

IN THE HIGH COURT OF JUDICATURE AT PATNA

PATNA BENCH : PATNA

Date of Decision:- 05.04.2002

Registration No. OA-586 of 1996

Shri S.P.Mahto, Son of Late Shri Bipat Mahto
at present Assistant Accounts Officer (Retired),
at present residing at Shahdara, Ramchani Road,
P.O. and P.S. Patna City, District Patna.

..... Applicant

- By Shri R.P.Singh Advocate

Versus

1. The Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Controller General of Defence Accounts, West Block V, R.K.Puram, New Delhi-110066.
3. The Controller of Defence Accounts, Patna-800019.
4. Shri D.C.S. Negi, Joint Controller of Defence Accounts, C.D.A., Patna-800019.

..... Respondents

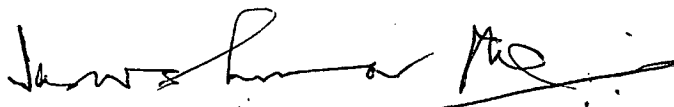
- By Shri G.K.Agarwal, Additional
Standing Counsel

Coram:- Hon'ble Shri Sarweshwar Jha, Member (Administrative)

ORDER

Hon'ble Shri Sarweshwar Jha, Member (A):-

1. Heard the learned counsel of both the parties.
2. The applicant in the O.A. Shri S.P.Mahto, who joined the Government service in the office of the Joint Controller of Defence Accounts, Patna on 31.7.1961, has since retired from the service on 31.1.1996. It was in October, 1988, when he was posted in the 'M' (Miscellaneous) Section of the main office



of the CDA, Patna. He was assigned ^{the} task of supervising Group I of the Section. This Group dealt with receipts and distribution of letters/bills,

rendition of various reports/returns, preparation of D.P. Sheets, despatch of PMS relating to Class 9 vouchers to the parties concerned and safe custody of valuable documents. His assignment also included supervision relating to safe custody of registers, paid vouchers, etc., DV numbering register for all Groups of 'M' section. Sometime in the year 1990 a question of some alleged fake payments by M section Group III of the CDA, Patna, cropped up. From the details given in the OA it appears that the applicant was issued a charge-sheet under Rule 16 of the CCS (CCA) Rules, 1965.

The charge-sheet mentioned that on varification it was found that DV numbering register was not being maintained ~~CWE wise~~ as a consolidated DV numbering register. It was also not being maintained in the format prescribed in the O.M. Part II, Volume II. It was also found that DP Sheets were not being scheduled to the UAs concerned and they were found ~~filed~~ with paid vouchers. Acknowledgement of PMS relating to Class IX vouchers scheduled to the UAs were also not watched. Certificates regarding receipt back of DP sheets and paid vouchers were also not found endorsed in the DV numbering register. The charge-sheet also mentioned that DV numbering register was never submitted to the Officer Incharge on fortnightly basis and to the Group Officer once in two months. It was finally

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charged that paid vouchers relating to Class IX vouchers in respect of GE, Alipore, Calcutta, and G.E. Fort William, Calcutta amounting to Rs. 21.24 lacs could not be traced out in M/1 Section, where Shri Mahto was serving, owing to improper maintenance of DV numbering register and non-certification of receipt back of vouchers from D section. It was charged that as a Supervisor of M/1 Section it was Shri Mahto's bound duty to make arrangement for safe custody of valuable record upto warranty period. It was finally charged that Shri Mahto miserably ^{failed} in his duty to supervise the Group in proper manner which resulted in loss of paid vouchers to the tune of Rs. 21.24 lacs and thus by these acts of omission Shri Mahto exhibited a complete lack of devotion to duties and his actions were unbecoming of a Government servant, thereby violating the provisions of Sub-Rule I(ii) and (iii) of Rule 3 of CCS (Conduct) Rules, 1964. Shri Mahto thereupon submitted a reply to the charge-sheet to the Controller of Defence Accounts, Patna, on 9th October, 1991 denying the allegation vide Annexure-A-2 of the O.A. While he was awaiting the decision on his representation, he was served another order dated 7th July, 1994 whereby the said charge-sheet under Rule 16 of the CCS (CCA) Rules, 1965 was cancelled by the CDA, Patna, for issuing a fresh charge-sheet ~~for~~ major penalty under Rule 14 of the CCS (CCA) Rules, 1965. The fresh charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued against the applicant on 7th July, 1994 itself.

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4.

