

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 283 of 2001

Dated this Wednesday the 30th day of April , 2003

S.Rajaiah

Advocate Shri P.M.Mokashi

- For the Applicants

VERSUS

Union of India & others

Smt.H.P.Shah
Shri R.R.Shetty

Advocate for Respondent No.1
Advocate for Respondents 2 & 4

CORAM : Hon'ble Shri A.S.Sanghvi - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

(i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library ?

Sh
(Shankar Prasad)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Wednesday the 30th day of April 2003

O.A.283 of 2001

Coram: Hon'ble Mr.A.S.Sanghvi - Member (A)
Hon'ble Mr.Shankar Prasad - Member (J)

S.Rajaiah,
B.K.C. Chawl No.3,
Room No.608, Bharat Nagar,
Bandra (East),Mumbai
(By Advocate Shri P.M.Mokashi) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
Rafik Marg,
New Delhi.
2. Central Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
Head Office E.P.F.O.,
Hudko Vishala,
Bhikji Cama Place,
New Delhi.
3. Additional Central Provident Fund
Commissioner, West Zone,
Bhavishya Nidhi,
341, Bandra (East),
Mumbai.
4. Regional Provident Fund Commissioner,
Maharashtra and Goa,
Bhavishya Nidhi Bhavan,
341, Bandra (East),Mumbai.
(By Advocate Smt.H.P. Shah - For Respondent no.1
(By Advocate Shri R.R.Shetty) - For Respondents 2 & 4

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (A) -

The Applicant was issued a charge sheet dated 30.6.1994. The disciplinary authority thereafter passed an order of dismissal from service. The Appellate Authority confirmed the said order. Aggrieved by these orders the Applicant has preferred the present OA.

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4. The case of Respondents in brief is that the perusal of chargesheet would indicate that the applicant had been charged with settling the claims of two members by persons purporting to be said members. He helped them for opening bogus bank accounts and embezzled the ^{the} ~~money~~ ⁱⁿ accounts. The Applicant admitted his wrong doings and accordingly there was no need of a detailed personal hearing. The proceedings have been conducted in accordance with law and principles of natural justice. The penalty has been rightly awarded.

The further case of the Respondents is that the Applicant in the OA has set up a case different from his stand before the Disciplinary/Appellate Authority and that he cannot be allowed to do so.

5. The relevant extract from the Article of Charge is as follows:

"..... Even after knowing that the claim papers in respect of MH/118/5571 of Shri J.B.Pathak and MH/118/5573 of Shri B.L.Vengurlekar were submitted by persons purported as Shri J.B.Pathak and Shri B.L.Vengurlekar respectively, he has helped them by settling the claims and acted as party. He has helped the perpetrators for opening two bogus Bank Accounts with Central Bank of India, Kher Nagar Bandra (E) and Central Bank of India, Bandra Kurla Complex, Bandra (E) with the help of two acquaintances Mr.Verma and Mr.Naik who reside at Dottapada Road, Borivali (E), Bombay and did the act of embezzlement/misappropriation by settlement of the two cases.

....4/-



When the original claimant came to inquire about the case, Shri S.Rajaiah, H.C. has suo moto made a payment with State Bank of India, Govt. Colony, Bandra (E) on 24.1.94 and his application submitted to Regional Provident Fund Commissioner (I) for excusing him has taken the moral responsibility for two wrong payments."

It further appears from the list of witnesses that his wife has introduced one of the persons to the Bank.

6. The relevant part of the reply to the said charge sheet is as follows:

".....I am very sorry to state that I admit the charges as my moral responsibility, since under the unfortunate circumstance. I had to act in violation of the manual provisions.

During the year 1993 I was undergoing lot of mental physical and financial strains, as my mother was suffering from cancer therefore required costly medical attendance. Further my younger son was also seriously sick. Under these circumstances the wrong payments were effected by me. I sincerely regret my mistake and request you to consider my case sympathetically, as in my 20 years service spotless except these two wrong payments. I have not committed any mistake."

7. The said reply was followed up by the mercy petition dated 12.8.1994 wherein the Applicant states as follows:

"I very much regret my mistake any (sic) assure you that, I shall do my duty with more devotion, honesty and integrity. I therefore pray that I may please be given any punishment not tha dismissal (sic).

8. The appeal also has the following statement:

"As soon as I realised my folly, I approached my relatives and friends and beg (sic) them to save me and my family from ruining (sic) and borrowed money from them and deposited the same in respective accounts immediately."

9. It would be clear from what has been stated in Paras 6, 7 and 8 above that what was stated by the Applicant is admission and cannot be said to be only a moral responsibility. In view of this fact, the decision of Calcutta High Court in the case of Allahabad Bank Vs. Pronab Kumar Mukherjee and others, 1993 ILLJ High Court, Calcutta 390 that moral obligation does not amount to admission is clearly distinguishable.

10. The second ground taken is that the disciplinary authority has relied on the report of Vigilance authorities though the same was not cited as a prosecution document and accordingly the order of disciplinary authority is bad in law. As has been already indicated, in para⁹ above, the Applicant has admitted his guilt. Thus the finding of disciplinary authority can be sustained irrespective of his having taken the report of the Vigilance Authority into account and thus even if the same report has been considered in violation of principles of natural justice, the same does not vitiate the penalty. The Applicant has also taken the ground that the disciplinary authority has not taken evidence as required under Rule 10 (5) of the CCS (CCA) Rules. The learned counsel on behalf of the Respondents has pointed out that this ground has not been taken earlier and in view of the decision of the Apex Court in the case of Deokinandan Sharma Vs. Union of India & others, (2001 SCC (L&S) 1079 the Applicant cannot be allowed to raise this point. The relevant part of the said decision is as follows:-

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".....In support of the first submission, learned counsel appearing on behalf of the appellant, on being asked by us, produced copy of the petition of appeal filed before the satutory authority, from a bare perusal of which it would appear that there is no whisper of the aforesaid ground ttherein. Therefore, it is not possible to allow he appellant to raise this point before this Court....."

11. Rule 11 of the CCS (CCA) Rules deals with penalties. The first proviso to the said rule provides that in every case ^{An the An} whether a charge of acceptance of illegal gratification is established, the penalty of compulsory retirement, removal from service or dismissal from service shall be imposed provided that in an exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed. The Employees Provident Fund organisation acts as a trustee of the Provident Fund of its members and ^{An abetment m-} abating the proper drawal of the amount standing to the credit of a member has to be dealt with severely. Thus no case of interference with the order of punishment is made out.

12. In view of what has been discussed above, the OA being devoid of merit is dismissed. No costs.

Shankar Prasad

(Shankar Prasad)
Member (A)

A. S. Sanghvi

(A. S. Sanghvi)
Member (J)

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84/51 APR

Order Judge
to ^{pp} make Rep. on
on 6-5-03

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... ajaon mo beasaimhaib si díriom fi biaovsh

(Inv. nos. 8, A)
(C) 1966 M

(A) Welder Painter Plasterer Bricklayer Plumber