

Central Administrative Tribunal
Jabalpur Bench

OA No.424/05

Jabalpur, this the 2nd day of July 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

D.K.Patil
S/o Late Shri V.A.Patil
Senior Auditor in the
Pay & Accounts Office (ORs)
MRC, Saugar (M.P.)

Applicant

(By advocate Shri M.Saini)

Versus

1. Union of India through
Secretary,
Ministry of Defence
New Delhi.
2. The Controller of Defence Accounts
Ridge Road, Jabalpur.
3. The Joint Controller
CDA Ridge Road
Jabalpur.

Respondents.

(By advocate Shri A.P.Khare)

ORDER

By A.K.Gaur, Judicial Member

Disciplinary Authority's order dated 23.11.2004 (A-7) and Appellate Authority's order dated 9.2.2005 (A-9) confirming the penalties have been challenged in the present OA.

2. It is urged on behalf of the applicant that while serving as Senior Auditor in the office of the Pay & Accounts Office (ORs), Corps of Signals, Jabalpur, during the period from 9.9.2002 to 29.12.03 the applicant had submitted a requisition for

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advance on 19.5.2003 and drew an advance of Rs.9,900/- on account of All India Leave Travel Concession for the block year 2002-05 for his family and self. According to the applicant, he purchased AC-3 tier railway ticket bearing PNR No.623-0432303 on 27.5.2003 for journey from Jabalpur to Rameshwaram and subsequently got it cancelled. Thereafter, the applicant preferred a false LTC claim for Rs.12,190/- on 24.6.2003 against the advance of Rs.9,900/- already drawn by him showing the journey being performed from Jabalpur to Rameshwaram and back. In order to verify the genuineness of the claim, the matter was referred to local railway authorities for verification of the actual performance of the journey or otherwise against the said ticket. The Divisional Railway Manager (DRM), West Central Railway, vide his confidential letter dated 8.8.2003 confirmed that the AC-3 tier ticket bearing PNR No.623-0432303 on which the onward journey from Jabalpur to Rameshwaram, is claimed to have been performed, was already got cancelled on 30.5.2003. The applicant was charge sheeted on the ground that he preferred a false and fraudulent LTC claim for Rs. 12,190/- drawn by him showing that the journey was performed from Jabalpur to Rameshwaram and back from 8.6.03 to 15.6.2003 despite the fact the neither his family nor he had performed the actual journey.

A detailed reply was filed by the applicant to the charge sheet whereby he submitted his defence (A-2). Copy of the charge sheet has been filed as A-1. By order dated 10.6.2004, Shri Samay Singh, IDAS, ACDA, was appointed as inquiry officer to inquire into the charges levelled against the applicant (A-3). In his defence statement the applicant made direct allegations against Shri Pramod Kumar, DCDA/CPAO (ORs) and apprehended that the inquiry officer might be biased in conducting a fair inquiry. The inquiry officer found charge No.1 (false claim) to be proved whereas charge No.2 (inducing fellow employees to submit false claim) was held to be not established (A-5). The applicant has stated in his OA that Shri Pramod Kumar being higher authority had influenced the whole inquiry proceeding and so the inquiry proceedings were lopsided. It is also submitted on behalf of the applicant that the respondent No.3, without proper appreciation of the reply and the defence statement, imposed the penalty of (i)

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withholding of two increments for 2 years with cumulative effect (ii) forfeiture of two sets of LTC i.e. one Home Town and one All India LTC and (iii) recovery of advance drawn with penal interest from the pay and allowances in one lump sum, if not already recovered/refunded (A-7). Being aggrieved by the order dated 23.11.2004, the applicant preferred an appeal to respondent No.2 (A-8), which was rejected vide order dated 9.2.2005 (A-9) and the order of the respondent No.3 was upheld.

3. The respondents have filed a detailed counter reply and denied the various allegations contained in the OA. They have mainly controverted the plea of the applicant with regard to imposition of penalty of withholding of 2 increments for 2 years with cumulative effect. The main plea of the applicant in the OA is that in all other cases of misuse of LTC, the penalty of withholding of 2 increments of pay for 2 years without cumulative effect has been awarded whereas in the case of the applicant, the same has been awarded with cumulative effect. It is submitted on behalf of the respondents that it is well settled axiom that every Government servant earns one increment in one year and so two increments for two years with cumulative effect will be withheld in three years. It is further submitted that implementation of the penalty is the look out of the administration and not that of the delinquent official. Before imposition of such a penalty, the competent authority had taken into consideration GOI instruction Nos. 16 & 17 under Rule 11 of CCS (CCA) Rules-1965 wherein, it is clearly mentioned that it is obligatory on the part of the disciplinary authority to specify the period for which the penalty should remain current. Further it is stated that before appointment of the inquiry officer, the existing procedure as mentioned under Rule 14, sub Rules 9 to 11, has been followed. Respondents have clearly pleaded that as the applicant had neither accepted the charges framed against him nor submitted any documentary proof in his defence, an inquiry was initiated and as per the laid down procedure, an IDAS officer was appointed to inquire into the charges. Meanwhile the applicant had submitted a representation for change of venue of the inquiry, which was forwarded to inquiry officer. It is the prerogative of the inquiry officer to fix the

