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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 256/2002
~~Tax No.~~

~~198~~

DATE OF DECISION 05/02/2004

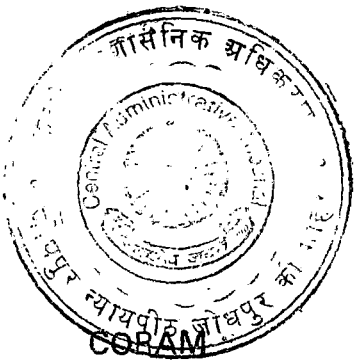
Harish Kumar Petitioner

Mr. Ashok Chhangani Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. S.K. Vyas Advocate for the Respondent(s)



The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. G.R. Patwardhan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *no*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

[Signature]
(G.R. Patwardhan)
Administrative Member

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(J.K. Kaushik)
Judicial Member

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 256/2002

Date of decision: this the 5th day of February, 2004

Hon'ble Mr. J K Kaushik, Judicial Member
Hon'ble Mr. G R Patwardhan, Administrative Member

Harish Kumar Son of Shri Mahendra Singh, aged 26 years, resident of Village & Post Office, Dhanora, Silvarnagar, Bagpat (U.P.).

At present working as Junior Engineer in the Office of the Garrison Engineer (South) Banar, District Jodhpur.

...Applicant.

(By Advocate Mr. Ashok Chhangani, for applicant)

versus

- (1) The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
- (2) The Chief Engineer, Southern Command, Head Quarter, Engineering Branch, Pune - 41 001.
- (3) The Chief Engineer, Jaipur Zone, Bani Park, Jaipur.
- (4) The Garrison Engineer (South), Banar, District, Jodhpur.

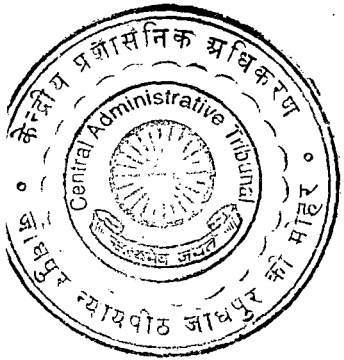
.....Respondents.

(By Advocate Mr. S.K. Vyas, for respondents)

ORDER

BY J K KAUSHIK, JUDICIAL MEMBER:

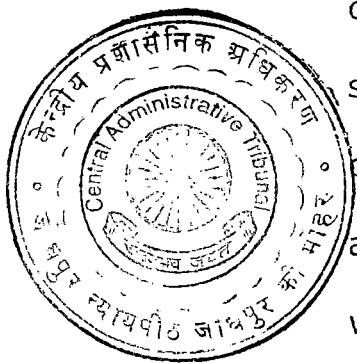
Shri Harish Kumar has filed this Original Application, inter alia, for quashemnt and setting aside the order dated 18.10.2001(Annexure A/1) and order dated 28.5.2002 (Annexure A/2), passed by the disciplinary authority and appellate authority, imposing and upholding the penalty of



withholding of two increments with cumulative effect and the consequent benefits thereof.

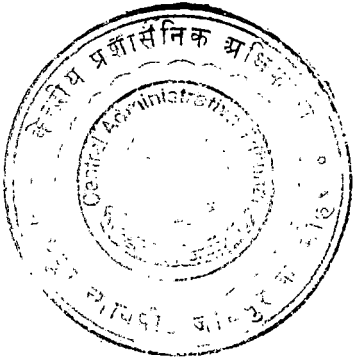
2. Factual scenario necessitating the filing of this application in nut shell is that the applicant was initially appointed as B & R Gr. II on dated 1.9.97, on probation for a period of two years. The said post came to be redesignated as Junior Engineer. He was posted in the office of Garrison Engineer (Independent Project), Barmer, Jodhpur. In addition to his normal duties of supervision of works, he also assigned the additional charge of the post of Store Keeper in March 1999.

3. It has been next averred that on 15.10.99, the AGE (P), Sub-division issued Unstamped Receipt for issuing 580 bags of cement the contractor awarded the work of construction of soakage well. The representative of the concerned contractor collected 280 bags on the same day. The applicant immediately apprised the same to his controlling authority i.e. the AGE (P) who in turn told him not to bother and the contractor would collect the remaining bags within few days. The representative of the contractor collected the left out bags only on 19.11.1999 from the stores. The gate pass was accordingly prepared by indicating the date of issue as November but the AGE (P) asked him to substitute the same by October since as per the procedure in vogue, the stores are required to be collected within two days from the date of issue. The applicant being a new recruit that too on probation had no option but to adhere to the instructions of his controlling officer.



