

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 18<sup>th</sup> day of March 2005.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.  
HON. MR. D. R. TIWARI, A.M.

**O.A. NO. 1632 of 2003(U)**

Bhuwan Chandra Pandey, aged about 34 years, Son of, Sri H.C. Pandey, R/O Shivalaya Line, Post & District Pithoragarh, Uttaranchal.

..... . .... . Applicant.

Counsel for applicant : Sri S. K. Singh &  
Sri A. Srivastava.

Versus

1. Union of India through the Secretary, Cabinet Secretariat, Government of India, Ministry of Home Affairs, Bikaner House (Annexe), Shahjahan Road, New Delhi.
2. Secretary, Ministry of Home Affairs, New Delhi.
3. Director General, Special Service Bureau, R.K. Puram, New Delhi.
4. Inspector General (Personnel) Special Service Bureau, R.K. Puram, New Delhi.
5. Deputy Director General, Special Service Bureau, Frontier Academy, Gwaldam, District Chamoli.

..... . .... . Respondents.

Counsel for respondents : Km. S. Srivastava.

O R D E R

BY HON. MR. D.R. TIWARI, A.M.

By this O.A. filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the order dated 12.9.2003 (Annexure A-28) with a direction to the Respondents to provide all the benefits and privileges of continuity of service including the monetary benefits as if no such order of dismissal from service dated 12.9.2003 has ever been passed against the applicant.



2. The facts of the case, in brief, are that on 9.1.1993, the applicant was inducted as a Company Commander after being recruited through the competitive test conducted by the Cabinet Secretariat under the orders of the Director in cabinet secretariat, Union of India and he joined his services as Group Centre Special Service Bureau, Tripura at Agartalla. In the year 1997, after completion of various competitive courses, the applicant was selected for the post of Instructor in the Premier Institution of Special Service Bureau and was posted at Frontier Academy, Gwaland. Being instructor, the applicant had to provide proper training to the trainees in respect of Guerilla War Fare, Map Reading, Intelligence, Demolition of explosives etc. He has averred that two lady trainees i.e. Miss Ekta Sharma and Mrs. M. Etta, who were the candidates of 94<sup>th</sup> Medics Initial Course, were given exemption from undergoing Night Navigation March in view of unfavourable weather condition and tough terrain of the hills. The exemption causes apprehension in the mind of the aforesaid two trainees of Medics Wing that they will not be getting March in the Night Navigation and Map Reading practical, which will result that comparatively they will loose their merit, which will certainly reduce their rank. The aforesaid two female trainees wanted that they should also be given extra marks so that it may compensate the marks of Guerilla War Fare and Map Reading. The applicant did not agree to their request. On 19.8.1998, a complaint was made by Miss Ekta Sharma for alleged misbehaviour of the applicant on 18.8.98 at about 23.30 hours. (Annexure A-1). On 24.8.98, the aforesaid complaint was forwarded by Dr. K.K. Pal, Incharge, Medicine Wing to Respondent No.5 (Annexure A-2). Accordingly, a preliminary inquiry was conducted by Shri H.C. Kharkwal, Senior Instructor. The statements of Miss Ekta Sharma, Mrs. Etta etc. are at Annexure Nos.A-3 to

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A-7. The extract of the finding of preliminary inquiry is at Annexure A-8.

3. On the basis of preliminary inquiry report on the complaint of Miss Ekta Sharma, the minor penalty charge-sheet under Rule 16 of CCS(CCA) Rules, 1965, was issued vide charge memo dated 8.10.1999 (Annexure A-9). The Article of Charges are as under:-

"ARTICLE-I

That the said Shri B.C. Pandey, Coy. Commander while functioning as Instructor F.a. Gwaldam w.e.f. 21.08.97 alleged to have outraged the modesty of Miss Ekta Sharma, SFA (M) under training at about 23.30 hrs. on 18.08.98 by molesting her while traveling in the truck No.URB-5255 of F.A. Gwaldam on conclusion of the night navigation exercise of medics initial course.

That the said Shri B.C. Pandey being a gazetted officer was duty bound to safeguard the security of the trainees especially lady trainees but instead of ensuring their security he himself indulged in a committing the aforesaid act and thereby exhibited a conduct most unbecoming of a Government servant of his rank and status and thus violated the provisions of Sub-rule 1(iii) of Rule-3 of Conduct Rules, 1964 and Rule 3C of CCS (Conduct) (Amendment) Rules - 1998.

ARTICLE-II :

That the said Shri B.C. Pandey after having committed the aforesaid act of molestation of Miss Ekta SFA(M) on several occasions tried to put pressure on Miss Ekta Sharma directly and indirectly to withdraw the complaint lodged by her and not to pursue the matter further. The said Shri B.C. Pandey also utilized the services of his father an officer of SSB in persuading

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Miss Ekta Sharma to withdraw the complaint against his son."

