

Reserved
(On 09.09.15)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 23rd Day of September 2015)

Hon'ble Mr. Justice L.N. Mittal-JM
Hon'ble Mr. U.K. Bansal, AM

Original Application No.399 of 2007
(U/S 19, Administrative Tribunal Act, 1985)
(Filed on 16.04.2007)

Manik Chand Agarwal, Aged about 58 years, son of Shri S C.
Agarwal, resident of 180/3 Muirabad, Allahabad.

..... Applicant

By Advocate: **Shri V. Budhwar**

Versus

1. Union of India through Secretary Ministry of Personnel, Public Grievances and Pension (Department of Personal Training), New Delhi.
2. Comptroller and Auditor General of India, 10 Bahadur Shaj Jafar Marg, New Delhi.
3. Deputy Comptroller and Auditor General of India, in the office of Comptroller and Auditor General of India 10 Bahadur Shaj Jafar Marg, New Delhi.
4. Accountant General (A&E) II, Uttar Pradesh, Allahabad.

..... Respondents

By Advocate: **Shri R.K. Rai**

ORDER

Delivered by Hon'ble Mr. Justice L.N. Mittal, Member (I)

Although file of this Original Application is very bulky and voluminous, yet in view of the arguments advanced by counsel for the parties, facts relevant for the disposal of the instant Original Application lie in a narrow compass:-

2. The applicant, Manik Chand Agarwal, was initially appointed as Auditor on 05.11.1973 by the respondents. On 01.03.1984, he was promoted as Accountant and on 14.1.1986, as Divisional Accountant. In June, 1986, the applicant was promoted as Section Officer by Principal Accountant General. The applicant was lastly promoted as Assistant Accounts Office (a Group 'B' post) on 31.01.1990.

3. On 30.05.2003, the applicant was working as Assistant Accounts Officer in the office of respondent No.4 (Accountant General (A&E) II, Allahabad). On that date, he was placed under suspension vide order dated 30.05.2003. The applicant was issued charge sheet Annexure A-5 vide memorandum dated 16.6.2003. The Articles of Charge are reproduced hereunder:-

"Article-I

That Shri Manik Chand Agarwal, Assistant Accounts Officer (P.No.B/115), while working in Fund-65 Section, Funds Wing, Officer of the Accountant General (A&E)-II, U.P., Allahabad accompanied by some staff members of the Funds wing forcibly entered in the Cell (of the Personal staff) of DAG/Funds and started shouting on 08.04.2003 at about 12.30 PM. Thereafter, he forced his entry in the chamber of Sh. P.P. Pant DAG (Funds), without seeking permission and started shouting at him (Sh.Pant) and threw certain paper on his table. He misbehaved with Sh. Pant and showed him disrespect by indulging in an indecorous behaviour. By doing so, Sh. Agarwal acted in a manner, which is unbecoming of a Government servant, as he failed to maintain official decorum, discipline and courtesy in the office. As such, he has made himself liable to be proceeded against as per Rule 3(1) (iii) and 3-A (a) of the C.C.S. (Conduct) Rules, 1964.

Article-II

That Shri Manik Chand Agarwal Assistant Accounts Officer, (P.No.B/115), while working in Funds-65 Section, Funds Wing, Office of the Accountant General (A&E)-II, U.P., Allahabad was required to maintain peace, decorum and discipline in the office and was expected not to resort to disorderly behaviour, agitational approach and gherao of his superior officers by promoting and inciting others.

It has, however, been observed that Shri Agarwal, instead organized a crowd of about 100 employees including the office bearers of Civil Accounts Association by promoting and inciting them, in front of DAG (Funds)' Cell at about 03.15 PM on 08.04.2003. He started shouting slogans along with others against Sh. P.P. Pant, DAG (Funds), which continued till about 04.30 PM while office bearers of the Civil Accounts Association were putting undue pressure upon DAG (Funds) inside his room to take back the action initiated against some employees.

Moreover, he blocked the entry to the chamber of DAG (Funds) along with others, and stood in the foyer shouting slogans. This resulted in chaos and the peaceful atmosphere of the office got disturbed due to the indiscipline, indecorous behaviour, agitational methods/gherao indulged in by Sh. Agarwal in concert with others.