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venue. The application of the applicant was considered by the inquiry officer but not acceded to and the same was intimated to applicant vide letter dated 7.10.04. The applicant could not produce any proof in support of the genuiness of his claim and the inquiry officer in his report dated 12.10.04 has clearly established charge No.1 against the applicant.

4. We have heard the counsel for the parties and perused the records of the case. We are of the considered view that the penalty has been imposed upon the applicant on the basis of the merits of the case after holding a proper inquiry, and after it was established beyond doubt that the applicant preferred the claim, even though he had got the tickets cancelled. Moreover, it is settled principle of law that the Tribunal or High Court may not sit as a court of appeal over the findings recorded by the disciplinary authority and the order of the disciplinary authority can only be interfered with, if the same has been passed in violation of the principle of natural justice or the findings are perverse, and if there is some evidence, no interference with the same is warranted by the Tribunal. Learned counsel for the respondents argued that the Tribunal may not embark upon an inquiry and arrive at its own conclusion. This view gets support from decisions of Hon'ble Supreme Court in JT 1999 (4) SC 489 – Bank of India Vs. Degla Suryanama; 2000 (1) SCC 416 – High Court of Bombay Vs. S.K.Patil.

5. It has been argued on behalf of the applicant that the respondents have applied discriminatory approach in awarding the penalty to the applicant. We are not satisfied with the said argument. The disciplinary and appellate authorities have passed the order of punishment in accordance the provisions of the Rules, and we find no illegality in the same. The penalty is neither excessive nor disproportionate to the misconduct, which has been established beyond reasonable doubt.

6. The argument of the learned counsel for the applicant that such a punishment is not provided under the rules is also devoid of merits and force. Imposition of the penalty is the prerogative of the administration and it is not the headache of the applicant as to how it will be enforced.



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7. Learned counsel for the applicant has also argued that the appellate authority has not considered the grounds taken in memo of Appeal and decided the same by a non-speaking order. In our view, this argument of the applicant's counsel has no substance. The order passed by the appellate authority is an order of affirmance. In view of decision given by Hon'ble Supreme Court in 1994 SCC (L&S) 1019- Union of India Vs. S.S.Koshal and 1995 ATC(31) 492, State Bank of Bikaner Vs. D.Grover, it has been held that an order of affirmance does not require reasonings.

8. Learned counsel for the applicant has argued that the punishment imposed by the disciplinary authority is unsustainable in law and impossible to be implemented. No such punishment has either been provided under the rules nor could it have been feasible. We have given our anxious thought to the argument of the learned counsel and we are in complete disagreement with the proposition of law advanced by the learned counsel for the applicant. In our view the applicant should not be bothered about the implementation of the penalty. It is the look out of the administration and not that of the delinquent officer. The withholding of two increments of pay for two years with cumulative effect clearly indicates that every government servant earns one increment for one year and two increments for two years with cumulative effect and the same will be withheld in three years. Therefore, such an argument has no foundation.

9. The applicant has failed to make out any ground which may warrant our interference with the order of penalty. The OA is devoid of merits and is liable to be dismissed. The OA is accordingly dismissed. No costs.

In your
(A.K.Gaur)
Judicial Member

Girija
(Dr.G.C.Srivastava)
Vice Chairman

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25/7/06

पृष्ठांकन सं. ओ/न्या.....जवलपुर, दि.....
प्रदिविनिवि दाता/र.पा/.....
(1) सदिय, दि. 1 अप्रैल 2006 दा राजीविभाग, जवलपुर
(2) आवेदक द्वि/प्रदिवि/पा.....के काउंसल
(3) प्रत्यार्थी श्री/श्रीमती/वा.....के काउंसल
(4) गवर्नर, रोपाल, जवलपुर राजीव
राजना एवं आवश्यक कार्यालयी द्वा
उप सचिवद्वारा

M.Soni *D.P.Khare*

25/7/06