

(Reserved on 16.04.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 1st day of June, 2012

Present:

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER-A**

ORIGINAL APPLICATION NO. 263 of 2007

Jitendra Kumar Pandey, son of Late Bindeshwari Pandey, T. No. 252/NID/Orderly Per. No. 305325 (Now Daftry), Ordnance Factory, Kalpi Road, Kanpur – 208009. Resident of G.1/560, Armapore Estate, Kalpi Raod, Kanpur Nagar.

.....Applicant.

V E R S U S

1. Union of India through Ministry of Defence, New Delhi.
2. General Manager, Ordnance Factory, Kalpi Road, Kanpur Nagar.
3. Deputy General Manager Administration, Ordnance Factory, Kalpi Road, Kanpur Nagar.
4. The Works Manager (Administration), Ordnance Factory, Kalpi Road, Kanpur Nagar.
5. The Enquiry Officer Shri S.K. Gupta, Works Manager appointed under the Rules of the Ordnance Factory, Kalpi Road, Kanpur Nagar.

..... Respondents

Present for the Applicant: Sri Mohd. Arif

Present for the Respondents: Sri Jitendra Naik

O R D E R

By Hon'ble Mr. Sanjeev Kaushik, JM

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant seeks quashing of order dated 20.11.2006 passed by the

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Reviewing Authority whereby confirming the order of reduction of pay to the minimum in the time scale of pay of Rs. 750-940 for a period of 3 years with cumulative effect.

2. The facts of the case are that after obtaining opinion regarding genuineness of handwriting on bill No. 9/LTC/LB/CTR dated 29.08.1989, 10/LTC/LB/CTR dated 29.08.1989 and 31/LTC/LB/CTR dated 08.09.1989 from Kazi M. Zunaid, Hand Writing Expert on 12.08.1991, the applicant was placed under suspension w.e.f. 22.08.1991 vide order dated 07.09.1991. The applicant was charge sheeted on 22.10.1991 under rule 14 of CCS (CCA) Rules 1965 on the ground that he in connivance with Shri Gomati Prasad prepared L.T.C advance requisition bill un-authorizedly in favour of S/Shri Guru Prasad, B.R. Verma and S.N. Pandey which caused defalcation of Government money amounting to Rs. 14,460/- (Annexure A-2). The applicant submitted his reply on 08.11.1991 denying the charges. Shri S.K. Gupta, WM/OFTI was appointed as Inquiry Officer. On 01.06.1992 the applicant requested to appoint Shri R.A. Pandey, CMI/BTR as Defence Assistant. On 18.06.1992 the applicant moved an application to the Inquiry Officer requesting for supply of complete report of Hand Writing Expert. He also requested that report may be sought from Government Hand Writing Expert. Inquiry was concluded and based upon the inquiry report the Disciplinary Authority i.e. Senior General Manager imposed the penalty of reduction of pay

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to the minimum in the time scale of pay of Rs. 750-940 for a period of 3 years with cumulative effect. Against this order the applicant filed statutory appeal on 08.12.1995. By order dated 12.03.1997 the Appellate Authority rejected his appeal. Thereafter, the applicant filed Revision Petition on 05.05.1997, which was rejected by the Reviewing Authority by order dated 20.11.2006 affirming the order passed by the Appellate Authority as well as Disciplinary Authority, hence the O.A.

3. Pursuant to the notice the respondents resisted the claim of the applicant by filing detailed Counter Affidavit wherein they have supported the impugned order on the ground that a due procedure was adopted and finally based upon the inquiry report the order of punishment was passed, which was upheld by the Appellate Authority and subsequently by the Reviewing Authority. It is alleged that the government suffered a loss of Rs. 14,460/- because of the act of the applicant.

4. The applicant filed Rejoinder denying all the averments made in the CA.

5. We have heard Shri Mohd. Arif, learned counsel for the applicant and Shri Jitendra Naik for the respondents.

6. Learned counsel for the applicant vehemently argued that the impugned order inflicting the punishment of reduction of

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pay to the minimum in the time scale of pay of Rs. 750-940 for a period of 3 years with cumulative effect is based upon the inquiry report which itself is totally illegal as the inquiry proceeding has not been conducted in a fair manner. The applicant was not afforded opportunity firstly to cross examine the Hand Writing Expert and secondly, only the report of private Hand Writing Expert was relied upon and no other evidence have been produced or taken into consideration. He placed reliance upon an order passed by this Tribunal in O.A No. 510/97 - Virendra Nath Agnihotri Vs. U.O.I & Ors decided on 10.05.2002. He further urged that the inquiry report is solely based upon the report of Hand Writing Expert that too of not a Government expert, therefore, same cannot be relied upon and consequently the order of punishment is liable to be set aside.