By doing so, Shri Agarwal has acted in a manner, which is unbecoming of a Government servant, as he indulged in unlawful activities like indiscipline, indecorous behaviour and demonstration/gherao against DAG (Funds) during office hours by inciting others to strike work during office hours and disturbed peace at the place of his employment and used abusive language. As such, he has made himself liable to be proceeded against as per Rule 3 (I) (iii), 1-A (a) and Rule 7 (ii) of C.C.S. (Conduct) Rules, 1964. His above action also attracts the provisions of GOI Decisions No.23 (7) & (8) and subsequent Serial No.23 (3) below Rule 3 of C.C.S. (Conduct) Rules, 1964."

4. The applicant submitted reply dated 15.10.2003 Annexure A-7 to the charge-sheet, denying the articles of charge.

Respondent No.4 appointed Inquiry Officer to conduct regular inquiry against the applicant and also appointed Presenting Officer. The Inquiry Officer vide his report dated 28.02.2006 Annexure A-11 held under Article-I of the charge that the applicant had rushed into the chamber of DAG (Funds) and misbehaved with him. Under Article-II of the charge, the Inquiry Officer held that the applicant took part in the demonstrations organized by the Civil Accounts Associations in the afternoon on 08.04.2003 against DAG (Funds) and shouted slogans, but it could not be proved that he was leading the agitation and there was no evidence to link events of the first half (Article-I of the charge) to events that took place in the second half on 08.04.2003 (Article-II of the charge). Thus, both the articles of charge were held proved to the aforesaid extent.

5. Respondent No.4 vide order dated 14.03.2006 issued show cause notice to the applicant holding Article-I of the charge to be fully proved and Article-II of the charge to be proved to the extent mentioned above.

6. The applicant submitted reply dated 12.04.2006 Annexure A-12 to the show cause notice. Respondent No.4 vide impugned order dated 02.05.2006 Annexure A-1 imposed the penalty of compulsory retirement and also penalty of reduction in normal admissible pension and gratuity by $\frac{1}{3}^{\text{rd}}$ on the applicant. Against the said order, the applicant preferred Appeal dated 24.05.2006 Annexure A-13. Respondent No.3 (Deputy Comptroller

and Auditor General of India) as Appellate Authority partly allowed the Appeal by reducing the penalty to only compulsory retirement from service (without reduction in normal admissible pension and gratuity by 1/3rd), vide impugned order dated 23.02.2007 Annexure A-2.

7. In the instant O.A., the applicant has sought quashing of order Annexure A-1 passed by respondent No.4 as Disciplinary Authority and order Annexure A-2 passed by respondent No.3 as Appellate Authority. Besides it, the applicant has also challenged Circular dated 23.02.1989 Annexure A-3 issued by the Office of respondent No.2, Comptroller and Auditor General of India, inter alia, stipulating that in terms of notification dated 13.09.1988, the Accountant General is competent to impose major penalty on a person who was appointed by the Principal Accountant General.

8. Various grounds to challenge the aforesaid orders and circular as argued during the course of arguments shall be discussed at the appropriate stage.

9. The respondents in their counter affidavit while admitting the factual position relating to disciplinary proceedings and their culmination in the punishment order and Appellate order broadly controverted the grounds pleaded by the applicant to challenge the impugned orders and Circular.

10. The applicant also filed Rejoinder to assail the stand of the respondents and to reiterate his version pleaded in the Original Application.
11. We have heard Shri Vikas Budhwar, Advocate for the applicant and Shri R.K. Rai, Advocate for the respondents at considerable length and also carefully perused the case file with their assistance.
12. Counsel for the applicant contended that notification dated 13.09.1988 Annexure CA-1 (published in Gazette of India on 24.09.1988) is not valid being against Rule-12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short 'the Rules'). The contention is unacceptable because the said notification has not even been challenged in this O.A.. It is worth mentioning that Circular dated 23.2.1989 Annexure A-3 has been assailed in the O.A. and there is reference to notification dated 13.09.1988 Annexure CA-1 in Circular Annexure A-3 and therefore, the applicant cannot also plead ignorance of notification Annexure CA-1. In spite of having knowledge thereof, the applicant did not challenge the said notification Annexure CA-1 in the O.A. and, therefore, the aforesaid contention to challenge the same cannot be accepted. Besides it, even on merit, the contention cannot be accepted because notification Annexure CA-1 has been issued in

exercise of powers conferred by Clause (b) of Sub-rule (2) of Rule 12 of the Rules, besides powers conferred by other Rules.

