

30/600

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 336/02

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA-336/02 Pg. 1 to 4
2. Judgment/Order dtd. 04/09/2003 Pg. 1 to 3 allowed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 336/02 Pg. 1 to 45
5. E.P/M.P. NIL Pg. to
6. R.A/C.P. NIL Pg. to
7. W.S. submitted by the respondents Pg. 1 to 5
no-1, 2, and 3
8. Rejoinder submitted by the applicant Pg. 1 to 19
9. Reply. Pg. to
10. Any other Papers. Pg. to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendment Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
....

ORDER SHEET

Original Application No : 336/02

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant (s) Sukir Bhatta Chatterjee

Respondent (s) -Vs- U.O.I Jams

Advocate for the Applicant (s) M. Chanda, G.N. Chakraborty

Advocate for the Respondent(s) H. Dutta
Case

Notes of the Registry	Date	Order of the Tribunal
<p>25-9-02 76575311</p> <p>Steps Taken</p> <p>Notice prepared and sent to D/S for issuing the order No 1 to 5 by Regd A.D.</p> <p>12/10/02</p> <p>DINo 2913 W 29117</p> <p>Dtd 24/10/02</p>	<p>10.10.02</p> <p>mb</p>	<p>Heard Mr. M.Chanda, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 15.11.2002 for admission.</p> <p>10/10/02 Member</p> <p>Vice-Chairman</p>

13.11.2002

Heard Mr.M.Chanda, learned counse
for the applicant and also Mr.A.Deb Roy
learned Sr.C.G.S.C. for the respondents

The application is admitted, call
for the records.

On the prayer made by ~~the~~ Mr.Deb
Roy, learned Sr.C.G.S.C. four weeks time
is allowed to the respondents to file
written statement.

List the case on 16.12.2002 for
order.

K. Chandra
Member

[Signature]
Vice-Chairman

bb

No. written statement
has been filed.

16.12.02

Further four weeks time is
allowed to the respondents to file
written statement on the prayer of Mr.
A.Deb Roy, learned Sr. C.G.S.C. for the
respondents.

List on 22.1.2003 for orders.

[Signature]
Vice-Chairman

mb

22.1.03 Present : The Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra,
Administrative Member.

List again on 18.2.2003 to enable
the respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

mb

Written statement has been filed.

The case may now be listed for hearing on
27.3.2003. The applicant may file rejoinder,
if any, within three weeks from today.

[Signature]
Member

[Signature]
Vice-Chairman

mb

Notice issued vide.

DINo 2913 to 2917
dt. 21/10/02

[Signature]
21.1.03.

No written statement
has been filed.

[Signature]
17.2.03.

19.2.03

MS submitted
in Dept. No. 1293.

18.2.2003

Rejoinder has been
filed.

27.3.03.

O.A 336/02

(2)

Notes of the Registry

Date


Order of the Tribunal 3

26.3.03

27.3.2003

Present: The Hon'ble Mr. Justice D.
N. Chowdhury, Vice-Chairman
The Hon'ble Mr. S. Biswas
Administrative Member.

On the prayer of Mr. M. Chanda,
learned counsel for the applicant,
the case is adjourned and again
listed for hearing on 22.5.2003.


Member


Vice-Chairman

bb

22.5.2003

Present : The Hon'ble Mr. Justice
D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr. S.K. Hajra,
Member (A).

On the prayer of Mr. M. Chanda
learned counsel for the applicant the
case is adjourned and posted for
hearing again on 23.6.2003.


Member


Vice-Chairman

mb

23.6.03

Adjourned. List for hearing
on 6.8.03.

6.8.2003

List again on 27.8.2003
for hearing.


Member


Vice-Chairman

mb

Response submitted
by the applicant.



Notes of the Registry	Date	Order of the Tribunal
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27.8.03

List on 4.9.03 for hearing.

ICV P. H. ...
Member

[Signature]
Vice-Chairman

lm

4.9.2003

Heard counsel for the parties. Judgment delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No costs.

ICV P. H. ...
Member

[Signature]
Vice-Chairman

bb

26.9.03

Copy of the judgment has been sent to the D/Sec. for filing the file to the applicant as well as to the R.C.G. Sec. for the Registry.

[Signature]
26/9/10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~ No. 111336 of 2002.

DATE OF DECISION 4.9.2003.

..... Sri Subir Bhattacharjee APPLICANT(S).

..... Mr. M. Chanda, G. N. Chakraborty & H. Dutta ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

..... Union of India & Others RESPONDENT(S)


..... Mr. A. Deb Roy, Sr. C. G. S. C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR. K. V. PRAHALADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ~~Member~~ Vice-Chairman.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.336 of 2002.

Date of Order : This, the 4th September, 2003.

THE HON'BLE MR.JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR.K.V.PRAHALADAN, ADMINISTRATIVE MEMBER.

Sri Subir Bhattacharjee
Assistant Accounts Officer
A/C No.8306517
PAO (Ors) ARC
Shillong.

. Applicant.

By Advocates Mr.M.Chanda, G.N.Chakraborty & H.Dutta.

- Versus -

1. Union of India
Represented by the Secretary to the
Government of India, Ministry of Defence
New Delhi.

2. The Controller of Defence Accounts
R.K.Puram, New Delhi.

3. The Controller of Defence Accounts
Udayan Bihar, Narengi
Guwahati.

4. Sri B.P.Singh
Assistant Accounts Officer
A/c No.8290871
Through office of the Controller of
Defence Accounts, R.K.Puram
New Delhi.

5. Sri S.C.Sahay
A/c No.8291282
Through office of the Controller of
Defence Accounts, R.K.Puram
New Delhi.

. Respondents.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.):

The issue relates to antedating the promotion of the applicant in the grade of Assistant Accounts Officer w.e.f. 19.3.1990.

1. A DPC meeting was held in 1989 for consideration of promotion of eligible officials to the cadre of Assistant Accounts Officer (AAO in brief). The case of the applicant was also considered alongwith other eligible candidates including his juniors. Some of his juniors were promoted

: 2 :

vide order dated 16.3.1990 w.e.f. 19.3.1990. The findings of the DPC for promotion of the applicant was kept in sealed cover by the respondents on the score that a disciplinary case was pending against him. The applicant was finally promoted by order dated 17.11.1993 w.e.f. 4.10.1993. The applicant moved the authority for ~~predating~~ his promotion as AAO at least w.e.f. 16.3.1990 i.e. date on which his juniors were promoted in the light of the order passed by this Bench in O.A.217 of 2000 on 14.8.2001. By the impugned order dated 26.6.2002 the respondents rejected the representation of the applicant. Hence this application praying for direction for antidating his promotion to the post of AAO w.e.f. 19.3.1990.


2. The respondents submit its written statement contesting the claim of the applicant. We have heard Mr.M.Chanda, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents at length.

3. It seems that this case is squarely covered by the decision rendered by us in O.A.217/2000 disposed on 14.8.2001. The applicant is similarly situated with the applicant in aforementioned O.A. and therefore there was no justification for not extending the same benefits to the applicant also though he did not individually file a case. In the aforesaid order the legal policy was explained. Admittedly, there was no disciplinary proceeding as on 19.7.1989 when the DPC considered the case of the applicant for promotion to AAO grade. The respondents on the otherhand, promoted persons even juniors to the applicant by order dated 16.3.1990 w.e.f. 19.3.1990 on the basis of DPC meeting held on 19.7.1989. The disciplinary proceeding against the applicant, that was referred to by the authority, was in fact, initiated on 13.10.1990. Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents, contended that on 12.7.1989 an explanation was called from the applicant by

Contd./3

communication dated 12.7.1989. Mr. Deb Roy stated that the initiation of disciplinary proceeding against the applicant was in fact, contemplated as indicated by the aforementioned communication. We have perused the said communication which only brought to the attention of the applicant as to the audit/supervisory lapses and an explanation was asked as to why disciplinary proceeding against him was not be initiated for the said lapses. That was only a notice asking explanation, which does not indicate even any decision was taken by the authority to initiate disciplinary proceeding against the applicant. The authority finally decided to initiate disciplinary proceeding against him on 13.10.1990. Therefore there was no justification for resorting to seal cover procedure in the case of the applicant. Since the disciplinary proceeding decision for initiation of against the applicant was taken on 13.10.1990, the applicant was entitled for promotion to AAO cadre on the basis of DPC meeting held on 19.7.1989 instead of resorting to seal cover proceeding. The present O.A. is squarely covered by the decision of this Bench rendered in O.A.217/2000 disposed on 14.8.2001. Therefore the impugned order dated 26.6.2002 is set aside and the respondents are directed to open the sealed cover and give effect to the recommendations of the DPC held on 19.7.1989. In the event it appears that the said DPC recommended the applicant for promotion to AAO grade the respondents shall give effect to the said recommendations antedating his promotion w.e.f. 19.3.1990 i.e. the date on which his juniors were promoted with all consequential benefits as admissible under law.

The application is accordingly allowed. There shall, however, be no order as to costs.


(K.V. PRAHALADAN)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case :

O. A. No 336 /2002

Sri Subir Bhattacharjee :

Applicant

- Versus -

Union of India & Others:

Respondents.

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	----	Application	1-15
02.	----	Verification	16
03.	1	Copy of Show cause letter 12.7.89	17-18
04.	2	Copy of Reply dated 31.7.1989	19-21
05.	3	Copy of Promotion order dated 16.3.1990	22-23
06.	4	Copy of Letter dated 11/12.05.1990	24
07.	5	Copy of Memorandum dated 13.10.1990	25-29
08.	6	Copy of Reply dated 14.11.1990	30-31
09.	7	Copy of Order of penalty dated 30.09.92	32
10.	8	Copy of Judgment and order dated 14.8.2001	33-37
11.	9	Copy of Representation dated 25.9.2001	38-41
12.	10	Copy of Representation dated 7.1.2002	42
13.	11	Copy of Representation dated 15.5.2002	43
14.	12	Copy of Impugned letter dated 26.6.2002	44
15.	13	Copy of Impugned order dated 28.1.2002	45

Date :

Filed by

Advocate

Subir Bhattacharjee

10
Filed by the applicant
through Sri G. N. Bhattacharjee
Advocate on 1-10-2002
Sec. Adv. at

19.7.89 DPC held.

12.7.89 Explain

16.3.90

Calc for

procm. u.e.f. 19.3.90.

13.X.90

proceeding initiated

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 396 /2002

BETWEEN

Sri Subir Bhattacharjee
Assistant Accounts Officer
A/c No. 8306517
PAO (Ors) ARC
Shillong

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India, Ministry of Defence,
New Delhi.
2. The Controller of Defence Accounts,
R.K. Puram, New Delhi.
3. The Controller of Defence Accounts
Udayan Bihar, Narengi
Guwahati-781171
4. Sri B.P. Singh,
Assistant Accounts Officer
A/c No. 8290871
Through office of the Controller of
Defence Accounts, R.K. Puram,
New Delhi.

Subir Bhattacharjee

5. Sri A.C.Sahay

A/c No. 8291282

Through office of the Controller of
Defence Accounts, R.K. Puram,
New Delhi.

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned order bearing letter No. AN/IC/727/Prom/AAO/Bart/SB dated 26.6.2002 whereby the prayer of the applicant for antedating of his promotion in the grade of Assistant Accounts Officer has been arbitrarily rejected by the respondents and further praying for a direction upon the Respondents for antedating promotion of the applicant in the cadre of Assistant Accounts Officer with effect from 19.3.1990 by opening the sealed cover which was wrongly adopted by the DPC held in the year 1989 and to give effect of the findings already kept in the sealed cover by the respondents in the light of the decision rendered by this Hon'ble Tribunal in its judgment and order dated 14.8.2001 in O.A. No. 217 of 2000 (Sri K.K.Das Vs. Union of India & Ors.).

Surbir Bhattacharya

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant is presently working as Assistant Accounts Officer under the respondents and posted in the office of the Pay and Accounts Officer (ORs), Assam Regimental Centre, Shillong, under the Controller General of Defence Accounts, Government of India, Ministry of Defence, Shillong.
- 4.3 That your applicant while working as Section Officer (A) under the respondents during the year 1989 attained eligibility for further promotion to the cadre of Assistant Accounts Officer (in short AAO) as per rules. It is stated that at the relevant time few vacancies of

Sukbir Bhattacharya

Assistant Accounts Officer fall vacant in the establishment of respondent Union of India. The respondents accordingly hold a DPC Meeting on sometime in 1989 for consideration of promotion of all the eligible candidates to the cadre of Assistant Accounts Officer. The said DPC in the year 1989 considered the case of the present applicant along with other eligible candidates including the juniors of the applicant. Surprisingly, the applicant came to learn from a reliable source that the findings of the DPC in respect of the applicant was kept under sealed cover on contemplation of a disciplinary proceeding against the applicant. Be it stated that on the day when the DPC considered the case of the applicant for promotion there was no disciplinary proceeding pending against him and it is categorically stated that no charge sheet was even served upon the applicant at the time when DPC held its aforesaid meeting.

