

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

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**Original Application No. 520 of 2007**

Allahabad this the 13<sup>th</sup> day of December, 2011.

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./EDD**

**Hon'ble Mr. Shashi Prakash, Member (A)**

*yogendra singh* *S*

~~Yogendra Singh~~ Kushwaha, S/o Ramashraya Singh Kushwaha C/o

Sri Sheo Nath Prasad Vill. Maraon, Po. Rohinia Distt. Varanasi.

Applicant

~~Received  
Lok Adalat  
dated 11.1.2012.~~

**By Advocate: Sri L.M. Singh**

*sunil kumar*  
11.1.12.

Vs.

1. Union of India through the General Manager, (P) D.L.W., Varanasi.
2. Chief Mechanical Superintendent, D.L.W. Varanasi.
3. Senior Divisional Medical Officer, D.L.W., Varanasi.
4. Divisional Medical Officer, D.L.W. Varanasi.
5. Dr. Sunil Kumar Divisional Medical Officer, D.L.W. Varanasi/ Inquiry Officer.

Respondents

**By Advocate: Sri Anil Kumar**

**O R D E R**

Instant O.A. has been instituted for the following relief(s): -

"i. Issue a Writ, Order or Direction in the nature of certiorari commanding the respondents to quash the orders impugned Orders dated 07.04.2006 Passed by the Respondent No. 1 (Annexure No. A-1 to the O.A.), Appellate Order Dated 27.06.2006 passed by the Respondent No. 3 (Annexure No. A-2 to the O.A.) and Revisional Order dated 17.11.2006 passed by the Respondent No. 2 (Annexure No. A-3 to the O.A.)

ii. Issue a Writ, Order or Direction in the nature of certiorari commanding the respondents to reinstate the Applicant in

*sunil kumar*

*service with full back wages, continuity of service and all other consequential benefits admissible to the post.*

*iii. Issue a Writ, Order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

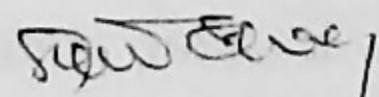
*iv. Award the cost of the Original Application to the applicant.*

2. Pleadings of the parties may be summarized as follows: -

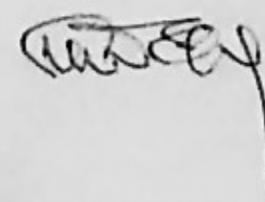
It has been alleged by the applicant that he was initially appointed as Substitute Bungalow Peon *vide* letter dated 11.01.1999 and worked on that post. All of a sudden, applicant felt ill w.e.f. 24.08.2004, and was under treatment. On 26.10.2004, applicant was declared medically fit and he submitted a joining report on 27.10.2004 along with medical certificate before respondent No. 2. The respondents after submitting the fitness certificate, were required to provide duty to the applicant but instead of permitting him to resume duty, a charge memorandum was served upon him on 04.10.2004 with the allegations that he had submitted fake school certificate at the time of his appointment. The applicant requested the respondents to supply the copy of complaint on the basis of which the investigation alleged to have been conducted, and the applicant also requested for giving sufficient time to reply to the charge sheet in question. But the documents were not supplied hence the

*Answer*

applicant has no option to reply the charge memo, in question, without obtaining the documents. The applicant denied from the allegations made against him. The inquiry was conducted by the Inquiry Officer (for short IO) and inquiry report was submitted against the applicant, and he was required to submit the reply within a period of 15 days w.e.f. 16.02.2006. The applicant narrated the procedural lapses committed by the IO but the Disciplinary Authority without considering the defence of the applicant, passed an order of termination. An appeal was filed by the applicant on 18.05.2006 before the respondent No. 3, and alleged that the inquiry has been conducted in utter violation of mandatory provisions even <sup>following</sup> <sup>2</sup> without <sup>1</sup> any process of law, and also the inquiry was conducted in a biased manner. The Appellate Authority without considering the contentions made by the applicant rejected the appeal in a cursory manner. Thereafter, applicant preferred a Revision before the Revisional Authority on 04.08.2006 after being aggrieved from the Order passed by the Appellate Authority but the <sup>8</sup> Revision of applicant ~~was~~ also rejected in a very cryptic and cursory manner. The Orders passed by the respondents are illegal hence, the O.A.



3. The respondents contested the case, filed the Counter Reply and denied from the allegations made in the O.A. It has further been alleged that the post of Telephone Attendant-cum-Dak Khalasi was earlier designated as Bungalow Peon in the scale of Rs. 2550-3200/- but later on the post was re designated as Telephone Attendant-cum-Dak Khalasi. The nature of duty of the Telephone Attendant-cum-Dak Khalasi, erstwhile Bungalow Peon is of trust and confidence. This post is manned only by a recruitee chosen personally by the officer concerned. Dr. R.C. Trivedi, Senior Divisional Medical Officer recommended the case of the applicant as Bungalow Peon. The proposal was approved by the General Manager, as per extant rules, and offer of appointment was made for the post of Telephone Attendant-cum-Dak Khalasi for a period of three months. The applicant mentioned the name of the Institution, from which he got education, as Sarswati Pathshala Industrial Inter College, Civil Lines, Jhansi, and submitted the mark sheet of 8<sup>th</sup> Class and T.C. issued by the same institution. The minimum qualification for Group 'D' post is 8<sup>th</sup> class. Afterwards the certificates were got verified from the Basic Shiksha Adhikari, <sup>Jhansi</sup> and on verification it was informed that no such T.C. has been issued from the college as per records, and the T.C. is not true. From the T.C. submitted