13. Main thrust of the arguments of counsel for the applicant was that the applicant was promoted/appointed as Section Officer and as Assistant Accounts Officer by Principal Accountant General and, therefore, the Accountant General could not act as Disciplinary Authority to initiate disciplinary proceedings and to pass impugned punishment order dated 2.5.2006 Annexure A-1 being subordinate to the Appointing Authority i.e. Principal Accountant General and, therefore, the impugned punishment order is illegal and the impugned Appellate order shall automatically fall. In support of this contention, reliance has been placed on judgment dated 11.02.2004 passed by Allahabad Bench of the Tribunal in O.A. No.709 of 2003-Vimles Sonkar vs. Union of India (along with connected O.As) upheld by Hon'ble High Court of Allahabad vide judgment dated 19.9.2005 in Civil Misc. Writ Petition No.20676 of 2004 -The Principal Accountant General and others vs. Ashok Kumar Maurya and others (with connected writ petitions).

14. Another main contention of counsel for the applicant was that P.P. Pant, the then DAG (Funds)-the complainant and

star witness of the Department, was not examined during inquiry and, therefore, the applicant got no opportunity to cross examine the said witness and consequently principles of natural justice have been violated. It was also contended that the documents which were not proved by examining the witnesses during inquiry could not be used against the applicant. Reliance in support of these contentions has been placed on various judgments i.e. judgment dated 6.7.2015 of Allahabad High Court in Writ (A) No.20337 of 1999 – Shreesh Singh vs. Chairman, Gorakhpur Kshetriya Gramine Bank & Ors, judgment of Punjab and Haryana High Court in Amarjit Singh Bhatnagar vs. State of Punjab and another 1991(4) SLR 70, judgment of Hon'ble Supreme Court in Union of India vs. Sardar Bahadur 1972 SLR 355, judgment of Hon'ble Supreme Court in M/s Bareilly Electricity Supply Co. Ltd., vs. The Workmen and others - AIR 1972 SC 330, judgment of Hon'ble Supreme Court in Ministry of Finance and another vs. S.B. Ramesh - AIR 1998 SC 853, judgment of Allahabad High Court (Lucknow Bench) in Lalta Prasad vs. State of U.P. and others- 1998 XCD 739, judgment of Hon'ble Supreme Court in Kashinath Dikshita vs. Union of India and others- AIR 1986 SC 2118 and judgment of Hon'ble Supreme Court in State of U.P. vs. Shatrughan Lal and another - 1998 (6) SCC 651.

15. Counsel for the applicant also argued that the only eye witness Hiranmoy Mukherjee examined during inquiry was inimical to the applicant as also pleaded by him in his reply to the charge sheet. It was pointed out that by ouster of the applicant, who was senior to the said witness, chances of promotion of the said witness could get accelerated and, therefore, the said witness deposed against the applicant in the inquiry. Reference by counsel for the applicant was also made to Article 311 (1) and Rule 12 (4)(a) of the Rules stipulating that no major penalty can be imposed by any authority subordinate to the Appointing Authority. It was argued that the Accountant General, therefore, could not impose the penalty of removal from service on the applicant because Accountant General is sub-ordinate to the Principal Accountant General who was the Appointing Authority of the applicant.

16. Per contra, counsel for the respondents vehemently referred to notification dated 13.09.1988 Annexure CA-I issued in exercise of the powers conferred by Rule 9 (2), Rule 12 (2) (b) and Rule 24 (1) of the Rules, by the President after consultation with the Comptroller and Auditor General of India.

Relevant part of the said notification is extracted hereunder:-

Description of Posts	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rules 11)	Appellate Authority
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1	2	Authority 3	Penalties 4	5
2. All filed offices (including training Institutions) subordinate to the Comptroller and Auditor-General of India other than Commercial Audit Offices and Commercial Audit Wing in Civil Audit Offices				
All Group B posts	Heads of Department in the rank of Principal Accountant General/Accountant General	Heads of Department in the rank of Principal Accountant General/Accountant General	All	Deputy Comptroller and Auditor-General of India/Additional Deputy Comptroller and Auditor-General

17. It was submitted that admittedly the applicant as Assistant Accounts Officer was in Group 'B' post and, therefore, Principal Accountant General as well as Accountant General were competent to impose all penalties provided under the Rules on the applicant and consequently impugned punishment order Annexure A-1 passed by the Accountant General as Disciplinary Authority was within his competence. It was also submitted that the Accountant General is not an authority subordinate to the Principal Accountant General and rather both of them are in the same rank, the senior having higher scale is designated as Principal Accountant General and the junior as Accountant General, but both of them are Head of