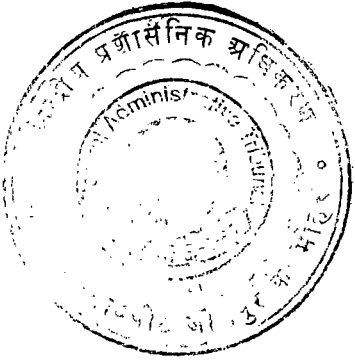
4. The further case of the applicant is that the representative of the contractor, while taking the said bags to some other destination, was intercepted by Army Intelligence who also seized the cement bags. An investigation was made by the GE (IP) and the applicant was meted out with warning vide letter dated 28.1.2000. Thus a penalty of censure was imposed on him. He was also confirmed on completion of probationary period satisfactorily.

5. Subsequently, the applicant was issued with a charge sheet under Rule 14 of CCS (CCA) Rules 1965 (for brevity rules), vide memo dated 9.11.2000, in respect of the same incidence. He submitted his statement of defence and apprised that that he was already penalised with warning/censure vide letter dated 28.1.2000 and the charge sheet was not legally permissible. He denied the allegations and gave reasons for the same. An oral inquiry was held and during the inquiry no evidence oral or documentary was produced on behalf of the department. It has been held that he failed to perform his duties as per orders on the subject, which resulted in non-adherence of store keeping instructions and hence failed to maintain absolute integrity and devotion to duty. The disciplinary authority has inflicted the penalty of withholding of two increments with cumulative effect. And the same has been upheld by the appellate authority. The OA has been filed on diverse grounds which we shall deal in the later part of this order.



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6. The respondents have resisted the claim of the applicant and have filed concise counter reply to the OA. The main defence as set out in the reply is that the simple warning letter is not a punishment and the same would neither be entered in the service book nor any part II order passed to publish the casualty and it was only meant to improve the applicant. Thus the ground of twice punishment is misconceived. The penalty has been awarded after carefully examining the complete case and on the basis of inquiry report. Therefore the penalty has been awarded legally and not arbitrary and not arbitrary. And the OA deserves to be dismissed. The appeal has been rejected as per the powers conferred vide rule 27 of rules. An exhaustive rejoinder has been filed; almost reiterating the factual backgrounds already narrated in the OA.



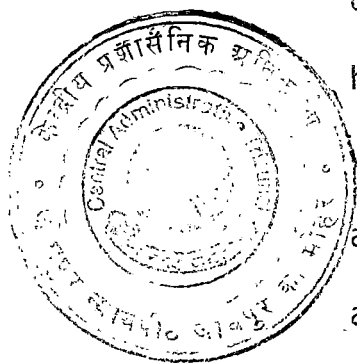
7. We have heard Mr. Ashok Chhangani and Mr. S K Vyas, the learned counsel for applicant and respondents, respectively, at a considerable length and have given our anxious thought to their submissions, pleadings and the records of this case.

8. Mr. Chhangani has vociferously contended that it is case of double jeopardy in as much as the applicant was already issued with a warning, which tantamounts to a penalty of censure, in the same incidence, there was no question of vexing the applicant again by issuing charge sheet and imposing the penalty. Such course of action is not permissible under the rules in force. It was next submitted that the theme adopted by the inquiry officer was as if it was for the delinquent to disprove the

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charges and not for the prosecution to prove the charges. The prosecution did not produce any evidence; neither oral nor documentary, and still held the applicant responsible for the charges. The observations made by the inquiry officer are otherwise in favour of the applicant. The seconded gate pass was signed by the Engineer Incharge and the inquiry officer has categorically concluded that the engineer in charge was aware of the issue of cement on 19.11.99 as per para 7(iv) of report.

9. Mr Chhangani also submitted that the applicant was a new person and was discharging additional duties of store keeper. He made us to travel through the observation of the inquiry officer at the end of inquiry report and submitted that it was a case of no evidence in as much as he only obeyed the orders of his higher authority and that can not construed as misconduct. It was also argued that the applicant has been picked whereas no action has been taken against the engineer incharge who is actually responsible for the whole episode and there is hostile discrimination in the matter of punishment.



