

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No.28/2007

Order Reserved on 15.7.2014

Order Pronounced on 04/08/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Tula Ram aged about 64 years son of late Algu Ram Sharma, resident of House No. D/525 A, Sector D, LDA Colony, Kanpur Road, Lucknow.

- (1) Smt. Urmila Sharma aged about 62 years wife of Late Tula Ram
- (2) Yogesh Sharma aged about 30 years son of late Tula Ram Both r/o LDA Colony, Sector D, N. 525 A, Kanpur Road, Lucknow.
- (3) Smt. Neera Sharma aged about 33 years wife of Lal Bahadur Sharma.
- (4) Smt. Pratibha Sharma aged about 28 years w/o Shri Sunil Kumar Sharma Both r/o Village Badeban P.O.Gandhi, Nagar, Dist. Basti

Applicants

By Advocate: Sri Surendran P

Versus

1. Union of India through the Secretary, Defence (Finance), Ministry of Defence, Finance Division, New Delhi.
2. Controller General of Defence Accounts, West Block V, R.K. Puram, New Delhi.
3. Dt. Controller General of Defence Accounts (Admn.) Office of CGDA, West Block V, R.K. Puram, New Delhi.
4. Principal Controller of Defence Accounts, Central Command, Lucknow Cantt., Lucknow.

Respondents

By Advocate : Sri S.P. Singh

ORDER

By Hon'ble Mr.Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the orders dated 28.9.2006 and 29.9.2005 contained in Annexure No. 1 and 2 to this O.A. and a direction be issued to pay back the recovered amount

w.e.f. 20.10.2005 to 6.12.2009 as shown in paragraph No. 4.42 (A) along with the admissible D.A. with interest.

2. The brief facts of the case are that the applicant was working in the respondents organization, was charge sheeted in 1999. Thereafter, the enquiry officer was appointed and the applicant denied the charges and finally the enquiry officer exonerated the applicant from the charges as he did not find the charges proved against the applicant. But the copy of the enquiry officer's report was not communicated to the applicant. The then disciplinary authority did not accept the report of the enquiry officer and expressed his disagreement and ordered for *denovo* enquiry by means of order dated 16.11.2000. The learned counsel appearing on behalf of the applicant also denied this fact that there was no provision by which the disciplinary authority should remand back the case to enquiry officer for further enquiry. As such the order dated 16.11.2000 for conducting the *denovo* enquiry is not in order. As such he made a request to review the aforesaid order for conducting *denovo* enquiry. But without considering the request made by the applicant, the enquiry officer started the enquiry. Feeling aggrieved by the action of the enquiry officer, the applicant filed appeal to the O.P. No. 1. The said appeal was considered by the O.P. No.1 and the same has been rejected. Learned counsel appearing on behalf of the applicant submitted that the rejection order dated 14.10.2003 is a non-speaking order. It is also indicated by the learned counsel for the applicant that during this period, the enquiry officer started the enquiry and proceeded *ex-parte*. Subsequently, the enquiry officer submitted his report and the applicant received the copy of the enquiry officer's report and applicant was asked to submit representation within 15 days from the date of receipt of letter. The applicant submitted the reply to the show cause notice and during the said period, the applicant has

also superannuated on 31.8.2002, as such his Excellency, the President was only competent to impose any punishment order upon the applicant. The learned counsel for the applicant has also submitted that without considering the reply of the applicant given to the show cause notice, the penalty of withholding 10% of monthly pension for a period of five years admissible to the applicant was imposed. Not only this, the copy of the UPSC advice was also not supplied to the applicant, as such reasonable opportunity was denied. Learned counsel for applicant has also submitted that since the applicant superannuated on 31.8.2002, as such the entire proceedings after the retirement of applicant was not in consonance with Rule 9(2) of Railway Servants (Pension) Rules. The learned counsel for applicant has also relied upon the decision of the Hon'ble Apex Court in the case of Union of India and others Vs. S.K. Kapoor reported in (2011) 4 Supreme Court Cases 589.

