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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 2 of 1987:

Date of Order: 9th November 89

SYED GHOUSE

.. Applicant

versus

The General Manager, Indian Govt
Mint, Hyderabad

.. Respondent

For Applicant

.. Mr.V.Venkateswara Rao for Mr.H.S.Guru-
raja Rao, Advocate

For Respondents:

.. Mr.G.Parameswara Rao for Mr.P.Ramakrishna
Raju, Sr.CGSC

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI D.N.MURTHY: MEMBER (JUDICIAL)

(Judgment delivered by Shri B.N.Jayasimha, Hon'ble Vice Chairman)

1. This is an application from an Assistant, Class II in the India Government Mint, Hyderabad. He has filed this application challenging the imposition of the penalty of warning against him by an order dated 2-11-1985 issued by the Respondent and confirmed by a memo dated 9-7-1986 by the appellate authority.

2. The applicant states that while he was working as an Assistant, Grade II, by an order dated 2-12-1982, an advance of Rs.3,000/- was sanctioned to him for the purchase of Motor cycle. The applicant submitted the

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documents in prove of the purchase of the Motor cycle on 3-2-1983. On 17-3-1983, the respondent issued a memo asking him to refund the amount with penal interest. The same was reiterated in another memo issued on 8-6-1983. Thereafter, in a memo dated 4-7-1983, a charge-sheet was issued to him consisting of one charge stating that he failed to refund the advance with interest as directed and, thus, he misappropriated the amount of advance of Rs.3000/- sanctioned and paid to him for purchase of Motor Vehicle. He had, thus contravened Standing Order 23(ii) of the India Government Mint Standing Orders. The entire amount was recovered with the penal interest in the mean-time. The applicant submitted a reply to the charge-sheet and after an enquiry by an order dated 2-11-1985, he was given a warning. His appeal against the warning was rejected on 9-7-1986. The applicant contends that he is not guilty of any mis-conduct and the disciplinary and ^{The} appellate authorities failed to apply their minds in the facts and circumstances of the case. The appellate authority passed a non-speaking order while rejecting his appeal. The appellate authority was bound to provide him reasonable opportunity to the applicant before disposing of his appeal and ought to have considered the various pleas raised by the applicant in his appeal. Hence, he has filed this application.

3. The respondent has filed a counter stating that the applicant received the motor cycle advance on 2-12-1982 after executing necessary bonds. He was required to produce the motor cycle within one month from the date of advance unless an extention of time is granted. He did not fulfil the formalities with regard to purchase of motor

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cycle as required under the Rule 206 of GRR and as per orders dated 30-11-1982. He did not even seek extention of time . Hence, by a memo dated 17-5-1983, he was directed to refund the advance amounts of Rs.3000/- together with interest including penal interest in lumpsum immediately. When his pay was withheld for the month of May, 1983, he gave a representation dated 2-6-1983 stating that due to sudden demise of his mother, serious ~~pediatric~~ disease of his daughter, he was not in a position to comply with regular formalities, and requested ~~to vacate~~ permission to submit all the concerned documents by 20th June and requested ~~to~~ release ^{of} his salary for the month of May, 1983. He was, therefore not granted any extension of time . He did not make any representation and not even cared to fulfil the formalities, thus giving room for suspicion. However, by a memo dated 8-6-1983, he was directed to refund the amount of pending advance together with the interest and penal interest forthwith in one lumpsum failing which disciplinary action ~~will~~ be taken. Though, he was directed to refund the amount, he did not comply with the formalities. Hence, apart from recovery of the penal interest he was served with a charge memo dated 4-7-1983, to which he submitted an application dated 8-7-1983 enclosing the RC Book Certificate of insurance and Cash Receipt in respect of the Motor Cycle purchased towards the motor cycle advance granted to him. Although he stated to have obtained the receipt on 28-2-1983, the actual receipt is dated as 3-2-1983. Even after taking the purchase of vehicle as 28-2-1983, the vehicle was not purchased within the time limit of two months. He was, therefore, directed to refund the balance of advance amount together with interest including

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penal interest immediately. The applicant did not make any representation either admitting or denying the articles of charges levelled against him in memo dated 4-7-1983. Hence, an enquiry officer was appointed and he dragged the enquiry by changing several defence assistants. Ultimately, the enquiry officer submitted his report on 4-10-1985 inspite of delaying tactics adopted by the applicant. Thereafter, by a memo dated 2-11-1985, a warning was issued to the applicant to guard against such mis-conduct in future. For these reasons, the respondent says that there is no merit in the application.

4. We have heard Shri Venkateswara Rao, learned counsel for the applicant and Shri Parameshwar Rao, Standing Counsel for the department.

5. Shri Venkateswara Rao, contends that the warning issued to the applicant amounts to a double jeopardy since the advances have already been recovered with penalty interest. He also states that the charge does not come within the ^{definition of} ~~mis-conduct according to~~ the Standing Orders No.23(ii) of the India Government Mint. He relies on the decision of the Supreme Court in A.L.Kalra Versus Project Officer (AIR 1984 SC 1361 and R.V.Patel Vs. Ahmedabad Municipal Corporation (1985 (1) SLR 573.

6. The only point that arise for consideration is whether Standing Order No.23(ii) of the India Government Mint applies in this case. Standing Order No.23(ii) enumerates various mis-conducts. 25(ii)(z) reads as follows:

'Preferring false claims in respect of medical reimbursement, travel concessions, etc., and producing false certificates in respect of purchases made out of loans and advance from Government funds'.

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To

- ✓ 1. The General Manager,
India Government Mint,
Khairatabad,
Hyderabad.
- ✓ 2. One copy to Mr. H. S. Gururaja Rao, Advocate,
3-5-703, Opp. Old M.L.A. Quarters, Himayatnagar,
Hyderabad - 500029.
- ✓ 3. One copy to Mr. P. Rama Krishna Raju, Sr. CGSC.,
CAT., Hyderabad.
- 4. One spare copy.

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In this case, the misconduct alleged is not preferring a false claim. It is that he did not fulfil the conditions prescribed for the grant of Motor Cycle advance. In *A. Katra Vs. the Project and Equipment Corporation of India* (1984(2)SLR 446), the applicant therein had taken a house building advance/conveyance advance and failed to refund in time and it was recovered by withholding the salary. In that case it was observed that "If the rules for granting the advances themselves provided the consequence of the breach of conditions, it would be idle to go in search of any other consequence by initiating disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that the breach of Home Building Advance Rules would by itself constitute a mis-conduct." In *R.V. Patel Vs. A.M.Corporation* (1985(1)SLR 573) the Supreme Court held that "It is thus well settled that unless either the certified Standing order or in the service regulations an act or omission is prescribed as mis-conduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged mis-conduct would not be comprehended in any of the enumerated mis-conduct."

7. In the facts of the case, the two decisions cited above apply in all its aspects. Accordingly, we set aside the orders dated 2-11-1985 and 9-2-1986. The application is allowed. No costs.

B.N.Jayashimha
(B.N.JAYASIMHA)

Vice Chairman

M.J.
(J.N.MURTHY)
Member (Judl.)

Dt. 9th November, 1989.

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J. Venkatesh
DEPUTY REGISTRAR (J)

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