

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, : CUTTACK.

ORIGINAL APPLICATION NO:59 OF 1988.

Date of decision: October 11, 1990.

V.O. Thomas Applicant

- Versus-

Union of India and others Respondents.

For the applicant : M/s S.Misra-l,
S.N.Misra,
Advocate.

For the Respondents : Mr. Tahali Dalai, learned
Additional Standing
Counsel (Central)

C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the reporters or Not? No.
3. Whether Their Lordships wish to see the fair copy of the Judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J), In this application the reliefs sought for are setting aside of the order imposing a penalty on the applicant and for refund of the amount already recovered from the salary of the applicant before filing of the application.

2. The facts alleged by the applicant, stated briefly, are as below. The applicant was posted as a Junior Engineer in the Potteru Construction Division No.1, Dandakaranya Project. During the period from August, 1979 to October, 1981 about two third portion of the construction work of the Right Canal from 11.815 Kms. to 12.465 Kms. had been executed. He measured the pits after excavation of ^{earthen} ~~works~~ by the agencies employed for the job and prepared bills according to the procedure laid down in the C.P.W.D. code. These measurements by him were checked measured by the Assistant Engineer, his immediate superior and accepted by the next higher authority i.e. the Executive Engineer whereafter payments were made to the Agencies employed for excavation of work for the construction of the ^{canal} ~~bank~~... His successor measured the canal banks after three monsoons and recalculated the work done. Basing on such re-calculation the Superintending Engineer called for an explanation from ~~on~~ him (the applicant) regarding measurements made by him and he submitted an explanation, copy of which is at Annexure A/2. Thereafter a Memorandum of charges,

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copy is at Annexure-A/3, was served on him. An Inquiry was made, the Inquiry Officer appointed was the Executive Engineer (C), Malkangiri. The Inquiry Officer on 18.8.1984 submitted his Report finding him (the applicant) not responsible for any excess payment to the contractors and recommended for exhortation. The copy of the Inquiry Report is at Annexure -A/4. The Superintending Engineer construction circle was the disciplinary authority and he did not accept the findings of the Inquiry Officer and found him (the applicant) guilty of not handing over the field book in respect of the excavation work to his successor and thus he inferred a lack of devotion to duty on his (the applicant's) part. The disciplinary authority found him (the applicant) responsible for over payment of Rs. 5,000/- and he ordered for recovery of the said amount in 25 instalments, each of Rs. 200/-. Against this order of the disciplinary authority, an appeal was preferred to Respondent No.3 who rejected the said appeal, the copy of the appellate order is at Annexure-A/7. The Revision was preferred to Respondent No.1 and Respondent No.1 rejected the revision, copy of the order of rejection is at Annexure-A/9. It has been averred in the application that he (the applicant) was found guilty of a fact not mentioned in the Memo of charges. Therefore, the entire proceeding was vitiated.

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3. The Respondents in their counter have stated that the applicant was working in Satiguda Canals Division, Dandakaranya Project, Malkangiri was entrusted with the work of excavation of earth of Right Canal and the work was executed through contractors. The applicant prepared a bill showing an excess measurement of 3276 KMs of earth and thus there was an over payment of Rs.10,000/- to the contractors. The applicant was asked to submit an explanation, he submitted one which was found to be unsatisfactory. The applicant had not been made over the field book to his successor on his relief from the division, thereafter a disciplinary proceeding was started against him for having violated Rule-3 of the Central Civil Services (Conduct) Rules, 1964 and the disciplinary authority, after carefully examining the findings recorded by the enquiry Officer and the other materials, found the applicant responsible for over payment of Rs. 5,000/-. With regard to the allegations made by the applicant concerning the findings of the enquiry officer, it is stated in the counter affidavit that the enquiry officer found that there was an excess execution of 1674 KMs and the enquiry officer wanted to give the benefit of doubt in favour of the applicant holding that excess measurement was rather negligible and this was beyond his jurisdiction. The Respondents have also disputed the stand of the applicant that the appellate and the revisional authorities rejected the appeal and the revision respectively, Without

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properly appreciating the contentions made by the applicant.