3. On behalf of the respondents, the detailed reply is filed and through counter reply, it is indicated by the learned counsel for respondents that the applicant was found guilty in passing three requisitions of medical advance for Rs. 24000/- without verifying the specimen signature of controlling authority and the appeal preferred by the applicant was also considered by the competent authority and the same was rejected. Not only this, it is also submitted by the respondents that the applicant had not done any checking of signatures, though he was required to do 5% checking and has also not discharged his duties. As such, the charge sheet was served upon the applicant. It is also not denied by the respondents that enquiry officer submitted the enquiry report on 24.5.2000 holding both the articles of charges as not proved. But the Disciplinary authority did not agree with the findings of the enquiry officer's report. As such, the matter was remanded back for denovo

enquiry from the stage of production of documents. The enquiry officer submitted the report on 8.10.2003 holding the applicant guilty of both the charges and UPSC was also considered. Not only this, it is also pointed out by the respondents that the applicant was given the opportunity to inspect the documents and to submit his reply and he was advised to cooperate with the enquiry as his appeal made to the Disciplinary authority as well as the appellate authority against the denovo enquiry already rejected and the decision was also communicated to the applicant. Learned counsel for the respondents in their reply has also indicated that copy of the UPSC advice along with order of the President dated 29.9.2005 was communicated to the applicant through letter dated 10.10.2005, as such it is clear that the copy of the UPSC advice was not communicated to the applicant prior to passing of the order. Not only this, it is also argued on behalf of the respondents that full opportunity of hearing was given to the applicant, as such nothing requires to be adjudicated in the present O.A.

4. On behalf of the applicant, Rejoinder reply is filed and through Rejoinder reply, mostly the averments made in the O.A. are reiterated and denied the contents of the counter reply. It is once again pointed out by the learned counsel for applicant through Rejoinder reply that Rule 15(1) of CCS (CCA) Rules do not permit de novo enquiry and the copy of the UPSC advice was not communicated to the applicant prior to imposing the punishment. As such, it requires interference by the Tribunal.

5. Heard the learned counsel for the parties and perused the records.

6. Admittedly, the applicant was working with the respondents organization, was charge sheeted through charge sheet dated 7.6.99.

The said charge sheet contains two charges. Along with charge sheet, statement of imputation of misconduct, list of documents and list of

witnesses are mentioned. The charges leveled against the applicant are as under:-

ARTICLE 1

That the said Sri Tula Ram, AAO (Now AO) A/c No.8295298 while functioning as AAO of medical section in the office of the CDA (CC) Lucknow audited and passed two requisitions for medical advances bearing Vr. No.00/197 dated 17.2.97 and 00/036 dated 5.4.97 respecting Sri B.N.Singh LDC for Rs.8000/- each and one requisition for medical advance bearing Vr. No. 00/049 dated 10.4.97 respecting Sri Anoop Lal, Pipe Fitter for Rs. 8000/- on "out today" basis without verifying the specimen signature of Controlling Authority and continuity /serial number of control number of unit concerned thereby completely overlooking the important audit points leading to fraudulent payment of Rs. 24,000/-.

Thus, Sri Tula Ram ,AAO (Now AO) by his above act not only failed to maintain devotion to his duty but also acted in a manner most unbecoming of a Govt. servant infirming thereby the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE -II

That while functioning in the aforesaid section in the office of CDA (CC) Lucknow the said Sri Tula Ram, AAO (now AO) authorized the payment of above mentioned requisition on account of medical advance for Rs. 24,000/-. The allegation made by Sri B.N.Singh, LDC one of the claimant in his application dated 28.5.97 to this effect suggests that there existed a collusion of Sri Tula Ram with the claimants.