The charges envisaged the same acts of omission under three articles of charges. The applicant objected to the cancellation of the previous charge-sheet by another charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 without showing sufficient and judicious reason and indicating the intention of issuing fresh and subsequent charge-sheet. The Respondent (Respondent No.3) appointed Shri D.C.S. Negi, Joint Controller of Defence Accounts (ORS), Patna to conduct an inquiry under Rule 14 of the CCS (CCA) Rules, 1965. The inquiry officer appears to have held three sittings to conduct the inquiry proceedings against Shri Mahto, i.e., on 14th February, 1995, 4th August, 1995 and 22nd November, 1995. A copy of the inquiry report as submitted by the inquiry officer was received by the applicant with CDA, Patna, letter of 9th January, 1996.


3. The applicant has raised question of procedural infirmity from which the inquiry suffered. He has submitted that the documents listed in Annexure-3 of the charge-sheet from serial Nbs. 1 to 14 were not taken on record of inquiry as exhibits. He^{has} further complained that copies of the official documents which were not available to him on the 4th August, 1995, during regular hearing on the said dates, were also not taken on the record of inquiry as exhibits. He^{has} further said that the Proceeding Officer (Inquiry Officer) dropped the listed prosecution witnesses (reference as^{to} Annexure-A-4 of the charge-sheet), thereby the prosecution did not lead either



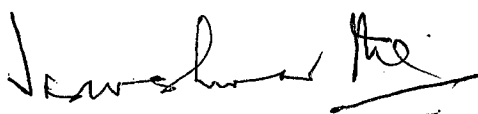
the documentary evidence through exhibits or oral evidence by putting them to test of examination or cross-examination. During the last mandatory regular hearing of the case on 22nd November, 1995 the applicant submitted a representation dated the 22nd November, 1995 to the inquiry officer requesting him for local inspection of the places where the open racks were provided to keep the vouchers in bulk in 'M' section and the Audit section of MO, Patna.

In the same representation the applicant also made a mention that he would also examine himself as a witness. However, the I.O. did not note down this request and did not pass any order on his request as submitted by the applicant. The applicant has also complained that the Presenting Officer submitted his written brief on behalf of the disciplinary authority and that written brief is as good as ^{the} inquiry report.

The applicant has complained that in the written brief the Presenting Officer proved the allegation against the applicant.

4. The applicant vide para XVII of his O.A. has elaborated his defence against the allegation made in the charge-sheet of 7th July, 1994 under Rule 14 of the CCS (CCA) Rules, 1965 and he has denied each one of them. Briefly he rebutted the charges  as follows:-

- (i) Maintenance of DV numbering register and non-certification of DV numbering Register in M section were confirmed being an operation in M section



with effect from 6.10.86 to 24.1.1990, whereas the applicant was posted in the said section from 3.8.1998 to 31.10.1990. He came to have followed the procedure with the advice of his superior~~s~~^s which were followed since 6.10.1986 and even prior to that. The applicant also claims that the procedure regarding maintenance of DV numbering register was never questioned by the superior officers^{of} ~~2nd~~ M section or by the inspection group of CDA, Patna, or by any other authority since 6.10.1986 or prior to 6.10.1986. His contention is that the said authority also carried duties and ~~responsibilities~~ with regard to the subject as defined in Appendix IA and IB of the Manual Part-I. In his view the work was being conducted smoothly since 6.10.1986 and the DV numbering register was being maintained as per practice to the knowledge of inspection ~~Cell~~ Group Officer and Accounts Officer prior to the ~~posting~~ of the applicant in M section.

- (ii) The applicant also maintains that safe custody and retention of pay vouchers/bills was affected considerable by the inadequacy of space ~~or~~ racks provided for keeping them and that, as a result, any time anything could have been removed. He further submits that vouchers/bills were kept in open racks and ^{open} ~~space~~ on the ground floor in all the sections of the main office, Patna with the knowledge of the CDA and the management. He states that this was the position prior to his posting and even after his retirement not only in M section

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Group I where he was posted, but in other sections as well, which could have been noticed by the superior officers during their rounds. He further avers that, through his representation of 22nd November, 1995 (Annexure-A_9) he had requested the inquiry officer to inspect the place where the paid vouchers/bills were kept and that I.O. did not take any decision on the subject;

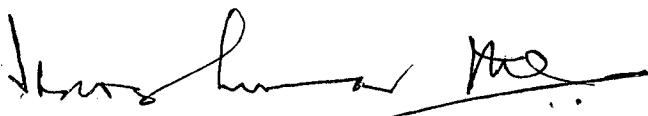
- (iii) On Article of Charge No.2, i.e., relating to dispatch of punching mediums (PMS) relating to Class IX vouchers to unit accountant, (UAS) ^{dates} duly indicating the numbers and ^{of} vouchers, amounts and code Nos. to which expenditure compiled on top list and acknowledgement thereof watched, and, ^{his} alleged failure to do so, the applicant submits that it was a practice already followed in M section and had been in practice upto 28th December, 1995, i.e., after four years of his shifting from M section.
- (iv) On the maintenance of DV numbering register (Article of Charge III) the applicant submits that it was being maintained in the same manner with effect from 6.10.1986, i.e., 2 years earlier than he was posted to M section and the same practice continued upto December, 1995.