10. My Chhangani endeavoured hard to prove that the findings of the inquiry officer are not supported by any evidence and it is a case of no evidence. He made us to travel through the inquiry report and contended that the findings recorded were such as could not have been reached by an ordinary prudent man and the findings were perverse and self-contradictory. His main thrust has been that in the records the engineer in charge has made the entry in respect of all 580 cement bags in the

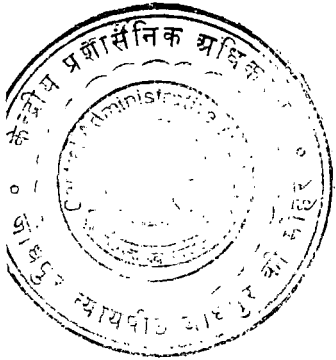
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consumption registered on 15.10.99 despite the fact that 300 bags were admittedly issued on 19.11.99. And once the gate pass was signed by the engineer in charge, how the applicant could be blamed for the same. He has also contended that there is no ill-will on the part of applicant for making any wrongful gain or causing any wrongful loss to the state and hence, even the penalty imposed on him which is a major penalty is ex facie disproportionate one.

11. The learned counsel for the applicant has next contended that the disciplinary authority has not at all evaluated the evidences and has passed the penalty order in mechanical way with a closed mind. The appellate authority also seems to have been travelling in the same boat and has turned down the appeal without considering the points raised in the appeal and also did not find expedient to give specific findings on the three mandatory points as required by the Rule 27 (2) of rule and hence the appellate order deserves to be quashed.

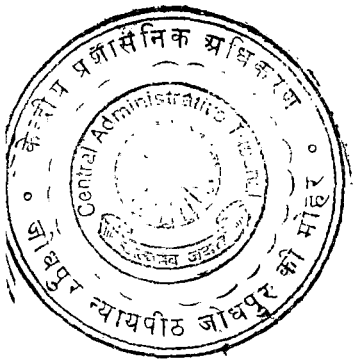
12. Per contra, as usual, Mr S K Vyas has reiterated the grounds of defence as set out in the reply. He desired to cite some authorities in support of the case of respondents and wanted few days time which was also given, but unfortunately we could not be benefited with the same since even after waiting for about 10 days, we received nothing.

13. We have considered the rival contentions adduced before us by the learned counsel for the parties. It a disciplinary

proceeding matter and the scope of interference in findings of fact arrived at in a disciplinary proceedings by the enquiry officer is limited in the sense that the Court cannot sit in appeal over those findings and assume the role of appellate authority but this does not mean that in no circumstance, the Court can interfere. The power of judicial review available to the High Court under the Constitution takes in stride the domestic enquiry as well and it can interfere with the conclusion reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man and the findings were perverse and made on the dictate of superior authority.

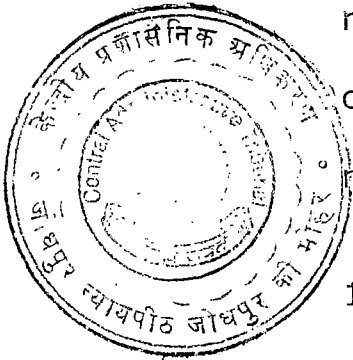
14. In the instant case, there is hardly any quarrel on the facts. It is admitted that the applicant was assigned the additional duty of the store keeper post. It is also admitted that he was employed under the supervision of Engineer in charge. 580 cement bags were issued on 15.10.99 and the transaction has been reflected by the engineer incharge. Subsequent Gate pass was also signed by the said engineer on 19.11.99 by amending the date of Oct 99. The whole transaction was very well known to the said engineer in charge. The applicant was also not involved in the episode and allowing the 300 cement bags in the store for about a month after the issue was made. There is no charge against him that he in any had any conspiracy with anyone and any ill motive attached to him. On the other hand, there is no depute that as per the orders in vogue the cement



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bags could not have been allowed to be kept for more than two days period (of course no rule has been brought to our notice).

