

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.291 of 2006

Friday, this the 7th day of November 2008

Hon'ble Mr. K.S. Menon, Member (A)

Neeraj Agarwal son of Shri R.P. Agarwal, R/o Shri Pramod Kumar Verma, 310 Battu Lala Chauk Kaliwali Bareilly U.P. Present is working as (J.E. [Q.S. & C.]) in the Chief Engineer, Bareilly Zone, Office Station Road Bareilly Cantt., U.P.

Applicant

By Advocate: Sri R.C. Pathak

Vs.

1. Union of India through the Defence Secretary, Ministry of Defence, Government of India South Block, New Delhi.
2. The Engineer-in-Chief, Branch A.H.Q. Kashmir House Raja Ji Marg, New Delhi.
3. The Chief Engineer, Central Command, Lucknow.
4. The Chief Engineer, Bareilly Zone, Station Road, Bareilly Cantt., U.P.
5. The Commander Works Engineers (C.W.E.) Station Road, Bareilly Cantt. U.P.
6. Shri P.K. Gupta, S.E. Commander Works Engineers, Bareilly Cantt. Presently posted as S.E. (S.O.I.) in the office of Chief Engineer, Jaipur Zone, Jainpur, Rajasthan.

Respondents

By Advocate: Sri Saumitra Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed against the punishment order dated 27.03.2004 issued by respondent No. 5 by which the penalty of "reduction to 3 lower stages" i.e. Rs.5750/- to Rs.5300/- in the pay scale of Rs.5000-150-8000 for a period of 3 years without cumulative effect and not adversely affecting his pension, was awarded to the applicant. The O.A. is also against the rejection of his appeal vide Order dated 21.09.2004, issued by respondent No. 4.

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2. The facts of the case in brief are that the applicant was appointed on 01.01.1999 in the Military Engineering Services (for short MES) on a civilian post of S.A.-II in the office of Chief Engineer, Bareilly Zone, Bareilly. The said post has subsequently been re designated as JE [Q.S. & C]. The applicant states that on 23.08.2002, the respondent No. 5 issued a letter seeking his explanation for coming late to the Office i.e. at 09.17 a.m. instead of 08.30 a.m. The applicant had replied to the same vide his letter dated 23.08.2002. Subsequently the respondents issued another letter dated 23.03.2003 seeking explanation of the applicant for proceeding on leave from 17.03.2003 to 18.03.2003 without any sanction. The applicant submitted a reply on 31.03.2003 in which he had indicated that due to his mother's sudden illness, he had to proceed on short leave but he had, however, sent a casual leave application through one Sri Kailash Sharma. The respondents subsequently had asked the applicant to furnish a medical certificate in respect of his mother vide letter dated 03.04.2003. The said medical certificate dated 23.03.2003 was furnished to respondents by the applicant vide his letter dated 09.04.2003. Thereafter there was no response from the respondents' side as to whether applicant's said leave application was sanctioned or whether they had accepted the medical certificate in respect of his mother, so submitted by him. The respondents however issued him memorandum dated 16.11.2003 proposing to initiate proceedings under Rule 16 of CCS (CCA) Rules 1965 alongwith statement of imputation of misconduct/charges and directed applicant to submit his representation within 10 days. The applicant submitted a detailed reply on 27.11.2003 in respect to the charges leveled against him in the aforesaid memorandum (annexure A-11 to the O.A.). The Disciplinary Authority however passed the Order of penalty vide the impugned order dated 27.03.2004 by which his pay was reduced by 3 stages for a period of two years without cumulative effect and not adversely affecting his pension. Being aggrieved, the applicant submitted an appeal on 25.05.2004 to respondent No. 4 against the said punishment order. The appeal was rejected by respondent No. 4 vide impugned order dated 21.09.2004. The applicant's grievance is that both the punishment order and appellate order are cryptic and not speaking orders. He submits that all the points that have duly been mentioned by him in his initial reply to the memorandum and thereafter in his appeal, have not been duly considered by the respondents as there is

no specific reply to each of the points, so raised by him in the aforesaid representations. He is, therefore, of the view that while issuing the punishment order as well as the appellate order, rejecting his appeal there has been no application of mind and the respondents have failed to maintain impartiality while deciding his case. He, therefore, seeks the following relief: -

- "i) To issue suitable order or direction by way of certiorari quashing the order dated 21.9.2004 and 27.3.2004 shown as Annexure A-1 and A-2 to this Original Application alongwith restoring the pay scale Rs.5750/- alongwith the deducted pay as Rs.5300/- be paid back to the Applicant with arrears including 18% penal interest without the consequential benefit to the applicant.**
- ii) To issue any other suitable, writ, order or direction, which may be, deem fit and proper, under the facts and circumstances of the case.**
- iii) To award cost of the Original Application to the applicant."**

3. The respondents in their Counter Affidavit state that O.A. is time barred since the appellate order was dated 21.09.2004, the applicant should have filed the O.A. by 20.09.2005, whereas he has filed the same on 13.03.2006. The second point taken by the respondents is that applicant has not availed the alternative remedies by filing a Revision, as contemplated under Rule 29 of CCS (CCA) Rules, 1965. Therefore, applicant has not exhausted all departmental remedies before approaching this Tribunal. They, therefore, submit that O.A. is premature and is liable to be dismissed on ^{the} ^{on} _L above two grounds alone.