7. On the other hand learned counsel for the respondents reiterated what has been stated in the Counter Affidavit.

8. We have considered the rival submissions and have gone through the pleadings on record. It is relevant to have the charged leveled against the applicant, which are as under: -

“ Statement of Articles of charge framed against Shri J.K. Pandey, T. No. 252/NID, Orderly.
(Article : I)

That the said Shri J.K. Pandey, T. No. 252/NID, while functioning as Orderly during the period of his employment is charged with Gross Misconduct in that he unauthorisedly prepared the LTC Advance Requisition

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Bills in respect of following Industrial Employees though it was not the part of his duty, he being as Orderly.

S/Shri

1. Guru Prasad, T. No. 245/CTR
2. B.R. Verma, T. No. 110/CTR
3. S.N. Pandey, T. No. 105/CTR

(Article : II)

That the said Shri J.K. Pandey, T. No. 252/NID, is further charged for Gross Misconduct in that he prepared false advance LTC Requisition Bills without valid authorities in respect of Industrial Employees of this factory as named in Article-I above.

(Article : III)

That the said Shri J.K. Pandey, T. No. 252/NID, Orderly, has thus acted in the manner unbecoming of Govt. Servant and did not maintain absolute integrity which is in violation of Rule 3(1) (iii) and (i) of CCS (Conduct) Rules, 1964."

9. From perusal of charges it is clear that the applicant has been charge sheeted for gross misconduct under rule 14 of CCS (CCA) Rules 1965 for rendering assistance in preparing the LTC Advance Requisition Bills in respect of other industrial employees for which he was not authorized. It is not clear that how for preparing the LTC advance requisition bill the government suffered loss of Rs. 14,460/-. It is nowhere pleaded that the applicant played fraud or misappropriated the government money. The L.T.C advance is to be finally adjusted in the final bill to be submitted by the concerned employee after completion of journey. If at all the employee is found to have taken more advance than admissible amount, then certainly the

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said employee is to be penalized and as a result of that interest can be charged for retaining government money for which he was not legally entitled. The applicant is only guilty of rendering assistance in preparing L.T.C advance requisition bill and nothing else. The applicant has admitted this fact of extending help to prepare LTC Advance Requisition Bills. Once the applicant admitted his guilt then his argument of obtaining report from private Hand Writing Expert loses its weight. We also do not find any illegality in the inquiry proceeding, therefore, we are not interfering in process adopted by the respondents.

10. As far as the quantum of punishment is concerned, we are of the view that while passing the impugned order the respondents also ought to have considered the past services of the applicant and the gravity of offence as well as nature of charges leveled against him. In the instant case, from perusal of the impugned order, it appears that the respondents have imposed the punishment of reduction of pay to the minimum in the time scale of pay of Rs. 750-940 for a period of 3 years with cumulative effect, which does not appear to be commensurate to the offence and the charges leveled against the applicant. Though the courts cannot sit as an Appellate Authority over the orders passed by the authority imposing penalty but it is permissible that if the punishment is shocking to the conscience of the Court then Court can interfere. Reliance in this regard has been placed in the case of **B.C. Chaturvedi &**

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Ors. 1995 (6) SCC 749 at page 764, U.O.I Vs. K.G. Soni reported as 2006(6) SCC 794 and 2009(7) SCC 248 at page 250 Ramanuj Pandey Vs. State of U.P. The relevant part of the judgment in B.C. Chaturvedi's case is reproduced herein under:-

"Constitution of India, Arts.226,142-Administrative Tribunals Act (13 of 1985) sec. 19-Imposition of Punishment on Govt. servant by disciplinary and appellate authority-Interference by High Court/Tribunal-Punishment shocking conscience of High Court/Tribunal-It can direct authority to reconsider punishment-It may itself, to shorten litigation impose appropriate punishment with cogent reasons in support thereof."

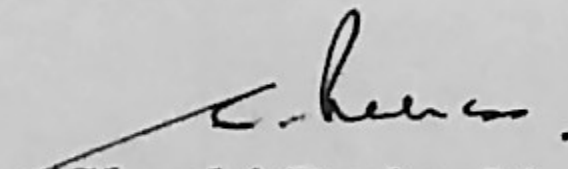
"Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

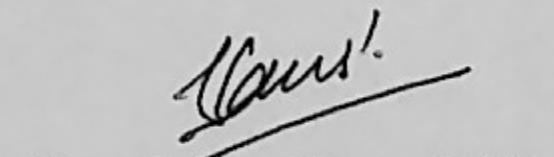
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11. In view of the observation made above and the law laid down by the Apex Court, we are of the considered view that since the punishment of reduction of pay to the minimum in the time scale of pay of Rs. 750-940 for a period of 3 years with cumulative effect is disproportionate for the reasons that the applicant in no way benefited by his act. Hence the matter requires re-consideration by the Reviewing Authority.

12. Accordingly, the Order dated 20.11.2006 passed by the Reviewing Authority is quashed and set aside. The matter is remitted to the said authority to reconsider the matter taking into account the gravity of offence and then pass a reasoned and speaking order in the light of observations made above within a period of three months from the date of receipt of certified copy of this order. No costs.


(Shashi Prakash)
Member-A


(Sanjeev Kaushik)
Member-J

/Anand/