

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

O. APPLICATION NO.: 544/2003

Applicant(s)

Surya Warain Saini

Respondent(s) U.O.I.

Advocate for Applicant(s)

P.P. Mather

Advocate for Respondent(s) T.P. Shrivastava

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

17/1/08

Mr. P.P. Mather, counsel for the applicant
and T.P. Shrivastava, counsel for the respsn.
Held, the learned counsel for the
parties,

order reserved.

(J.P. Shrivastava)
M(A)

(M.L. Chauhan)
M(J)

18/1/08

order pronounced today in the
open court by the aforesaid
Bench.

18/1/08.
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of January, 2008

ORIGINAL APPLICATION No.544/2003
Misc. Application Nos.86/2007, 145/2007 and
295/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Surya Narain Saini,
s/o late Shri Goverdhan Lal Mali,
r/o Plot No.193, Shantinagar,
Gopalpura Railway Bridge,
Jaipur, at present working as
Scientific Officer,
Scientist Grade E (SO/SE),
Department of Atomic Energy,
Atomic Minerals Division,
Jaipur

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. Union of India
through the Secretary,
Government of India,
Department of Atomic Energy,
Anushakti Bhawan,
Chhatrapati Shivaji Marg,
Mumbai-400 001.
2. Director, Atomic Directorate
for Exploration and Research,
AMD Complex,
Begumpeth, Hyderabad.
3. Regional Director,
Atomic Minerals Directorate,
AMD Flats,
52/496, Pratap Nagar,
Sanganer,
Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant is an employee of the Department of Atomic Energy, Government of India. Its directorate is at Hyderabad with 7 regional headquarters manned by Regional Directors. The headquarter of the North Western Region is at Jaipur whereas that of Northern Region at New Delhi. The respondent No.3 i.e. Regional Director has been declared as Head of the Office in respect of North Western region whereas respondent No.2, Director, Atomic Minerals Directorate, Hyderabad is the Head of the Department. It appears that one Shri Narpat Singh, who was working as Cashier, North Western region at Jaipur died on 14.5.1994. Upon verification of cash balance in the cash book certain discrepancies were noticed. Accordingly, preliminary enquiry committee was constituted to enquire into the matter. The committee verified the record pertaining to the period from 23rd December, 1992 (i.e. the date of taking over charge by Shri Narpat Singh) to 14.5.1994 (i.e. the date of death of Shri Narpat Singh) and it was noticed that there are irregularities and discrepancy in handling the cash which has resulted into defalcation of cash amounting to Rs. 1.20 lakhs. Accordingly, separate chargesheets dated June 28, 1995 was issued in respect of various persons including the applicant (Ann.A1). Enquiry was

conducted into the matter and the charges were proved. However, subsequently, it was noticed that this being a case of joint enquiry and matter has been processed on the basis of individual chargesheet, accordingly, common disciplinary proceedings under rule 18 of the CCS (CCA) Rules were ordered afresh against following 7 persons:-

1. Shri B.M.Swarkar, SO(G)/Regional Director, AMD Bangalore.
2. Shri R.B.Jain, SO/E, NWR, AMD, Jaipur
3. Shri S.N.Saini, SO/E, NWR, AMD, Jaipur
4. Shri A.K.Sharma, SO/C, NWR, AMD, Jaipur
5. Shri Pritu Ram, Assistant Accountant, NWR, AMD, Jaipur
6. Shri Roshan Lal, Sub Pay Officer, NR/NWR, AMD, New Delhi.
7. Shri S.K.Sharma, retired Sr. Clerk, NWR, AMD, Jaipur.

The Enquiry Officer held the officials guilty of the charges. However, the Disciplinary Authority on the advice of the Union Public Service Commission (UPSC) imposed penalty so far as five persons were concerned, as one person Shri Pritu Ram obtained relief from this Tribunal, but no such penalty was imposed in respect of Shri S.K.Sharma, Senior Clerk as it was found that Shri S.K.Sharma was simply a Senior Clerk and was neither competent nor authorized to handle the cash under the Central Government Account (Receipt and Payments) Rules, 1983, as such, no penalty was imposed upon him. Shri B.M.Swarkar, Regional Director who was Head of the Office and was mainly responsible for handling the cash and disbursement of the amount so received was imposed

