

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1201/1995

DATE OF DECISION: 19/7/2001

N.K. Theckedath

Applicant

Shri Natrajan

-----Advocate for
Applicant.

Versus

Union of India and 3 others

-----Respondents.

Shri S.S.Karkera proxy counsel
for Shri P.M.Pradhan

-----Advocate for
Respondents.

Coram:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt. Shanta Shastry, Member(A).

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to
other Benches of the Tribunal? *X*
3. Library. *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
OA NO. 1201/1995

Mumbai this the 19th day of July, 2001

CORAM:HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

N.K.Theckedath
(Audit Officer),
residing at
294, C.G.Quarters,
Sector C, Bhandup(East),
Bombay - 400 042. ... Applicant

By Advocate Shri Natrajan

v/s.

1. Union of India through
The Comptroller & Auditor General of India,
Indraprastha Estate,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 060.
2. Deputy Comptroller & Auditor General of India,
Indraprastha Estate,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 060.
3. Principal Director of Audit (Central),
Madhu Industrial Estate,
Pandurang Budhkar Marg,
Worli, Bombay - 400 030.
4. The Principal Accountant General (Audit)I,
Maharashtra, Old CGO Building,
101, M.K.Road,
Bombay - 400 020. Respondents

By Advocate Shri S.S.Karkera proxy
counsel for Shri P.M.Pradhan

(ORDER) (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

In this application, the applicant is challenging the vires of the orders issued by the respondents, namely, the order of the disciplinary authority dated 27/1/94 and rejection of his appeal by the appellate authority by his order dated 25/7/94.

2. A number of grounds have been taken by Shri S. Natrajan, learned counsel for the applicant. The brief relevant facts of

the case are that the applicant was issued a memorandum of charges dated 29/4/92 containing six articles of charges, which was issued by respondent no.4, i.e. the Principal Director of Audit (PDA) (Central). These charges were issued against him under Rule-14 of the Central Civil Service (Classification, Control and Appeal) Rules 1965, which deals with the procedure for imposing major penalties. After holding the departmental enquiry against the applicant, the disciplinary authority i.e. PDA(Central) decided to impose penalty under Rule 11(iii) of the CCS(CCA) Rules by ordering that the pay of the applicant be reduced by two stages in the time scale of Rs.2375-3500 for a period of two years w.e.f. 1/2/94 without cummulative effect.

3. Shri S.Natrajān, learned counsel has taken a ground that neither the charge sheet nor the punishment order which is stated to be issued by the disciplinary authority has been done by the competent authority. He has relied on the appointment order issued to the applicant appointing him as an Audit Officer by Office Order dated 1/2/91. He has submitted that the order appointing the applicant as Audit Officer has been done by respondent no.4. i.e the Principal Accountant General (Audit)-I, Maharashtra, Bombay. During the course of the hearing, Shri S.S.Karkera, learned proxy counsel for respondents has admitted that respondent no.4 is higher in rank to respondent no.3 i.e PDA (Central), Bombay.

4. Both learned counsel for the parties have relied on the relevant Rules, copy placed at Annexure R-1 by the respondents. This refers to the correction slip no.29 dated 27/3/89 to the Comptroller and Auditor General's Manaual of Standing Orders (Administrative) Vol.II. Relevant portion of Column.2 of the

Schedule to the CCS(CCA)Rules /1965 Part I - General Central Service - Group 'B' reads as follows:-

Description Post	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rule 11 of CCS(CCA)Rules)	Appellate Authority	Remarks/ Authority	
(1)	(2)	(3)	(4)	(5)	(6)
2. All field offices offices (including training institutions subordinate to the Comptroller and Auditor-General of India, other than Commercial Audit Offices and Commercial Audit Wing in Civil Audit Offices					
All Group B posts	Head of Department in the rank of Principal Accountant General/ Accountant General	Heads of Department in the rank of Principal Accountant General/ Accountant General			

It is relevant to note that in serial No.1 dealing with Group 'B' posts in the office of the Comptroller and Auditor General of India, the Principal Director/Director is shown both as the appointing authority and disciplinary authority, which is not the case for Group 'B' posts in field Offices:

5. Learned proxy counsel for the respondents has submitted that respondent no.3 i.e. PDA (Central) who had issued the punishment order as disciplinary authority was infact the Head of the Department in the rank of Principal Accountant General/Accountant General as provided in the aforesaid Schedule to the Rules. He has however not disputed the fact that respondent no.4 is higher in rank to these officers. It is relevant to note that in column no.2 of the aforesaid Schedule to the Rules, the appointing authority for all Group 'B' posts in field offices, subordinate to the Comptroller Auditor General of India, is the Head of the department in the rank of Principal Accountant General. Further, it is relevant to note that in the present case, the applicant has been appointed as Audit Officer by the Principal Accountant General(Audit), Bombay. Nothing has been produced on record by the respondents to show how in the circumstances, the contention has been made that while admitting that the Principal Accountant General (Audit) Bombay is the Head of the Department, at the same time the PDA (Central) is also, the Head of the same office. Having regard to the provisions of the Rules, referred to above, we are, therefore, unable to accept the submissions of the learned proxy counsel for respondents that respondent no.3 should be deemed as Head of the Department in this case. It is also relevant to note that he does not at the same time dispute the fact that he is lower in rank to the appointing authority who had appointed the applicant as Audit Officer, namely the Principal Accountant General:

6. In the facts and circumstances of the case, we therefore find force in the submissions made by learned counsel for the applicant that the disciplinary authority's order has been issued

:5:

by an officer lower in rank to the appointing authority and is not in accordance with the Rules. The contention has been raised by learned proxy counsel for respondents that this matter should have been raised by the applicant before the enquiry officer and he cannot do so now. We are unable to agree with this contention because it was the bounden duty of the respondents to follow the relevant law and rules, which as stated above, they have not done in the present case. Therefore, having regard to the provisions of Article 311(1) of the Constitution read with the provisions of the CCS(CCA) Rules, 1965, as amended by correction slip no.29 dated 27/3/89, we find force in the submissions made by the learned counsel for applicant, namely, that the disciplinary authority was not the competent authority to impose the impugned punishment order dated 27/1/94.

In the result, having regard to the discussion above and the relevant provisions of law, the OA succeeds and is allowed to the following extent:-

The disciplinary authority's order dated 27/1/94 which has been upheld by the appellate authority's order dated 25/7/94 are quashed and set aside. The applicant shall be entitled to the consequential benefits in accordance with law. In the circumstances of the case, liberty is granted to the respondents to proceed in the matter, if they so desire, in accordance with law. No Costs.

Shanta J
(SMT. SHANTA SHAstry)
MEMBER(A)

Lakshmi S
(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN

abp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3887 OF 2002

Union of India & Ors.Petitioners
(Orig.Respondents)

V/s.

N.K. TheckedathRespondent

Mr.Ravi Shetty with Mr.N.R. Prajapati for the
Petitioners.

Mr.Sureh G. Pillai for the Respondent.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : JANUARY 30, 2008

P.C. :-

1. By this petition, the petitioner challenges the order passed by the Central Administrative Tribunal dated 19th July, 2001. By that order, the Tribunal has set aside the order dated 27th January, 1994 passed by the Disciplinary Authority as also the order of the appellate authority dated 27th July, 1994 by which order the order of the Disciplinary Authority was upheld. By the order dated 27th January, 1994, the Principal Director of Audit (Central) had imposed punishment on the respondent reducing the pay of the respondent by two stages from Rs.2975 to 2825 in the time scale of pay of Rs.2375-75-3200-EB-100-3500 for a period of two years with effect from 1st February, 1994 without cumulative effect and, not adversely affecting his pension. This

order was passed as a consequence of departmental enquiry held against the respondent wherein the allegation of misconduct was made against the respondent. Appeal was filed against this order before the appellate authority. That appeal was rejected. Against that order, the CAT was approached. Perusal of the order of the CAT shows that the order has been set aside for two reasons 1) That the Principal Director of Audit (Central) who has made the order imposing the punishment is subordinate in rank to the appointing authority of the respondent and therefore, imposing of punishment is contrary to the provisions of Article 311(1) of the Constitution and (2) that though the Director of Audit has been designated as a competent authority, the competent authority designated being subordinate to the Head of the Department who is the appointing authority of the respondent, the order imposing punishment is improper.

2. We have heard the learned Counsel for both the parties.

3. Article 311(1) of the Constitution reads as

under :-

311(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

4. Perusal of the above quoted Article makes it clear that Article 311(1) comes into play only in case punishment imposed is of dismissal or removal. Therefore, in the present case, provisions of Article 311(1) are not attracted because the punishment imposed on the respondent is neither dismissal nor removal.

5. So far as second ground is concerned, it is clear that so far as field officers like the respondents are concerned, the appointing authority is Head of the Department in rank of Principal Accountant General/Accountant General and competent authority to impose penalty is Head of the Department in the rank of Principal Accountant General/Accountant General. It is

clear from the Auditor General's Manual that so far Civil Audit Office is concerned, Principal Director (Audit) has been designated as Head of Office, therefore, Principal Director (Audit) is the Head of the Department so far as respondent is concerned and therefore, as per the standing orders of the Auditor's General Manual, the Principal Director (Audit) could be Head of the Department who will be competent to impose the penalty though he will be subordinate to the appointing authority of the petitioner. Perusal of the order of the CAT also shows that the CAT has accepted the submission on behalf of the petitioner that the Principal Director (Audit) has been designated as Head of the Department but it appears from the order of CAT that according to the Tribunal, despite designation of Principal Director (Audit) as Head of Department, he cannot impose punishment on the respondent because he continues to be subordinate to the appointing authority of the respondent. In our opinion, these observations are contrary to law. We have not been pointed out any provision by the learned Counsel for the respondent which lays down that punishment other than removal and dismissal cannot be imposed on a member of civil service

by an authority who is designated as competent authority who may happen to be subordinate to the appointing authority. The Rule that the punishing authority cannot be lower in rank than the appointing authority applies in view of the provisions of Article 311(1), only in case punishment is of dismissal or removal and in case of other penalties, the Government is free to designate an officer as disciplinary authority though that officer may be subordinate to the appointing authority of the concerned civil service. Thus, we find that both the reasons given by the Tribunal for interfering with the order imposing punishment on the respondent are not proper and in accordance with law.

6. In the result, therefore, the present petition is allowed. Rule is made absolute in terms of prayer clause (a). No order as to costs.

27/3/2008
MUNIR
27/3/2008
P.M. 2008
P.M. 2008
27/3/2008