- 4.4 That some of his juniors namely, Sri B.P.Singh, A/c No. 8290871, Sri S.C.Sahay, A/c No. 8291282, Sri Rajendra Prasad, A/C No. 8294250 and Sri V.K.Verma, A/c No. 8294215 who were working as Section Officer at the relevant time were also considered for promotion to the post of Assistant Accounts Officer along with the applicant by the same DPC as stated above and they were promoted to the cadre of Assistant Accounts Officer (Group B) in the pay scale of Rs. 2000-3200 with effect from 19.3.1990 vide order bearing letter No. Part

Sudhir Bhasin

II.O.O No. 117 dated 16.3.1990 but unfortunately the name of the applicant did not find place in the said promotion order dated 16.3.1990 without any valid reason on the alleged ground that a disciplinary proceeding was contemplated against the applicant as learnt from a reliable source. In this connection it may be stated that the applicant was simply issued a show cause notice to explain regarding passing of certain L.P bills vide letter bearing No. AN/I/D/139/SB/Part/235-239 dated 12.7.1989. The applicant on receipt of said show cause submitted his explanation vide his reply dated 31.7.1989 wherein it is stated by the applicant that the circumstances under which he had to work in supervising audit check keeping in view of departmental circular dated 27.7.1988 directing speedy disposal of bills and also made a mention of para 367 of Part I of Office Manual re circulated on 29.5.1990.

A copy of the show cause letter 12.7.89, reply dated 31.7.89 and promotion order dated 16.3.1990 are annexed herewith as **Annexure-1, 2 and 3** respectively.

4.5 That the applicant immediately after issuance of order of promotion of his juniors vide order dated 16.3.1990 submitted a detailed representation vide letter dated 28.5.1990 for consideration of his promotion to the post of Assistant Accounts Officer. However, the applicant was informed vide letter bearing No.

Subir Bhandari

AN/I/727/Prom/SO(A)/Vol.-I dated 11/12.5.1990 whereby it is informed to the applicant that the case of the applicant has been adjudicated as sealed cover case for promotion to the grade of Assistant Accounts Officer vide confidential letter No. AN/I/727/Prom-XIV dated 15/16.1.1990. As such his name was not included in the said promotion list of AAO by the CGDA, New Delhi.

Copy of the letter dated 11/12.05.1990 is annexed as Annexure-4.

4.6 That your applicant being aggrieved by the aforesaid order again submitted a detailed representation on 18.7.1990 praying for consideration of promotion to the Grade of AAO.

4.7 That the Joint Controller of Defence Accounts issued the Memorandum of Charge sheet vide letter bearing No. AN/I/D/139/SB/Part/236 dated 13.10.1990 whereby two article of charges brought against the applicant alleging that while working as supervisor he had accepted and passed number of LP bills in batches in respect of five Mountain Division Brig. Although the LP bills were bogus and without adhering the requirements of the audit the claims were passed by the applicant. It is further alleged that the bills were apparently bogus as the specimen signature of the countersigning of the claimant official held in office record does not tally with those found on the claims. Claims were passed without verification of specimen signature, voucher control number and without

Sunbir Bhattacharya

maintaining supply order, file, register etc. The applicant, after receipt of the said memorandum of charge sheet dated 13.10.1990, immediately submitted a detailed reply denying all the charges brought against him. He had also referred to the two departmental circulars/rules providing guidelines for scrutiny of bills etc. vide letter dated 14.11.1990.

Copy of the Memorandum of Charges dated 13.10.1990 and reply dated 14.11.1990 are enclosed as **Annexure-5 and 6** respectively.

4.8 That the respondent Union of India appointed Sri Balak Ram Das, IDAS, ACDA as Inquiry Officer. Thereafter, vide letter dated 20.05.1991 the applicant was asked to submit the written brief by the Inquiry Officer stating that all the charges leveled against the applicant stood proved. However, the applicant submitted his written brief to the Inquiry Officer giving a para-wise reply to the said letter. On 11.08.1992, the inquiry Officer submitted his Inquiry report holding the applicant as guilty of the charges but found that the applicant was a victim of the circumstances and the lapse was due to inadvertence and the bills were passed by the applicant in good faith. The applicant submitted a representation against the findings of the Inquiry Officer on 22.08.1992.

But surprisingly a penalty was imposed upon the applicant vide Order bearing letter no. AN/1/D/139/SB/Part/236 dated 30.09.1992 whereby an

Subir Bhattacharya

Order was passed reducing his pay by one stage for a period of six months without cumulative effect and nothing was said about promotion to which he was entitled on 17.03.1990.

A copy of the Order of penalty dated 30.09.1992 is enclosed as **Annexure-7**.

4.9 That your applicant preferred an appeal on 8.12.1992 against the order of penalty dated 30.9.1992 before the Appellate Authority. However the appellate authority confirmed the order of penalty dated 30.9.1992 passed by the Disciplinary Authority.

4.10 That your applicant thereafter promoted to the post of Assistant Accounts Officer (Group-B) in the pay of scale of Rs. 2000-3200 vide order bearing letter No. An/1/727/Prom/SD(A)/XIII dated 17.11.1993 with effect from 4.10.1993. In the instant case the prayer of the applicant to promote him to the said post of AAO with effect from 16.3.1990 i.e. the date from which the juniors of the applicant namely Sri B.P.Singh, S.C. Sahay, respondent nos. 4 and 5 were promoted to the post of AAO with all consequential benefits including seniority arrear monetary benefits.

4.11 That it is stated that admittedly there was no departmental proceeding pending against the applicant in the year 1989 when DPC held for consideration of promotion of the applicant along with others in the cadre of AAO. The charge sheet was served upon the

Suhir Bhattacharya

applicant vide Memorandum dated 13.10.1990 whereas juniors of the applicant were promoted to the cadre of AAO following the finding of the DPC held in the year 1989 with effect from 19.3.1990 vide Part II order No. 117 dated 16.3.1990 but unfortunately the DPC wrongly kept the findings of the applicant under sealed cover in total violation of the rule/law, in fact there was no disciplinary proceeding pending against the applicant at the relevant time when promotion order was issued on 19.3.1990. As such the decision of DPC keeping the findings under sealed cover was highly arbitrary, whimsical and contrary to law. In this connection it may be stated that mere issuance of a show cause notice dated 12.7.89 is not sufficient to withheld the promotion of the applicant to the cadre of AAO when admittedly there was no proceeding pending against the applicant.

4.12 That your applicant thereafter repeatedly approached the authorities for grant of promotional benefits to the cadre of AAO to him with effect from 19.3.1990 but the same is arbitrarily denied to the applicant, as a result the applicant is incurring huge financial loss each and every month in his salaries. As such the cause of action in the instant case is arising each and every day and the applicant is to incur the said financial loss in his salaries as well as in fixation of his pay and pensionary benefit. Due to such arbitrary denial of promotion the applicant is incurring financial loss

Sudhir Bhatnagar

as a result of non fixation of pay in the scale of Rs. 2000-3200 in the post of AAO with effect from 19.3.1990. As a consequence there is a loss of incremental benefit each and every year.

- 4.13 That in the similar facts and circumstances, one Sri Kalyan Kumar Das, the then SO (A), AN/II Section, office of the Controller of Defence Accounts, Narengi, Guwahati i.e. of the same establishment being aggrieved by the arbitrary decision of the respondents approached the Hon'ble Tribunal through O.A. No. 218 of 1997 and also through O.A. No. 217 of 2000 (K.K.DAS VS. UNION OF INDIA & ORS). This Hon'ble Tribunal in O.A. 217 of 2000 considered the case of Sri Kalyan Das in detail after hearing the parties it is directed by the Hon'ble Tribunal to the respondents of that O.A. to open the sealed cover and give effect to the recommendation of the D.P.C. held in the year 1989 in the event if it appears that the DPC meeting held on 19.7.89 recommended the case of the applicant for promotion to the post of Section Officer the respondents shall give effect to the said recommendations promoting the applicant to the higher post with all consequential benefit with effect from the date of promotion of his juniors. The case of the present applicant is squarely covered by the decision rendered by this Hon'ble Tribunal in O.A. 217/2000 decided on 14.8.2001.

Sukir Bhasin

A copy of the judgment and order dated 14.8.2001 is annexed as **Annexure-8**.

4.14 That your applicant after receipt of the judgment and order dated 14.8.2001 passed in O.A. 217/2000 in favour of Sri Kalyan Kumar Das, submitted a detailed representation addressed to CGDA, R.K.Puram, New Delhi, through proper channel on 25.9.2001 but finding no favourable reply again submitted a representations dated 7.1.2001 and on 15.5.2002. But most surprisingly the office of the Controller of defence Accounts rejected the claim of the applicant for antedated promotion of the applicant in the cadre of AAO vide impugned letter bearing no. AN/IC/727/ Prom/AAO/Part/SB dated 26.6.2002 on the alleged ground that the decision rendered in O.A. 217/2000 by the Hon'ble Tribunal cannot be made applicable to the present applicant as the said judgment is made in the individual case of Sri Kalyan Kumar Das. The said impugned decision of the Controller of Defence Accounts is contrary to law in as much as when the respondents have complied with the judgment and order dated 14.8.2001 passed in O.A. No. 217/2000 vide Part II Office Order No. 697 dated 28.01.1997. Therefore denial of the same benefit to the present applicant is violative of Article 14 of the Constitution.

Copy of the representation dated 25.9.2001, 7.1.2002, 15.5.2002 and impugned letter dated

S. B. Brakaty

26.6.2002 and order dated 28.01.2002 are enclosed as Annexure-9,10,11,12 and 13 respectively.

4.15 That your applicant finding no other alternative approaching this Hon'ble Tribunal praying for a direction to the respondents to extend the similar benefit to the present applicant in the light of the decision rendered by this Hon'ble Tribunal in O.A. No. 217/2000 dated 14.8.2001.

4.16 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, there was no disciplinary proceeding pending against the applicant on the day when the DPC was held to consider the promotion of the applicant to the post of Assistant Accounts Officers along with others including juniors i.e. on 19.3.1990.

5.2 For that, adoption of sealed cover procedure in the case of the present applicant is contrary to law/rule more particularly when there was no disciplinary proceeding pending against the applicant at the relevant day i.e. in the year 1989 when DPC was held to consider the case of promotion of the applicant along with others.

5.3 For that, sealed cover procedure cannot be adopted on the basis of contemplation of a disciplinary proceeding

Surbir Bhattacharya

and also not permissible to adopt sealed cover procedure on the basis of mere show cause notice.

5.4 For that, the applicant is similarly circumstanced like that of Sri Kalyan Kumar Das, the then S.O. as such the present applicant is also entitled to the similar benefit of promotion already granted by this Hon'ble Tribunal in O.A. No. 217/2000 dated 14.8.2001.

5.5 For that, due to arbitrary denial of promotion to the applicant in the cadre of AAO at least from the date of promotion of his juniors, the applicant is incurring financial loss in the matter of fixation of pay in the scale of Rs. 2000-3200 and also incurring loss of incremental benefits each and every month.

5.6 For that, due to denial of promotion to the cadre of AAO, the applicant is meted out with hostile discrimination and the same is violative of Article 14 of the Constitution.

5.7 For that the retrospective benefit of promotion has already been granted by this Hon'ble Tribunal in O.A. No. 217/2000 on 14.8.2001.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

Subir Bhattacharya

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be pleased to quash and set aside the impugned Order No. AN/IC/727/Prom/AAO/Bart/SB dated 26.6.2002 (Annexure-12).

8.2 That the respondents be directed to promote the applicant in the cadre of AAO at least with effect from the date of promotion of his juniors namely respondent Nos. 4 and 5 with all consequential service benefit including seniority and monetary by opening the sealed cover in the light of the decision rendered by this Hon'ble Tribunal in its judgment and order dated 14.8.2001 in O.A. 217/2000 (Sri Kalyan Kumar Das Vs. U.O.I. & Ors.).

8.2 Costs of the application.

8.3 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

That the Hon'ble Tribunal be pleased to make an observation that the pendency of this application shall not be a bar for the respondents to consider the case of the applicant.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	:	76 5753 11
ii) Date of Issue	:	25-9-02
iii) Issued from	:	G.P.O., Guwahati
iv) Payable at	:	G.P.O., Guwahati

12. List of enclosures.

As given in the index.

Sunbir Bhattacharya

VERIFICATION

I, Shri Subir Bhattacharjee, S/o Shri Sulapani Bhattacharjee, aged about 53 years, working as AAO, in the office of PAO, Assam Regimental Centre, Shillong, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 7th day of October, 2002.