penalty of 10% cut in his pension for two years besides recovery of pecuniary loss to the Government proportionately to the tune of Rs. 20,000. So far as S/Shri R.B.Jain, A.K.Sharma and S.N.Saini (applicant) who were working as Scientific Officers and were authorized to handle the Government money during different periods were awarded penalty of reduction of pay by two stages in the time scale of pay for a period of two years with immediate effect, during which period they will not earn increment of pay and on expiry of the penalty period, the reduction will have the effect of postponing of future increments of pay and also recovery of Rs. 20,000/- in suitable installments on account of loss caused to the Government. Sixth person who was working as Sub Pay Officer, North Region and was also in-charge of North Western Region in the absence of there being no post of Sub Pay Officer in North Western Region was also held guilty and imposed punishment. It may be relevant to state here that gravamen of the charge against the applicant was that he failed to effectively carry out the duties entrusted to him by the Regional Director, North Western Railway, Jaipur for a period from 18.11.93 to 13.12.92 and 5.1.94 to 25.2.94 thereby contravening the provisions of Rules 13 and 92 of the Central Government (Receipt and Payments) Rules, 1983 which has resulted into defalcation of Rs. 1.20 Lakhs and by the above said action he failed to maintain

devotion to duty and acted in a manner unbecoming of a Government servant violating CCS Conduct Rules, 1964. From the imputation of misconduct annexed with the chargesheet it is evident that the allegation against the applicant was that he has not carried out the duties and responsibilities as an officer to operate the current account and arrange disbursal of the payment as required under the provisions of Central Government (Receipt and Payments) Rules, 1983. He has also not conducted the monthly physical verification of cash balance during the above period. Further allegation was that he has signed the cash book and cheques without actually checking the entries as officer authorized by the Regional Director to the extent of Rs. 12,108 without charging into the cash book which has resulted in cash shortage of Rs. 12108/-. Similarly, he has authorized payment of TA/DA, LTC etc. from the operational imprest advance meant for meeting the urgent contingent expenditure of the region.

The matter was heard from time to time and when the matter was listed on 3.11.2006, this Tribunal passed the following order:-

"It is a 2003 matter. Pursuant to the joint inquiry, impugned order was passed qua the applicant as well as other persons. Some of the effected persons have filed OA before the Hyderabad Bench. The Hyderabad Bench considered the matter in great length and after rendering judgment, remitted the matter back to the Disciplinary Authority to re-consider the matter afresh. The matter was carried by the Department by filing Writ Petition No.13495/2005 before the Andhra

Pradesh High Court. The said Writ Petition has been disposed of by the Hon'ble High Court on 02.02.2006. The High Court has observed that the respondents were neither required nor authorized to perform the duties, it is only a stop gap arrangement and under these circumstances the respondents should have been given the benefit. It was further observed that since Govt. money was involved and there was financial loss to the government exchequer, the Department can recover the amount through reasonable instalments so that the government amount is safeguarded. It was further held that the major punishment of reduction of pay by two stages in the time scale of pay for a period of two years and further direction that during the period of reduction, delinquent will not earn any increment of pay and on expiry of the penalty period, the reduction will have the effect of postponing his future increments of pay is a disproportionate punishment having regard to the facts and circumstances of the case and therefore, set aside.

Learned counsel for the applicant submits that in view of the judgment rendered by the Hon'ble High Court whereby the High Court has observed that it may be a case of negligence and at the most, the respondents should have recover Rs. 20,000/- from the applicant and it is not a case of mis-conduct.

Learned counsel for the respondents is directed to intimate this Tribunal by filing affidavit as what follow-up action is taken by them pursuant to the judgment rendered by the Andhra Pradesh High Court in Writ Petition No.13495/2005 decided on 02.02.2006."

Thereafter the matter was adjourned from time to time and lastly listed for hearing on 14.11.2007 on which date this Tribunal passed the following order:-

"Learned counsel for the applicant submits that he was never entrusted the duties of DDO and as such, he was not bound to verify the entries made in the Cash Book as well as to record the certificate of verification at the end of the month, which was the requirement. Thus, according to the learned counsel for the applicant, applicant

cannot be held responsible for the charge, as claimed by the respondents.

Learned counsel for the respondents in the reply has, however, stated that the charge against the applicant relates to the period from 18.11.1993 to 13.12.1993 and 05.01.1994 to 25.02.1994 when he had signed in the Cash Book without checking the entries therein and other related/connected activities thereby causing a loss of an amount of Rs. 1.20 lakhs to the Department.

Respondents are directed to produce the contemporaneous record to this effect and also the notification vide which the financial power was delegated to the applicant during the aforesaid periods.

