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD.

REVIEW APPLICATION No. 24 of 2002.

In

ORIGINAL APPLICATION 23 OF 2001

Allahabad this the 12th day of May, 2004.

Hon'ble Maj Gen K.K. Srivastava, Member-A.

S.P. Matta, A/a 60 years, S/o late Sri K.C. Matta, R/o 21/55 ED Road, Dehradun.

.....Applicant.

(By Advocate : Sri S.K. Om)

Versus.

Union of India and others

.....Respondents.

(By Advocate: Sri G.R. Gupta)

ORDER

The present review application has been filed by the original applicant under section 22 (iii) (f) of Administrative Tribunal Act 1985 read with Rule 17 of Central Administrative Tribunal (Procedure Rules) 1987 for review of the order dated 31.1.2002. Heard counsel for the parties at length. Order dated 31.1.2002 passed in O.A. No. 23 of 2002 is recalled and following order is passed.

2. The applicant in this O.A. has prayed for quashing the appellate order dated 20.09.2000 (Annexure 15) and disciplinary authority order dated 18.02.2000 (Annexure 13) with all consequential benefits.

3. The facts of the present case, in short, are that the applicant was initially appointed on 22.08.1984 as U.D.C and was promoted as Assistant Accounts Officer on 1.4.87 in Group 'B' category. While working as Assistant Accounts Officer he was issued a charge sheet under rule 14 CCS (CCA) Rules 1965, alleging therein that while replying the letter dated 29.08.97 applicant did not dispute the contents thereof and thus he facilitated the commission of fraudulent payment of public money to the tune of Rs.16,434/- . Applicant has submitted that charge sheet was

not issued by the competent authority in as much as he was appointed by the Controller General of Defence Accounts, whereas the charge sheet was issued by Controller of Defence Accounts who is much lower in rank. It has further been pointed out by the applicant that no witness or any relied upon document is mentioned in the charge sheet. However, the inquiry was held into the matter and inquiry officer submitted his report on 25.1.1999 whereby he completely exonerated the applicant from the charges leveled against him. However, the respondent N.O.4, C.D.A., issued a letter to him on 10.02.1999 disagreeing with the findings of the Inquiry Office and issued him a show-cause notice as to why the action should not be taken against him. After the receipt of reply from the applicant, the C.G.D.A issued a final order vide Annexure 13 on 18.02.2000 imposing punishment on the applicant by reducing his pay to two stages with cumulative effect upto the date of retirement. The applicant filed an appeal against this order before the Financial Advisor which was also rejected.

4. The applicant further relied upon with the Defence Accounts Department Office Manual Part I 1979 Edition (Annexure II) to review application, according to which Controller of Defence Accounts will ^{not} exercise the power for imposition of major penalties in respect of Group C staff appointed prior to 25.03.67. In the present case applicant is working in Group B service and even in Group C, he was appointed in the year 1964 i.e. prior to 25.3.67 and, therefore, he submits that in any view of the matter, C.D.A. is not competent to issue dissenting note dated 10.02.99 disagreeing with the findings of Inquiry Officer and there has been no application of mind by the disciplinary authority i.e. C.G.D.A. in as much as inquiry report was examined by C.D.A who issued the disagreement note on his own.

5. Applicant has further referred to rule 15 (iii) of CCS and CCA and submitted that only disciplinary authority is empowered to issue disagreement note and any order passed by lower authority than the disciplinary authority, disagreeing with the inquiry report will be nugatory.

6. The applicant has further referred to circular dated 13.07.1981, mentioned at page 72 of Swami's CCS (CCA) Rules wherein it is mentioned that disciplinary proceedings are quasi-judicial in nature and as such it is necessary that orders in such proceedings are issued only by the competent authority who have been

specified as disciplinary/appellate/reviewing authority under relevant rules and thus also the order dated 10.02.1999 issued by the C.D.A disagreeing with inquiry report is invalid.

7. The respondents have contested the original application by way of filing a counter affidavit stating therein that the applicant confirmed the validity of the letter dated 17.06.1997, issued by him in his own handwriting and under his own signatures. The basis on which the applicant confirmed the validity of the letter dated 17.06.1997 does not exist. Respondents further stated that applicant should have taken care to refer to the concerned record before writing back to Unit and more so since unit authorities have themselves raised doubt about the genuineness of the letter, the applicant should have verified before confirming the same. It has further been stated that CDA is competent disciplinary authority in terms of SRA to initiate and process both the major and minor penalty proceedings against Group B officials irrespective of whether such employee is pre or post 1967 entrant. It is however, not denied by the respondents in para 14 of the C.A that the disagreement note was passed by CDA as per provisions of rule 15 (ii) of CCS (CCA) Rules.

8. Heard counsel for the parties at length, carefully considered their submissions and closely perused records as well as the pleadings.

9. The grounds taken by the applicant for review of the order dated 31.1.2001 are irregularity in issuing the charge sheet by lower authority, as well as the disagreement note and also there is no evidence or witness to prove the applicant guilty. As per rules, disagreement note is to be issued by the disciplinary authority and no authority other than him is empowered to issue any disagreement note and, therefore, the illegality and irregularity committed by C.D.A can not be cured simply because G.C.D.A has passed a detailed reasoned order imposing punishment upon the applicant.

