

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

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ORDER SHEET**

ORDERS OF THE TRIBUNAL

10.12.2007

OA No. 234/2003

Mr. Anupam Agarwal, counsel for the applicant
Mr. Amit Mathur, proxy counsel to
Mr. B.B.Mathur, counsel for respondents

Heard the learned counsel for the parties.

ORDER RESERVED.

Tarsem Lal
(TARSEM LAL)

Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

R/

13/12/07
order pronounced
today in the open
Court by the
aforesaid Bench.

13/12/07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 13th day of December, 2007

ORIGINAL APPLICATION NO. 234/2003

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Heera Lal Bairwa son of Shri Ram Swaroop Bairwa aged about 46 years, working as LDC in the Office of Regional Provident Fund Commissioner, EPF Organisation, Regional Office, Jaipur.

By Advocate: Mr. Anupam Agarwal

.....Applicant

Versus

1. Union of India through Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14, Bhikhaji Kama Palace, New Delhi.
2. The Regional Provident Fund Commissioner, Nidhi Bhawan, Jyoti Nagar, Jaipur.

By Advocate: Mr. Amit Mathur proxy counsel to Mr. B.B. Mathur

.....Respondents

ORDER

PER HON'BLE MR. TARSEM LAL

Mr. H.L. Bairwa has filed OA No. 234/2003 and has asked for the following reliefs:-

- "(i) By an appropriate order or direction the impugned order dated 20.1.2004 (Annexure A-1) may kindly be quashed and set aside.
- (ii) By an appropriate order or direction all other orders prior to passing of the impugned order should also

be declared as null and void. Applicant should be granted all consequential benefits including arrears of salary with interest thereof.

- (iii) That the Enquiry report dated 9.4.1998 holding the applicant guilty of the charges leveled should be quashed and set aside. Applicant should be allowed to get the benefit of the increments as was admissible to him including interest and arrears thereof.
- (iv) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (v) Cost may also be awarded to the applicant."

2. Facts of the case as applicable are that the applicant was initially appointed on the post of LDC in 1984. He was promoted as UDC in 1986 and since then, he was continuously working on that post. A charge sheet dated 10.01.1995 (Annexure A/2) was issued to him wherein several allegations were leveled against him to the effect that he has not rightly processed the claims. Inquiry Officer, Mr. S.A. Ahmed, was appointed who submitted his report vide Annexure A/13-A and has held charges proved against the applicant. On the basis of charges having been proved against the applicant, the Disciplinary authority i.e. Regional Provident Fund Commissioner (I), Rajasthan, Jaipur awarded the following penalty vide orders dated 26.11.1998 (Annexure A/9)

"NOW, THEREFORE, in the light of the above findings and other facts relevant to the case the



undersigned considers that ends of justice would be met if the penalty of "ESTABLISHED PROPORTIONATE RECOVERY FROM HIS PAY OF THE WHOLE PECUNARY LOSS CAUSED BY HIM DUE TO HIS UTTER NEGLIGENCE OF DUTIES TO THE CENTRAL BOARD BY NEGLIGENCE OR BREACH OF OTHER ALONG WITH REDUCTION TO A LOWER TIME SCALE OF L.D.C. AT THE INITIAL STAGE OF PAY SCALE WHICH SHALL ORDINARILY BE A BAR TO THE PROMOTION OF THE EMPLOYEE TO THE TIME SCALE OF PAY, GRADE OR POST FROM WHICH HE WAS REDUCED WITHOUT ANY FURTHER DIRECTION WITH EFFECT FROM THE DATE OF ISSUE OF THE ORDER IS IMPOSED UPON Shri Heera Lal Bairwa, UDC and orders accordingly."

3. The above penalty was revised by the Addl. Central P.F. Commissioner (HR) and Appellate Authority vide its order dated 26.06.2000 (Annexure A./4), which reads as under:-

"NOW, THEREFORE, the undersigned in exercise of the powers conferred under Rule 20 and the schedule to EPF staff (CCA) Rules, 1971, modifies the above-mentioned orders of the Disciplinary Authority and imposes the penalty of reduction to lower post of Lower Division Clerk with initial basic pay of Rs.3050/- in the pay scale of Rs.3050-75-4590 on Shri Heera Lal Bairwa, the Appellant with the further directions that the seniority in the grade of LDC will be reckoned from the date of imposition of the penalty i.e. 26th November 1998 and he will be eligible for promotion to higher post in his turn as per the rules.

Consequent to the above, the recoveries made from the pay of the Appellant, shall be repaid to the Appellant."