5. The applicant submitted a representation on 11th January, 1996 after receiving the report of the inquiry officer where he submitted that principles of natural justice and reasonable opportunity

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had not been borne in mind while preparing the report. He also alleged that the disciplinary authority (Respondent No.3) has not considered the salient features of defence version as made from paras 1 to 17 of his representation of 11th January, 1996. He has also alleged that the respondent No.3 has ignored ^{the} irregularity and violation of the mandatory provision in the conduct of oral inquiry under various Sub-rule of Rule 14 of CCS (CCA) Rules, 1965. The applicant has submitted that the penalty of recovery of Rs.15,000 from him vide Respondent No.3's letter No.AN/1-A/232/RNL-RKS and others (PA) dated 19th January, 1996 has been imposed on him illegally. Aggrieved by this order (Annexure-A-14) he submitted an appeal to the appellate authority, i.e., the Controller General of Defence Accounts (Respondent No.2) vide Annexure-A-15 of the O.A. However, the appellate authority rejected the appeal vide his order dated 25th June, 1996 (Annexure-A-16) finding no justification for interfering with the penalty imposed. The applicant, therefore, has finally approached this Bench with the instant OA for seeking reliefs as detailed in para 8 of the OA, as under:-

"8.(i) That it is prayed that the penalty of recovery of Rs.15,000/- (Rupees fifteen thousand) imposed by the respondent no.3 though his orders dated 19.1.1996 (Annexure-14) be quashed as being arbitrary and without any authority of law.



- (ii) That respondents be directed to refund the amount already recovered from his salary and other dues with penal interest within one month.
- (iii) That the applicant be paid suitable compensation for illegal mental torture and agonies unconstitutionally caused to the applicant for the last six years.
- (iv) That the applicant be granted any other relief(s) as your honour may deem fit and suitable."

6. On perusal of the Written Statement of the Official Respondents it is observed that they have confirmed some of the factual submissions like, the period of services rendered in M Section by the applicant and his job responsibility, non-production of prosecution witnesses by the presenting officer and their certification that the facts of the case were found sufficient to establish the charges. They have also submitted that the contention of the applicant about inspection of the place occupied by M section was not found to be necessary or feasible by the Inquiry Officer on the date of conclusion of inquiry. They have further submitted that after closure of the case, allowing the applicant to examine himself as witness was not possible for the I.O. They did not, therefore, consider ^{necessary} passing of any order on his representation of 22.11.1995. In paragraph 16 of the Written Statement the Respondents have not refuted the fact that the practice which the applicant followed in regard to maintenance of register and safe custody of paid vouchers, etc., was inherited by him from his predecessor and that he did not receive any guidance in the matter from his seniors. Similarly, their submissions with regard to the contention of the applicant

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about the retention of paid vouchers in open racks and on the ground which could have been removed at any time by any body also do not seem to have been refuted by the Respondents. Again the practice followed by the applicant was what he had seen being practised in the past has not been rebutted by the Respondents, who have simply said that it does not absolve the applicant of his responsibility in the matter. They have maintained that the 3 Articles of charges have been proved by the inquiry officer and as such the disciplinary authority rightly, after taking into account aspects of the case as per the Rules and orders, found the applicant guilty of the charges and imposed upon him penalty of recovery of Rs.15,000/-.

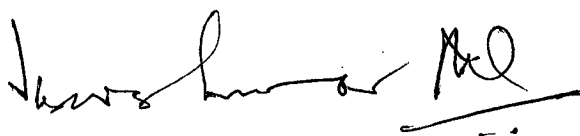
In the subsequent paragraphs of the Written Statement submitted by the Respondents they have reiterated that they have considered all aspects of the matter and also his retirement on 31.1.96 and imposed upon him the said penalty. On the question of rejection of the plea of the applicant by the appellate authority, they have averred in the written statement that the said authority considered & rejected his appeal, after considering the pros and cons of the case as per Rules and orders.