Learned counsel for the applicant further submits that other two persons, namely S/Shri R.B.Jain and A.K.Sharma have subsequently been imposed penalty of Rs. 20,000/- on account of loss caused to the Department. Learned counsel for the applicant submits that in case the Department is willing to treat the amount of Rs. 20000/- as loss caused to the Department, instead of treating the recovery of penalty, in that eventuality, the applicant shall not ask for the refund of Rs. 20,000/-. Learned counsel for the respondents is directed to seek instructions on this point also on the next date of hearing."

2. In compliance of the order dated 3.11.06, the respondents have filed additional reply dated 16.1.2007 thereby annexing order dated December 11, 2006. At this stage, it will be useful to quota para 4 of the reply affidavit, which thus reads:-

"4. That the contents of para 5 of the O.A. submitted that the Hon'ble High Court of A.P. Hyderabad vide its common order dated 02.02.2006 disposed of the writ petition No.13496 and 14892 of 2005- UOI and Others vs. A.K.Sharma and UOI and Others vs. R.B.Jain, respectively filed against the common order dated 16.12.2004 of Hon'ble

le^o

CAT, Hyderabad Bench and modified the order of the Tribunal.

"with considered opinion, it is not really necessary having come to the conclusion that the two respondents were neither officially required nor authorized to perform the duties, it is only a stopgap arrangement the respondents should have been given the benefit. However, we are of the opinion that as the government money was involved and there was financial loss to the government exchequer, the petitioners can recover the amount through reasonable installments from the respondents so that the government amount is safeguarded. Apart from that, the major punishment of reduction of pay by two stages in the time scale of pay for a period of two years and further direction that during the period of reduction he will not earn any increment of pay and on expiry of the penalty period the reduction will have the effect of postponing his future increment of pay is a disproportionate punishment having regard to the facts and circumstances mentioned above and therefore set aside."

The respondents have also stated that pursuant to the order passed by the Hon'ble High Court of Andhra Pradesh, the matter was referred to the Department of Legal Affairs, Ministry of Law, New Delhi, Department of Personnel and Training (DOPT), New Delhi and the UPSC. Their reply has been received on 16.11.2006. It is further stated that in compliance of the judgment of the Hon'ble High Court dated 2.2.2006 in WP No.13495 of 2005 and 14892 of 2005 necessary order was issued by the Secretary, Department of Atomic Energy on 11.12.2006. The respondents have annexed copies of penalty orders issued to S/Shri R.B.Jain and A.K.Sharma as Ann.R1 and R2.

3. Pursuant to the order passed by this Tribunal on 14.11.2007, the respondents have moved a Misc. Application No.295/2007. Regarding the queries raised by this Tribunal in the said order, the respondents in Para C and D have made the following averments:-

"c) It is respectfully submitted that the applicant, being a Group-A officer, was entrusted to carry out the duties and responsibilities entrusted to him by his superiors only as a stop gap arrangement. It is further stated that the applicant, has been penalized as he failed to effectively carry out the duties and responsibilities entrusted to him, by his superior by contravening the provisions of rule 13 and 92 of Central Government (Receipts and Payments) Rules, 1983, resulting on defalcation of cash of Rs. 1.20 lakhs (Approx.). It is further submitted that alongwith other officers involved in the defalcation of cash was to merely disburse the payments to the concerned and receive payments, if any, to/from the concerned in NWR and this could not be done systematically. It is further submitted that the Applicant at Para-5A (Grounds of the OA) himself admitted unconditionally that he was part of an illegal practice followed in NWR which has subsequently resulted in defalcation of cash. It is further submitted that in this case the applicant is that during the relevant period, has signed the cash book, cheques and other documents without verifying the entries properly and as such it facilitated embezzlement of Government money.

d) That it is further submitted that the penalty of Rs. 20,000/- each was imposed on Shri R.B.Jain and Shri A.K.Sharma as per Government of India instruction No. 22 under Rule 11 of CCS (CCA) Rules, 1965, wherein it has been indicated that in the case of proceedings relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is so established that the Government servant was responsible for a particular act or acts of

negligence or breach of orders or rules and that such negligence or breach caused the loss."

