

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.9/2005.Jaipur, this the 8th day of November, 2006.

CORAM : Hon'ble Mr. Kuldip Singh, Vice Chairman.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Ishwar Prasad Sharma
 S/o, Late Shri Ganga Sahai Sharma,
 Aged about 53 years,
 R/o Village and Post Govindgarh,
 District Jaipur (Rajasthan)

... Applicant

By Advocate : Shri R. D. Tripathi.

Vs.

1. Union of India
 Through its Secretary to the Department of Labour
 Government of India,
 New Delhi.
2. Director General,
 Employees State Insurance Corporation,
 Panchdeep Bhawan, C.I.G. Marg,
 New Delhi.
3. Insurance Commissioner,
 Employees State Insurance Corporation,
 Panchdeep Bhawan, C.I.G. Marg,
 New Delhi.
4. Regional Director,
 Employees State Insurance Corporation,
 Panchdeep Bhawan, Bhawani Singh Marg,
 Jaipur (Rajasthan).

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

: O R D E R (ORAL) :

In this OA, the applicant has challenged the order passed by the respondents vide which a penalty was imposed upon the applicant for reduction of pay by two stages from Rs.8125/- to Rs.7775/- for a period of two years with cumulative effect with further direction that he will not



earn any increment during currency of the period of penalty. It was also directed that the excess amount of TA/DA paid to the applicant shall also be recovered from him. The applicant preferred an appeal before the Appellate Authority, which was also rejected vide Annexure A/2.

2. The facts in brief as alleged by the applicant are that he was proceeded departmentally on the allegations that 1) he has received an excess payment wrongly by making over writing/alterations in the amount of Cash Memo No.1937 and 1954 of Hotel Parag Kota attached to his TA Bill dated 16.3.01 for Rs.12,268.15 in respect of his tour from Jaipur to Kota, thereby caused financial loss to the Corporation of Rs.2,730/- and 2) attempted to receive an excess financial gain amounting to Rs.864.50 wrongly by making over writing/changes in the details/amount of Cash Memo No.1987 of Hotel Parag, Kota attached to his supplementary T.A. Bill dated 4.4.2001 for Rs.3,800/- in respect of his tour from Jaipur to Kota and while posted at Pali Center during 22.5.2000 to 1.1.2001, he attempted to receive wrongly an excess financial gain amounting to Rs.106/- by making over writing/changes in the details, amount of Bill No.4235 of Hotel Mamta Jaipur attached to his T.A. Bill dated 24.4.2001 for Rs.852/- in respect of his tour from Pali to Jaipur.

When the show cause notice was issued to him, the applicant replied as per Annexure A/4 wherein he denied the



allegations made against him. He denied that he had made any over writing on bills submitted by him. He submitted that allegations made against him are without any foundations so show cause notice issued to him should be dropped.

3. However, the department after considering his reply took a decision to proceed against him to issue a memo under Rule 14 of the CCS (CCA) Rules 1965 and inquiry was held in which the Inquiry Officer submitted his report vide Annexure A/17, wherein he had held that article of charge No.1 stand proved except that the over writings/cuttings/alterations in the Cash Memos No.1937 and 1954 of Hotel Parag, Kota have been made by Sh. Banwari lal Manager of the Hotel Parag. However, these have been made by the above named person on the instance of C.O. The basis for reaching at this conclusion is that it is none else but C.O. only was benefited by such over writings/cuttings and he actually availed the financial benefit by using the vouchers with the over written/inserted figures. Article of Charge-2 also stands proved except that the over writings and cuttings made in the Cash Memo No.1987 of Hotel Parag, Kota and Bill No.4235 of Hotel Mamta, Jaipur were made by Shri Banwari Lal the then Manager of Hotel Parag and Shri Murari Lal Proprietor of Hotel Mamta as admitted by them during inquiry. It is however an established fact that such over writings and cuttings made in the above mentioned vouchers were made by the persons concerned of the respective hotel on the

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instance of the charged officer. The conclusion so arrived at is based on the revelation made by the deposition of the witnesses. It is none else but C.O. himself who was benefited by such over writings/cuttings/insertions resulting in inflation of figures raising the entitlement of C.O. to the Daily allowance at higher hotel rate. The C.O. attempted to avail of the financial gain by using the relevant Cash Memo/Bill. *Accepting the findings of S. O. The* ~~the acceptance by the~~ Disciplinary Authority ~~who~~ passed the impugned order Annexure A/1 as well as the Appellate Authority passed the impugned order Annexure A/2. However, in order to, challenge the same, the applicant had submitted that the Inquiry Officer had traveled beyond the ^{scope} ~~stock~~ of charges and he had been held guilty for a different charge, rather than the charge framed against him. Thus, a serious prejudice has been caused to him.

4. The charge leveled against him was to the extent that he had received the excess payment by making over writing/alterations in the amount of bills but in fact the findings recorded by the Inquiry Officer are that alterations have been made by someone else and the charge to that extent has not been proved. When the Inquiry Officer had categorically stated that its stand proved except that the over writing/alterations in the cash memo have been made by the applicant. Rather it has been held that the alternations have been made by one Shri Banwari Lal, Manager of the Hotel where the applicant had stayed. Similarly on charge No.2, he stated that alterations have

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been made by Banwari Lal and Murari Lal, the Manager of Hotel Parag and Proprietor of Hotel Mamta. So Learned Counsel for the applicant submitted that there was no charge framed against the applicant that the alterations in the Bill submitted by him were made. ^{Not there was charge there} Thus, the witnesses ^{the alterations} were made at the instance of the applicant. So the applicant should not have been held guilty for the said charge.