On the other issues like cancellation of the charge sheet under Rule 16 of the CCS (CC&A) Rules to issue subsequent charge sheet under Rule 14 of the CCS (CC&A) Rules, etc. the Respondents appear to have maintained the submissions to the effect that they have taken all aspects of the

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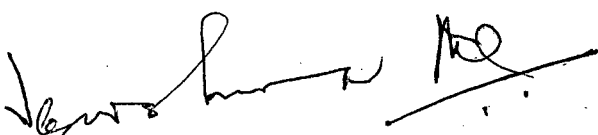
subject into account before imposing the penalty.

5. On closer examination of the issues involved in this case it is observed that the applicant was posted to M/I Section of the CDA, Patna, from 4.8.88 to 10.7.90 and worked in that section during the said period following the procedures and practices which were already in vogue in the section over the years. It also appears from the submissions of the applicant as well as the Written Statement of the Respondents that these procedures and practices were not reviewed by the authorities concerned for identifying the weaknesses and deficiencies in the system and for bringing about the required improvement in the functioning of the section, as the system followed in the section was not fully reliable and efficient so as to ensure that the papers/vouchers/registers/despatches which were parts of the responsibilities of M/I section did not get misplaced or lost and also to ensure that the objectives of the section were achieved with optimum level of satisfaction and efficiency. It was important that the matter should have been looked into by the senior authorities concerned supervising the functions of M/I and other relevant sections of the CDA. While the responsibility of the applicant in the total scheme of things and systemic health of the section cannot be ignored, the facts that he pointed out the unsatisfactory state of retention of the vouchers, etc. on the ground as well as in the open racks and also that he suggested inspection of space by the I.O. deserve to be taken serious note of. When vouchers and papers are kept in the open and there is no systematic arrangement



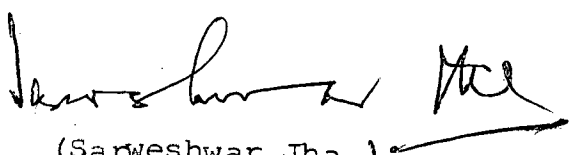
to ensure their safe custody and maintenance and also when it is in the knowledge of all senior officers responsible for the subject, to derive satisfaction by merely fixing responsibility on a single officer for the loss of paper would be difficult to maintain. While it would not be in order to comment on the merit of the inquiry report or the procedure followed by the inquiry officer, from the submissions of both the parties it appears that they have not covered some important aspects of the issues raised in the O.A. There is no satisfactory comment on non-examination of the prosecution witnesses, non-inspection of the premises where records/vouchers were kept and on the Respondents not being able to issue a speaking and reasoned order particularly on the representation/appeal submitted by the applicant to the disciplinary authority as well as the appellate authority. It is also not clear how the cancellation of disciplinary proceedings initially initiated under Rule 16 of the CCS (CC&A) Rules, 1965 and its further initiation under Rule 14 of the CCS (CC&A) Rules, 1965 were compelling. This does not seem to have been amply justified and elaborated, thereby leaving enough room for vagueness. The imposition of penalty of recovery of Rs. 15,000 from the applicant also does not seem to have flown naturally and logically from the submissions made by both the parties.

6. In view of the above and after considering the totality of the circumstances and after hearing the learned counsels for both the parties I am inclined to conclude that the order of the Respondents issued vide their order No.AN/1A/232/RNL-RKS dated



the 19th January, 1996 imposing the ~~penalty~~ of recovery of Rs.15,000/- on the applicant by the Respondent No.3 is not justified, particularly keeping in view the need to ensure that the procedures and practices followed by M/I Section of CDA, Patna, should be such as to ensure that recurrence of loss of papers, as reported in the instant case, does not occur and also in view of the fact that the remedy of the malady lies in acknowledging the systemic deficiencies in the functioning of M/I Section of the CDA and removing them by bringing about appropriate changes and improvement in the procedures and practices followed by the officers concerned. The Respondents are, therefore, directed to review the procedures and practices of the section and also the arrangement for keeping/retaining the papers, ~~vouchers~~, registers, etc. in the said section so as to ensure their safe custody. As the applicant has already retired and who seems to have followed the procedures and practices already in vogue in the section and also as imposition of the penalty would not serve the purpose for which it has been imposed, the Respondents are directed that the amount of Rs. 15,000/- recovered from the applicant may be refunded to him within a period of four months. With this, their ~~impugned order~~ mentioned above stands quashed. I am not passing any order as to interest and other reliefs sought by the applicant. With this, the OA stands disposed of. No order as to costs to the parties.

SKS


(Sarweshwar Jha)
Member (A)