Thus, Sri Tula Ram , AAO (Now AO) by his above act not only failed to maintain absolute integrity but also acted in a manner most unbecoming of a Govt. servant infirming thereby the

provisions contained in Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

7. Subsequently, the enquiry officer was appointed and enquiry officer submitted his report. The disciplinary authority disagreed with the report of the enquiry officer, as such, passed an order on 16.11.2000 remitting back the matter to the enquiry officer for *denovo* enquiry from the stage of production of documents. This was exercised by the disciplinary authority under Rule 15(1) of CCS (CCA) Rules. For ready reference, Rule 15(1) of CCS (CCA) Rules is reproduced below:-

“15. Action on the inquiry report

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiry Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

8. Thereafter, another enquiry officer was appointed but prior to that, the applicant raised an objection and requested for reviewing the order for conducting *denovo* enquiry. When no action was taken, he preferred an appeal on 15.7.2002 and in the appeal itself, it was again indicated by the applicant that there is no provision for *denovo* enquiry and also alleged that Disciplinary Authority being prejudice and bias, has ordered for such an enquiry. The said appeal of the applicant was considered by the competent authority and it was rejected and the same was communicated to the applicant through letter dated 10.4.2003 with a request to cooperate with the enquiry for expeditious finalization of the case. Subsequently, the enquiry proceeded and number of dates were fixed. The enquiry officer, submitted his report, copy of which was given to the applicant through letter dated 31.3.2004 and enquiry

officer through his report observed that both the article of charges stand proved against the applicant. It is also pointed out that on the date when copy of enquiry officer's report was communicated to the applicant, he has already superannuated after attaining the age of superannuation. The applicant submitted his reply to the enquiry officer report through his representation dated 6.4.2004 and finally by means of order dated 29.9.2005 which is communicated to the applicant vide letter dated 10.10.2005 punishment of 10% cut in monthly pension for a period of 5 years was imposed upon the applicant as the proven charge constitutes grave misconduct. The applicant preferred the revision and the said revision petition was also dismissed vide order dated 28.9.2006. Feeling aggrieved by the punishment order and dismissal of revision, the applicant preferred the present O.A. Learned counsel for applicant has categorically pointed out that prior to issuance of punishment order, the advice of the UPSC was not communicated to the applicant and has also indicated that in terms of the decision of the Hon'ble Apex Court in the case of **Union of India and others Vs. S.K.Kapoor reported in 2011 (4) SCC 589**, the Hon'ble Apex Court observed as under:-

“8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case, it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise there will be violation of the principles of natural justice. This is also the view taken by this Court in

S.N, Narula Vs. Union of India .

9. In the case of **S.N. Narula Vs. Union of India and others reported in (2011) 4 SCC 591**, the Hon'ble Apex Court observed as under:-

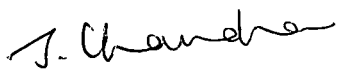
“6. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

10. It is also to be pointed out that during the pendency of O.A., the applicant expired on 6.12.2009 and substitution application is moved and the legal heirs are substituted. During the course of pleadings, the applicant moved substitution application which was also allowed. The applicant has also moved the amendment application which was also allowed by means of order dated 25.11.2013 and necessary amendments were incorporated. Though the respondents have filed objection to the amendment applicant has also pointed out through their objection that no further reply is required from the answering respondents.

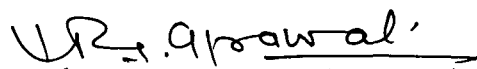
11. Considering the submissions made by the learned counsel for parties and also on the basis of observations made by the Hon'ble Apex Court in the case of Union of India Vs. S.K. Kapoor (supra) and S.N. Narula Vs. Union of India (supra), we deem it appropriate to interfere in the present O.A.

12. Accordingly, the O.A. is allowed. The impugned order dated 29.9.2005 and 28.9.2006 as contained in Annexure No. 1 and 2 are quashed. Since the applicant has already expired, as such the amount recovered w.e.f. 28th October, 2005 till 6.12.2009 be

refunded to the legal heirs of the applicant without any interest. No order as to costs.



(Ms. Jayati Chandra)
Member (A)



(Navneet Kumar)
Member (J)

HLS/-