

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE <sup>22</sup> DAY OF <sup>April</sup> ~~MARCH~~, 2004

Original Application No. 470 of 2003

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.S.C.CHAUBE, MEMBER(A)

Virendra Mohan Tewari,  
S/o Late Kripa Shanker Tewari,  
R/o 261/4, New Labour Colony,  
Babu Purwa,  
Kanpur.

.. Applicant

(In Person)

Versus

1. Union of India, through  
Director General of Foreign Trade,  
Udyog Bhawan,  
New Delhi-110 011
2. The Zonal Joint Director  
General of Foreign Trade,  
6-7, Asaf Ali Road,  
New Delhi.

.. Respondents

(By Adv: Shri Ashok Mohiley)

O R D E R (Reserved)

JUSTICE S.R.SINGH,V.C.

While serving as UDC in the Department of Foreign Trade the applicant was served with a charge memo dated 27.4.1995 containing the following charges:

Article.1

Shri V.M.Tewari, UDC(adhoc) while working in the office of Jt.DGFT, Varanasi during the period 1994-95 failed to deal with the case of M/s Sunder Carpet Industries, Newada, Varanasi in file No.60/2349/AM.95/SPL.IMP.LIC properly inasmuch as he initially raised some objection and then cut it off for the reasons best known to him proposing issue of licence. When asked about B.L.Checking

he stated that there was no B.L.record and the B.L.clearance given by him earlier was purely on personal knowledge. Sh. Tewari was required to consult the B.L. register available with the ECA Branch of the office to record B.L. clearance on files. His statement that such clearance was being given by him purely on personal knowledge exhibited dereliction of duty on his part.

Article-II

Sh.Tewari was posted to the record section in the office of Jt.DGFT,Varanasi vide their Office order No.73/94-95 dt.9.11.94. He did not join his duties and failed to take charge of the Record section despite several verbal reminders and written memoranda issued to him on 12.12.94 and 15.12.94. He, however, represented vide his letter dt. 23.11.94 and 12.12.94 stating that the work assigned to him was for a LDC and was not as per his status adding that it was a degrading job. He refused to perform and implement the written orders of JDG Varanasi inspite of various memoranda issued to him by JDG Varanasi asking him to resume his duties immediately and also informing him that the leave sanctioning authority i.e. Jt.DGFT Varanasi had decided to declare the period of his absence as 'Dies-Non' as he failed to take charge of the Record Section as directed.

Article-III

Sh.Tewari came to Varanasi office on 16.12.94 and left the office unauthorisedly without proper leave/permission. On 20.12.94 it was ascertained by the office that he had not signed while leaving the office and an application was received for C.L. through R&I Branch on 15.12.94. For his similar action he had been warned several times verbally as well as in writing but Sh.Tewari did not show any improvement in his behaviour.

*(Signature)*

Article-IV

On 16.12.94 Sh.Tewari did not put his signature in the departuer column of the attendance register and the same was crossed and circled in red ink by the Dy.DGFT Varanasi on 20.12.94. Sh.Tewari was absemnt from 19.12.94 to 23.12.94 without permission., On surprise inspection on 30.12.94 it was found that Sh.Tewari had signed over the red cross mark on back date that too somewhere after 26.12.94.

This act on the part of Sh.Tewari amounts to tampering of Govt.records exhibiting lack of devotion to duty which is unbecoming of a Govt. servant thereby violating Rule 3(1)(ii)&(iii) of CCS (Conduct) Rules,1964.

The applicant submitted his reply to the charge memo. The Inquiry officer in his report dated 21.2.1999 held charge No.1 as not proved and the remaining three charges as proved. The Disciplinary Authority accepted the inquiry report and imposed on the applicant the punishment of compulsory retirement vide order dated 23.5.1990. Appeal preferred against the said order came to be rejected vide order dated 12.2.01. The applicant then filed OA No.108/01 which was allowed vide order dated 18.2.02 with a direction to the Disciplinary Authority to start the proceedings from the stage it was pending before it and hear the applicant again on each point & passed order in accordance with law in the light of the order. The Disciplinary Authority thereafter remitted the matter to the Inquiry officer vide order dated 10.6.02 whereupon the Inquiry officer submitted a fresh report dated 20.7.02 thereby holding charge no.2 and 3 as proved and charge nos 1 & 4 as not proved. The Inquiry report was furnished to the applicant with a view to enable him to submit his explanation. On receipt of the explanation the Disciplinary Authority considered the matter and imposed the punishment of compulsory

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retirement vide order dated 3.10.02. Part II Office order

to that effect was issued on 11.2.03. The applicant preferred appeal against the said order. The Appellate Authority, however, rejected the appeal vide order dated 5.2.03. Aggrieved the applicant has preferred this instant OA.