10. It is admitted fact and is also evident from perusal of Annexure-II to O.A. that GCDA is the appointing authority of the applicant in as much as he was appointed in Group C before 25.3.67. Moreover, he is presently working in Group B service. It is also admitted that applicant was exonerated by the Inquiry Officer but CDA was not agreeable to the inquiry report and he issued the disagreement



note to the applicant against which he filed objection pointing out that his disciplinary authority is GCDA and not CDA. He referred the matter to GCDA who vide his order dated 18.2.2000 imposed the punishment of reduction of pay by two stages with cumulative effect upto the date of superannuation on 30.04.2001.

11. The applicant has referred to rule 15 (ii) wherein it is prescribed that disciplinary authority is to issue the disagreement note and thus it is incumbent upon the disciplinary authority to have exercised his own independent mind on the inquiry report and recorded the reasons for disagreement with the inquiry report. But in the present case, this position is lacking in as much as disciplinary authority neither exercised his independent mind nor recorded any reason of his own and he simply relied upon the disagreement note given by the CDA who is neither the disciplinary authority nor empowered to give any dissenting note and thus any disagreement note issued by CDA would be void in terms of rule 15 of CCS (CCA) Rules and consequently the entire proceedings in furtherance to disagreement note would be void and are liable to be set aside.

12. There is substance in the submission of applicant's counsel that in terms of rule 14 (iv) only disciplinary authority is empowered to issue charge sheet to the applicant and no authority lower than him can issue a charge sheet whereas in the present case, the charge sheet dated 10.11.1998 (Annexure VII to O.A.) has been issued by CDA who is not the disciplinary authority of the applicant. Respondents have not denied this fact and have simply stated that charge sheet was in accordance with rules. The charge sheet dated 10.11.1998 is invalid and can not sustain in the eyes of law.

13. The applicant has relied upon a case law laid down by Hon'ble Supreme Court reported in 1998 Supreme Court 2713 Punjab National Bank Versus Kunj Bihari Mishra, wherein the Hon'ble Supreme Court has propounded that while examining the inquiry report, the delinquent employee should have been given an opportunity to reply to the inquiry officer's findings and the disciplinary authority is then required to consider the evidence, report of the Inquiry Officer and the representation of the employee against it but when the inquiry report is in favour of the delinquent officer and the disciplinary authority proposed to differ with such conclusion then the disciplinary authority should have given the applicant an



opportunity of being heard besides serving his own disagreement note rather than relying on the disagreement note issued by C.D.A.

14. In the present case, the above proposition of law is lacking in as much as no disagreement note has been given by the disciplinary authority. Since the authority lower than the disciplinary authority, who has no jurisdiction, has issued the disagreement note, the order dated 18.2.2000 passed by GCDA without issuing any disagreement note of his own is liable to be quashed.

15. Reliance has further been placed by the applicant on the judgment of Hon'ble Supreme Court on Yoginath D. Bagde Versus State of Maharashtra and others 1999 Supreme Court cases (L&S) 1385 wherein the Apex Court relying upon the judgment of Punjab National Bank Versus Kunj Bihari Mishra held that disciplinary authority should have conveyed to charged employee its tentative reasons for disagreeing with the findings of inquiry officer before forming its final opinion.

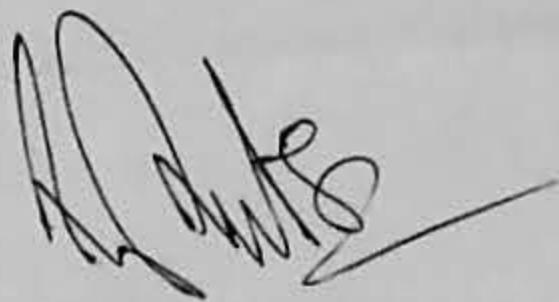
16. The facts of both the above referred two cases are identical to the facts of present case in as much as in the present case also, no disagreement note was issued by the disciplinary authority and there was no independent application of mind by the disciplinary authority i.e. GCDA. The procedural defect cannot be rectified by GCDA by giving detailed reasons. It was incumbent upon him to have cancelled the disagreement note issued by CDA and passed disagreement note afresh after considering the inquiry report and applying his own independent mind. The order dated 18.02.2000 passed by GCDA and order dated 20.09.2000 passed by Financial Commissioner (Defence Services) imposing punishment upon the applicant are liable to be quashed.

17. It is noticed that the applicant has attained the age of superannuation on 30.04.2001. Three years have already elapsed since the applicant has superannuated, and therefore, at this stage, it will not be in the interest of justice to remand the case to disciplinary authority for the start of another innings.

18. In the facts and circumstances and aforesaid discussions, the O.A. is allowed. Punishment order dated 18.02.2000 (Annexure IV) passed by CGDA and appellate

order dated 20.09.2000 passed by Financial Commissioner (Defence Services) are quashed. The applicant is entitled for consequential benefits. The respondents are directed to implement this order within a period of four months from the date of communication of this order.

No costs.



Member (A)

Manish/-