

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 18-1-05

O.A.No.170/2002

Kamal Chand Jain s/o Late Shri Rajmal Jain r/o
Quarter No.10, P.F.Colony, Nidhi Vihar, Jyoti
Nagar, Jaipur.

... Applicant

VERSUS

- 1.Union of India through Addl.Central Provident
Fund Commissioner (West Zone) and Appellate
Authority, Central Provident Fund Department,
Bhavishya Nidhi Bhawan, 14, Bhikaji Kama
Place, New Delhi.
- 2.Regional P.F.Commissioner (I) & Disciplinary
Authority, Employees Provident Fund
Organization, Regional Office, Rajasthan,
Jaipur.
- 3.Regional P.F.Commissioner (I) & Estate
Officer, Employees Provident Fund
Organisation, Regional Office, Rajasthan,
Jaipur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

Mr.Anupam Agarwal, proxy counsel for
Mr.Manish Bhandari, counsel for Applicant.
Mr.N.S.Yadav, counsel for Respondents.

O R D E R

PER MR.A.K.BHANDARI

Applicant has filed this OA u/s 19 of the
Administrative Tribunals Act, 1985 thereby
praying for the following relief :

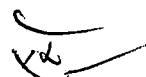


"i) By an appropriate order or direction, the impugned order dated 2.4.2002 (Ann.A/3) passed by the appellate authority rejecting the appeal of the applicant and the order dated 14.12.2001 (Ann.A/1) may kindly be quashed and set aside so also the impugned notice for eviction of residential quarter so occupied by the applicant.

ii) by an appropriate order or direction, the respondents may kindly be commanded with a direction to produce the orders/records pertaining to the punishment inflicted upon the employees namely S/Shri Ajay Kumar Meena, Mukesh Verma, Hanuman Badetia, G.P. Mathur, Ram Kishore Meena, Prakash Samtani, A.K.Chugh and Smt.Mohini Jethwani, which has not been furnished to the applicant despite application at Ann.A/8."

2. Brief facts of the case, as stated in the OA, are that applicant, a Head Clerk (under suspension) was served with a charge-sheet (Ann.A/6) containing two articles of charges regarding manipulation of record and fraudulently giving benefit to a client of CPF Department in the matter of remittance of PF dues. In this matter he was awarded punishment of dismissal from service, which shall ordinarily be a disqualification for re-employment under the Central Government. He preferred an appeal against this order and the same was decided on 2.4.2002 upholding the penalty awarded by the disciplinary authority (Ann.A/3). During the period intervening between awarding of punishment and decision in appeal the applicant preferred an OA (No.149/2002) before this Tribunal impugning the punishment order dated 14.2.2001 (Ann.A/1) and also requesting for early decision in his appeal. This OA was disposed of by order dated 27.3.2002 with a direction to the respondents to dispose of the appeal within a period of two months(Ann.A/2). In this, the Tribunal had also directed the respondents that till disposal of appeal they should not dispossess the applicant from the government quarter occupied by him.

3. It is further stated that immediately on



submission of the copy of this Judgement the appellate authority decided the appeal vide order dated 2.4.2002 (Ann.A/3). It is alleged that the appeal was decided in a hurry, upholding the punishment of dismissal, due to which reason he was then dispossessed from the government accommodation for the retention of which he had sought interim relief by the above order. The applicant has impugned this appellate order in this OA. It is further stated that although allegation in the charge-sheet is regarding forging of documents, a bare reading of the orders passed by the appellate authority reveals that he had not forged the signature but the same had been managed to be obtained on dues and paid statement of M/s Modern School. This shows that the charge-sheet has not been prepared properly and for this reason charge No.1 does not survive. That the documents were neither prepared by him nor signed by him. Therefore, finding of the appellate authority that charge is proved is wrong. In this matter some other employees of the office were also punished but their punishment is less than the punishment meted out to the applicant, although their misconduct is graver, they being not only the custodians and authors of the documents but also signatories of the same. That in course of inquiry applicant had demanded documents pertaining to the disciplinary action against other employees but the same were not furnished by the respondents, which shows arbitrary and discriminatory attitude of the respondents. Although this fact was stated in the appeal also yet the appellate authority has not taken note of it and decided the matter. The punishment to other employees on the same facts is also contradictory to the action initiated and punishment awarded to the applicant. Therefore, applicant requests for examination of all the relevant documents including orders of punishment passed to other employees involved in the matter so as to see whether the