Subir Bhattacharjee

STRICTLY CONFIDENTIAL

NO. AN/I/10028/VI/17/235-1/237
 Office of the CCA,
 Paschim, Guwahati-28
 Dated :- 12-7-89

To
 Shri Subir Bhattacharjee
 Section Officer(a)
 A/C No. 8306517

During the period from September, 1989 to October, 1989 a number of LP Bills, in batches, were received from 5 Hm Div. Sgt. The said bills were accepted and passed by you. The particular of such bills are as under :-

Received on 17/7/89
 Sr 17/7

Particulars	Date of receipt	Date of passing	LV NO.
1. 2 LP Bills for Rs. 9083/-	16.9.88	27.9.88	124 of 10/88
2. 1 LP Bill for Rs. 2451/-	16.9.88	27.9.88	142 of 10/88
3. 2 LP Bills for Rs. 10195/-	16.9.88	27.9.88	147 of 10/88
4. 2 LP Bills for Rs. 3323/-	16.9.88	27.9.88	148 of 10/88
5. 3 LP Bills for Rs. 11936/-	16.9.88	27.9.88	201 of 10/88
6. 2 LP Bills for Rs. 11610/-	16.9.88	27.9.88	223 of 10/88
7. 2 LP Bills for Rs. 7975/-	16.9.88	27.9.88	229 of 10/88
8. 1 LP Bill for Rs. 2944/-	16.9.88	27.9.88	239 of 10/88
9. 1 LP Bill for Rs. 10976/-	21.9.88	27.9.88	125 of 10/88
10. 2 LP Bills for Rs. 14292/-	21.9.88	28.9.88	140 of 10/88
11. 2 LP Bills for Rs. 9771/-	21.9.88	27.9.88	145 of 10/88
12. 1 LP Bill for Rs. 3270/-	21.9.88	27.9.88	206 of 10/88
13. 2 LP Bills for Rs. 10140/-	21.9.88	27.9.88	230 of 10/88
14. 2 LP Bills for Rs. 6347/-	21.9.88	27.9.88	238 of 10/88
15. 3 LP Bills for Rs. 20122/-	11.10.88	14.10.88	132A of 10/88
16. 2 LP Bills for Rs. 7046/-	11.10.88	14.10.88	1334 of 10/88
17. 1 LP Bill for Rs. 5560/-	11.10.88	14.10.88	1339 of 10/88

Contd.....P/2

Received for Adroc.

The claims accepted and passed for the payments by you were not submitted by the unit concerned and were apparently bogus bills as the specimen signature of the counter-signing/claimant official held in this office record does not tally with those found on the claims.

The dealing auditors who had processed/passed all these LP bills ignored the following points audit requirements :

- (a) Non verification of specimen signature of the Counter-signing Officer.
- (b) Non-verification of the Voucher Control No.
- (c) Failure of putting dated initials on the payment encasement.
- (d) Failure of maintaining proper supply order/File/ Register.
- (e) Non-linking of supply orders.
- (f) Failure of making entry for verification of Supply Order and specimen signature in respect of DV No.142 of 10/88, 1322 of 10/88, 1334 of 10/88 and 1339 of 10/88.
- (g) Failing to exercise proper scrutiny of the claims.
- (h) Showing undue favour to the beneficiaries of the apparently bogus claims.

In spite of being the above points, of basic audit requirements for the LP bills you chose to ignore them and passed the bills.

In view of the above, I am directed to ask for your explanation as to why disciplinary action should not be taken against you for having released the payments, but with the above audit/supervisory lapses on your part.

Your reply should reach the undersigned within 15 days of this communication.

Please acknowledge receipt.

Dudhi B. C.
(D.B. RAJPUT)
ACCOUNTS OFFICER (ADMIN)

-19-
CONFIDENTIAL

Amman 2

29

To
The CDA, (Ad-I),
Basista,
Ganpati - 23.

Subject :- Payment of L.P. Bills in respect of
5 Min. Div. Regt.

Sir,

Kindly refer to your strictly confidential No. AM/I/D/139/SE/Part/235 to 239 dated 12.7.89. In this connection I submit that I am utterly shocked of being charged with for alleged failure on my part to collect the L.P. Bills in question as Vagus Bills.

That Sir, I inherited a Group i.e., SE/TIA Group. I did not find head and tail in the functioning of the group. Things had been just in mess. I had to take long days to take stock of the worsened situations in the group. This all happened as appeared to me -- due to lack of direction, guidance etc by the superior officers. The concrete steps were taken by my predecessors including superior officers to motivate the group in the manner contemplated in the relevant provisions in the relevant manual/Rule. There was no proper judgement about proportion of work in the group vis-a-vis sections. Besides work and payment of L.P. Bills, all nature of work such as preparation of D.P. Sheets of the entire section, scheduling of vouchers, Post Scrutiny of all contracts, release of security deposit, maintenance of land register for recording expenditure over allotment. Monthly expenditure return and co-ordination etc. etc. had been entrusted in the group. I am giving below the quantum of bills as an instance to enable your authority to have a glimpse over the volume of work being done in the group.

Month.	No. of bills submitted
8/88	1147
9/88	1249
10/88	1212

That Sir, I had to handle the above voluminous works with the help of mostly inexperienced juniors. There had been constant exertion of pressure from the higher authorities including the then hon'ble CDA to expedite clearance of bills within 7 days from the date of receipt of the bills in 'R' section to the date of clearance of the bills by issuing cheques to the group. Thus the group was overburdened with work from all sides. It appeared to me that my seniors had been taking a quantum of output leaving them bothered about the quality or the output. The state of affairs in the group was such an extent that everyone looking after the group affairs had been in hurry to show the quantum of work ignoring even the basic requirements of quality. It was indeed a sorry state of affairs.

Confidential

Pls find
Daro case

... having a personal ... in the ... would not ...
the ... would ... and ... new ...
... to ... the ... CDA for ...
... of ... the ... the ...
to put the ... in ... all in ...

"Sir, I only attempted to ...
back the ... conditions through which ...
works I just ... to myself to the stage of ...
auditor and in fact I had to forget that I had ...
put into the group of supervisors ... because ...
volume of work reached to such an extent that ...
were just unable to pull ... their job. However, ...
all the difficulties, I tried my best to run the ...
and even, ... after doing so much for the group, I ...
surprised and shocked as well, of being the charged ...
alleged failure to exercise proper check ...
claims. However, para-wise reply to the charges are given
below :-

(a) That Sir, I received the bills ...
like ... other official documents through ...
Please ... the issue. The ...
primary ... like other bills. Questions ...
... bills as ...
... does not arise.

(b) That Sir, regarding verification of
specimen signature of the countersigning officer, I
submit that I believe in exercising cent percent control
in my supervising capacity, to all bills and ...
even though these are checked/verified by my ...
But then due to abnormal/unusual rush of work in the
group as indicated above, I had to compromise ...
principles and therefore had to resort to P.A. ...
supervising the work of my auditors. While ...
last checks of bills submitted to me by my ...
bills in question did not come up under my ...
Thus, I let the bills pass my level.

(c) That Sir, control no(s) in the ...
are generally, never looked into audit nor in the ...
mentioned in our audit manual because these are ...
essentially unit subject. What is looked for in ...
is whether the bills carries vouchers no(s) ...
Yes, I state that the bills were bearing vouchers no(s) ...
and date(s). Control no(s) are, sometimes, ...
alphabets or numerical digits, and also some ...
totally bypassed ignored by units. An ...
point at issue therefore is not looked into ...
us nor is it insisted by us for compliance in ...
any specific provisions in our manuals or ...
ordered to have ... appreciation of my ...
I would request your goodness, to review all ...
in the group.

(d) That Sir, regarding ...
initially in the bills, I ...
did ...
bills ...
not ...
...
...

Continued

(e) That Sir, your allegation that proper supply orders files/Registers have not been maintained in the group is not acceptable to me. In this connection I submit that all relevant supply order files/Register connecting payment of L.P. Bills were being maintained in the group as per provision contained in our departmental manuals.

(f) That Sir, supply orders were always linked while subjecting the L.P. Bills to audit scrutiny. A clear endorsement to the above effect has been given in all supply orders. Kindly, therefore, re-verify the documents. Your charge, therefore, that supply orders were not linked in admitting payment of L.P. Bills is therefore not agreed to.

(g) That Sir, regarding non-endorsement of SS verified/SO linked in the bills as pointed out by your goodself, I submit that I am unable to recollect whether endorsement to the effect specimen signature verified/supply order linked was given in the Bills or not at this stage. However, I admit that there might have been some omission in not looking for these endorsements due to heavy in-flow of the works on my table.

(h) That Sir, regarding alleged failure to exercise general scrutiny and showing undue favour to suppliers, I submit that these allegations are totally baseless. I firmly state that I exercised proper scrutiny of all bills as per provisions contained in the relevant manuals and audit instructions and there was no deviation, whatsoever, from it.

It is indeed painful to note that I have been charged of being shown favour to suppliers which is not at all true. I wonder how my hon'ble authority came to such a serious conclusion without judging the state of affairs in its right perspective.

However, I sincerely and solemnly state that I did not show any undue favour to any suppliers in processing their claims.

In view of the above, I request your goodself to re-examine the points at issue with reference to the relevant documents and also be kind enough to drop the alleged charges labelled against me. Your kind and sympathetic action would help me to mitigate my mental agony.

Thanking you,

Dated-

31.7.89.

Yours faithfully,

(S. BHATTACHARJEE)

S.O. (A)

A/C No.

Gauhati.

Office of the C A, Basistha, Gauhati-28

Part II O.O. No. 117

Dt. 16/3/90.

Administration

Promotion

Sub:-

Higher Functional Grade in SO(A) Grade
DAD- Promotion to the Grade of AAO(GP 'B')

Having been selected for promotion to the grade of AAO, the Controller of Defence Accounts, Basistha, Gauhati-28 hereby appoints the section Officers (Accounts) mentioned in Annexure 'A' to this part II O.O. as "ASSTT. ACCOUNTS OFFICER (GROUP B) in the scale of pay Rs. 2000/= to 3200/= w.e.f.

19/3/90 w or from the date of assumption of charge : whichever is later in the officiating capacity till successful completion of their probation. The officers will be on probation for a period of two years w.e.f. the date of promotion.

If the individuals desire to have their pay fixed as AAO in terms of DP and T OM No. 1/2/87 Estt. pay I dt. 9/11/87 they should exercise an option within a period of one month from the date of issue of this order and option once exercised will be treated as final. No request for consideration of delay in exercising the option will be considered.

Authority:- CGDA New Delhi Strictly confidential No. AN/XI-A/11061/Prom/AAO/12/84 Vol.-III dt. 7/3/90.

No. AN/1/727/Promotion-XV
dt. 16/3/90.

(K. GANESAN)
DY. CDA (ADMIN)

Copy to:-

1. The CGDA, West Block-V, R.K. Puram, New Delhi- 2 copies.
2. The CDA(P) Allahabad- 2 copies.
3. The CDA Patna-10 - 2 copies.
4. AO 36 BRTF C/O 99 APO
5. AO(P) Vartak, C/O 99 APO
6. OA 503 EP C/O 99 APO
7. UAGE Shillong
8. UAGE(AF) Jorhat
9. AAO Shillong
10. The OI/C SA Section (Local)

With an extra copy each for the individual concerned.

.....2/..

Alotted
from
Advocate

- 11) The Ol/C AN-II(PFC)
 12) The Ol/C AN/III
 13) The Ol/C AN-II(SB)
 14) The Ol/C AN/IB(AGR/Dossier)
 15) The Ol/C AN/IA(Per-File)
 16) Spare- 10 copies

Local

33

(R.L. TRIPATHI)
 ACCOUNTS OFFICER(ADMIN)

ANNEXURE 'A' TO PART II O.O. No.117 dt. 16/3/90

<u>Sl. No.</u>	<u>Name of the SO(A) with A/C No.</u>	<u>Roster No.</u>	<u>Date of promotion</u>	<u>Office where serving.</u>
	<u>S/Secy</u>			
1.	Ranjit Pal, A/C No. 8313332	0A/867	19/3/90	AO 36 BRTF
2.	G.N. Upadhyay, A/C No. 8313381	0A/870	19/3/90	AO(P) Varanasi
3.	P.K. Dey, A/C No. 8306367	0A/908	19/3/90	UA 583 ED
4.	B.P. Singh, A/C No. 8299871	0A/999	19/3/90	UAGE Shillong
5.	S.C. Sahay, A/C No. 8291282	0A/1011	19/3/90	UAGE(AF) Jodhpur
6.	Rajendra Prasad, A/C No. 8294250	0A/1045	19/3/90	AO Shillong
7.	V.K. Verma, A/C No. 8294215	0A/1100	19/3/90	MO Gannadi SA Section

*Longitudinal
 pl. regarding
 a grant. pending
 as shared by
 the Staff Secy
 12/3*

(R.L. TRIPATHI)
 ACCOUNTS OFFICER(ADMIN)

Annexure - 4

31

CONFIDENTIAL

No. AN/I/727/Prom/SG(A)/Vol-II
OFFICE OF THE CDA ASSISTANT
GAUHATI-28 DATES 11.5.90.

To

The S I/C SA Section
(Local).Subj:- PROMOTION TO THE GRADE OF AAO SHRI. S. GHATAK
JEE SG(A) A/C No. 8306517.Ref:- Your Confidential No. SA/I/Confid-Vol-II
dt. 30.5.90 forwarding an application dt. 28.5.90
in respect of the above named individual.
.....

