

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

**Original Application No. 568/2006
This the 29 day of January 2009**

**HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.
HON'BLE DR. A.K. MISHRA, MEMBER ADMINISTRATIVE.**

Surendra Prakash, aged about 63 years, Son of Sri Puttu Lal, Resident of C-1520, Indira Nagar, Luckow-3.

...Applicant.

By Advocate: Ms. N. Srivastava.

Versus.

1. Union of India, through the Secretary, Defence, Government of India, South Block, New Delhi.
2. Controller General of Defence Accounts, West Block V, R.K. Puram, New Delhi-110066.
3. Principal Controller of Defence Accounts, Lucknow Cantt., Lucknow.

...Respondents.

By Advocate: Shri Vishal Choudhary for Km.

Asha Choudhary.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed OA with a prayer to set-aside the impugned penalty of reduction of 10 %

of his monthly pension for a period of 5 years vide order Dt. 30.11.2005 (Ann.1) and pass suitable order which the court deem fit and proper in the circumstance of the case. The applicant questioned the validity of impugned order (Ann.-A-1) on the following grounds.

(i). When the charges relate to the period July 93 to 94, but the charge sheet was served much belately in 2002, at the time of his next promotion to deprive him for promotion.

(ii). Inspite of prior notice for adjournment, the enquiry officer proceeded further by making him ex parte and no opportunity was provided for production of his defence.

(III). Documents relied upon in charge sheet had not been supplied and the complainant never called as witness to prove the charges and further the alleged complaint does not bear the signature of the complainant and the same was not served upon him.

(iv). The punishment awarded on the basis of ex parte report and without furnishing documents and without examining the witnesses which is illegal, unjust, arbitrary and malafide.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the applicant did not cooperate with the enquiry officer (EO) and when sought adjournment at the last hour, he denied the same and proceeded further and thus, the proceedings are legal and according to statutory procedure and thus no justified grounds are there for interference of this tribunal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated the pleas taken in the OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant while working on the post of senior accounts officer in the year 2000, a charge sheet (A-A-2) 8.2.2000 was served upon him alleging that while he was serving in the office of PAO (ORS) 58 GTS, Shillong, closed final account in respect of L/Hav No.54444021, Ruk Bahadur Gurung with a debit balance of Rs.18,009/- and caused financial loss for non satisfaction of his demand of illegal gratification of Rs.5000/- by the said Hav. and

~

thus, he failed to maintain absolute integrity and lack of devotion of duty and acted in the manner unbecoming a govt. Servant, thereby violated Clauses I,II, III of Rule 3.(1) of CCS (Conduct) Rules, 1965. The applicant submitted reply dt.2.4.2000 denying the charges leveled against him. The disciplinary authority (R-2), who was not satisfied with the reply of the applicant, instituted departmental enquiry by appointing Inquiry Officer and Presenting officer by order Dt. 25.8.2000. The inquiry officer, who conducted the inquiry, concluded proceedings ex parte and submitted his report dt.28.4.2003 (Ann-A-7) which the disciplinary authority i.e. the President of India, accepted the inquiry report without any disagreement. The copy of the inquiry report, duly accepted by the President, along with the copy of UPSC recommendations was duly served upon the applicant on 13.09.2003, for which he submitted his representation on 6.10.2003 and thereafter penalty of reduction of 10% of his monthly pension for a period of 5 years was imposed against the applicant. Before submitting the inquiry report, the applicant retired from service on 31.12.2002, on attaining the age of superannuation. It is also

not in dispute that the alleged complaint of L/Hav Ruk Bahadur Gurung dt. 16.10.1993, which is the basis for issuing charge sheet and inquiry proceedings against the applicant was an unsigned application.

7. On perusal of inquiry report enclosed to Annexure-A-7 reveals that after commencement of inquiry proceedings, the applicant made representation for supply of certain documents. But the same was allowed partly and rejected for supply of DO-II and File containing the receipt of Pt. II, orders etc. on the ground that they could not be traced. Thereafter, when the regular inquiry commenced on 8.1.2002 the applicant submitted an application to the disciplinary authority for change of the inquiry officer on the ground of bias but the same was not accepted twice. Thereafter, when the enquiry commenced on 21.5.2002, the applicant again sent adjournment slip for change of enquiry officer on the ground of bias. But the enquiry officer did not consider the request for adjournment on 21.5.2002 on the ground that the delinquent officer has been repeatedly abstaining from the proceedings and thus, decided to proceeded ex parte and thus concluded proceeding by conducting

~

ex parte enquiry under Rule-14 (2) of CCS (CCA) Rules. Thereafter, he submitted his report to the disciplinary authority on 28.04.2003, with a finding that the charges are proved.

8. The applicant mainly questioned the validity of inquiry report on the ground that inspite of seeking adjournment, the inquiry officer conducted proceedings ex parte. He also further stated that the complainant did not attend the inquiry proceedings and his alleged complaint does not bear any signature. It is also the case of the applicant that on receipt of complaint of Hav. Ruk Bahadur Gurung, the department appointed Special Revision Team, who conducted preliminary inquiry against the applicant basing on the grievances of the complainant and submitted its review report (Ann. 6) but the same is also not helpful to prove the charges against the applicant. Further, inspite of his repeated request for change of enquiry officer on the ground of bias, the same was not considered properly and in the meantime, the inquiry officer conducted the proceeding hastily in ex parte manner, without considering his request for adjournment.