4. We have heard Mr. S.N.Misra learned Counsel for the Applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the Respondents and perused the papers. In the course of his arguments Mr. Misra has taken us through the memorandum of charges, the Inquiry Report and the order of the disciplinary authority. From the Memorandum of charges it would be found that though it did not strictly conform to the standard form in Central Civil Services (Classification, Control and Appeal) Rules, 1965, ^{yet} all the details of accusation were mentioned. From page 14 of the brief it would be found that the applicant was charged with not having handed over the level field book to his successor at the time of handing over ~~and~~ relieved from that division, therefore, the argument of Mr. Misra that there was no charge for non-handing over the field book is not wellfounded. As the copy of the disciplinary authority's order is to be found at pages 21 and 22 of the file. It would be better to quote para-4 of the order of the disciplinary authority

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"And whereas the undersigned as the Disciplinary Authority, after careful study of the Inquiry Reports and all

relevant documents pertaining thereto, does not agree with the findings of the Inquiry Officer. The Junior Engineer (C) has not handed over the original field books to his successor. The field book is an important document. He failed to handover the details of work done in this reach to his successor. Lack of devotion to duty is proved. Lack of integrity is not proved. The undersigned holds him responsible for the overpayment of Rs. 5000/-."

From the quoted portion it would be manifesto that all that the disciplinary authority mentioned was that he did not agree with the findings of the Inquiry Officer on going through the Inquiry Report and the relevant documents but he did not assign any specific reason why he disagreed. It is now settled that when a disciplinary authority agrees with an Inquiry Officer, he need not give any reason nor any reason whatsoever except stating that he agrees with the Inquiry Report. But, when the disciplinary authority ~~differs~~ from the Inquiry Officer's report in all fairness he must give reasons for such disagreement as otherwise the officer facing the disciplinary proceeding would be ~~at~~ ^{at} set a disadvantage to successfully challenge the order by preferring an appeal. In this connection a reference may be made to a decision of Punjab and Harayana High Court in the case of H.K.Khana Vs. Union of India reported in 1971(1)SLR 618.

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The Inquiry Officer while giving his findings stated that an excess measurement of only 1674 ^{comes} KM was revealed from the documents executed. The prosecutor could not show that

only the applicant was responsible for the excess measurement as the work was executed by others as well. The Inquiry Officer, after making some calculations based on records, came to the ultimate finding that the actual excess was only 102.18 ^{cu m} ~~₹4~~ and this was rather an insignificant quantity compared to the quantum of work done. The disciplinary authority did not meet any of the reasons given by the Inquiry Officer in support of his finding. It is true that the disciplinary authority had the right either to agree or to disagree with the finding of the Inquiry Officer, but this Right of the disciplinary Authority could not be exercised capriciously or arbitrarily. Therefore, there is much substance in the contention of Mr. Misra that the order of the disciplinary authority is not supportable. In this connection a reference to another decision of the Punjab and Harayana High Court in the case of Union of India Vs. Dalip Singh reported in 1973 SLJ 728 may be referred to.

5. The Appellate order as ~~at~~ Annexure-A/7 is also another cryptic order ^{without} when setting forth the reasons for rejection of the appeal. Thus it would be found that till up to the appellate stage the concerned authorities did not conform to the norms and thus their orders are vulnerable and liable to be set aside. The Revisional

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Authority in his order Annexure-A/9 also did not assign adequate reason which strictly speaking does not ~~need~~ ^{meet} the requirements of natural justice.

6. In view of the state of affairs the order imposing the penalty of recovery of Rs. 5,000/- which is based on the assumption that the applicant was responsible for the loss, cannot be sustained and accordingly is quashed. Parties to bear their own costs.

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VICE-CHAIRMAN



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MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K.Mohanty.