4. The applicant denied the charges vide his letter dated 4.11.1999 (Annexure A-10). On denial of charges by the applicant, a formal inquiry under Rule 14 of the CCS(CCA) Rules was ordered and the Inquiry Officer, vide his letter dated 11.5.2000, informed the applicant that an inquiry shall be held on 19.5.2000 at G.C. SSB Hqrs., Shamshi at 1000 hrs. (Annexure A-11). In compliance of the notice, the applicant presented himself and informed the Inquiry Officer about the name of his Defence Assistant Shri T. Dorji. Inspite of his resistance, the applicant was compelled to give his own statement at the very out set of the inquiry proceedings. It is alleged, is contrary to provisions of Rule 14(16) of the CCS (CCA) Rules. Statement of applicant is at Annexure A-12. Statements of Miss Ekta, Dr. P. Joshi, Mr. B.C. Mathpal and Kabadwal are at Annexures A-13 to A-16. After the conclusion of the inquiry, the inquiry report was furnished to the applicant vide memo dated 13.11.2001 (Annexure A-24). Inquiry Officer held both the charges to be proved. The applicant submitted his representation on inquiry report vide his letter dated 2.1.2002 (Annexure A-25). The Disciplinary Authority, after taking into account the inquiry report, the case file, the representation of the applicant on the inquiry report and the advice of the U.P.S.C., vide his order dated 12.9.2003 (Annexure A-28), imposed the penalty of dismissal from service with immediate effect.

5. Aggrieved by the above order, the applicant has challenged the impugned order on multiple grounds enumerated in para 5 and its sub-paras of the O.A. We shall, however, examine only those grounds which have been stressed during the course of the hearing.

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6. The respondents, on the other hand, have resisted the O.A. by filing a detailed counter affidavit contesting the grounds taken by the applicant in his pleadings.

7. During the course of the hearing, learned counsel Sri S.K. Singh and Sri A. Srivastava, appearing on behalf of the applicant, submitted that the entire inquiry proceeding was vitiated as the mandatory provision of the Rules were not followed. He initiated the argument with the observation that the applicant was charge-sheeted under Rule 16 of the CCS (CCA) Rules and the major punishment of dismissal from service has been imposed. He contended that it is against the provisions of CCS (CCA) Rules. He conceded that the oral inquiry under Rule 15 was possible even if the delinquent official has been charge-sheeted under Rule 16. However, he emphasized that the inquiry under Rule 14 without first issue of the charge-sheet under Rule 14, does not entitle the administration to award major penalties. He submitted that the charge-sheet issued under Rule 16 has to be cancelled and another charge-sheet under Rule 16 is required to be issued for imposing a major penalty. Mandatory provision of Rule 14(16) has been violated during the course of the inquiry as the entire sequence has been changed in as much as the charged officer was compelled to give his statement of defence even before the closure of the case for the Disciplinary Authority. He also alleged that he was deprived of reasonable opportunity of defence as on certain dates, his Defence Assistant could not come for cross examination of the prosecution witness. He also strenuously argued that the applicant submitted a list of his defence witnesses vide letter dated 19.6.2000 and was waiting for the production of defence witnesses but by the letter dated 18.9.2001, the Inquiry Officer has denied the said opportunity by



saying that since those witnesses have already been produced as prosecution witnesses and the applicant had an opportunity to cross-examine them and as such, there is no point of calling those witnesses again as defence witnesses. It is alleged that such flimsy ground taken by the officer had deprived him of an opportunity to produce those defence witnesses.

8. The learned counsel for the Respondents Km. Sadhna Srivastava, on the other hand, had reiterated the points from the counter affidavit. She has submitted that all possible reasonable opportunity was afforded to the applicant during the course of the inquiry and the inquiry cannot be said to be vitiated. She also contested the argument that there were case laws which supported the action of the respondents that the major penalty can be imposed even when the charge-sheet was issued under Rule 16 for imposition of minor penalty. However, she could not produce any case law on the subject. No other defence was taken by the counsel for the respondents.

9. We have very carefully heard the rival submissions made by the counsel for the parties and given an anxious thought. We have also perused the pleadings.

10. The crucial question, which falls for consideration, is the validity of the impugned order. We are conscious of the settled legal position that in disciplinary proceedings, the scope of judicial review is limited to the extent that disciplinary proceedings are vitiated on account of procedural illegality causing prejudice to the delinquent official or in a case of no evidence and perverse finding, applying the test of common reasonable prudent man and lastly, on the proportionality of punishment where the punishment is found to be shockingly disproportionate to the

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misconduct proved, that too, in exceptional and rare cases, for cogent reasons. In the backdrop of this settled legal position, we have to examine whether the mandatory provisions of the law has been violated causing prejudice to the delinquent employee. From the records, it is clear that the inquiry proceeding commenced with the statement of the charged officer which is against Rule 14(16) of the CCA (CCS) Rules. With regard to the question of conversion of minor penalty charge-sheet into a major penalty charge-sheet without canceling the earlier one and even without giving him another charge-sheet under Rule 14, appear to be *prima-facie* wrong and illegal. Counsel for the respondents could not point out any provision of law or any case law on this point. Hence, on these two grounds, the O.A. is bound to succeed.

11. In view of the facts and circumstances, mentioned above and the discussions made, the O.A. succeeds on merits and the impugned order is quashed with the liberty reserved to the respondents to initiate fresh disciplinary proceeding in accordance with rules and law on the subject.

No order as to costs.

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