X X

version of other employees or the version of the applicant is correct, which should have been the prime consideration with respondents at the time of awarding punishment and rejecting the appeal. It is also stated that non-proving of one charge should have the effect of cumulatively non proving other charge also. That the respondents have not taken note of unblemished service record of the applicant during which he was neither served any charge-sheet nor adverse remark except the one under challenge was issued to him. It is also stated that the grounds taken by him in the appeal (Ann.A/4) may be taken as grounds in this OA. The applicant has also blamed the respondents for dispossessing him from the government quarter immediately after passing the punishment order although the appeal was still pending and it is claimed that the appeal was hurriedly decided to be able to throw him out from the government quarter. Applicant has assailed the inquiry on the ground of not following the prescribed procedure and for non-consideration of the evidence put up by him in his own defense. That another employee of the department, Shri G.P.Mathur, had admitted that he had signed Exhibit P-1 and P-2 and if the same was signed without a counter check of the payment position, no negligence can be attributed to the applicant. Copies of certain statements of witnesses in the DE are collectively attached as Ann.A/7 and A/8 and stated that none of the challans, statements or other documents were ever prepared by the applicant rather they were processed and signed by other concerned staff as per the laid down procedure and it can hardly be presumed that all the officials worked blindly on persuasion of the applicant and that too for the reason that children of the applicant were studying in the Modern School. Even if it is presumed that applicant had requested the official concerned to complete the necessary procedure at the earliest then also it does not

✓

mean that while discharging their duties all the officials will not even check or cross check the record before signing them. For these mistakes not only Shri G.P.Mathur but also Shri Mukesh Verma were found responsible. These facts clearly indicate that mishap occurred on account of mistakes and negligence on part of other officials and the applicant has been punished with penalty arbitrarily. The applicant was neither in charge of the Section nor did he have any direct or indirect control over the officials of different Wings but he was only working on the post where he could not even influence or threaten them in any way. Therefore, excuse taken by these officials that they signed the papers without checking them is ill founded and only to shift the burden of punishment on him. In these circumstances, awarding punishment of dismissal to the applicant is arbitrary. It is discriminatory because others have been punished lightly. That Government has not sustained any financial loss in this matter because Modern School had deposited certain amount concerning in this matter and Shri Mukesh Verma had also deposited Rs.50000/- towards the account of Modern School. That Shri Mukesh Verma was more involved in this incident for which reason he agreed to deposit the amount and that applicant caused no loss but he has been awarded punishment of dismissal. These circumstances make the punishment disproportionate to his charge as well as discriminatory in comparison to the punishment awarded to other employees.

4. In the grounds it is stated that appellate authority has categorically admitted that signatures on the document are not forged but the same were managed to be obtained by the applicant on dues and paid statement. This proves that charge No.1 has not been correctly prepared due to which reason it does not survive and deserves to be dropped at the

✓

outset. That applicant a low level functionary in the office could hardly have managed to obtain signatures from staff working in different sections. Thus, finding of appellate authority renders charge No.1 infructuous. Further, when other employees in the office were punished with lessor punishment although their involvement in the incident was greater as they were being authors and signatories and applicant was not in a position to pressurise them to extract their signatures, the punishment is discriminatory. As mentioned in facts for the same incident more than one staff members have been punished but applicant has been punished with more severe penalty than others due to which reason the respondents' action is discriminatory. The applicant had demanded the documents pertaining to departmental inquiry of other staff members but the same were not furnished by the respondents arbitrarily although they have used the material gathered in those departmental inquiries against him which makes the respondents' action violative of principles of natural justice. All these facts were mentioned in the appeal but appellate authority did not consider them while deciding the appeal. In the appeal many other objections were also raised but appellate authority not only did not consider them but also did not even mention them in the order passed by him. Hence appellate order deserves to be quashed. Further, as per law if punishment has been passed in for more than one charge then it has to be treated as an order having cumulative effect of various misconducts and if one misconduct is not proved then the order of punishment gets vitiated. On this ground also the punishment and appellate orders deserve to be quashed. Statements of many witnesses which were favourable to the applicant have been ignored. The appeal was not decided expeditiously was due to premeditation to punish on part of respondents. Also they