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4. Against the above order, the applicant filed OA No. 122/1999 which was adjudicated by the CAT, Jaipur Bench. The above order dated 20.06.2000 was quashed and set aside by the CAT, Jaipur Bench vide its order dated 20.11.2002 (Annexure A/5). Against the above order of the CAT, Jaipur Bench, Jaipur, the respondents filed a Writ Petition No. 747/2003, which was dismissed by the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur vide its order dated 07.03.2003 (Annexure A/6).

5. Subsequently, the penalty was revised by the Additional Central PF Commissioner (WZ) And Appellate Authority vide order dated 31.01.2003 (Annexure A/7) as under:-

"NOW, THEREFORE, in exercise of my powers under rule 23(2) of the EPF Staff (CCA) Rules, 1971, I revise the penalty as under and feel that ends of justice shall meet by the same:-

"His pay is reduced to the lower post of Lower Division Clerk with initial Basic Pay of Rs.3050/- in the pay scale of Rs.3050-75-3590 w.e.f. 26.11.1998. The recoveries made from the pay of the Appellant shall be repaid to the Appellant. On restoration to that grade or post, his seniority and pay shall be decided as if he joined as LDC w.e.f. 26.11.1998 i.e. effective date of penalty, on a regular basis.

I order accordingly."



6. The above penalty has further been revised by the Central Provident Fund Commissioner as a Revisionary Authority vide his order dated 20.01.2004 (Annexure A/1), which reads as under:-

"NOW THEREFORE, the undersigned, in exercise of the powers of the Revisionary Authority as vested in the Central Provident Fund Commissioner vide Rule 25 of EPF Staff (CCA) Rules, 1971, hereby modifies the penalty order dated 26.11.1998 as revised from time to time to reduction of pay from 4600/- to Rs.4500/- for a period of four years with further directions that the official shall earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay and orders accordingly."

7. The applicant has pleaded that he has categorically denied his signatures on the claim form but despite of it, the Inquiry Officer has failed to call for the expert opinion of handwriting expert, which the very basis of alleged misconduct.

8. The Inquiry Officer has relied upon the statements of the applicant made during the course of criminal investigation before the CBI which are not admissible under Section 161 of the Cr.PC and was irrelevant for the inquiry.

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9. The Inquiry Officer has acted as Presenting Officer for the respondents which is in violation of the prescribed procedure of the inquiry. Therefore, the findings of the Inquiry Officer are illegal.

10. The Department was represented by an expert Officer from the CBI as a Presenting Officer whereas such an opportunity was not given to the applicant for representing his case before the Inquiry Officer. Therefore the inquiry proceedings are illegal and unlawful.

11. The Inquiry finding was submitted on the basis of the opinion of the GEQD whereas the applicant was never supplied with a copy of the same nor such opinion was ever placed on record during the course of inquiry. Thus the fundamental right of the applicant to have a cross examination has been taken away from him. The applicant has submitted that the whole inquiry is vitiated and the impugned order based on the findings of the inquiry officer deserved to be quashed and set aside.

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12. On the other hand, respondents have filed a detailed reply to the OA and have not agreed to any of the reliefs asked for by the applicant. Respondents have stated that the applicant was appointed as an LDC and was subsequently promoted as UDC. A charge sheet was issued to him and the Inquiry Officer has submitted his report based on the material placed before him. The Inquiry officer was having sufficient evidence on record to give his findings. After properly considering all the facts placed before him, the Inquiry officer has submitted its report and held the applicant guilty of the charges.

13. That the applicant was functioning as Dealing Assistant in the Accounts Section had committed serious misconduct. He failed to observe the norms laid down in regard to processing of final settlement claims related to H.P. Singh son of Shri L.R. Singh (a non existent persons) amounting to Rs.2,85,384/- towards EPF and Rs.17,220/- towards FPF which were the bogus claims and lodged with fictitious P.F. Account RJ/378/67 showing him to be an employee of M/S Gandhi Metal Mills Pvt. Ltd., Pali. The applicant signed on the claim forms in the capacity of Dealing Assistant in token of having processed and

verified the claims and thereby facilitated passing of aforesaid two bogus claims and putting the organization into the loss of Rs.3,02,604/- . Inquiry report submitted by the Inquiry officer amply proves that the applicant was guilty of the committing misconduct. The report of the Inquiry officer further established that without signature of applicant, there was no possibility of processing fictitious claim as the entire record was in the possession of the applicant. The Inquiry Officer reproduced the deposition of Shri O.P. Gupta wherein he has stated that "the entire record of the establishment remained in possession of Dealing Assistant and he is having full knowledge of transfer of its account to U.C.D. Accounts, if any. The claim and relevant worksheet and ledger cards were seen by all the officials i.e. Dealing Assistant, Head Clerk and AAO before they were settled by him (A.P.F.C.)." He confirmed that the signature on the claim were of the applicant, Mr. H.L. Bairwa.