4. On the merits of ^{the} ^{on} case, the respondents submitted that with regard to reporting late for work on 21.08.2002 the applicant was asked to submit a leave application but instead of doing the same, he filed reply giving the circumstances under which he came late, requesting that the facts so mentioned be verified from the Office Superintendent. In respect of two days absence without sanction, the respondents state that applicant was asked to explain the circumstances for remaining absent from duty without sanction. The applicant had submitted his reply and had also furnished the medical certificate so called for by the respondents. However, respondents have not commented upon the facts as to how they dealt with applicant's explanation and submission of his mother's medical certificate. The respondents state that keeping in view his misconduct a memorandum was issued to him under Rule 16 of CCS (CCA) Rules, 1965 and he was

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given an opportunity to make representation against the said memorandum. The said memorandum was issued to him as per rules and there was nothing personal or prejudicial against the applicant. Keeping in view, the reply of the applicant, in the light of relevant facts and circumstances of the case, the respondents came to the conclusion that explanation tendered by the applicant is not tenable and the charges so leveled against him, stood proved. ^{they are} ~~the~~ therefore, awarded the punishment vide their letter dated 27.03.2004. The appeal so preferred by the applicant to respondent No. 4 was duly considered and the Appellate Authority i.e. respondent No. 4 passed a reasoned and speaking order vide his Order dated 21.09.2004.

5. The applicant had leveled allegation against the Disciplinary Authority i.e. respondent No. 6-Sri P.K. Gupta stating that he was biased, prejudiced and had fabricated the charges of misconduct and misbehaviour against the applicant. Responding to this, the respondents state that all actions taken by respondent No. 6 was not in his personal capacity but was in pursuance of his official duty and therefore no case of bias or prejudice can be attributed to him, as such, [✓]allegations of the applicant are frivolous and without any basis. In view of the above, they state that the applicant has not made out any case warranting interference by this Tribunal.

6. Heard Sri R.C. Pathak, learned counsel for the applicant and Sri Saumitra Singh, learned counsel for the respondents, and perused the pleadings.

7. It is an admitted fact that the applicant had reported late by about 45 minutes on the said date, for which his explanation was called for. Subsequently the applicant had also given a detailed reply explaining the circumstances under which he had to take two days C.L. without prior sanction. It is however seen that without giving him any reason, whether his explanation has been accepted or not, in respect of ^{the} [✓]above two lapses on his part, the respondents had proceeded to issue him a memorandum in which this imputation[✓] of misconduct[✓] have been listed. Same are reproduced below: -

“(a) MES/439640 Shri Niraj Agarwal, while serving at HQ CWE Bareilly as JE (QS&C) in E-8 Section has been found: -

(i) Habitual of coming late to office.

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- (ii) **Hobnobbing with outsider when he came for submitting application for recruitment.**
- (iii) **Lacking in interest, sincerity and diligence in working and often found whiling away time. He merely goes through motions rather than doing productive work.**
- (iv) **Sluggish in working and poor in discipline.**
- (v) **Missing from duty point and loitering in MES Yard on 29.07.03 without any permission from his officer. On 15 Nov 2003, at 0920 hrs he was found sleeping/resting while on duty.**
- (vi) **Has failed to show any improvement in working despite repeated verbal warnings/counsellings."**

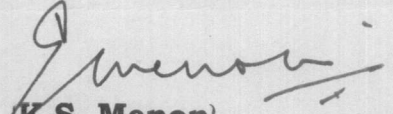
A bare reading of above imputations would indicate that except for sub para-(v) above, which is the only charge i.e. specific with date and time, all the other charges are either general in nature or vague. None of the charges have been duly supported by details pertaining to event, date, place and time. It was the duty of Disciplinary Authority to give detailed statement of imputation of misconduct and charges and it was grossly unfair on the part of respondents to accept the charges leveled on the applicant, which are not specific in nature and devoid of details.

8. It is also seen from the punishment order dated 27.03.2004 that the Disciplinary Authority has merely reproduced the statement of imputation of charges without a detailed analysis of the same and pointing specifically as to how the applicant was responsible. The punishment so ordered does not seem to flow from the gravity of aforementioned charges. The Appellate Authority also has not ^{in detail dealt} ~~detailed~~ with the specific points raised by the applicant in his appeal-dated 25.05.2004. The Appellate Authority has merely summarized the points and came to a conclusion without any analysis whatsoever. I am of the opinion that said order of Appellate Authority is not a reasoned and speaking order. The scrutiny of charges that have been leveled against the applicant, indicates that they are of a nature which would certainly be required to be brought to the notice of ^{the} ~~the~~ applicant for taking cognizance but may certainly be not termed as being so serious and grave, to impose a punishment that has been awarded to ^{or} ~~the~~ applicant. The nature of punishment is certainly not commensurate with the gravity of charges.

9. In view of the above, the Original Application succeeds and ^{is} ~~is~~ allowed. The Appellate Order dated 21.09.2004 as well as punishment

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order dated 27.03.2004 are hereby quashed and set aside. The respondents are directed to reconsider the case and initiate fresh disciplinary proceedings if so warranted, strictly in accordance with provisions of Rule 16 of CCS (CCA) Rules, 1965, as amended from time to time. There shall be no order as to costs.


K.S. Menon
Member 'A'

/M.M./