VK

decided the appeal only when notices of this OA had been issued. That punishment is disproportionate to the charges levelled against him. That applicant was denied documents pertaining to departmental action against other employees though material gathered during those inquiries has been used against him illegally. That Government sustained no financial loss in this matter because Rs.50000/- was deposited by Shri Mukesh Verma, who later on resigned from the Organisation and M/s Modern School also deposited the remaining money.

5. Respondents have filed detailed reply. They have vehemently denied vindictiveness in the matter of issuance of notice for vacation of quarter during the period of appeal by stating that under the provisions of Employees Provident Fund, Central Employees Board (Allotment of Residential Premises) Rules, 1972, an employee is entitled to retain possession of premises allotted to him till he is in employment or otherwise ordered to vacate. As and when the relation of employee and employer ceases, one has to vacate the possession. Therefore, when services were terminated, applicant's entitlement to keep possession of quarter came to an end. However, in view of the order of the Tribunal dated 27.3.2002 he was permitted retention of the quarter but as soon as punishment order was upheld in appeal he was required to vacate the same, which action is strictly as per rules. They have also denied that under pressure of serving of notice of this OA the appeal was decided. On the contrary, coincidentally it was decided just after the above order of the Tribunal. As far as plea that he had unblemished record of service, it is stated that applicant while posted in Sub Regional Office, Kota, in 1993, was charged for gross negligence and behaviour unbecoming of employee of EPF Organisation and on being found guilty

✓x -

was punished with punishment of withholding of two annual increments for two years without cumulative effect. In support of this, Ann.R/1 has been attached. Similarly, in 1998, in another inquiry punishment of reduction to lower time scale of UDC at the initial stage of pay scale, which shall ordinarily be a bar to promotion, was imposed for tempering with the service book, desertion from duty place, misappropriation of Govt. money advanced to him on account of LTC, and wilful absence from the duty. In support of this Ann.R/2 is attached. In the present case, he was charged for serious violation of service rules because applicant took employment in Modern School without permission while in employment under the respondents. He was assisting M/s Modern School over their PF Account matters, getting Rs.200/- per month since 1996. It is stated that a complaint was made by M/s Modern School to respondents as well as a criminal case as filed by them against the applicant alleging fraud and cheating in the course of remittance of PF dues of the Institution to SBI. Some other employees were also found at fault in this matter and were also charge-sheeted on different charges. Shri Mukesh Verma was charged for not maintaining DCB Register, failure to notice that establishment M/s Modern School was not submitting Form-12A and Triplicate Challan regularly, and had signed the due and paid statement and the annual statement of accounts in Form 24 for the year 1992-93 and 1993-94 and he was punished with recovery from his pay of Rs.45310.50 i.e. 50% of pecuniary loss caused to the Central Board of Trustees. This order was passed on 4.11.96 (Ann.R/3). Shri Mukesh Verma accepted punishment and deposited the amount of recovery from his Bank Guarantee. His resignation was also accepted w.e.f. 4.11.96.

6. Reply of the respondents contains reply to the facts as well as grounds and it is denied

Y'a ✓

that there is any admission in order of appellate authority dated 2.4.2002 that signatures on the document are not forged signatures as same were managed to be obtained by the applicant on due and paid statement. It is also denied that there is any contradiction in inquiry proceedings of other employees and that of the applicant and that applicant was punished on the basis of statements of other accused because applicant was supplied with the copies of all the statements and documents relied upon in the inquiry. That punishment awarded to other employees are not relevant to establish innocence of the applicant and as per rules he has no right to get copies of these orders nor is he entitled to call record of proceedings of other inquiries. In fact, appellate authority had considered all issues raised in appeal connected with the impugned order. However, many issues which were not considered relevant as not arising out of impugned orders but had been raised in appeal unnecessarily were ignored and to that extent allegation against the appellate authority are baseless. It is also stated that it is not as per rules to say that if there are various charges and if one charge is not proved then the entire order of punishment cannot be sustained. The allegation of discrimination is denied because the charges against other co-delinquent employees are different than those against the applicant and other employees have been punished on the merits of cases concerning them and the applicant has been punished only for the charges levelled against him. Allegation of not conducting the inquiry fairly is also denied because correct procedure was followed and when charges were found proved punishment was awarded. Allegation of delay in deciding the appeal out of vindictiveness is also denied and it is sated that there is no rule that only filing of appeal entitles applicant to retain the government quarter allotted to him during his tenure of service.