14. The respondents have further stated that the applicant had never raised any objection during the course of inquiry and he had participated in the Inquiry but when the Inquiry officer had submitted its report and held that the applicant guilty of the charges, the applicant has raised objection before the

Hon'ble Tribunal whereas such objections were not even raised before the Appellate Authority.

15. The respondents have pleaded that there was no restriction to appoint Government Servant or CBI Officer as a Presenting Officer. The contention of the applicant in this regard are totally unfounded as no such objection was raised by the applicant during the course of the inquiry. The inquiry was conducted in the most fair manner and there was no violation of any of the Rules.

16. The respondents have averred that the order dated 20.01.2004 (Annexure A/1) and earlier order passed by the competent authorities were in consonance with the provisions of law and has been passed after considering the entire material available on record of the case. It is admitted that charge sheet was issued to the applicant and reply was also filed by the applicant to the aforesaid charge sheet. It is also admitted that against the order of punishment, an appeal was preferred before the appellate authority. The order dated 20.06.2000 (Annexue A/4) was challenged by the applicant before the learned Tribunal by way of filing OA. The learned

Tribunal vide its order dated 20.11.2002 (Annexure A/5) allowed the OA and further quashed the order of punishment. The learned Tribunal has passed the order dated 20.11.2002 on the ground that the punishment which was imposed upon the applicant was not provided under rule. It was held by the learned Tribunal that "from the bare perusal of the aforesaid rules, it is quite clear that the Appellate Authority after reduction of the applicant to the post of Lower Div. Clerk could not have been passed further order directing that the seniority in the grade of Lower Div. clerk will be reckoned from the date of imposition of penalty i.e. 26th Nov. 1998". It was further held by the Hon'ble Tribunal that "we are of the view that the punishment as imposed by the appellate authority is not in confirmity with one of the enlisted penalty under rule 7 of the rules of 1971, under the circumstances, the matter is remanded back to the appellate authority, for passing appropriate order, in accordance with rules within a period of two months".

17. It is admitted that against the order dated 20.11.2002 passed by the learned Tribunal, the respondents preferred a writ petition before the Hon'ble High Court. However, in

meanwhile, the competent authority passed a separate order, , therefore, the petition pending before the Hon'ble High Court became infructuous. The official respondents vide order dated 31.01.2003 revised the penalty, which provides that "his pay is reduced to lower post of LDC with initial pay of Rs.3050 in the pay scale of Rs.3050-75-3590 w.e.f. 26.11.1998, the recovery made from the pay of the applicant shall be repaid to the applicant on restoration to that post or grade his seniority and pay shall be decided as if he joins as LDC w.e.f. 26.11.1998, i.e. effective date of penalty on regular basis." The punishment order passed on dated 31.01.2003 was passed in accordance with the provisions of Rules of 1971. By way of punishment order, the applicant has been reduced in the pay of LDC with initial basic pay of Rs.3050 in the pay scale of Rs.3050-75-3590 w.e.f. 26.11.1998 and it is due to this effect that he has been made eligible for all the benefit of pay scale of LDC from 26.11.1998, the applicant will earn the increment in the scale of LDC frin 26.11.1998 and onwards. Revisionary Authority has further revised the penalty as reduction of pay from Rs.4600/- to Rs.4500/- for a period of four years with directions that applicant shall earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will

not have effect of post poning the future increments of his pay. The punishment order is just and proper and had rightly passed on the basis of the facts and circumstances of the case.

18. The applicant has filed rejoinder to the reply to the OA, filed by the respondents and has reiterated all the arguments given in his OA.

19. Learned counsel for the parties have been heard.

20. Learned counsel for the applicant stated that charge of Ledger copy of RJ/378/67 was not handed over to the applicant. He pleaded that a CBI Officer was appointed as a Presenting officer whereas applicant was not given assistance of an equally expert officer and, therefore, he could not defend his case properly. He also pleaded that the case does not bear signatures of the applicant and no advice of any expert has been obtained. Learned counsel for the applicant further pleaded that the whole case has been based on the statement given by the applicant before the CBI, which is not admissible under Section 161 of the Cr.PC. He, therefore, concluded that as the Enquiry has not been conducted in a fair manner,

therefore, the impugned order dated 20.01.2004 (Annexure A/1) may be quashed and set aside.

