

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO;898.96
DATED THE 11TH DAY OF JUNE,2002

CURAM:HON'BLE SMT.SHANIA SHASTRY, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

Dilipkumar Laxman Landan,
resudubg at 533, Guruwar Peth,
Pune - 411 042.

... Applicant

None present

v/s.

1. Unikon Bank of India,
through Secretary,
Ministry of Defence,
South Block, New Delhi-110 011.
2. Hon.C.G.D.A., R.K.Puram,
New Delhi-110 066.
3. Hon'ble Chief Controller
of Accounts, Factories,10-A
Auckland Road,
Calcutta - 700 001.
4. Hon'ble Controller of Accounts,
Ammunition Factor, Khadki,
Pune - 411 003.
5. Sr.Accounts Officer,
V.R.K.Sarma, Accounts Officer,
Ordnance Factory, Bhandara,
441 906.
6. Hon'ble Shri K.C.Patil,
Accounts Officer,
Ordnance Factory, Bhandara,
441 906.
7. Hon'ble Shri S.K.Choudhary,
(Shyamal K Choudhary),
Former Chief Controller of
Additional C.G.D.A. at Office,
situated in R.K.Puram,
New Delhi 110 066 as referred
above at Sr.No.2 as Respondents/
Opponenets.
8. Chief Controller of Accounts,
Shri Bhandarakar, Calcutta-01
10A, Auckland Road,
Calcutta - 700 001.

9. Shri Vishwajeet Banerjee,
Controller of Accounts,
Calcutta, 10-A, Auckland Road,
Calcutta - 700 001.

10. Chief Controller of Accounts,
(FUND), Meerruth, Meerut Cantt. ... Respondents

By Advocate Shri R.R.Shetty for
Shri R.K.Shetty

(ORAL)(ORDER)

Per Shri Shankar Raju, Member(J)

None for the Applicant.

Shri R.R.Shetty, counsel for respondents. UA is disposed of under Rule-15 of CAI Procedure Rules 1987.

2. The applicant has sought multiple reliefs which is barred under Rule-10 of the Rules. One of the grievances of the applicant is that his appeal filed against the impugned order has not been entertained by the respondents.

3. The case of the applicant was transferred to this Tribunal, was disposed of by an order 10/10/1991 by setting aside the order of removal dated 4/5/1979 on the ground of non compliance of Principles of Natural Justice and in view of the decision of the Apex Court in Union of India V/s. Mohd. Ramzan Khan AIR 1991 SC 471 with liberty to the Disciplinary Authority to proceed beyond the stage of giving Enquiry Report and reasonable time to applicant to file objections. Review application no.11/1992 was dismissed by an order dated 10/1/1992 in circulation.

4. Respondents in compliance of the directions kept the applicant under deemed suspension and by an order dated 29/4/1994 considering the belated statement of defense, imposed the penalty of removal from service by order dated 29/4/94 against which an

appeal was filed but was not entertained by the respondents on the ground that no directions have been issued to them to entertain the appeal.

5. The applicant in his pleadings stated that by depriving of reasonable opportunity to assail his grievance in appeal, he has been prejudiced as the Appellate Authority has not at all gone into the illegalities cropped up during the course of the inquiry as well as in the punishment order and the proportionality of the punishment has also not been gone into which is the absolute domain of the authority.

6. Learned counsel Shri Shetty appearing for the respondent by resorting to the decision of Apex Court invoked the Doctrine of Useless Formality and stated that non compliance of a transfer order led to the respondents have passed an order of removal and as the applicant has admitted the allegations of not complying with the orders of respondents and joining the transferred place, it will not be useful to send back the case to the appellate authority.

7. We have carefully considered the contentions of Shri Shetty and perused the pleadings in UA.

8. In our considered view, it is not open for this Tribunal to either review or substitute the punishment as in so far as the proportionality of punishment is concerned, having regard to the decision of the Apex Court in U.C.Chaturvedi V/s. Union of India JJ 1995 Vol.8 SC -65, matter can be remanded back to the Appellate Authority. In the instant case by setting aside the earlier order of removal and according liberty to the respondents to continue with the proceedings ^{as at} ~~and~~ consequence of which the

order of removal has been passed against which the applicant has a right to exercise his statutory remedy of appeal and the doctrine of merger would have no application as by setting aside the earlier order of removal, the appellate order has also been deemed set aside. It cannot ^{be} legally inferred that ^{whereas} the earlier appellate order subsists despite fresh order of penalty has been passed. Applicant in compliance of principles of natural justice and fair play has a right to assail the same, specially resorting to the plea of proportionality of punishment and other legal infirmities cropped in. Doctrine of Useless Formality depends on facts and circumstances of each case and as prejudice has been caused to the applicant at the hands of respondents by not entertaining the appeal preferred against the removal, it would be in consonance to achieve ends of justice, to declare this action of the respondents as not legally sustainable.

9. In the result, ^{as} having regard to the reasons recorded above, UA is disposed of by remanding back the appeal of the applicant preferred against the order of removal directing the respondents to dispose it of by passing a detailed and speaking order by taking into consideration the contentions of the applicant as well as the proportionality of punishment within a period of six months from the date of receipt of copy of this order. They are also mandated upon to communicate this decision to the applicant. No costs.

S. Raju
(SHANKAR RAJU)
MEMBER(J)

Shanti -
(SMT. SHANTIA SHASTRI)
MEMBER(A)