9. Admittedly, the charges leveled against the delinquent officer was misconduct involving his

integrity and dishonesty, while settling the account of Hav. Ruk Bahadur Gurung, which resulted in excess adjustment and closing the final settlement amount in debit balance on the ground that the complainant did not satisfy the demand of the applicants illegal gratification of Rs. 5000/- Thus, the charge leveled against the applicant before the enquiry is two fold and the main allegation against him was demand of illegal gratification of Rs.5000/- from the Hav. and coming to the second part that because of non satisfaction of such demand the applicant with malafide intention made incorrect settlement closing the final settlement account in debit balance and as such, even for proving second part of the charge, the dishonest or malafide intension of the applicant has to be proved besides dismissing certain items wrongly disallowed which resulted in excess adjustment and thus closed in debit balance.

10. Coming to the first part of the charge there is no evidence either of the complainant Hav. Ruk Bahadur Gurung, or other witnesses before the enquiry and without any evidence, proving of the allegation against the applicant that he demanded illegal gratification from the complainant does not

arise. Added to it, the complaint also does not bear any signature and it is unsigned. Similarly in respect of the charge that because of non-satisfaction of dishonest demand of the applicant, he wrongly disallowed certain items of the complainant and showed his account in debit balance also no material evidence is available on record.

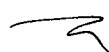
11. Coming to the settlement of account of Hav. Ruk Bahadur Gurung, by the applicant, the enquiry officer mainly relied on the review report Ann-A-6, which was prepared and final settlement of the account of Hav Ruk Bahadur Gurung, was revived by the respondent department, in which they noticed certain items as wrongly disallowed, which resulted in excess adjustment and closing final settlement account of Hav. Ruk Bahadur Gurung, in debit balance. But the said review report does not make any specific finding against the applicant and further, it also shows that before finding fault with the concerned officers, verification of DO-II is required. But the said DO-II was not placed before the departmental enquiry. When the applicant sought production of such documents, the department expressed their inability stating the same could not be traced. In such circumstances without

production of such record of DO-II and its verification, placing reliance only on the review report Ann.A-6, where nothing was shown against the applicant is not at all sufficient for proving that the applicant intentionally disallowed certain allowances wrongly. Thus, the review report dt. 10.5.1994 (Ann-A-6) on which enquiry officer relied is also not helpful to prove the charges leveled against the applicant. Thus, the finding of the enquiry officer against the applicant is not at all convincing.

12. Though the Jurisdiction of this tribunal under judicial review is very limited to examine whether the departmental enquiry held properly and the enquiry report is a reasonable based on evidence and not arbitrary. In judicial review, the court is not concerned with the merits and correctness of the decision of the enquiry officer but with the manner in which the decision is taken or order is made is most important.

13. On the face of the records, it is clear that inspite of expressing his displeasure and bias against the enquiry officer the enquiry officer conducted the enquiry proceedings on the ground that the disciplinary authority rejected such

request of the applicant. When the applicant made representation seeking adjournment on 22.5.2002 on the ground that he made another representation for change of enquiry officer on the ground of bias and on the ground of illness the enquiry officer rejected such request of the applicant and proceeded the enquiry in ex parte. It is also not in dispute that the appellate authority rejected such representation of the applicant for change of enquiry officer on the ground of bias and communicated such letter Dt.3.4.2003, which they have mentioned in the impugned order of punishment Ann-A-1 at page-6 bottom at line 4 to 7, which also shows that the appeal of the applicant was pending even on the date of ex parte order Dt. 22.5.2002 passed by the enquiry officer. When the delinquent officer expressed displeasure and bias against the enquiry officer and also sought for change of such officer, without final disposal of such request of the applicant, deciding the enquiry in ex parte is nothing but hasty manner which naturally causes prejudice to the delinquent officer which further strengthens his apprehension of bias against the enquiry officer.



14. Coming to the evidence part, none of the witnesses has been examined and no one has marked documents more particularly the alleged complaint Ann.-A-3 given by Hav. to prove the allegation made against the applicant in respect of gratification demanded by him and because of non-satisfaction of gratification the applicant acted in malice and caused financial loss in his account. Similarly, in respect of calculation made by the applicant while settling the account of complainant Hav. Also, no worthwhile documents are placed before the enquiry officer for his finding against the applicant on the charges leveled against him. Thus, it is clear that the finding of the enquiry officer is not at all reasonable and not based on evidence and in such circumstances, this tribunal has no other way for arrival of such conclusion after examination in respect of the decision making process adopted by the enquiry officer and his findings while conducting departmental enquiry against the applicant. This also further shows that the enquiry officer has not given a fair hearing and further his decision is also not based on any evidence on record and as such the same is not

helpful, for imposing penalty against the applicant.

15. Admittedly, the enquiry report (Ann-7) is the basis for imposing penalty on the applicant and as such, the penalty awarded against the applicant is liable to be quashed.

In the result, impugned penalty imposed against the applicant vide order Dt. 30.11.2005 (Ann.-A-1) is set-aside and thus, OA is allowed and no order as to costs.

Almora 29/11/09
(DR.A.K. MISHRA)
MEMBER (A)

29-01-09
(M. KANTHAIAH)
MEMBER (J)

Amit/.