✓

It is denied that Shri Mukesh Verma, charge against whom was more serious than the applicant, was permitted to retire from service whereas applicant has been dismissed. It is stated that Shri Mukesh Verma was punished on the merits of his case. That he while resigning from service submitted Bank Guarantee with declaration that if any liability arrives upon him then amount in question could be recovered from his Bank Guarantee and as per decision in his case, whereby liability for loss was held, half of the amount of loss was recovered by invoking the Bank Guarantee. Allegation of not following principles of natural justice and procedure by inquiry officer is also denied because applicant was supplied copies of statements of witnesses and all the relevant documents as mentioned in the statement appended to the statement of allegation. Regarding the merits of his own case, it is stated that there was enough evidence to prove the allegations against him. It was amply proved that he had undertaken services of M/s Modern School without permission and that he misused his official position and managed to seek wrong processing of due and paid statement of Modern School by persuasion of the staff dealing with the matter and by this act he caused financial loss to the respondent Organisation. That his previous conduct and punishments record were sufficient to prove his tendency unbecoming of an employee of the organisation and in these circumstances the punishment and decision in appeal against him are correct. It is denied that punishment to him is based on statement of those employees who have been separately charge-sheeted. In fact, punishment to the applicant was awarded on the basis of inquiry held against him by due process of law. During this inquiry although statements recorded during preliminary inquiry were produced before inquiry officer but applicant was given copies of the statement and he was also given ample opportunity to cross

✓✓

examine and shake the testimony of the witnesses. Therefore, allegation of not conducting inquiry as per rules and norms of natural justice are denied. Finally it is stated that the OA is not maintainable u/s 20 of the Administrative Tribunals Act, 1985 as the applicant has not exhausted all departmental remedies available to him against the impugned order. That under Rule-25 of Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971 provision of revision against the order of appeal exists to the Central Government or Central Board, which the applicant has not availed and on this ground also the OA should be dismissed.

7. Counsel for parties were heard at length during arguments. Counsel for applicant after reading profusely through his pleadings reiterated the grounds taken by him about wrong charge framed against the applicant regarding forgery, no financial loss caused to the government because of recovery made from M/s Modern School and Shri Mukesh Verma, the dealing hand, who was found solely responsible for the fault for which applicant has been wrongly charged, allegation of discrimination that Shri Mukesh Verma has been allowed voluntary retirement even though his fault was greater and applicant has been dismissed for charge not proved against him and that other similarly defaulting employees were not punished as severely as the applicant in whose case punishment is disproportionate to the charges also. He also referred to Ann.A/8 by which during inquiry copies of documents concerning departmental action against other employees were demanded by him and arbitrarily declined by the inquiry officer who also did not give adequate reason for denial for the same. That the appellate authority was duty bound to take note of this fact mentioned in his appeal but he failed to do so. He also referred to statements of witnesses S/Shri

XK -

G.P.Mathur, A.K.Chugh, appended at page 74 and 75 of the paper book, according to which they signed the relevant documents and that they were not aware that the applicant was working for M/s Modern School. They only knew that his children were studying in that school and for this reason he was assisting the work connected with PF of employees of the school. He reiterated his plea about applicant's career being unblemished by stating that appeal in both the punishments referred to by the respondents are still pending.

