

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

Original Application No.156 of 1996.

Date of Order : 6<sup>th</sup> December, 1999

Ambika Mochi, son of Late Balgovind Mochi, Peon  
posted at Regional Office of National Sample Survey  
Organisation, Budhia Bhavan, 3rd Floor, Near Kamla Hotel,  
Main Road, Ranchi-834 001. .... Applicant.

Vrs.

1. Union of India, through the Director, National  
Sample Survey Organisation 'C' Block, 3rd Floor, Pushpa  
Bhawan, Madangir Road, New Delhi-110062.

2. Regional Assistant Director, National Sample  
Survey Organisation, Budhia-Bhawan, 3rd Floor, Near  
Kamla Hotel, Main Road, Ranchi.834001.

.... Respondents.

Counsel for the applicant : Shri M.P.Dixit.

Counsel for the respondents : Shri S.C.Jha.

C O R A M

Hon'ble Shri L.R.K. Prasad, Member (Administrative)  
Hon'ble Shri Lakshman Jha, Member (Judicial)

O R D E R

Hon'ble Shri L.R.K. Prasad, Member (Admn.) :-

This O.A. has been filed seeking following  
reliefs :-

(1)

To set aside the order passed by Respondent No.1,  
Annexure-4, and the order passed by the Disciplinary

Authority dated 28.4.1995 (Annexure-A/4(a).

- (ii) The Respondents be directed to re-instate the applicant in the post of Daftary w.e.f. 28.4.1995, and pay arrears in the grade of Daftary.
- (iii) The Respondents be directed to treat the period spent under suspension from 8.9.1994 to 15.11.'94 as on duty for all purposes and give the applicant all consequential benefits.

2. This case was admitted on 27.11.1996. In spite of several opportunities given to the respondents, they did not bother to file written statement. In the order dated 12.8.1999, the respondents were allowed four weeks time to file W/s, by way of last chance. It was made clear in the order that, if the same is not furnished within stipulated period, the case will be heard and disposed of. As no W/s was filed, it was decided to dispose of the matter on the basis of materials available on record, and after hearing the learned counsel for the parties. Accordingly, the matter was heard on 16.9.1999, when the respondents were represented by Shri S.C. Jha, Additional Standing Counsel for the Respondents.

3. The applicant joined as Peon on 22.8.1974 in the respondents' department. In 1992, he was promoted as Daftary. At the relevant time, he was working as Daftary in the Office of Regional Director, N.S.S.O., Ranchi (Respondent No.2).<sup>He</sup> was placed under suspension w.e.f. 8.9.1994, which was followed by initiation of disciplinary proceeding against the applicant under

*[Handwritten signature]*

CCS (CC & A) Rules, 1965. The charge-sheet was issued on 28.10.1994/9.11.1994 (Annexure-A/2), in the meantime, the suspension order was revoked on 15.11.1994. The charges related to alleged disobedience of the office order by the applicant and his misbehaviour with officers and staff of the office, The further charge against the applicant is that in spite of direction, the applicant failed to submit the unemployment certificate, which is treated as an act of indiscipline. The details regarding these two charges are given in the annexures attached with the charge memo.

4. It is alleged by the applicant that charge-sheet was issued on the basis of written complaint by three employees of the office, namely Shri R.Rajak, Shri Rajesh Kumar and Shri S.Akhtar. Their written complaints are at Annexure-5, 6 and 7 respectively. It is submitted by the applicant that during the course of evidence before enquiry officer, the above named complainants did not support their complaint and gave contradictory evidence. It is also pointed out that some of the prosecution witnesses became hostile. It is alleged by the applicant that charges against him are totally baseless and unfounded, and the charge-sheet was issued without any proper enquiry into the matter. However, the applicant participated in the process of enquiry. The report of the enquiry officer is at Annexure-A/3. After recording the necessary evidence and giving opportunity to the applicant to defend his case, the enquiry officer came to the conclusion that the charges are proved. On the

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basis of enquiry report, the disciplinary authority passed an order on 28.4.1995 ( Annexure-A/4(a) ),

whereby he awarded to the applicant the penalty of reduction to the lower rank of Peon w.e.f. 28.4.1995.