Department. Reference in this regard was also made to impugned Circular Annexure A-3 which is clarificatory in nature, specifically stipulating that the Accountant General is competent to impose major penalty on a person who was appointed by the Principal Accountant General. It was also submitted that the applicant as Assistant Accounts Officer was not appointed by the Principal Accountant General. Counsel for the respondents relied on two judgments of the Tribunal i.e. judgment dated 21.12.2012 of Allahabad Bench in O.A. No.516 of 2012-Hari Shankar Tiwari vs. Union of India & Ors and judgment dated 8.9.2010 of Ernakulum Bench in O.A. No.163 of 2010-V.S. Binu vs. The Comptroller and Auditor General and India & Ors. Counsel for the respondents also pointed out that the Accountant General and Principal Accountant General are both not posted in one and the same office and only one of them is posted as Head of Department and whoever is so posted at the relevant time is the competent Disciplinary Authority. Counsel for the respondents also submitted that P.P. Pant had since retired and notices were sent to him by the inquiry officer for appearing as witness in the inquiry, but due his retirement, he did not appear and written complaint made by P.P. Pant, on which disciplinary action was initiated against the applicant, was produced in the inquiry. It was also pointed out that the applicant in his reply dated 15.10.2003 Annexure A-7 to the

charge sheet also pleaded that even Mr. P.P. Pant was already annoyed and displeased with the applicant since last few months and was trying his best to harass the applicant by a variety of methods. The applicant also alleged motive on the part of Hiranmoy Mukherjee to get his promotion accelerated by ouster of the applicant. It was submitted that due procedure was followed in the disciplinary proceedings and there is no infirmity in the impugned orders.

18. We have carefully considered the rival contentions. Notification Annexure CA-1 completely nails the main contention of the applicant's counsel regarding competence of the Accountant General as Disciplinary Authority. Admittedly the applicant as Assistant Accounts Officer held Group 'B' post. According to the aforesaid notification, Head of Department in the rank of Principal Accountant General/Accountant General was the appointing authority and also authority competent to impose all the penalties provided by Rule 11 of the Rules. Consequently both Principal Accountant General as well as Accountant General were the competent Disciplinary Authority. In other words, the Accountant General was also the Appointing Authority as well as Disciplinary Authority in the case of the applicant. Notification Annexure CA-1 has not even been challenged by the applicant in the instant O.A. in spite of

having knowledge thereof. Even otherwise, the said notification is in no way illegal and has rather been issued in exercise of powers conferred by various rules of the Rules as mentioned in the notification as already noticed.

19. In addition to the aforesaid, it is also significant to notice that there is neither any pleading nor any material on record to the effect that the applicant as Assistant Accounts Officer was promoted/appointed by Principal Accountant General. On pointed inquiry by the Bench, counsel for the applicant could not refer to any such pleading or material on record. Thus, whole contention of counsel for the applicant that Accountant General could not act as Disciplinary Authority because the applicant was appointed by the Principal Accountant General falls to the grounds. In this regard, it may be noticed that the applicant in the O.A. specifically pleaded that on his promotion as Section Officer in June, 1986, he was granted appointment on the said post by the Principal Account General, but while pleading his last promotion on the post of Assistant Accounts Officer, no such plea was taken that the applicant was promoted/appointed by the Principal Accountant General nor promotion/appointment order of the applicant as Assistant Accounts Officer has been placed on record which would have clinched the factual position on this aspect. Thus,

even it cannot be said that the applicant as Assistant Accounts Officer was promoted/appointed by Principal Accountant General. We may hasten to add that even if the applicant had been promoted/appointed as Assistant Accounts Officer by the Principal Accountant General, even then the Accountant General could validly act as Disciplinary Authority against the applicant. This position is clear from notification Annexure CA-1 and further clarified by circular dated 23.2.1989 Annexure CA-2. It has been clarified by said Circular that Accountant General is competent to impose major penalty on a person who was appointed by the Principal Accountant General. This clarification became necessary in view of an earlier circular dated 8.6.1984 which stood superseded by notification dated 13.9.1988 Annexure CA-1. Circular dated 23.2.1989 Annexure CA-2 (which is also impugned Circular Annexure-3) cannot be said to be illegal in any manner because the same is based on notification Annexure CA-1 and both the said notification and circular are perfectly valid.