8. Per contra, respondents drew attention to his own admission of the guilt mentioned under article of charge No.II. It is stated that at sub para (ii) at page 5 of the punishment order it is stated that; "the charged officer had himself in is statement dated 24.3.96 and also in his representation dated 5.11.2001 admitted that he used to do PF elated work in Modern School", which is further corroborated from the oral evidence adduced during inquiry and deposition by the Principal of Modern School. It thus goes beyond doubt to establish that the charged officer was working for this establishment for remuneration. As per the evidence of Principal of Modern School, Jaipur, during the course of inquiry, charged officer was looking after the work of this school since 1991 till 1995 and he was being paid Rs.200/- per month in cash without any receipts". It was stated that the other officers who put their signatures were given wrong impression by the applicant that he was helping M/s Modern School with PF work because his children were studying there and in good faith they processed the school's PF related work expeditiously. It is denied that there was discrimination in meeting out the punishment because each employee was punished according to the gravity of charge levelled against him and even recovery was made where circumstances so demanded but on the basis of gravity of charge

✓✓

levelled against the applicant he was punished with dismissal. Counsel for respondents vehemently denied disclaimer of earlier punishment by the applicant in the name of pending appeals because as per rules they are to be considered punishment till order to the contrary is passed in appeal, which has not yet been passed.

9. We have given careful consideration to all the facts and pleadings of this case. As per charge-sheet which is based on painstaking preliminary inquiry, it is clear that the charged officer was working for remunerative payment of Rs.200/- per month for Modern School Jaipur since 1991 and had not only kept his colleagues in darkness about it but also not taken permission from his superior officers that he was dealing with the PF matters of the school. During inquiry it is conclusively established that he managed to obtain the verification of payment entries of M/s Modern School by his colleagues in office by persuasion and by keeping them in dark about the true facts when the checking of the due and paid statement for the year 1992-93 and 1993-94 was being done by them. Secondly, the Principal of Modern School was shocked to know that the money paid by ^{ex-him through the applicant} on behalf of his Institution had not been paid to the CPF Department and to this effect he even lodged FIR. This misconduct of the applicant has attracted this punishment by regularly conducted departmental inquiry. His allegation that the charge of forgery is not made out is baseless because comprehensive reading of the charge-sheet makes out the meaning that he managed the signatures of his colleagues and not that he forged the signatures. This incident of fraud concerned other staff members and their delinquency was different from the delinquency of the applicant because some of them had worked negligently and without due care or in good faith and signed the due


and paid statement although money had really not been paid and thereby caused loss to the organisation. It is however wrong to think that in view of their mistake and in view of the fact that payment was shown having already been made under their signatures and that they were directly concerned with the responsibility of checking the dues and paid statement the applicant ^{vk can be} ~~is not~~ absolved of his misconduct. His contention that the evidence collected by the respondents in departmental inquiries of other staff members has been used in the departmental action against him and that this evidence in the form of employees statements and documents has not been made available to him though he had demanded the same during inquiry and also raised objection about it in his memo of appeal is found baseless because it has been satisfactorily explained in the reply to the OA that no such recourse has been taken and on the contrary statements annexed by the applicant purporting to be supporting him, on comprehensive reading make out that applicant was blamed by them for keeping them under misconception of facts and that they have signed the relevant papers in good faith on persuasion of the applicant. His claim that if one aspect of the charge-sheet is not proved, the entire charge-sheet has to be considered as not proved is wrong as per law. We feel that the inquiry has been conducted with due care and caution in respect to granting required opportunity and abidance of principles of natural justice. The applicant has been given the required opportunities, facility of defence assistant and copies of all relevant documents relevant to the case. Even though statement recorded during preliminary inquiry have been used in the departmental inquiry but the same were testified by the witnesses during proper inquiry and opportunity of cross examining was granted to the applicant. We also find no infirmity in the punishment to the applicant even though the financial loss caused to the

vk -

government was made good by making recoveries of the relevant amount from M/s Modern School and 50% of the loss from Shri Mukesh Verma from whom Bank Guarantee was taken to this effect. In light of the fact that charges have been comprehensively proved against the applicant, it does not behove him to say that he is being punished for the mistake of others. The action of respondents in the matter of vacation of government quarter is also as per rules. The disciplinary authority and the appellate authority have passed elaborate orders and no fault is found with examination of inquiry report and appeal by them. Therefore, we are not inclined to grant the relief as prayed by the applicant above.

10. With these observations the OA is dismissed with no order as to costs.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAURHAN)
MEMBER (J)