In this connection it is intimated that the above named individual has been adjudicated as 'sealed cover case' for promotion to the grade of AAO vide this office confidential No. AN/I/727/Promotion-XIV dt. 15/12.1.90 as a disciplinary case is pending against him. His name has not been found included in the list of SGs(A) Promoted to AAO's grade by the CGDA New Delhi.

The individual may be informed suitably.

(Signature)
(R.L. TRIPATHI)
ACCOUNTS OFFICER (ADMIN)

*Attended
for
Gauhati*

No. AN/I/D/139/CB/Part/236
Office of the CDA
Basistha, Gauhati:28
Date:- 13/11/90

M E M O R A N D U M

The undersigned proposes to hold an inquiry against Shri. Subir Bhattacharjee, SO(A), A/C No. 8306517 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. The substance of the imputations of misconduct and misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of mis-conduct or mis-behaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which ----- the articles of charge are proposed to be sustained is also enclosed (Annexure-III).

2. Shri. Subir Bhattacharjee, SO(A), A/C No. 8306517 is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore, specifically admit or deny each article of charge.

4. Shri. Subir Bhattacharjee, SO(A), A/C No. 8306517 is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri. Subir Bhattacharjee, SO(A), A/C No. 8306517 is invited to Rule 20 of the Central Civil Service (Conduct) Rules 1964 under which no Govt. servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri. Subir Bhattacharjee, SO(A), A/C No. 8306517 is aware of such a representation and that it has been made at his instigation and action will be taken against him for violation of

Received
on 16/10/90
Sr
16/10

Attested
by
Adrocal

-2-

Rule 20 of the CCS(Conduct) Rules, 1964.

6. The receipt of the memorandum may be acknowledged.

D. Lahiri

D. LAHIRI
J.C.D.A.

ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FROM COURT ORDER
SHRI SUBIR BHATTACHARJEE, SO(A), A/C No. 8306517

ARTICLE-I

That the said Shri Subir Bhattacharjee, SO(A),
A/C No. 8306517 who is serving in ST-III section of H.O.
Gachati as supervisor had accepted and passed a number of
R.P. Bills in batches in respect of 5 Hdn. Div. Sig. Regt..
In fact the 12 bills were bogus and without adhering to
the requirements of audit the claims were passed by Shri
Subir Bhattacharjee, SO(A), A/C No. 8306517.

ARTICLE OF CHARGE-II

NIL

ARTICLE OF CHARGE-III

NIL

ANNEXURE-II

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN
SUPPORT OF THE ARTICLE OF CHARGES FROM COURT ORDER
BHATTACHARJEE, SO(A), A/C No. 8306517

That the said Shri Subir Bhattacharjee, SO(A),
A/C No. 8306517 while functioning as SO(A) in ST/III section
of Main Office, CMA Gachati had accepted and passed for pay-
ment some bogus local purchase bills submitted by the unit
concerned i.e. 5 Hdn. Div. Sig. Regt. These bills were apparently
bogus bills as the specimen signature of the countersigning/
claimant official held in office record does not tally with
those found on the claims.

The dosing auditor who had processed/passed the
R.P. Bills ignoring the audit points/audit requirements and the
said Shri Subir Bhattacharjee, SO(A), A/C No. 8306517 also in-
spite of being the SO(A) of the section had chosen to ignore
those audit points and passed the bills. The audit points/re-
quirements ignored are as under :-

.....P/2

- a) Non verification of specimen signature of the countersigning Officer.
- b) Non verification of the voucher Control No.
- c) Failure of maintaining proper supply order/ File/Register.
- d) Non linking of supply orders.
- e) Failure of making entry for verification of supply order and specimen signature in respect of DV No.142 of 10/88, 1322 of 10/88, 1334 of 10/88 and 1339 of 10/88.
- f) Failing to exercise proper scrutiny of the claims.

Inspite of being the above points, basic audit requirements for the LP Bills the said Shri Subir Bhattacharjee, SO(A), A/C No.8306517 chosen to ignore them and passed the bills. By his aforesaid act the said Shri Subir Bhattacharjee, SO(A), A/C No.8306517 has exhibited gross negligence to duty and lack of devotion towards his duties and thereby violated the provisions contained in Rule 3(i) (ii) & (iii) of CCS(Conduct) Rules 1964.

29.

39

ANNEXURE-III

List of documents by way of which Article of Charges,
framed against Shri Subir Bhattacharjee, D(2), C No.
8306517 are proposed to be sustained/

Sr. No.	Particulars	Date of Receipt	Date of Passing	DV No.
1.	2 LP Bills for Rs.9088/-	16.9.88	27.9.88	124 of 10/88
2.	1 LP Bill for Rs.2491/-	16.9.88	27.9.88	142 of 10/88
3.	2 LP Bills for Rs.12195/-	16.9.88	27.9.88	147 of 10/88
4.	2 LP Bills for Rs.3523/-	16.9.88	27.9.88	148 of 10/88
5.	3 LP Bills for Rs.11236/-	16.9.88	27.9.88	201 of 10/88
6.	2 LP Bills for Rs.11610/-	16.9.88	27.9.88	224 of 10/88
7.	2 LP Bills for Rs.7975/-	16.9.88	27.9.88	222 of 10/88
8.	1 LP Bill for Rs.2844/-	16.9.88	27.9.88	229 of 10/88
9.	1 LP Bill for Rs.10979/-	21.9.88	27.9.88	123 of 10/88
10.	2 LP Bills for Rs.14292/-	21.9.88	28.9.88	140 of 10/88
11.	2 LP Bills for Rs.9771/-	21.9.88	27.9.88	145 of 10/88
12.	1 LP Bill for Rs.3270/-	21.9.88	27.9.88	206 of 10/88
13.	2 LP Bills for Rs.10140/-	21.9.88	27.9.88	230 of 10/88
14.	2 LP Bills for Rs.6347/-	21.9.88	27.9.88	233 of 10/88
15.	3 LP Bills for Rs.20122/-	11.10.88	14.10.88	1322 of 10/88
16.	2 LP Bills for Rs.7046/-	11.10.88	11.10.88	1334 of 10/88
17.	1 LP Bill for Rs.5560/-	11.10.88	14.10.88	1332 of 10/88

TO
THE SECRETARY OF DEFENCE ACCOUNTS,
(C/Comptroller) Delhi (the government)

Through proper channel.

Respected sir,

Most humbly and respectfully I beg to acknowledge receipt of your memo NO AN/I/D/139/SB/Part/236 dated 13-10-99

and submit the following few lines amongst many others in defence of the charges levelled against me for your kind and sympathetic consideration please.

(a) sir, the charge sheet has not been initiated in accordance with rule 14(1) of CCS (CA) rules 1965 and is apparently without jurisdiction.

(b) that sir, the allegations with regards to passing of bills as brought home in Annexure I to the memo referred to, was earlier notified vide your confidential letter NO AN/I/D/139/SB/Part/235 to 239 dated 12th July 1989 and the same charges were denied with reasons vide my application dated 31-July 1989. But now I find the same charges have again been levelled on me without any fresh materials and or evidence / information documentary evidences or preliminary enquiry as per Ministry of Home Affairs G.O. NO F 30/5/01-89 dated 25-August 1961.

(c) that sir as per practice invoice the Bills which have been passed for payment are required to be checked at various places where the S.O(A) as per charter of general duties are required to verify the specimen signature only in respect of bills below Rs 25000/- . But it is not clear from the demands and the statement of imputation of misconduct from the same as per memo under reference as to whether there was any evidence to establish the fact that the bills were signed by me.

(d) sir, it may be pertinent to submit, as an S.O(A) it had been my earnest endeavour to discharge the duties judiciously and expeditiously as possible but the quantum of responsibilities and the volume of work was so much in a section that it has not been academically possible to maintain desired amount of checks and controls under constant pressure to clear up the accumulated work. It is submitted in this context that in July 1989 the Secretary, Government of India, lettered the Government of India dated 27-July-1989 to clear the duties of the S.O(A) in the Government of India who bills were

the SO(A) within 24 hrs. Thus, in all fairness, though there had been an intention to exercise greater extent of check even more than those specified in the charter of general duties one had to sacrifice this reasonableness for the sake of speedy disposal.

(e) Sir, so far I remember all the bills checked by me specifically for verification of specimen signatures were verified well as per the signatures available on records and there were no cases came to my light where such signatures could be doubted. Thus I do not agree to the allegation that the specimen signature of the countersigning Officer of the claims were not verified by me. ~~allegation~~ The allegation on this part is prejudicial and not borne out of fact.

(f) As regards the charges for non verification of vouchers contrall no, failure to maintain proper supply order file and non linking of such orders it may be mentioned that these duties do not come within my charter of duties as SO(A) and therefore it would not be correct and proper if the charges is contemplated to be levelled on me for which I was not responsible.

I, in view of the above, request your goodness to kindly reconsidered the entire case in the perspective of the facts and evidences adduced from records and squash the charges levelled against me and oblige.

Thanking you sir,

Yours faithfully,

dated 14-11-90

(S. BHATTACHARJEE)

Guwahati

SO(A) A/C NO 8306517

*20 days time extension
as per from CDA 2 granted by him*

ORDER

No. AN/1/D/139/SB/Part/236
Office of the C D A,
Basistha, Gauhati-28
Dated: 30/09/92

Whereas disciplinary proceedings for Major penalty were initiated against Shri S. Bhattacharjee, SO(A), A/C No. 8306517 while serving in the office of the CDA Gauhati for passing of bogus local purchase bills of 5 MTN Div, Sig. Regt. without adhering to Audit requirements. As Shri Bhattacharjee denied the charges vide statement of Defence dated 14/11/90, an inquiry was held to afford him reasonable opportunity to defend his case. The inquiry officer submitted his report on 6/8/92. A copy of the Inquiry Report was forwarded to Shri Bhattacharjee SO(A) on 11/8/90 to give him another opportunity to represent on the findings of Inquiry Officer. Representation dated 22/8/92 was preferred by Shri Bhattacharjee against the findings of the Inquiry Officer.

2. The undersigned has carefully considered the Inquiry Report and representation there on submitted by Shri S. Bhattacharjee, SO(A). On the basis of evidences adduced during the Inquiry, the Inquiry Officer has held all the charges against him as proved. The undersigned agrees with the findings of the Inquiry Officer. However, in the circumstances of the case a lenient view has been taken by the undersigned. Taking all factors into account the undersigned feels that ends of justice will be met by imposing upon the said Shri S. Bhattacharjee, SO(A), A/C No. 8306517, the penalty of reduction of pay by one stage for a period of six months without cumulative effect.

3. Now therefore, the undersigned hereby imposes upon the said Shri S. Bhattacharjee, SO(A), A/C No. 8306517 the penalty of reduction of his pay to the stage of Rs. 2060.00 (Rupees Two thousand sixty only) from the present pay of Rs. 2120.00 (Rupees Two thousand one hundred and twenty only) in the time scale of pay of Rs. 1640-60-2600-EB-75-2900 for a period of six months with effect from 1/10/92. The period of penalty will count for future increment.

(AMAR CHAND)
C D A

TO
Shri S. Bhattacharjee,
SO(A), A/C No. 8306517
O/O the ACDA(P) Sewak
C/O 99 APO

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- 33 -

Annexure - 8

43

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.217 of 2000

Date of decision: This the 14th day of August 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Kalyan Kumar Das, ()
S.O.(A), AN/II Section,
Office of the Controller of Defence Accounts,
Narengi, Guwahati.

.....Applicant

By Advocates Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakrabarty.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. The Controller General of Defence Accounts,
West Block V, R.K. Puram,
New Delhi.
3. The Controller of Defence Accounts,
Narengi, Guwahati.

4. Sri Pradip Kumar Paul,
Assistant Accounts Officer,
A/C No.8319870,
Office of the LAO,
222 ABCD, C/o 99 APO.

5. Sri A.K. Dhall,
Assistant Accounts Officer,
A/C No.831590,
Office of the E.E. Barasat,
Central Div-II, CPWD,
VIP Road, 24 Parganas,
Calcutta, West Bengal.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

*Officer
Law
Associate*

CHOWDHURY. J. (V.C.)

The applicant belongs to the Defence Accounts Department.