The respondents have further submitted that this application may be allowed and prayed to pass final order in the interest of justice.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

Though initially, as can be seen from the previous order, the only contention raised by the learned counsel for the applicant was that at the most it is a case of negligence and not that of misconduct, as such, at the most the respondents may recover Rs. 20,000/- from the applicant, but the said amount may not be treated as amount recovered pursuant to the penalty as imposed under Rule 11 of the CCS (CCA) Rules, 1965, but the learned counsel for the applicant further argued today that order passed by the authority regarding imposition of penalty is not speaking order and the contention raised by the applicant has not been taken into consideration. According to the learned counsel for the applicant, in fact the respondents have failed to prove that there was a shortage of amount to the tune of Rs. 1,20,000 and also that there has been delay in completion of the enquiry proceedings. This is a case where impugned order is required to be set aside and the case may not be remitted back to the appropriate authority for the

purpose of reconsideration. For that purpose, the applicant has placed reliance upon the judgment dated 5.4.2006 in Appeal (Civil) No.8267 of 2004, M.V.Bijlani vs. Union of India and ors. In that case before the Apex Court, the disciplinary proceedings were initiated after six years and it continued for a period of seven years. It is not the case of such nature. In this case the disciplinary proceedings were initiated immediately, though the respondents took considerable time to complete the proceedings. The respondents have given plausible reasons as to why it took considerable time to complete the proceedings as initially individual proceedings were initiated against all the seven persons and they were held guilty in the enquiry, but subsequently, it was found that it was a case of joint enquiry and accordingly, joint enquiry was held. Thus, the judgment was rendered by the Hon'ble Apex Court in the facts and circumstances of that case, which cannot be made applicable to the facts and circumstances of this case. Further, law on this point is clear. The Apex Court in number of cases has held that where there is any infirmity in the departmental proceedings, the order cannot be quashed and it has to be remitted back to the appropriate authority to proceed further from the stage where such infirmity has occurred. The applicant has not made out a case for remitting the same to the Disciplinary Authority for

reconsideration. Further, remitting the case back to the appropriate authority to reconsider the case on the basis of objections filed by the applicant to the enquiry report will in fact cause prejudice to the applicant and will further delay the proceedings with no tangible result as we are satisfied that the applicant has failed to make out a case on this account and the learned counsel for the applicant has raised his arguments before us pointing out certain infirmity/suggestion given in the preliminary enquiry report, which report cannot be taken into consideration being a fact finding enquiry only. It is well settled that the High Court and the Tribunal *exercising the jurisdiction in disciplinary matter do not* while ~~acting~~ as appellate authority [see 2006 SCC (L&S) 316]. Further, sufficiency of evidence cannot be gone into, is also well settled by the Apex Court, unless it is a case of no evidence.

The matter can be looked into from another angle also. Even if for arguments sake it is held that action of the applicant does not amount to misconduct but certainly it is a case where pecuniary loss has been caused to the Government exchequer and the applicant was responsible for such act of negligence, as can be seen from the facts stated hereinabove, thus liable for penalty in terms of Govt. of India instruction No. 22 under Rule 22 of CCS (CCA) Rules.

5. That apart, the applicant has not even made out any case on merit. It is not in dispute that joint enquiry was held in respect of 7 persons as mentioned above about the cash transactions when one Shri Narpat Singh was working as Cashier in North Western Region, Jaipur. It is also not disputed that Enquiry Officer held all the 7 persons guilty of charges and out of 7 persons, 5 persons have been imposed punishment, one person got relief from this Bench, whereas disciplinary proceedings have been dropped in respect of one Shri S.K.Sharma, Senior Clerk who was only Class-III employee and thus neither competent nor could have been authorized to handle the Government money. From the material placed on record, it is also evident that the applicant stand on the same footing as that of S/Shri R.B.Jain and A.K.Sharma who were also holding the post of Scientific Officer and were authorized to handle the Government money for the period other than the period during which the applicant was authorized to handle the Government money. The question which requires our consideration is whether the applicant can be absolved of the charges leveled against him simply because it was the primary duty of the Regional Director i.e. Shri B.M.Swarnkar to handle the cash who has been imposed penalty of 10% cut in his pension as also recovery of Rs. 20,000/-. According to us, the applicant cannot be completely absolved of the charges.