5. Against the order of the disciplinary authority, the applicant submitted an appeal on 1.5.1995 before the appellate authority (Respondent No.1). However, a copy of the appeal representation has not been filed with the O.A. It is noted from the order passed by the Respondent No.1 on 18.9.1995, as at Annexure-A/4, that the appeal of the applicant dated 1.5.1995 was considered by the appellate authority and necessary order passed. The order as at Annexure-A/4 is detailed order, and has been passed after taking into consideration various points as stated in the said order. As at Annexure-A/4, following paragraph of the order is relevant :-

"Even though the penalty imposed by the disciplinary authority is commensurate with the proved misconducts, there are merits in taking a compassionate view on the quantum of punishment awarded since that might help Shri Mochi to do introspection and make conscious efforts to make improvements in his style of functioning. I note that as per CCS (CC&A) Rules, 1965, the order imposing the penalty of reduction to a lower time scale of pay should generally specify the period of reduction. This period has not been spelt out in the order of the disciplinary authority dated 28.4.1995. I also note from records that the appellant earned his promotion as Daftry in the year 1992 after having been in the lower rank of Peon for a period of about 18 years and this was his first promotion of the career. It would be rather harsh to deprive him of the only promotion he has earned in almost 18 years. I order that Shri Mochi be restored to his original post of Daftry w.e.f. 27.4.98 i.e. after a lapse of a period of three years from the date of imposition of major penalty, if otherwise fit for promotion."

*for ECL*

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6. It is noted that as the applicant did not submit his defence statement with reference to charge memo, an Inquiry Officer was appointed to find out the truth in the matter. He submitted his report on 28.2.1995 and a copy of the same was made available to the applicant for making his representation. The applicant submitted his representation on 28.3.1995 which was considered by the disciplinary authority who reached the conclusion that the charges against the applicant have been established. In that view of the matter, he awarded penalty of reduction to the applicant to a lower rank of peon with effect from 28.4.1995. As the period of penalty had not been specified in the order of the disciplinary authority dated 28.4.1995, the appellate authority by his order dated 18.9.1995 (Annexure-A/4) directed restoration of the applicant to his original post of Daftry with effect from 27.4.1998 after the lapse of a period of three months from the date of imposition of major penalty, if otherwise fit for promotion. The applicant has prayed for quashing the order of the appellate authority also as at Annexure-A/4 and thereby ~~reinstating the applicant~~ to the post of Daftry with effect from 28.4.1995 with consequential benefits.


7. It is noted that the finding of the Inquiry Officer is that ~~both~~ the charges have been established. After considering the report of the Inquiry Officer vide order dated 28.4.1995 (Annexure-A/4(a)) the disciplinary authority imposed a punishment of reduction in rank from Daftry to Peon with effect from 28.4.1995. We have noted the content of the charge memo as well as the analysis made by the Inquiry Officer in his report.


The applicant had participated in the inquiry and gave his defence. It is also true that certain complaints had been made against the applicant by certain officials which ultimately resulted in framing of charges against the applicant. The net result of the disciplinary proceedings has already been indicated above.

8. We have considered the entire matter in the light of submissions made during hearing as well as the materials on record. The basic allegation against the applicant in the charge-memo is disobedience to office related orders and indiscipline which have been established by the Inquiry Officer in his report. It is settled principle of law that even if the charges have been established and competent authorities have agreed with the same, the imposition of penalty has to be proportionate to the nature and gravity of the charges. A disciplinary authority can agree or disagree with the findings of the Inquiry Officer and then pass appropriate order according to his own understanding of the case and law points by giving reasons for the same. However, a system of appeal/review for considering appeal representation of the aggrieved Government servant against the order of disciplinary authority has been prescribed in various disciplinary rules. An aggrieved Government servant has right to file an appeal before the prescribed authority. As per prescribed rule, the appellate authority has to consider whether the procedure laid down for disciplinary proceedings has been followed or not. After consideration of the matter with reference to appeal representation, the appellate authority can pass order confirming, enhancing, reducing or setting aside the penalty imposed by disciplinary authority or remitting the

case to the authority which imposed the penalty. It is the responsibility of the appellate authority to consider the points raised by aggrieved Government servant against the order of the disciplinary authority in accordance with law and then pass reasoned order on the appeal representation filed by the aggrieved Government servant. It is the duty of the appellate authority to ensure that appeal representation is considered by him in all its aspect specially on the law point as well as quantum of punishment before passing the reasoned order. Whether he agrees or disagrees with the order of the disciplinary authority, he must record reasons for the same. In the instant case we find that the appellate authority has passed order dated 18.9.1995 (Annexure-A/4) after due examination of the case. He has also modified the order of the disciplinary authority to the effect that he has fixed the time-limit for operation of the penalty imposed on the applicant by the disciplinary authority. However, in our considered opinion, it appears that the imposition of penalty of reduction ~~of~~ rank from Daftry to Peon is on higher side. It deserves reconsideration of the matter afresh by the appellate authority specially on the point of quantum of punishment.

9. In view of the above, the appellate authority i.e. Director, National Sample Survey Organisation, Govt. of India, New Delhi (respondent no.1) is directed to reconsider the matter afresh in accordance with law and in the light of observations made by us above and pass appropriate order within a period of three months from the date of receipt of a copy of this order. With the above direction, this O.A. is disposed of with no order as to the costs.

  
(Lakshman Jha)  
Member (J).

  
(L.R.K. Prasad)  
Member (A)