He was initially appointed as Auditor on 23.12.1980. The Departmental
SAS Examination (Part II) was held in October 1986. The result of the

44

said examination was declared on 28.4.1987. The name of the applicant also appeared as one of the successful candidates. A DPC meeting was held for considering the promotion to the post of Section Officer (Accounts). According to the applicant he was recommended by the DPC alongwith respondent Nos.4 and 5 for promotion to the post of Section Officer, but arbitrarily he was denied promotion and the juniors were allowed to march over him. The applicant took up the matter with the Department and preferred an appeal. The Department by order dated 30.9.1996 rejected his representation on the ground that the disciplinary proceeding was initiated against him on 12.7.1989, whereas the DPC in respect of the SAS Part II passed Auditors/Sr. Auditors (October 1986 batch) was held on 19.7.1989 after initiation of the disciplinary proceedings against the applicant on 12.7.1989. The recommendations of the DPC were kept in sealed cover in accordance with the guidelines on DPC procedure. The applicant thereafter moved the Tribunal by way of O.A.No.218 of 1997 and assailed the action of the respondents as arbitrary and discriminatory. It was asserted in the aforesaid O.A. that on 12.7.1989 the respondents only asked for an explanation from the applicant with regard to certain lapses and irregularities. The charge memo was issued on the applicant only on 13.10.1990. Therefore, the disciplinary proceeding was initiated only on 13.10.1990. The department fell into error in denying the promotion to the applicant and placing the recommendations dated 19.7.1989 in sealed cover. The Tribunal disposed of the aforementioned O.A. on 31.8.1999 directing the respondents to consider the representation of the transfer and pass a reasoned order thereto within a specified time. By order dated 9.2.2000 the respondents disposed of the representation, which is impugned in this proceeding. The material part of the order is reproduced below:

"The Applicant and his confreres were first adjudicated by the DPC held on 19.7.89. Meanwhile in the case of Shri K.K. Das serious allegations of processing Bogus Local Purchase Bills, which resulted in fraud were under investigation, after which an explanation was called for from the Applicant on 12.7.89, culminating in the issue of charge sheet on 13.10.90. Therefore the findings of the DPC so far as Applicant was concerned, were kept in "Sealed Cover". This was in accordance with the Govt. order/instructions which was in operation.....

33 - 35

15

operation at that time i.e. Department of Personnel & Training OM No.22011/2/86 Estt (A) dated 12.1.88 a copy of which is being annexed to this order. In accordance with para 2(IV) of the said OM, it was incumbent on the part of the DPC to place their findings in Sealed Cover, even if allegations involving corruption, bribery or similar grade of misconduct were under investigation. In the circumstances, as per the provision of para 2 of the OM dated 12.1.88, the findings of the DPC held on 19.7.89 and 17.7.92 were kept in "sealed cover". The above procedure was modified by the Department of Personnel & Training vide their OM No.22011/4/91-Estt (A) dated 14.9.92 (copy enclosed). Since by this date a charge sheet was already issued on 13.10.90, the question of opening the sealed cover in the wake of the revised orders did not arise. The OM No.22011/2/86 Estt(A) dated 12.1.88 and OM No.22011/4/91 Estt (A) dated 14.9.92, and even the earlier orders provide for opening the "Sealed Cover" and giving effect to the findings of the DPC, only in the case of exoneration of the concerned Govt. servant. In the instant case, the Applicant was imposed penalty of reduction of pay by one stage for a period of 6 months without cumulative effect on 30.9.92. Therefore the question of opening and taking action on the findings of DPC's held on 19.7.89 and 17.7.92 did not arise. The next DPC was held on 30.12.92. In the DPC the applicant was recommended "Fit" for promotion to the grade of SO(A). However in accordance with the para 13 of the OM No.22011/5/86-Estt(D) dated 10.4.89 the promotion was to be given effect from the date after the expiry of the period of the penalty i.e. w.e.f. 12.4.93 or from the date of his assumption of charge of SO(A) whichever is later and not to be released during the currency of the penalty. However the concerned Government servant retains his seniority according to his position in the panel recommended by the DPC held on 30.12.92, and is also eligible for fixation of pay from the original date of promotion with reference to the panel in which he was recommended fit i.e. in the DPC held after the finalisation of the disciplinary case. He would not, however, be entitled for the arrears of pay and allowances for the period covering the penalty. The Applicant Shri Kalyan Kumar Das has been imparted benefits accordingly."

2. From the narration of facts it thus appears that the disciplinary proceeding was initiated only on 13.10.1990 vide Memo No.AN/I/D/139/KKD/Part/238. As per the O.M. dated 12.1.1988 the sealed cover procedure was to be adopted in the circumstances mentioned in para 2 of the said O.M. Para of the O.M. dated 12.1.1988 reads as follows:

"At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specially brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has.....

has been issued or a decision has been taken to accord sanction for prosecution.

iv) Government servants against whom an Investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise."

Para 2 has subsequently been modified by Memorandum dated 14.9.1992.

which is also reproduced below:

"At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal case is pending."

3. The materials on record clearly indicate that disciplinary proceeding under Rule 14 of the CCS (CCA) Rules was initiated only on 13.10.1990. Prior to it an explanation was sought from the applicant by Memo dated 12.7.1989. Mere asking for an explanation does not amount to initiation of disciplinary proceeding, nor the same can be termed as a decision taken to initiate a disciplinary proceeding. No materials were cited before us to hold that the respondents took a decision to initiate disciplinary proceeding prior to the Memorandum dated 13.10.1990. From the conspectus it thus appears that there was no disciplinary proceeding pending or decision for initiation of disciplinary proceeding was taken on 12.7.1989 and steps for initiating disciplinary proceeding was taken after the DPC meeting was held on 19.7.1989.

The conclusion that we have reached finds support from the Full Bench decision of the Central Administrative Tribunal, Madras Bench dated 2.3.1987 in K. Ch. Venkata Reddy and others Vs. Union of India and others, reported in Full Bench Judgments of Central Administrative Tribunals (1986-1989) 158 and the decision rendered by the Apex Court in Union of India and others Vs. K.V. Jankiraman and others, reported in (1993) 23 ATC 322.

4. In view of the above findings the impugned order dated 9.2.2000 is not sustainable in law and the same is accordingly set aside. The respondents are directed to open the sealed cover and give effect to the recommendations of the DPC held on 19.7.1989. In the event it appears that the DPC meeting held on 19.7.1989 recommended the applicant for promotion to the post of Section Officer (Accounts) the respondents shall give effect to the said recommendations promoting the applicant to the higher post and with all consequential benefits with effect from the date of promotion of respondent Nos.4 and 5. The respondents shall take steps for antidating the promotion of the applicant in terms of the DPC recommendations and confer all consequential benefits as admissible under law.

5. The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

Sd/MEMBER (Adm)



TRUE COPY

प्रतिलिपि

Section Officer (J)

प्रशासनिक अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati

गुवाहाटी न्यायालय, गुवाहाटी-८

20/9/2007

To

The Controller General of Defence Accounts
West Block V, R.K.Puram,
New Delhi

(Through Proper Channel)

Sub : Prayer for extension of the benefit of retrospective promotion etc. to the post of Assistant Accounts Officer in the light of judgment passed on 14.8.2001 in O.A. No. 217/2000 by the Hon'ble CAT, Guwahati Bench, Guwahati (Sri K.K.Das Vs. Union of India & Ors.).

Sir,

Most humbly and respectfully I beg to lay the following few lines before your for favour of your kind and sympathetic consideration :-

- 1) That Sir, following the holding of DPC in the year 1989, in respect of the SD(A), some of my colleagues who are even junior to me were promoted with effect from 19.3.1990 under CDA, Guwahati Part II, O/o No. 117 dated 16/19.3.1990 to the grade of Assistant Accounts Officer in the pay scale of Rs. 2000-3200/- without considering my case.
- 2) That Sir, being aggrieved at that, I had submitted an application to the Controller of Defence Accounts (CDA), Guwahati on 28.5.90 praying for consideration of my promotion to the grade of Assistant Accounts Officer (AAO) but it was intimated that my case being under sealed cover could not be considered.
- 3) That Sir, eventually I had submitted an appeal to your kind self praying for consideration of my case of promotion but the same was not considered.
- 4) That Sir, subsequently, a memorandum of charge sheet was issued against me on 13.10.90 alleging some charges

certified to
be true copy
for
Adrocali

Subir Bhattacharya

pertaining to some bogus LP Bill passed by me for payment in October, 1988 in the capacity of S.O.(A) and a disciplinary proceeding was initiated thereafter which after a long period of time, ended by imposing a punishment on me in the form of reduction to a lower stage of pay scale for a period of 6 months.

- 5) That the DPC held in the year 1989, while recommended the case of even those who are junior to me for promotion to the grade of Assistant Accounts Officer, wrongly kept my case under sealed cover on the basis of an explanation letter issued against me by my department on 12.7.89 relating to the aforesaid bogus L.P. Bills, thus allowing my juniors to supersede me in the matter of promotion by Part II Order bearing Letter No. 117 dated 16/19.3.1990.
- 6) That Sir, eventually, after the expiry of the period of 6 months of punishment, the DPC held on 1993 recommended my case for promotion and accordingly I was promoted to the grade of Assistant Accounts Officer with effect from 4.10.1993 on notional basis.
- 7) That Sir denial of my promotion by the earlier DPC held on 1989 by wrongly adopting the sealed cover procedure on the basis of an explanation letter dated 12.7.1989 is against the settled law. According to settled law, one's promotion cannot be stopped before initiating or in contemplation of a disciplinary proceeding. In the instant case, the disciplinary proceeding started on 13.10.1990 only i.e. the day on which Memorandum of Charges was issued whereas the DPC was held in 1989

Sudhir Bhandari

i.e. much before the initiation of the Disciplinary Proceeding and as such the DPC had no right to adopt sealed cover procedure in absence of any disciplinary proceeding. The explanation letter dated 12.7.1989 which the DPC acted upon, was a mere departmental correspondence and did not form a part of disciplinary proceeding and as such cannot be taken as a basis for withholding my promotion.

- 8) That Sir, I tried my level best to bring under your kind notice the illegal act of the DPC aforesaid and prayed for justice by submitting representations to the CDA, Guwahati and also to your honour but I failed to get the justice and I was deprived of my legitimate promotion to the grade of Assistant Accounts Officer at least with effect from 19.3.1990, i.e. the day on which my juniors were promoted.
- 9) That Sir, under similar situation, one Shri Kalyan Kumar Das, S.O.(A), AN/II Section, office of the CDA, Guwahati approached the Hon'ble Central Administrative Tribunal, Guwahati assailing the non-consideration of his promotion under similar circumstances and the Hon'ble tribunal after examining the case, passed the judgment on 14.8.2001 in O.A. No. 217/2000 directing the respondents to open the sealed cover and give effect to the recommendations for promotion, the same should be given effect retrospectively with all consequential benefits antedating the promotion of the applicant with effect from the date on which his juniors were promoted. Copy of the judgment dated

Subir Bhattacharya

14.8.2001 is self detailed and is enclosed herewith for your kind perusal.

- 10) That Sir, due to the illegal action of the DPC held 1989, I have not only been incurring a recurring and continuing financial loss but also going to adversely affect my pensionary benefit as well as to the benefit of my promotion to the cadre of Accounts Officer which is going to be delayed for denial of promotion to the cadre of Assistant Accounts Officer in due time.

Under the circumstances stated above and in view of the judgment dated 14.8.2001 passed in O.A. No. 217 of 2000 by the Hon'ble CAT, I would pray your honour kindly to extend the same benefit as spelt out in the judgment dated 14.8.2001 to me giving effect to my promotion as Assistant Accounts Officer at least with effect from 19.3.1990 i.e. the day on which my juniors namely, Sri P.K.Dey-8306567, B.P. Singh-8290871 and Sri S.C.Sahay-8291282, AAO, were promoted and granting all consequential service benefits including monetary benefits to me in accordance with the principles of natural justice and principles of equality as patent under Article 14 of our constitution and for this act of your kindness I shall remain ever grateful to you.

Enclo : Judgment dated 14.8.2001

Yours faithfully,

Sd/-

Date : 25.09.01

(SUBIR BHATTACHARJEE)
Asstt. Accounts Officer

Subir Bhattacharjee

To,

The CGDA
R.K.Puram
New Delhi

(Through Proper Channel)

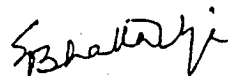
Sir,

With due respect and honour, I beg to state that I have submitted an application on 25.09.2001 to your kind honour for reconsideration of my case of promotion in the grade of AAO with my conferers, on the basis of verdict given by CAT Guwahati on 14.08.2001 in OA No : 217/2000 in the case of Shri K.K.Das, but till date I have not received any communication from your honour.

I, therefore, request you to kindly intimate me the result of your reconsideration, on receipt of which I would be able to contemplate the further course of action.

Thanking you

Yours faithfully



(SUBIR BHATTACHARJEE)
AAO A/C No 8306517
PAO(ORs) ARC
Shillong

Station : Shillong

Dated : 7th Jan 2002

Attested
Jem
Advocate

No: AN/1 - General
Dr. 26.9.01
Reminder
11.1.02

To,

The CGDA
RK Puram
New Delhi

(Through Proper Channel)

Sir,

I beg to submit that I submitted an application on 25.09.01 to your kind honour for reconsideration of my case of promotion in the grade of AAO with my conferers on the basis of verdict given by CAT Guwahati on 14.08.01 in OA No : 217/2000 in the case of Shri K.K. Das. After waiting more than three months I have submitted another application on 07.01.02 but till date I have not received any communication from your honour.

I, therefore, once again request you to kindly intimate me the result of your re-examination of my appeal at your earliest. So that I may not feel it imperative to knock the doors of the law for justice.