21. Learned counsel for the respondents pleaded that an independent inquiry has been held wherein the Inquiry officer has analysed that the applicant, Shri H.L. Bairwa, stated in his statement on 28.03.1994 to the Deputy S.P., C.B.I. that he took the charge of the seat from Shri Suraj Mal Meena in respect of 104 establishments including RJ/378/67 and 200 pending claims.

22. Learned counsel for the respondents pleaded that appointment of a CBI officer as a Presenting Officer is permissible under Rule 14(5)(c) of CCS(CCA) Rules. The applicant has participated in the inquiry.

23. As regards the applicant's signature, S/Shri O.P. Gupta, APFC (Accounts) and R.K. Gupta, Head Clerk, have submitted before the Inquiry Officer that the same bear signature of Mr. H.L. Bairwa. The respondents have also taken expert opinion of GEPD and it has been confirmed that the claim bear the signature of the applicant.

24. As regards the arguments that the statement made before the CBI Officer is not admissible, the respondents have stated that it is legally admissible. Learned counsel for the respondents concluded that the payment of Rs.3,02,604/- has been made on the basis of bogus documents and, therefore, the OA deserves to be dismissed.

25. We have examined this case carefully alongwith documents placed on record. It has been ~~seen~~ ^{seen} that an independent inquiry has been conducted. The Inquiry Officer in his report has conducted as under :-

"To sum up, the initial admission of the charged official who have signed the fictitious claim of Shri H.P. Singh son of L.R. Singh, Account No. RJ/378/67, his subsequent denial who has signed the claims and identification of his signature on the claims by Head Clerk Shri R.K. Gupta and A.P.F.C., Shri O.P. Gupta during inquiry leaves no doubt about the person who actually passed the claims of huge amount of Rs.2,85,384/- towards provident fund and Rs.17,220/- towards E.P.F. It was definitely Shri Hira Lal Bairwa, the charged official. It is irrelevant whether he passed the claims of his own accord or at the instance of A.A.O. To me there appears to be nexus between Shri Suraj Mal Meena and Shri Hira Lal Bairwa, Dealing Assistant to prepare forged claims in respect of employees of closed establishment (a part played by Shri Suraj Mal Meena), pass them for huge amounts, facilitate payment and manage disappearance of papers so that nobody could ever know of the frauds. Such behaviour on the part of Shri Hira Lal Bairwa proves his dis-honesty, utter negligence for ill performance on

his part which constitutes "lack of devotion to duty" and it is a conduct unbecoming of an employee of the organization.

CONCLUSION:

Accordingly I hold that the charge leveled against Shri Hira Lal Bairwa stands proved."

It is very clear from the findings of the Inquiry officer that the applicant is guilty of misconduct and has contributed in releasing the fraudulent of huge payment of Rs.3,02,604/-.

26. As regards admission of the statement made before the CBI Officer, the Apex Court in the case of **State Bank of Bikaner & Jaipur vs. Srinath Gupta and Another, 1996** SCC (L&S) 1464 in paras nos. 12 & 13 has held as under:-

"12. It is now well settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry (e.g.: See State of Haryana v. Rattan Singh, 1977(2) SCC 491). What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself.

13. The statements under Section 161 CrPC may not be admissible in the criminal trial but the said statements can be produced in a disciplinary inquiry like the present....."

27. As regards the applicant's signature, Mr. O.P. Gupta, APFC (Accounts) and Mr. R.K. Gupta, Head Clerk, both have confirmed before the Inquiry Officer that the claim passed pertaining to H.P. Singh bear the signature of the applicant, Mr. H.L. Bairwa. The applicant has voluntarily participated in the Inquiry. The objections raised by him in his OA were neither raised during the inquiry nor in the representation to the respondents. Therefore, the same are merely after thought.

28. The applicant has admitted before the CBI officer that he had taken charge of seat from Mr. Suraj Mal Meena in respect of 104 establishments including the ledger RJ/378/67.

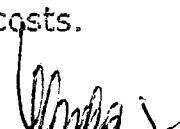
29. The penalty which was initially awarded as recovery of proportionate amount from his pay of the whole pecuniary loss caused by him alongwith reduction to a lower time scale of LDC at the initial stage of pay scale which shall ordinarily be a bar to the promotion of the employee to the time scale of pay has been reduced to reduction of pay from Rs.4600/- to Rs.4500/- for a period of four years with further directions that the official shall earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will

not have the effect of postponing the future increments of his pay.

30. The respondents have been considerate and taken very lenient view inspite of fact that applicant's guilt has been proved by an independent Inquiry Officer. Therefore, this Court will not like to interfere in the impugned order of OA dated 20.01.2004 (Annexure A/1) passed by the respondents.

31. The OA is disallowed with no order as to costs.

Kausar Lal
(TARSEM LAL)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