15. As regards the first contention of Mr. Chhangani that it was a case of double jeopardy in as much the applicant was given warning in the same incident and he could not have been subjected to another penalty, we are not impressed with the same. Firstly, it was a mere informal warning and was not a recorded warning. Such warning can not be construed as a penalty of censure. Warning is also not included in the list of penalties enumerated in rule 11 of rules. No law has been brought to our notice in support of the issue. It would also not form the part of service records and no part II order would reflect the occurrence. If that be so, we are bound to reject the contention in question and accept the defence of the respondents that it is not a case of double jeopardy.



16. Now we would advert to another vital contention advanced on behalf of the applicant that the finding of the inquiry officer are not supported by any evidence and it is a case of no evidence. We had to carry out a close and incisive analysis on this issue. There no doubt that the findings of the inquiry officer are halting in as much as one side it has been said that the engineer incharge was in know of the whole transaction and he made entry of the stores as well as signed the gate pass in back date. It has also been observed that the applicant seemed to have worked as per advice of his incharge engineer; he being a new person and also handling the additional charge of store

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keeper. However, it is true that the cement bags were kept in the stores for over a month whereas as per rules it could not have been kept for over two days and it can not be said to be case of no evidence. Thus there has been violation of said rules and this ground of the applicant is also not sustainable being ill-founded and groundless.

17. Now we resort to examine the another contention raised on behalf of the applicant that the findings recorded were such as could not have been reached by an ordinary prudent man and the findings were perverse and also self-contradictory. We have already seen that the applicant was working under the engineer in charge who was his controlling authority as well as was throughout associated with the complete transaction of 580 cement bags. The inquiry officer has observed that he being new must have behaved as advised by his engineer in charge. We are impressed with the logical observations of the inquiry officer for more than one reason. There is no charge of any embezzlement against the applicant. The action of the applicant was not in isolation; rather the same is with the concurrence of his controlling officer. He only obeyed the orders of his superior officer. Even the applicant had absolutely no ill-motive; rather acted in good faith. In such circumstances, we are of firm opinion that a person of ordinary prudence could not have come to the conclusion that the applicant was guilty of the charges alleged against him and therefore the findings of inquiry officer can be safely construed as perverse and the penalty order based on such findings can not be sustained in law.



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18. As regards the next contention that the applicant was discriminated in the matter of penalty, from the facts and circumstances and the above analysis, it would be axiomatic that the applicant acted as per the advice/order of his controlling officer but said controlling officer has not been even touched and the applicant has been made scapegoat and no further debate is required on this point. On this count also the impugned orders can not be sustained (**AIR 1984 SC 1499; Sengara Singh and others etc. vs. The State of Punjab and others - refers**).

19. Now we come to the disciplinary and appellate orders- the disciplinary authority has not at all discussed the observation part of the findings of the inquiry officer and passed the order in a stereotyped manner. The appellate authority has rejected the appeal by a cryptic order without application of mind in as much as no specific findings have been given on the three mandatory points including that of adequacy or inadequacy of the penalty (disproportionate penalty) as per rule 27(2) of the rules. There is no indication that the appeal has been rejected by application of mind. The same cannot be sustained (**AIR 1990 SC 1984; S.N. Mukherjee vs. Union of India and AIR 1986 SC 1173; Ram Chander vs. Union of India - refer**).

20. Though not argued on behalf of any of the parties, we cannot loose sight of the term in which the very penalty is clothed. The penalty was withholding of two increments for a period of three years with cumulative effect but one gets only one increment during a year. It is next to impossible to



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implement such penalty since increment can be withheld when one gets it and by no stretch on imagination two increments can be withheld in a year since one does not get them at all. Penalty is as such is absurd and neither it has been provided under the rules nor could have been feasible. It is difficult to understand as to what mind the disciplinary and other authorities have applied. Such penalty cannot be sustained in law. It may be mystery for us to imagine as to how the respondents might have given effect to the penalty order in question.

21. The upshot of the aforesaid discussion is that there is merit and substance in this Original Application and the same stands allowed. The impugned orders dated 18.10.2001 (Annexure A/1) and order dated 28.05.2002 (Annexure A/2) are hereby quashed and the applicant shall be entitled for all the consequential benefits. Costs made easy.




(G.R. Patwardhan)
Administrative Member


(J.K. Kaushik)
Judicial Member

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के लिए Ashok Chhangani

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