Thanking you.

Yours faithfully

Station : Shillong-7

Dated : 15 May 2002

SR 195
(SUBIR BHATTACHARJEE)

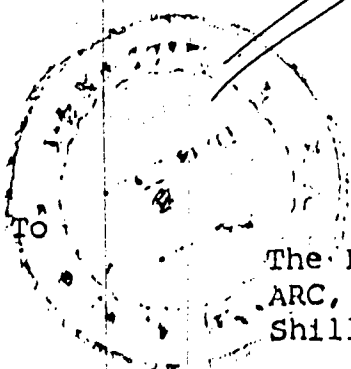
*Attested
from
Advocate*

4.10.93

b7

Confidential

NO.AN/IC/727/Prom/AAO/Bart/SB
Office of the CDA
Udayan Vihar, Narangl
Guwahati - 781 171
Dt. 26/06/2002



The PAO (ORs)
ARC, Happy Valley
Shillong - 7

Subject:- Antedate the date of promotion in AAO's grade : Shri Subir Bhattacharjee.

Ref:- Your NO.AN/20 VI dt.16.5.02

It has been intimated by the CGDA, New Delhi that the judgement of Hon'ble CAT Guwahati dated 14/8/01 in OA 217 of 2000 delivered in the case of Shri K.K. Das can not be made applicable in the case of Shri Subir Bhattacharjee as the judgement has been issued in the individual case. The request of Shri Subir Bhattacharjee, AAO for his antedating of promotion in AAO's grade w.e.f. 19/3/90 can not be considered. The officer may be informed accordingly.



(DILIP KUMAR)
ACDA (AN)

Antedated
for
Advocate

OFFICE OF THE CONTROLLER OF DEFENCE ACCOUNTS
UDAYAN VIHAR, WARANGI, GUWAHATI-781 171

Part II O.O. NO.697

Dated 28.01.2002

Administration:-Promotion to the grade of AAO (Gp-'B')

Promotion of Shri K.K. Das, SO(A),
A/C NO.8319897 (now AAO) to the grade of AAO w.e.f.
19/8/97 notified vide CDA Guwahati Pt II O.O. NO.550
dt.26.8.97 has been antedated to 30.5.96 with all
consequential benefits.

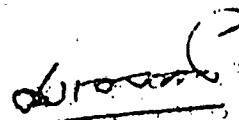
Sd/-

(DILIP KUMAR)
ACDA (AN)

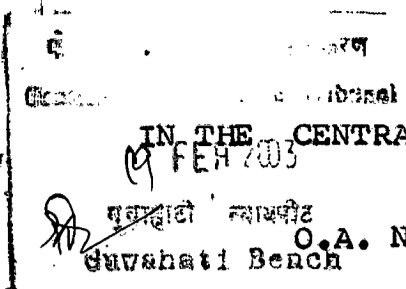
File NO.AN/IC/727/Prom/
SO(A)/AAO/XXIV

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- 4.. Officer-in-charge, AN/IA, AN/IB,
AN/II, AN/III, AN/III(PFC) (all local)
- 5.. The LAO 222 ABOL - 2 copies. One copy for the
C/O 99 APO above named officer.
- 6.. File NO.AN/IC/727/Prom/AAO/Part/KKD/II


(R.B. SHARMA) -
Accounts Office :(AN)

*Attended
Secy
Advocate*



- 46 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
GUWAHATI BENCH

O.A. NO. 336 OF 2002
Guwahati Bench

Shri Subir Bhattacharjee

VS

Union of India & others

IN THE MATTER OF

Written statement submitted by respondent
NO.1,2 and 3

Filed by
18/2/03
(A. DEBROY)
Sr. C.C.C.
C.A.T., Guwahati Bench

That the respondents beg to submit a brief background/history of the case which may be treated as a part of the written statement.

(BACKGROUND / HISTORY IN BRIEF)

5 MTN Div Signal Regiment is one of the units under Hqrs IV Corps who used to submit contingent bill on local purchase of MT Parts. Hqrs 5 MTN Div Signal Regt vide his signal dated 23.10.88 informed the office of the CDA Guwahati that they have received certain cheque slips the payment of which are suspected to have been made on bogus/forged documents. A detailed scrutiny of the bills was carried out in the office of the CDA Guwahati which revealed some serious lapses/irregularities on the part of the officer and staff of CDA Guwahati. Accordingly explanations of the officers and staff responsible for the lapses were called for. The replies received from them were considered and it was decided to initiate disciplinary proceedings for Major penalty against the staff responsible for the lapses. This included the case of Shri S. Bhattacharjee the then SO(A) serving in ST/III Section of CDA Guwahati. This decision to initiate disciplinary proceedings against Shri S. Bhattacharjee was taken on 20th October 1989 by the competent authority and the charge sheet was issued on 13/10/90.

In pursuance of CGDA New Delhi memo NO.AN/XIA/11061/Prom/AAO/XL dated 29/11/89 a D.P.C. was held on 16.1.90 for promotion of Section officer(A/Cs) to the grade of AAO (Gp-B) in which the case of Shri S. Bhattacharjee was adjudicated as Sealed Cover case as the above disciplinary case was pending against him on the date of DPC.

The case of Shri S. Bhattacharjee for promotion to the grade of AAO (Gp-B) was again adjudicated as sealed cover case in the DPCs held on 21.8.90, 15.7.91 and 17.7.92 in response to CGDA New Delhi memo Nos.AN/XI/11061/Prom/AAO/XIV dated 18/7/90, 29/4/91 and 1/5/92 respectively as the disciplinary case was still pending against him.

The disciplinary case pending against him was finalised on 30.9.92 and he was awarded the penalty of reduction of pay by one stage i.e. from Rs.2120/- to Rs.2060/- w.e.f. 1.10.92 for a period of six months vide CDA Guwahati order bearing NO.AN/I/139/SB/Part/236 dated 30/9/92. Shri Bhattacharjee submitted an Appeal dated 8.12.92 to the CGDA New Delhi against the penalty of reduction of pay to the lower stage awarded by CDA Guwahati.

The Appeal dated 8.12.92 was considered by the CGDA New Delhi as Appellate Authority and rejected vide his orders bearing NO.AN-XIII/13600(387)/93/4 dated 4.3.93.

The case of the individual for promotion to the grade of AAO (Gp-B) was adjudicated as review case in the D.P.C. held on 1.11.93 after finalisation of disciplinary proceedings and he was promoted to the grade of AAO (Gp-B) notionally w.e.f. 4.10.93 as notified in CDA Guwahati Part II O.O. NO.583 dated 17.11.93 (copy enclosed).

The applicant filed petition before the Hon'ble CAT Guwahati vide OA NO.9/94 which consisted of two parts (i) the order of the disciplinary authority imposing the penalty of reduction of pay by one stage for a period of six months be set aside and (ii) the respondents be directed to promote the applicant as Asstt. Accounts officer with effect from 19/3/90 i.e. the date when his juniors were promoted with all financial and other benefit. Both the parts of the application were rejected vide judgement/order dated 28/4/95 passed by the Bench Hon'ble CAT Guwahati. The applicant after receipt of the judgement and order dt.14.8.2001 passed in a separate OA NO.217/2000 in favour of Shri Kalyan Kumar Das submitted a detailed representation to the respondents to act upon the clause (ii) ibid, which was rejected by the respondents.

The respondents beg to submit parawise written statement as follows :-

1. ~~Para 1~~
~~Para 2~~ That with regard to para 1,2, and 3 the respondents
~~Para 3~~ beg to offer no comments.

2. ~~Para 4.1~~ No comments
~~Para 4.2~~

3. Para 4.3 It is submitted that a DPC for consideration of promotion from SO(A) to AAO was held on 16/1/90 and the decision to initiate disciplinary proceedings against the applicant was taken on 12/7/89 (Annexure-I of OA) by the competent authority

and charge sheet was issued on 13/10/90 (annexure-5 of the OA). The findings of the DPC was kept in Sealed cover in accordance with the Govt. of India Min of pers DOPT OM NO.22011/2/86-Estt(A) dt.12/1/88. The disciplinary case against the applicant was finalised on 30/9/92 (annexure-7 of OA) and he was promoted to the grade of AAO notionally with effect from 4/4/93. Copy of OM dated 12/1/88 is annexed hereto and marked as ANNEXURE - 'A'.

4. X Para 4.4 X
X Para 4.5 X
X Para 4.6 X
X Para 4.7 X

No comments being matters of record.

5. Para 4.8

It is submitted that all charges against the applicant were proved and the resultant penalty was imposed by the disciplinary authority as per CCS Rules. The observations of the inquiry officer that the applicant was a victim of the circumstances and the lapse was due to inadvertence do not absolve the applicant of misconduct within the meaning of CCS Rules. These observations can at best be understood as enlisting the relevant circumstances to enable the disciplinary authority to determine the quantum of penalty commensurate with the nature of the misconduct proved and nothing more.

6. X Para 4.9 X
X Para 4.10 X

No comments being matters of record.

7. Para 4.11

It is true that on 16/3/90 when the applicant had become eligible for promotion and when officers junior to him were promoted the disciplinary enquiry had not been initiated. However, disciplinary proceedings was in contemplation and steps were taken by calling the explanation of the applicant on 12/7/89 (Annexure-Ix of OA). Charges against the applicant was proved and penalty was imposed. If the applicant was exonerated from the charges of dereliction of duty, then possibly he could have contended that the decision of DPC to keep the findings under Sealed cover was highly arbitrary whimsical and contrary to law. It is to be kept in mind that the applicant at that time was under cloud within the meaning of Govt. of India Min of Pers PG & Pens (DOPT) OM NO.22011/2/86-Estt(A) dt.12/1/88.

8. Para 4.12

No comments.

9. Para 4.13

It is submitted that in the same case filed by the applicant before the Hon'ble CAT Guwahati vide OA NO.9 of 1994, the action of the respondents was upheld and the case was rejected vide judgement/order dated 28.4.95

passed by the Hon'ble Bench of the Tribunal. Copy of judgement and order dated 28/4/95 is annexed hereto and marked as ANNEXURE - 'B'.

10. Para 4.14

It is submitted that the action of the respondents of postponement of the promotion of the applicant was upheld by the Hon'ble CAT Guwahati vide judgement/order dated 28/4/95 on OA NO.9 of 1994. Therefore, the decision of the respondents to reject his claim of antedating the promotion is quite in order. The decision rendered in OA NO.217/2000 (Kalyan Kumar Das V/S GOI & others) is an individual case and not to be equated with the case of the present applicant.

11. X Para 4.15 X
X Para 4.16 X

No comments.

12. Para 5.1

That there was no disciplinary proceeding pending against the applicant on the day when the DPC was held to consider the promotion is not correct. The fact is that the decision to initiate disciplinary proceedings against the applicant was taken on 12/7/89 i.e. before the date of DPC.

13. X Para 5.2 X
X Para 5.3 X

That the contention of the applicant that adoption of Sealed cover procedure was contrary to law/rule when there was no disciplinary proceedings pending against him when DPC was held is not correct and hence denied. As already stated in paragraphs 4.3, 4.11 and 5.1 decision for initiating disciplinary proceedings was taken by the disciplinary authority on 12/7/89 and the DPC was held on 16/1/90.

14. Para 5.4

In view of the facts stated above the application is liable to be dismissed.

15. X Para 5.5 X
X Para 5.6 X

No comments.

16. Para 5.7

It is submitted that the action of the respondents of postponement of the promotion of the applicant was upheld by the Hon'ble CAT Guwahati vide Judgement/order dated 28/4/95 on OA NO.9 of 1994 (Annex-B). Therefore, the decision of the respondents to reject his claim of antedating the promotion is quite in order. The decision rendered in OA NO.217/2000 (Kalyan Kumar Das V/S GOI & others) is an individual case and not to be equated with the case of the present applicant.

17. Para 6

It is submitted that the applicant has not exhausted

all the remedies available to him. The penalty imposed by the disciplinary authority vide order dated 30/9/92 was upheld by the competent authority vide order dated 4.3.93. The next alternative of preferring a revision/review petition was open to the applicant which has not been done. Copy of order dated 4.4.93 is annexed hereto and marked as ANNEXURE - 'C'.

18. Para 7

The declaration of the applicant that he had not previously filed any application writ petition or Suit before any court or any other authority or any other Bench of the Tribunal regarding the subject matter of ~~this~~ this application is false and suppression of facts. His previous application on the same subject matter was rejected by the Hon'ble CAT Guwahati Judgement/order dated 28/4/95 ON O.A.NO 9/94

19. Para 8.1
Para 8.2

It is submitted that in view of the statement made in paragraphs 4.3 to 7 ibid, the applicant is not entitled for the relief sought for and the application is liable to be dismissed.