5. Learned Counsel for the applicant further contended that in fact the applicant had paid the same ^{amount} to the Hotels where he had stayed which he had charged from the department and in support of his contention, he referred to the statements of the witnesses and even the Presenting Officer had declared the witnesses hostile. So Learned Counsel for the applicant submitted the fact that the witnesses from the Hotel have ^{deposed} been advised that they have received the amount as shown in the original bill issued to the applicant on the basis of which he received payment from his office.

6. Learned Counsel for the applicant further submitted that the findings arrived at by the Inquiry Officer are totally ^{perverse} ~~absolve~~ and ^{is} unreasonable. As such, the applicant should not have been held guilty, rather he should have been excluded.

7. In reply to this, Learned Counsel for the respondents submitted that witness Banwari Lal had stated that he had

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made alterations in the original copy of the bill at the instance of applicant as he wanted to make extra money. Learned Counsel for the respondents further submitted as regards the charge of receiving excess payment by ^{submitting} ~~making~~ & tempered documents are concerned that stand proved against the applicant. As such, the applicant has been rightly held guilty and no interference in this case is called for in the impugned order.

8. We have heard the Learned Counsel for the parties and gone through the material placed on record. As regards the contention of the Leaned Counsel for the applicant that there is deviation in the charge framed and the charge proved against the applicant and that the Inquiry Officer has traveled beyond the charge, we find that this contention of the applicant has no merits because the bare perusal of the charge sheet shows that the applicant had received excess payment wrongly by making over writing/alterations in the amount of cash memos submitted by him. Assuming for the arguments sake that the charge framed against the applicant is that ^{submitted to} ~~should~~ he had tempered ^{bills for} ~~the post by~~ receiving excess payment. In that event, both the charges remained the same that the applicant had received the excess amount by submitting tempered bills. Mere fact that ^{the} tempering has not been done by the applicant ^{own} ~~is~~ in his hand ^{and} ~~i.e. immediately~~ and that will not amount to the fact that the Inquiry Officer traveled beyond the scope of charges framed against the applicant because both the charges leveled against he applicant remains the

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same that the applicant had received/ ^{attempted to receive} excess payment from the office of the applicant on the basis of submission of tempered bills of his stay in hotels at Kota. Moreover, the Inquiry Officer had concluded that the tempering had been done at the instance of the applicant itself as it has been proved from the statement of Banwari Lal. So the question of traveling beyond the charge does not stand and even in the findings recorded by the Inquiry Officer. The Inquiry Officer himself had agreed that the charge of tempering documents in the handwriting of the applicant does not proved but the fact he has received excess payment has been proved. Even otherwise, the perusal of charge sheet ~~which~~ ^{which} shows that it concerns of two elements one tempering of the bills second receiving of the excess payment by submitting tempered bills. So the fact that the applicant has received the payment that has been held to be proved and the fact that the documents had been tempered at the instance of the applicant ~~though~~ stands proved but the inquiry Officer had rightly held that the charge against the applicant for doing the tempering is not proved that is why he had ~~received~~ ^{received}, it stands proved except that the over writings/cuttings/alterations in the Cash Memos No.1937 and 1954 of Hotel Parag, Kota have been made by Sh. Banwari Lal Manager of the Hotel Parag. However, these have been made by the above named person on the instance of C.O. The basis for reaching at this conclusion is that it is none else but C.O. only was benefited by such over writings/cuttings and he actually availed the financial

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benefit by using the vouchers with the over written/inserted figures.

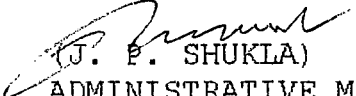
9. During the course of arguments, Learned Counsel for the applicant also called upon us to reappraise the evidence and wanted to pursue us that the applicant had not received the excess payment but had received the same on account of his TA/DA Claim which he had paid but the fact remains that it is a settled law that the Tribunal while deciding the OA in judicial review is not required to reappraise the evidence ~~only~~ and unless the findings arrived at by the Inquiry officer are so pervert which cannot be written by any person of reasonable prudence. On the contrary, in this case we find that the witnesses summoned by the department from those hotels had come to show that the tempering of bills have been done in the original copy which was submitted by the applicant to the department to claim TA/DA. One could have accepted that there was a genuine mistake but in this case it was not one or two mistake rather the applicant had stayed in one hotel on 3 occasions and another hotel on 3 occasions and the tempering appears to have been done on all the copies of the original bill and there was no tempering in the carbon copies which was retained by the hotel. This cannot be said to be a case of bonafide mistake and as such, we are of the considered opinion that the findings ^{arrived at} ~~written~~ by the Inquiry Officer are not at all perverse and any reasonable person could have ^{returned} ~~written~~ the same ^{findings} ~~point~~ and thus the applicant has been rightly held guilty and he has been given

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an appropriate time to defend his case and as such we find that no interference is called for and no other contention has been raised before us.

10. Hence, the OA being bereft of merit stands dismissed.

Nr. C-1/12


(J. P. SHUKLA)

ADMINISTRATIVE MEMBER


(KULDIP SINGH)

VICE CHAIRMAN