

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.627 OF 2000.

DATED THIS THE DAY 31st OF MAY, 2002.

CORAM : HON'BLE SHRI S.L. JAIN, MEMBER (J)

Shri Nanhen Umashankar Lal,
Resident of No.P/3/1 MES Quarter,
Behind GE (NW), Bhandup,
Mumbai - 400 078.

...Applicant

(By Advocate Shri P.R. Prabhakaran)

V/s

1. Engineer in Chief
 Army Headquarters,
 P.O. New Delhi-110 001.
 2. Chief Engineer (Southern Command),
 Pune - 411 001.
 3. Chief Engineer (Pune Zone),
 Pune - 411 001.
 4. Chief Engineer (Navy) Brichganj,
 Jungcighat P.O.
 Port Blair - 744 103.
 5. Commander Works Engineer,
 24, Assaye Buildings,
 Colaba, Mumbai - 400 005.
 6. Garrison Engineer (West),
 Mumbai, Dr.Homi Bhabha Road,
 Colaba, Mumbai - 400 005.
 7. Asstt. Garrison Engineer E/M(West)
 8, Moude Lines, Colaba,
 Mumbai - 400 005.
 8. DGNP (Dry Docks),
 Lion Gate,
 Mumbai - 400 001.
 9. Shri Shetty, J.D.
 Senior Auditor, Local Audit Office,
 25 Assaya Bldg., Colaba, Mumbai.
- ...Respondents.

(By Advocate Shri R.K. Shetty)

O R D E R
(PER : S.L. JAIN, MEMBER (J))

This is an application under Section 19 of the Administrative Tribunal Act 1985 to quash and set aside the orders of warning dated 6.8.1997, the penalty order dated 1.6.1999, the Memorandum under Rule 16 of CCS(CCA) Rules, 1965 dated 31.12.1997 and the appellate order dated 31.1.2002.

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It is further prayed for cancellation of order of penalty and the Momorundam under Rule 16 shall not revive the warning dated 16.8.1997 said to have been cancelled on 3rd Dec.1997 with the direction to the respondents to produce all original documents dated 9.9.1995 onwards, Audit objections/report and file processing them.

The applicant in the year 1995 was working as Group 'C' Civilian employee directly under Asstt. Garrison Engineer(I) PB in the office of Garrison Engineer (I) Army. The stores, including fuel are indented in five copies by local office by the AGE(E/M) to the ASC Depot who intimates the actual sanction, price and total invoice to be accounted for by debits and credits in the local office. After recording the quantity sanctioned and noting the price to be debited/credited, original and two copies are retained by the Depot. Thereafter three copies are returned to the indenting officer for its record and accounts. There is elaborate accounting system incorporating the quantity of goods demanded, issued, received etc. as well as the price debited and credited. The accounts are periodically audited by the Local audit unit. For the audit in Colaba the records are called for i.e. indent, sanction and supply are made available almost at the same place which enables the local audit unit to verify, tally, correct or rectify, indeed unauthorised apparent errors and omissions.

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In respect of indent dated 9.9.1995 issued by AGE(E/M) 5 items of POL were asked for (Exh.1), in respect of goods supplied as per procedure the applicant got a Receipt Voucher prepared incorporating the stores/goods received in response to demand No.3151051 E-3 dated 9.9.1995 numbered as RV/06/POL dated 20.9.1995. The corresponding entries were made in POL ledger. The Local Accounts Unit in the course of audit detected/noticed that in the copies retained with the Depot Authorities the quantity of petrol supplied/sanctioned had been recorded as 1400 Ltr. while in 3 copies returned and other documents in the receiving office it was recorded as only 400 litres. The respondent No.9 called the applicant alongwith Depot Authorities and in his presence added the numeral ONE in figure before 400 in the three copies adding that the correction of clerical error did not affect any one as such. The applicant accepted it without giving much thought, unaware of the background and the consequences too. It appears that it was a collusive one to hush up the whole issue at the point of origin itself. The Applicant was warned by letter dated 6.8.1997.

Thereafter Board of Enquiry was constituted, the same warning letter dated 6.8.97 is cancelled vide letter dated 3.12.1997 informed to the applicant vide letter dated 25.2.98 and Memorandum under Rule 16 of CCS(CCA) Rules 1965 was issued by Respondent No.4 under his reference dated 31.12.1997. The applicant replied to the same and respondents No.4 issued penalty order-with holding of increment of pay for one year without cumulative effect. The applicant preferred an appeal which is rejected vide order dated 31.1.2000.

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The applicant before filing an appeal against the order dated 31.1.1999 filed O.A.NO.622/99 which was disposed off vide order dated 13.8.1999 with liberty to the applicant to exhaust statutory remedy and in case he is still aggrieved by order of Competent Authority, he can still approach this Tribunal. Thereafter the Appellate order dated 31.1.2000 is passed by respondent No.2 rejecting the appeal.

On perusal of the reply submitted by the applicant dated 19.1.1998 I found that the applicant has stated that the charges are not correct. He made further grievance that complete documents have not been supplied to him asking for complete copies of the enquiry and he pleaded not guilty. It is true that applicant was supplied by letter dated 27.1.1998 the documents asked for which he has acknowledged vide (Ex.A.9) requesting for further extension of time up to 15.2.1997 on the ground that he has to obtain documentary evidence from main land. After that the applicant submitted the reply on 10.2.1998 in addition to his reply dated 2.2.98.

The reply of the applicant dated 10.2.98 alongwith 2.2.98 *responses to be read together, & may be read with.*

Warning letter which was issued to the applicant on 6.8.97 is stated to have been cancelled vide letter dated 3.12.97 which was informed to the applicant vide letter dated 25.2.98.

It was further asked/directed to the applicant to submit the Defence Statement on letter dated 5.1.98. The applicant replied vide letter dated 26.2.98 in reply to letter dated 25.2.98 (Ex.A-12).

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On perusal of the above correspondence in the case it is found that the applicant has not pleaded ^{guilty} to the Memorandum issued by the respondent under Rule 16 of CCS(CCA) Rules 1965. All the above replies to the Memorandum referred above should be read together and not in isolation. In the circumstance it was necessary for respondent to hold the detailed enquiry when the facts were not admitted by the applicant. The object of Rule 16 of CCS(CCA) Rules 1965 is to proceed when facts stated are not in dispute. When the facts are in dispute then the enquiry even though not asked for is necessary one.

The fact that the applicant was warned for this even on 6.8.97, which was cancelled vide letter dated 3.12.97 communicated to the applicant vide letter dated 25.2.98 is not sufficient to proceed when after issue of the charge sheet under Rule 16 of CCS(CCA) Rules 1965, the applicant pleads not guilty to the same, order of warning dated 6.8.97 ^{has already been cancelled vide letter dated 3.12.97} communicated to the applicant vide letter dated 25.2.98 as such no relief in this respect is necessary when the order in dispute does not survive.

In the result O.A. is allowed. The order of Appellate Authority dated 31.1.2000 confirming the order of Disciplinary Authority dated 1.1.99 is quashed and set aside, the respondents are directed to hold an oral enquiry in respect of the charges in the Memo dated 31.12.97 and complete the same within the period of 3 months from the date of receipt of this order. No order as to costs.

Order/Judgement despatched
to Applicant, respondent (s)

24/6/02

ssg.

(S.L. JAIN)
MEMBER (J)