20. Para 8.3
Para 9

No comments.

hgent
(R.P. SINGH)
ACDA (AN)

VERIFICATION

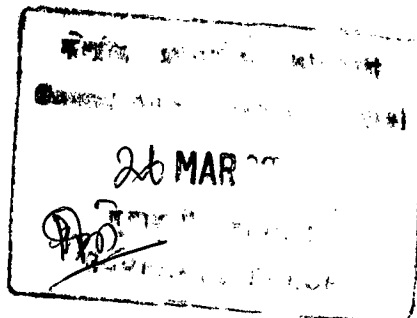
I, R.P. Singh, ACDA (AN) office of the CDA, Udayan Vihar, Narangi, Guwahati - 781 171 being authorised do hereby verify that the statement made in paras 1,2,4 to 8, 10 to 16 and 18 to 20 are true to my knowledge and those made in paras 3,9 and 17 are true to my k information and I have not suppressed any material fact.

And I sign this verification on this the

31st

day of January 2003

hgent
DECLARANT



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

In the matter of :

O.A. No. 336 of 2002.

Shri Subir Bhattacharjee

- Vs -

Union of India & Ors.

- AND -

In the matter of :

Rejoinder submitted by the applicant.

That your applicant most humbly and respectfully
beg to state as under :-

1. That with regard to the statement made in the brief history of the case, in the written statement it is pertinent to mention here that the present applicant in fact preferred an Original Application before this Hon'ble Tribunal which was registered as O.A. 9 of 1994 with a specific prayer for setting aside the penalty order dated 3.9.92 and appellate order dated 4.3.93 ~~xx~~ passed in pursuant to the disciplinary proceeding initiated vide memorandum of Chargesheet dated 13.10.90, however, said original application was pleased to be dismissed by the Hon'ble Tribunal on 25.4.1995. It is admitted that there was prayer in the earlier Original application to promote the applicant as Asstt.Accounts Officer w.e.f. 19.3.90, that is the date when his juniors was promoted. However, the said original application was dismissed by the Hon'ble Tribunal. It is relevant to mention here that in the paragraph 22 of the said judgment dated 25.4.95 this Hon'ble Tribunal specifically

Filed by the applicant
through advocate
Sri G. N. Chakraborty
on 15-3-03.

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62

not dealt with the question of consideration of eligibility of applicant on 16.3.90 prior to issuance of memorandum of chargesheet and the same was not adjudicated. It is specifically observed in the paragraph 22 of the aforesaid judgment that since the question of eligibility of the applicant for promotion as on 16.3.90 was not the subject matter of the original application hence this Hon'ble Tribunal was not inclined to deal with the aforesaid question of eligibility as on 16.3.90, therefore the contention of the applicant was specifically denied.

A copy of the judgment and order dated 25.4.95 has been annexed as Annexure # 1

2. That your humble applicant categorically denied the contention of the respondents made in paragraph 3, 5, 7, 9, 10, 12, 13, 14, 16, 18 and 19 of the written statement and further beg to state that the case of the applicant is ~~am~~ squarely covered by the ~~following~~ decision rendered by this Hon'ble Tribunal in C.A. 217 of 2000.

In the facts and circumstances the application deserves to be allowed with costs.

... Verification

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V E R I F I C A T I O N

I, Shri Subir Bhattacharjee, son of ~~late~~ Sri Sulapani Bhattacharjee, aged about 53 years, working as AAO, in the office of PAO, Assam Regimental Centre, Shillong, do hereby verify that the statements made in paragraphs 1 and 2 are true to my knowledge

And I sign this verification on this the 25/5 day of March, 2003.

Subir Bhattacharjee

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

64

Original Application No. 9 of 1994.

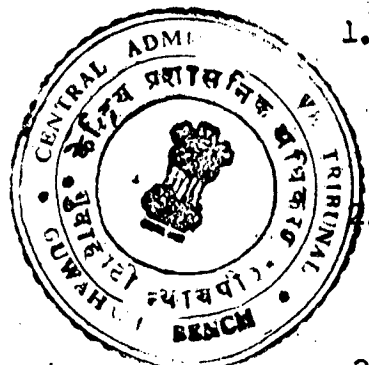
Date of decision : This the 25th day of April 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.
The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Subir Bhattacharjee
Office of the Asstt. Local Audit Officer,
Supply Depot,
Dimapur
Nagaland Applicant

By Advocate Mr. B.K. Das, Sr. Advocate.

-versus-



1. Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Defence,
New Delhi.

Controller General of Defence Accounts,
West Block-V,
R.K. Puram,
New Delhi-110066.

3. Controller of Defence Accounts,
Basistha,
Guwahati-781028. Respondents

By Advocate Mr. A.K. Choudhury, Addl. C.G.S.C.

ORDER

CHAUDHARI J (V.C.).

The applicant was appointed as Auditor in
the office of the SLA, Bhalukmara, Assam under the
Controller of Defence Accounts, Patna and at the
material time was holding the post of Assistant Local

*Accepted
for
Admission*

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65
Audit Officer, Supply Depot, Dimapur where he was posted on 12.7.89. An explanation was called from him by the Accounts Officer (Admn.) to show cause as to why disciplinary action should not be taken against him for alleged audit/supervisory lapses.

2. The applicant submitted his explanation on 31.7.89. However on 13.10.90 a Memorandum of charge with statement of articles of charge for alleged negligence and lack of devotion to duty was served upon him by the Joint Controller of Defence Accounts. The applicant submitted his reply thereto on 14.11.90. Thereafter an enquiry officer was appointed on 4.12.90 to conduct the enquiry. The applicant denied the charges framed against him. The enquiry officer at the conclusion of the enquiry made his report on 11.8.92 to the disciplinary authority. The enquiry officer held that all charges were proved against the applicant. He held that the applicant was proved to have exhibited gross negligence and lack of devotion to duty in allowing payment of bogus bills and thereby had violated the provisions contained in CCS (Conduct Rules) 1964. At the same time the enquiry officer expressed his view that the applicant seems to have passed the bills in question in good faith and the lapses in observing certain requirements on his part may have been due to inadvertance. He also observed that the applicant appeared to have been a victim of circumstances.

The disciplinary authority i.e. C.D.A. accepted the findings recorded by the enquiry officer. However stating that in the circumstances of the case a lenient

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view was being taken he imposed the penalty of reduction of pay by one stage for a period of six months without cumulative effect w.e.f. 1.10.92. He also specified that the penalty of reduction in pay was to reduce the pay of the applicant to the stage of Rs. 2060/- from the existing pay of Rs. 2120/- in the time scale of Rs. 1640-50-2600-EB-75-2900. He clarified that the period of penalty will count for future increments. That order bearing No. AN/1/D/139/SB/Part/236 was passed on 30.9.92 (Annexure-19).

4. The applicant preferred an appeal to the Controller General of Defence Accounts. The said Appellate Authority agreed with the order of the disciplinary authority and holding that the penalty imposed upon the applicant was just and commensurate with the gravity of the charge, dismissed the appeal by order No. AN/XIII/13600(387)/93/4 dated 4.3.94 (Annexure-21).

5. The aforesaid orders are one part of challenge in the instant application filed on 12.1.94. However though the applicant prays that the order dated 30.9.92 (the order of the disciplinary authority) be set aside, he has not in terms prayed ~~that~~ for quashing the Appellate Order. We imply that prayer from para 3 of the application which shows that the application has been filed against that order also. This is one part of the grievance.

It appears that the applicant became eligible for being promoted to the grade of Assistant Accounts Officer in the scale of Rs. 2000-3200 in March 1990. At that time he was in the cadre of Junior Officer. However since the disciplinary proceedings against him was intended



to be commenced the respondents applied 'sealed cover' procedure and kept the consideration of the question of his promotion in abeyance and seven other officers junior to him were promoted as Assistant Accounts Officer at that selection i.e. on 16.3.90. The applicant submitted a representation against his supersession on 28.5.90 and again on 18.7.90 but no action was taken on those representations. The applicant was eventually promoted to the post of Assistant Accounts Officer (Group B) (in the scale of pay Rs. 2000-60-2300-EB-75-3200) w.e.f. 4.10.93 with notional seniority and notional fixation of pay by order issued by ACDA (AN) No. PT II.O.O. No. 583 dated 17.11.93 (Annexure-22). The order shows that he was promoted consequent upon his selection for promotion, by the Controller of Defence Accounts, Guwahati. The order also directed that financial benefit will be allowed from the date of assignment of higher charge as Assistant Accounts Officer in the officiating capacity till successful completion of the probation of two years. The applicant has made that also the subject matter of the present application and has prayed that the respondents be directed to give retrospective effect to his promotion as AAO with effect from 16.3.90 i.e. the date when his juniors were promoted and claims all financial and other benefits on that basis. *This is the second part of the grievance.*

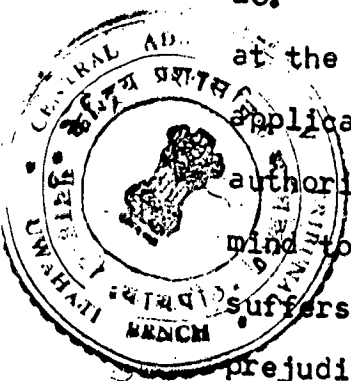
It is thus apparent that two distinct casues of action have been combined together by the applicant in this application. The application thus suffers from the defect of seeking plurality of remedies requiring different considerations. This is precisely not permissible to do

under Rule 10 of the CAT (Procedure) Rules 1987 which provides that the application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. The reliefs sought by the applicant cannot be construed as consequential to one another.

8. Mr. B.K.Das the learned counsel appearing for the applicant submitted that the claim for giving retrospective effect to the promotion is intertwined with the disciplinary proceedings and consequently both the causes of action could be combined and therefore the application is not inconsistent with Rule 10 aforesaid. We find it difficult to accept this proposition but instead of rejecting the application on this ground at this stage we think it proper to consider the application in its ^{entirety} ~~entirety~~ and decide the material issues arising therein.

9. We shall deal with the grievance relating to the order of the disciplinary authority imposing the penalty of reduction of pay by one stage for a period of six months *in the first instance*.

10. Mr. B.K.Das submitted that the enquiry officer at the end of his report virtually has indicated that the applicant may be exonerated but that neither the disciplinary authority nor the appellate authority have applied their mind to those observations and thus the impugned order suffers from non-application of mind and have caused prejudice to the applicant. The learned counsel submitted that had those observations been duly taken into account possibly the authorities might have exonerated the applicant or at least would have reduced the punishment further so

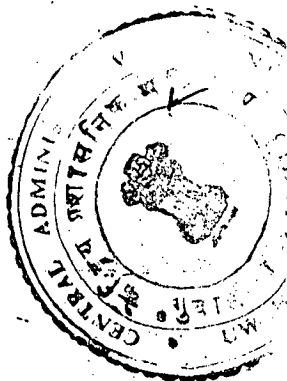


as to render it a token punishment which would not prejudice the future career prospects of the applicant.

11. We have already set out the gist of the observations of the enquiry officer. At the cost of repetition in the context of the submissions of the learned counsel it may be worthwhile to set out the observations in the words of the enquiry officer himself.

(Enquiry report annexure 17), Para 11 of the report reads as follows :

"With no exception of any charge, all charges stand proved as discussed in the above report. I conclude my enquiry with the finding that the charged officer namely Shri Subir Bhattacharjee SO(A) was responsible for exhibiting gross negligence and lack of devotion towards his assigned duties and responsibilities in allowing payment of bogus bills and thereby violating the provisions contained in CCS (Conduct) Rules, 1964. However, perusal of bills reveals that the same were complete in all respects. It was not possible for the charged officer to suspect those bills as false and bogus as the same did not look as such. All bills appear to have been passed in good faith presumably after satisfying the requisite informations/requirements had been furnished/complied with. The lapses of certain audit requirements as explained above for each and every charge appear to have inadvertantly been committed by the charged officer who has, indeed, been victimised (^{sic} see) of the circumstances because of not ensuring compliance of vital audit requirements or not for seeing that claims may be even false specially those which were received in Main Office of CDA Guwahati after a considerable gap between



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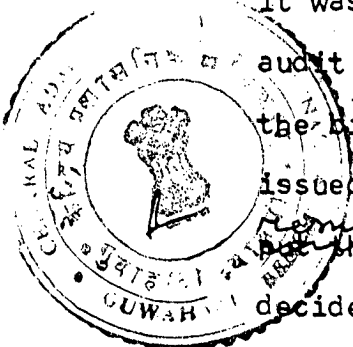
the dates of initiation from the unit and the date of their receipt in CIA Guwahati as shown in Table below 10 (d) above".

It is difficult to accept the proposition of the learned counsel ~~noted~~ ^{above} based on concluding observations from the words "However, perusal of bills" onwards. These observations have to be read with the findings recorded in the preceding portion based upon appreciation of evidence wherein it has been held that without any exception all the charges are proved against the applicant. The concluding observations cannot be read in isolation. It is contended by the learned counsel Mr. Das that this indeed introduces an inconsistency in the approach of the enquiry officer and the benefit of this conflict must go to the applicant. We however do not find any inconsistency or conflict in the two parts of the observations in para 11 of the report. The concluding portion thereof is intended to lay emphasis on the aspect that there was no element of intentional misconduct on the part of the applicant involving turpitude and that the circumstances pointed out by the applicant rather go to show that the lapse on his part was an inadvertent lapse in respect of audit requirements. These observations can at best be understood as enlisting the relevant circumstances to enable the disciplinary authority to determine the quantum of penalty commensurate with the nature of the misconduct proved and nothing more.