The applicant has admitted the fact that he was entrusted such duties by the Regional Director and rather his positive stand is that he has obeyed the verbal orders of the Regional Director and carried out the work as per direction. According to the applicant, maintaining the accounts in the regional office was not legal as has been held by the report of the enquiry dated 2.9.94. As per the report of the Enquiry Officer (CVC) and also of the UPSC when the so called duties and responsibilities as entrusted to the applicant was illegal, the applicant was not solely responsible for obeying to carry out the duties and responsibilities entrusted by the Regional Director contravening rule 13 of Central Government (Receipt and Payment) Rules of 1983 which has ultimately resulted into defalcation of cash of approx. Rs. 1.20 lakhs noticed during the year 1994. This part of the pleadings find mention in Group 5(a) at page 42 to 43 of the paper book. In the said para the applicant has further stated that it was not possible to carry out the so called duties and responsibilities as the records were not properly maintained in the regional office since its inception in 1988 in Jaipur. The Head of the Office was the Regional Director himself who was solely responsible. Since the applicant has himself admitted that he was a part of the illegal practice followed in North Western Region, which was subsequently resulted in defalcation of cash, it is

not a case where the applicant can be fully absolved about the charges levelled against him. The fact remains that the applicant was authorized to handle the Government money as a stopgap arrangement for the period w.e.f. 18.11.1993 to 13.12.1993 and 5.1.94 to 25.2.94. From the material placed on record, it is evident that cash book, cheque book and other documents were signed without verifying the entry properly, as such it facilitated defalcation of the Government money. One of imputation of charge against the applicant is that he signed the cheque as per the cheque register as officer authorized by the Regional Director to the extent of Rs. 12108/- without reflecting the said entry in the cash book, which has resulted a shortage of cash of Rs. 12108/-. It was incumbent upon the applicant to sign the cheque for the aforesaid amount only if the corresponding entry has been made in the cheque register as also in the cash book. This having not done, according to us, even this part of the charge is sufficient to hold the applicant guilty. The fact that the applicant was Scientific Officer was not acquainted with handling of cash transaction is not sufficient to absolve the applicant as at the same time he was a Class-I officer holding the responsible post under the Government of India and it was incumbent upon him to act in accordance with the procedure as prescribed under the Central Government (Receipts and Payments) Rules, 1983

while handling the Government money. Further, it was also not open for the applicant to make payment of TA and DA, LTC etc. from the operational imprest advance meant for urgent contingency expenditure of the region especially such payments are released through Suspense Account before the same are passed for payment by the Sub Pay Officer, North Region, New Delhi. True is that the applicant was not conferred power as Head of Office/DDO but this fact will not materially affect the present case, in any case as he was a 'departmental officer' as defined under Rule 2(m) of the Central Government (Receipts and Payments) Rules, 1983, thus authorized to handle the Govt. money, which thus reads:-

"2. Definition...

....

(m) "departmental officer" means an officer of the Government authorized to handle Government money."

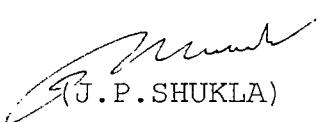
Thus, the applicant was authorized to handle the Government money by the Regional Director and in terms of Central Government (Receipts and Payments) Rules it was incumbent upon the applicant to handle the cash and every financial transaction in terms of the aforesaid rules. Having not done so, we are of the firm view that the applicant cannot be completely absolved of the charges levelled against him. The fact that he being a Scientific Officer and was not

conversant with the cash matters in the absence of Account officer has been taken note of by the Hon'ble High Court of Andhra Pradesh in its Division Bench decision dated 2.2.2006 while disposing of the Writ Petition No.13495 and 14892 of 2005, Union of India and ors. Vs. R.B.Jain and Union of India and ors. vs. A.K.Sharma and thus upheld the recovery of penalty in the cases of respondents therein. Thus, we are also of the view that the applicant who is also similarly situated to that of S/Shri R.B.Jain and A.K.Sharma is required to be dealt with similarly.

6. Accordingly, the impugned order dated 3.4.2003 (Ann.A3) is hereby quashed to the extent it relates to reduction of pay of the applicant by two stages in the time scale of pay for a period of two years and further direction that during the period of reduction the applicant will not earn any increment of pay and on expiry of the penalty the postponing of future increment of pay, being a disproportionate punishment having regard to the facts and circumstances of this case and not commensurate to the charges proved against the applicant as held by the Andhra Pradesh High Court in the case of R.B.Jain and A.K.Sharma (supra). However, the penalty of recovery of Rs. 20,000/- effected on the applicant in suitable installments on account of loss caused to the Government is upheld. The respondents are directed to

pass final order in the light of the judgment rendered by the Andhra Pradesh High Court relevant portion of which has been reproduced by the applicant in MA No.294/2007 and also extracted in the earlier part of this judgment and as prayed by the respondent in MA No.295/07. No costs.

In view of the order passed in the OA, no order is required to be passed in Misc.Application Nos. 86/07, 145/07 and 295/07 which shall stand disposed of accordingly.


(J.P. SHUKLA)

Admv. Member

R/


(M.L. CHAUHAN)

Judl. Member