Heard the applicant who appeared in person and Shri Ashok Mohiley learned counsel for the respondents. It has been submitted by the applicant that as per order passed by the Tribunal the Disciplinary Authority ought to have taken the decision on the basis of the material before it instead of remitting the matter back to the Inquiry officer again. The submission made by the applicant cannot be accepted. The Tribunal by its order dated 18.2.02 quashed the order passed by the Disciplinary Authority and Appellate Authority with the direction that the disciplinary proceeding will start again as if it were pending before the Disciplinary Authority. The order passed by the Tribunal did not inhibit remittance of the matter back to the Inquiry officer for holding further inquiry. The order dated 6/10.6.02 passed by the Disciplinary Authority remitting the matter back to the Inquiry Officer for conducting further inquiry after taking into account the materials given by the defence but not considered earlier by the Inquiry officer. The order dated 6/10.6.02 having not been challenged, the applicant cannot be permitted to urge that the Disciplinary Authority was not justified in remitting the matter back to the Inquiry officer for inquiry after taking into account the materials given by the defence. The Inquiry officer issued notice to the applicant at his given address thereby directing him

to attend the inquiry on a specified date with advice to bring in writing material which could not be considered while finalising the report earlier. The applicant did not attend the inquiry on the appointed date nor did he attend the inquiry on the adjourned date instead by means of a letter dated 9.7.02 he alleged bias against the applicant and urged that he would be approaching the Disciplinary Authority for change of Inquiry officer. Since the applicant did not participate in the inquiry, the Inquiry officer had no option but to submit his report dated 20.7.02 thereby holding charge nos 2 & 3 as proved and charge nos 3 and 4 as not proved.

The applicant then submitted that the period of absence from duty was earlier treated as 'dies-non' and hence it could not form the basis of disciplinary action. The submission made by the applicant cannot be countenanced. We agree with the submission made by Shri Ashok Mohiley, learned counsel appearing for the respondents that the earlier order treating the absence of the applicant from duty as 'dies-non' was without prejudice to any other action that the Competent Authority might take against the applicant. The submission made by Shri Ashok Mohiley finds support from Government of India's Instruction No.6 at the foot of Rule 11 of CCS(CCA) Rules, 1965 which being relevant to the discussion is quoted below:

"(6) when a day can be marked as dies non and its effect-

Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive or discipline. In cases of such absence from work, the leave sanctioning authority may order that

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the days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the Competent Authorities might take against the persons resorting to such practices."

It is clear from the above extracted provision that dies non will neither count as service nor will it be construed as break in service. It is not a punishment/penalty within the meaning of Rule 11 of CCS(CCA) Rules. This does not inhibit the competent authority to take disciplinary action for unauthorised absence from duty notwithstanding that the period of absence has been treated as dies-non.

The applicant then submitted that the 2nd charge was without any foundation in that the applicant was not at all transferred to the record room by office order dated 9.11.1999 and therefore, submitted the applicant the question of his joining duties in the record room does not arise. The submission made by the applicant cannot be countenanced office order dated 9.11.1994(Annexure 7) is an order of re-allocation of work and clearly shows that the applicant was allotted work in the 'record & listing' section. He was to be assisted by Shri Dev Anand and Shri V.K.Dubey, LDCs in arranging the files in the record room and stocking it properly. The applicant has not been able to show any provision inhibiting Upper division clerk from being assigned the work of record and listing the applicant, as stated (supra) was provided the assistance of Shri Dev Anand and Shri V.K.Dubey LDCs in discharge of his duties and performance of the work allotted vide order dated 9.11.1994. In the absence of any statutory or legal demarcation of work, no exception can be taken to re-

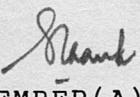
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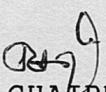
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allocation of work vide order dated 9.11.1994.

The applicant, lastly, submitted that the punishment of compulsory retirement was not at all commensurate with the charges found proved against the applicant. We are not impressed by submission made by the applicant whose conduct in our opinion, was subversive of discipline and in the circumstances, therefore, imposition of major penalty of compulsory retirement cannot be said to be shockingly disproportionate to charges found established against the applicant. The applicant, it may be observed, was short of qualifying service for the purpose of sanction of pension yet the department have given him pensionary benefits as stated in the counter affidavit.

In view of the above discussion, the original application is dismissed being bereft of merit. The parties are however, directed to bear their own costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 24 April, 2004

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