12. In this context it will be proper to briefly mention the charges that were framed against the applicant

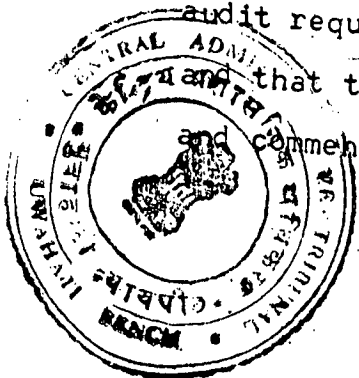
and have been held proved. The enquiry was held under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1955. First Head of Charge was "non-verification of specimen signature of the countersigning officer". Second Head of Charge was "non-verification of the voucher Control No.". The third Head of Charge was "failure of maintaining proper supply order/file/register". Fourth Head of Charge was "non-linking of supply orders". Fifth Head of Charge was "failure of making entry for verification of supply order and specimen signature in respect of certain vouchers" and the sixth Head of Charge was "failing to exercise proper scrutiny of the claims".

13. Shortly stated the case of the respondents leading to the disciplinary proceeding was that during the period from September 1983 to October 1988 number of L.P. Bills in batches, were received from 5 Mtn. Div. Sig. Regt. and were accepted and passed by the applicant for payment although these were not submitted by the unit concerned and were apparently bogus bills. The specimen signatures of the officer preferring Contingent Bills and those of countersigning officer as appearing on all contingent bills did not tally with those held on record. It was therefore alleged that the applicant had ignored the audit requirements at the time of processing and passing the bills as pointed out in Annexure-I dated 12.7.89 issued by the Accounts Officer (ADMIN) and that that had *resulted in fraudulent payment.* ~~But the department to monetary loss.~~ It was therefore decided that disciplinary action may be initiated against



the applicant for his audit/supervisory lapses amounting to misconduct within the meaning of CCS Rules.

14. The report of the enquiry officer shows that he has investigated the various heads of charge taking into account the evidence produced by the presenting officer and the defence raised by the applicant in respect of each head of the charge. The report reveals that the entire material produced before him has been carefully analysed and evidence has been properly appreciated by the enquiry officer. His findings therefore are based upon proper appreciation of evidence and amount to findings of fact. The disciplinary authority has stated in his order that he had carefully considered the enquiry report and representation submitted by the applicant. He has also noted that the enquiry officer has held the charges proved on the basis of evidence adduced during the enquiry and he agrees with the findings of the enquiry officer. Similarly the appellate authority has also stated in his order that he had carefully perused the appeal in the light of the record of disciplinary proceedings and found that the charge stands established against the applicant. The appellate authority considered the grievance of the applicant that his pleas were looked upon with indifference by the disciplinary authority and held it to be untenable. He has also held that the bills under question were admitted without following the basic audit requirements which had resulted in fraudulent payment and that the penalty imposed upon the applicant is just and commensurate with the gravity of the charge.



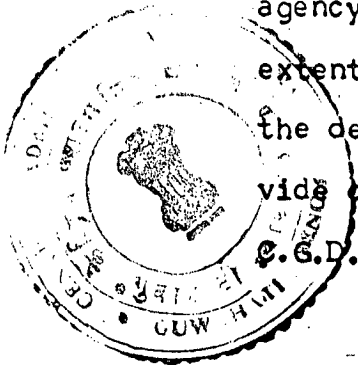
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15. It is thus not possible to hold that there was any conflict in the report of the enquiry officer as is sought to be projected by the learned counsel for the applicant and the concurrent findings on questions of fact arrived by the authorities below cannot be reopened by this Tribunal which cannot sit as an appellate authority and substitute its own findings in place of the findings recorded by the authorities below. It is well established that the jurisdiction of the Tribunal in such matters is limited and cannot be invoked unless it is shown that the order of penalty suffers from any illegality or patent irregularity or the appreciation of the evidence has been perverse or that there has been non-application of mind to the record on the part of the appellate authority. We find no such ground available in the instant case to warrant interference in the orders passed by the authorities below.

16. The learned counsel for the applicant sought to contend that the findings of the enquiry officer are perverse which circumstance has not been taken into account either by disciplinary authority or the appellate authority and thus their orders are also vitiated. The perversity arises according to the learned counsel for two reasons. Firstly it was not proved at the enquiry by the prosecuting agency that the applicant had not checked the bills to the extent of the percentage of check that is prescribed under the departmental instructions issued by the Govt. of India vide circular No. AN/V/1289/Report dt. 27.7.88 (read with C.G.D.A. letter Dated 7.7.88 Annexure 3) whereunder it is



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provided that amongst the checks to be exercised by the Section Officer (A) for ensuring audit verification of the specimen signature of claimants before payment of bills in respect of local purchase bills the percentage of check will be 5% in respect of claims below Rs. 25,000/-. The learned counsel submitted that the burden to prove this circumstance negatively was upon the prosecuting agency and the applicant was not required to establish that he had carried out the checks to this extent. Hence it could not be held that there was a lapse committed by the applicant.

17. We are not impressed by the above submission. It is too insignificant a point having regard to the small number of bills that were involved. The bills involved were only 31. The 5% thereof would be insignificant number and when all the bills were available at the time of enquiry it was not difficult for the applicant to have pointed out the bills in respect of which he had carried out the necessary verification in ^{proportion} ~~proportion~~ of the prescribed ~~proportion~~ ^{proportion}. This is not a circumstance in our view such as has materially affected the appreciation of the material by the enquiry officer as has been done by him and the findings arrived at by him after considering the totality of the material thus cannot be held to be perverse. Moreover that irregularity was also not the only head of charge for which the applicant was subjected to the enquiry. No other circumstance is pointed out to render the findings of the enquiry officer perverse. Obviously in the absence of any illegality or perversity in the findings recorded in the

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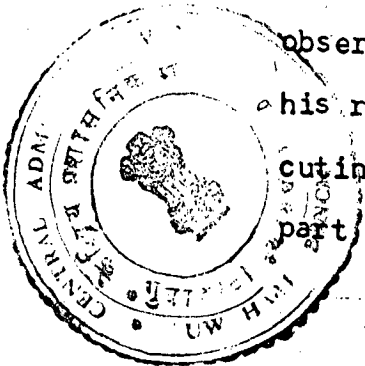


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course of the disciplinary enquiry or discernible in the orders passed by the Disciplinary Authority or the Appellate Authority it is not possible to interfere with the impugned orders passed by them.

18. The learned counsel for the applicant submitted that it has been laid down by the Supreme Court ~~that~~ in several rulings that power of judicial review exercised by this Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution and that would enable us to go into the reasons considered by the enquiry officer and set aside the penalty. He referred to the latest decision of the Supreme Court in the case of Transport Commissioner Madras-5 Vs. A.R. Krishnamurthy (1995) 1 SCC 332. We do not think that the decision helps the applicant in the instant case since it has been held therein that the Tribunal has no jurisdiction to go into the truth of the allegations/charges except in a case where they are based on no evidence i.e. where they are perverse. While explaining the scope of the power of judicial review it has been observed that the Tribunal only examines the procedural correctness of the decision making process. As we find no such defect in the instant case we cannot interfere.

19. Mr. Das next submitted that the concluding observations of the enquiry officer in paragraph 11 of his report (already set out above) imply that the prosecuting agency had failed to establish any mensrea on the part of the applicant and therefore the penalty imposed



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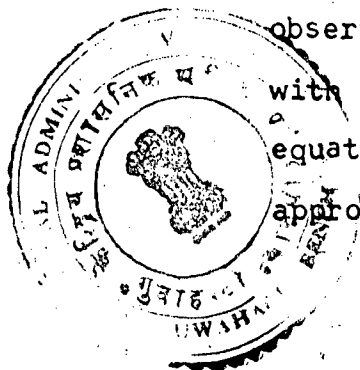
upon him is illegal. The learned counsel submitted that as it has been held that there was no deliberate violation of the rules on the part of the applicant nor there was any such charge the mere unintentional and inadvertent lapse does not establish negligence much less intentional misconduct on the part of the applicant. It is true that a disciplinary enquiry pertakes the character of a quasi criminal proceeding. However the enquiry is necessarily held under the Central Civil Service CC & A Rules and the misconduct alleged related to the non-compliance with the rules. It must be remembered that the charge against the applicant was not that he was guilty of any misappropriation but was that his non-compliance with the basic audit requirements had resulted in fraudulent payment and loss to the Department. The alleged fraud was on the part of those who allegedly had submitted bogus bills and not on the part of the applicant. The charge against him was of non-compliance with the instructions since he was under the duty to abide with them as he was holding the post of Controller and was the supervising officer whose job precisely was to prevent such fraudulent claims being passed for payment. The question of mensrea therefore does not enter into consideration in the instant case. The submission of the learned counsel based on that ground thus cannot be accepted.

20. Lastly Mr. Das submitted that the punishment is not commensurate with the misconduct as is held proved. He submitted that the disciplinary authority ought to have in the light of the observations made by the enquiry officer



in para 11 of his report considered imposing a minor penalty such as censure or warning and the penalty as is imposed is disproportionate and cannot be sustained. Here also we find it extremely difficult to agree with the learned counsel. It appears to us that the penalty imposed is very lenient and all safeguards are provided in the order while imposing the penalty so that no difficulty can arise in the way of the applicant in respect of his future prospects in the service. In fact despite the punishment the respondents in all fairness have already promoted the applicant. Moreover on principle there would be no difference whether the penalty awarded is of reduction of pay for a short duration or whether it is by way of censure. That would not amount to exoneration of the applicant from the charge of misconduct levelled against him. Moreover it is well settled that the Tribunal would not ordinarily interfere on the question of quantum of penalty when an Appellate Authority had found it proper. In that connection Mr. A.K.Choudhury, the learned counsel for the respondents drew our attention to the decision of the Supreme Court in the case of Union of India Vs. Parma Nanda, AIR 1989 Supreme Court, 1185 wherein Their Lordships have held that the Tribunal cannot interfere with the penalty imposed on a delinquent employee by the competent authority on the ground that the penalty is not commensurate with the delinquency of the employee. It is observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction and that it is appropriate to remember that the power to impose penalty

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on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. It is further held that if the penalty can lawfully be imposed on the proved misconduct the Tribunal has no power to substitute its own discretion for that of the authority unless it is malafide. With respect this ratio clearly applies to the instant case and in the absence of any allegation of malafides against any of the authorities. We reject the submission that the penalty imposed upon the applicant is bad.

21. In the light of the forgoing discussion we find no ground to interfere with the impugned order dated 30.9.92 or the appellate order dated 4.3.93 and therefore the relief sought in clause (b) of para 8 of the application is refused.

22. We shall now turn to the second ^{part} ~~part~~ of the grievance relating to the promotion. In that connection once it is found that the disciplinary enquiry proceeding had intervened between the date on which the applicant was eligible to be considered for promotion i.e. 16.3.90 and till the period of penalty was over there could arise no question of the applicant being entitled to be promoted as that would result in an incongruous situation. It is true that on 16.3.90 when the applicant had become eligible for promotion and when officers junior to him were promoted the disciplinary enquiry had not been initiated and although the respondents purported to adopt the 'sealed cover' procedure that was not quite in order. However disciplinary proceeding was in contemplation and steps were taken by

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calling the explanation of the applicant on 12.7.89 vide Annexure I. The Chargesheet was issued on 13.10.90. From the date of issuance of the Chargesheet till the period of penalty of six months was over the applicant could not be considered for promotion. The gap between 16.3.90 and the date of issuance of Chargesheet i.e. 13.10.90 is of no help to relate back the promotion to 16.3.90 by reason of the enquiry proceeding having followed thereafter and concluded with the appellate order on 4.3.93. Even assuming that the respondents could not have withheld the promotion on 16.3.90 and should have considered the eligibility of the applicant as the disciplinary proceeding had not been initiated, that not being the subject matter of this O.A. nor that claim would be within limitation that cannot afford any ground to render the impugned order of penalty illegal.

We do not thus find any illegality in giving the benefit of promotion to the applicant as is given notionally with effect from 4.10.93 after the penalty period of six months from the date of the appellate order had expired. If the applicant was exonerated from the charges of misconduct framed against him then possibly he could have contended that the order of promotion dated 17.11.93 effecting the promotion from 4.10.93 should have been given retrospective effect from the date when his juniors were promoted. Since he has not been exonerated such a question does not arise. Consequently the relief sought by the applicant in para 8 (ii) of the application must be rejected and is rejected.

In the result, the application is dismissed. There will be no order as to costs.



Certified to be true Copy
21/3/03

Section Officer (J)

C.A.T. GUWAHATI BANCH

Guwahati-781005

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)