20. There is another fallacy in the contention of counsel for the applicant regarding competence of the Accountant General to act as Disciplinary Authority in the case of the applicant. Accountant General by no means can be said to be an authority sub-ordinate to the Principal Accountant General,

although the 'former may be junior to the latter. Article 311 of the Constitution provides that no member of civil service shall be dismissed or removed by an authority subordinate to that by which he was appointed. Similarly Rule 12(4)(a) lays down that no major penalty shall be imposed by any authority subordinate to the Appointing Authority. Thus, the bar by Article 311 of the Constitution and Rule 12(4)(a) of the Rules is against major penalty being imposed by an authority subordinate to the Appointing Authority. The expression 'subordinate to the Appointing Authority' is very significant. In the instant case, as already noticed, Accountant General is not subordinate to the Principal Accountant General. For this added reason also, the contention regarding competence of the Accountant General to act as Disciplinary Authority, as raised by counsel for the applicant, is completely untenable. In this regard, judgments in the cases of Hari Sankar Tiwari(supra) and V.S. Binu (supra) are fully attracted to the facts of the instant case. Whereas, judgment in the case of Vimlesh Sonkar (supra) although tends to support the contention of the counsel for the applicant is not attracted, more particularly in view of notification Annexure CA-1 and Circular Annexure CA-2.

21. As regards non examination of P.P.Pant as witness during the inquiry, letters were sent to him for appearing as

witness in the inquiry but since he had retired, he did not appear before the Inquiry Officer as it often happens that a retired employee avoids to so appear. However, since other witnesses including Hiranmoy Mukherjee eye witness appeared during the inquiry, the evidence was found sufficient by the Inquiry Officer and the Disciplinary Authority to hold the articles of charge proved against the applicant to the extent indicated hereinbefore. This Tribunal is not to sit as court of appeal over the findings of the Inquiry Officer, Disciplinary Authority and Appellate Authority and is not to reappraise the evidence led during the inquiry. Sufficiency or reliability of evidence cannot be looked into by this Tribunal.

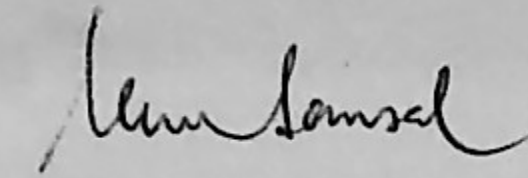
22. As regards alleged motive of Hiranmoy Mukherjee to depose against the applicant, the same is highly farfetched. In this regard, it is significant to observe that even if P.P. Pant had appeared as witness during the inquiry, the applicant could have urged that P.P. Pant was also annoyed and displeased with the applicant as mentioned in reply to the charge sheet. Thus, the applicant by alleging bias and motive against both the star witnesses of the department prepared a ground to assail the finding on the charges against him. However, the finding recorded by the Inquiry Officer and upheld by the Disciplinary Authority and Appellate Authority

cannot be challenged and set aside by the Tribunal on the aforesaid specious grounds. It may be added that even according to reply Annexure A-7 to the charge sheet submitted by the applicant, Mukherjee had his chances of promotion in the year 2006 in the normal course. According to the applicant, regular hearing of the inquiry was conducted from 22.7.2004 to 25.11.2005. Consequently, Mr. Mukherjee could not get any advantage for his promotion due to ouster of the applicant in the year 2006 because according to the applicant, Mr. Mukherjee was expected to be promoted in the year 2006 in the normal course. Thus, examined from any angle, it cannot be said that Mr. Mukherjee had any motive to depose falsely in the inquiry against his own senior colleague the applicant. In this situation, various judgments cited by counsel for the applicant have no applicability to the facts of the case in hand. The applicant was given full opportunity to defend himself during the disciplinary proceedings including opportunity before the Disciplinary Authority and the Appellate Authority.

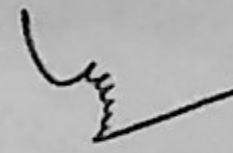
23. As necessary corollary of the discussion aforesaid, it emerges that there is no infirmity or illegality in impugned order Annexure A-1 passed by the Disciplinary Authority and order Annexure -2 passed by the Appellate Authority. No significant argument was advanced to assail impugned Circular

Annexure-3 dated 23.2.1989. Even otherwise, the said circular also does not suffer from any illegality, more particularly in view of notification dated 13.09.1988 Annexure CA-1 which has not even been challenged by the applicant in this O.A.

24. Resultantly, we find no merits in this Original Application, which is accordingly dismissed, leaving, however the parties to suffer their own costs.



(U.K. Bansal)
Member-A



(Justice L.N. Mittal)
Member-J

Date: 23/09/15

Sushil