by the applicant, in support of his educational qualification at the time of appointment, it revealed that the applicant has secured employment on the basis of fake certificate. Hence, the disciplinary inquiry was conducted against the applicant, as the allegation against him was of serious nature. The I.O. was appointed to conduct the inquiry and witnesses were examined during the inquiry; documents were also filed by the applicant in defence; and the inquiry report was submitted. The applicant was found guilty and the order was passed by the Disciplinary Authority of removal from service. The order was communicated to the applicant. That the appeal was also filed by the applicant before the Appellate Authority, and the Appellate Authority after considering the entire record of the case arrived at the conclusion that the penalty imposed upon the applicant is warranted by the records, and the Revisional Authority also considered the matter and rejected the Revision after considering the facts of the case. It is claimed by the respondents that there is no procedural lapse, irregularity or violation of principle of natural justice in granting punishment to the applicant. The O.A. lacks merit and is liable to be dismissed.

4. In response to the CR filed on behalf of the respondents, the applicant also filed the Rejoinder

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Affidavit and he reiterated the facts which have been alleged in the O.A. However, it has also been alleged that the certificates relied by the respondents during the inquiry was never supplied by the applicant.

5. We have heard Sri L.M. Singh, Advocate for the applicant and Sri Anil Kumar, Advocate for the respondents and perused the entire facts of the case.

6. It has been argued by learned counsel for the applicant that the inquiry conducted by the I.O. was against the established procedure; documents were not supplied to the applicant in spite of demand. The Disciplinary Authority passed the punishment order without considering all facts and circumstances of the case. It is the case of the applicant that the Appellate Authority passed the order in very cursory manner and the order is cryptic, and against the order of the Appellate Authority, the applicant filed a Revision which too has been rejected by the Revisional Authority in a very cursory manner without applying it's mind.

7. Instead of considering merits of the case, it will be just and appropriate to consider whether the Appellate Authority has applied its mind in deciding the Appeal. Annexure A-2 is the copy of order passed by the Appellate

*Subramanyam*

Authority, and Annexure A-3 is the copy of order passed by the Revisional Authority. Learned counsel for the applicant argued that the orders passed by the aforesaid authorities are cryptic and cursory in nature, and it cannot be inferred that the Appellate as well as Revisional Authority applied their mind at the time of passing the order. The points raised by the applicant in the Appeal and the Revision were not considered, hence in view of the law laid down by the Hon'ble Supreme Court in the case of '*Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others (2009) 1 Supreme Court Cases (L&S) 806*', these are no orders passed by the concerned authorities. The Hon'ble Supreme Court held, as under: -

*"An order of affirmation need not contain as elaborate reasons as an order of reversal but that does not meant the order of affirmation need not contain any reasons at all. Whether there was an application of mind or not, can only be disclosed by reasons, at least in brief, mentioned in the order of appellate authority. An affirmation order must contain some reasons, at least in brief."*

Hence, in view of the Judgment of the Hon'ble Apex Court, the order of the Appellate Authority and Revisional Authority need not ~~contain~~ <sup>*to be maintained P*</sup> as elaborate reasons ~~as an~~ <sup>*has not been mentioned*</sup> ~~order of reversal~~ but there must be application of mind in passing the order. At least some reason must be mentioned. We have perused the order of the Appellate

*S. D. S.*

Authority (annexure A-2), wherein it has only been mentioned by the Appellate Authority that he has considered the punishment order dated 07.04.2006 as well as the appeal preferred by the applicant, and he comes to the conclusion that the Disciplinary Authority passed the appropriate order of punishment and no order has been passed that whether the Appeal is dismissed or allowed but it is to be presumed that the Appellate Order means that the appeal stands dismissed because it has been observed that the punishment awarded by the Disciplinary Authority is appropriate. Annexure A-3 is the order passed by the Revisional Authority, and it has been mentioned in the order that "*I have gone through your above referred revision petition dated 02.08.2006 and the entire case in detail. The punishment imposed by disciplinary authority vide NIP of even no. dated 07.04.2006 is adequate and requires no change.*" From perusal of the order, it appears that there is no application of mind in passing the order and in view of the Judgment passed by the Hon'ble Supreme Court, at least brief reason must be given. Dismissing the appeal or revision by one sentence is not proper. The authorities must consider the appeal or revision minutely and affirmation order must contain some reasons, at least in brief. Under the aforesaid circumstances, it can be said that the orders

*Amrit Chawla*

passed by the Appellate as well as Revisional Authority deserve to be set aside.

8. Instead of recording any finding on the merits of the case, it will be just and appropriate to direct the Appellate Authority for deciding the appeal afresh after considering all the facts and circumstances alleged by the applicant in his appeal. The order must be reasoned and speaking one. O.A. deserves to be allowed.

9. O.A. is allowed. The order of the Revisional Authority dated 17.11.2006 (annexure A-3) as well as order of the Appellate Authority dated 27.06.2006 (annexure A-2) are quashed and set aside. The matter is remanded back to the Appellate Authority for deciding the appeal preferred by the applicant, within a period of three months from the date when a copy of this Order is received. The applicant shall be at liberty to file the Revision, if his appeal may be dismissed, within the statutory period. The applicant shall produce a copy of this Order before respondent No. 3 at the earliest. No cost.

*S. hanu*  
Member - A

*Shivshankar Ray*  
Sr.J.M./HOD