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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Applications Nos.690,997 &1039 of 2005

Jabalpur this the 20th day of July, 2006.

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

(1) Original Application No.690 of 2005

Kailash Chand Soude, S/o Shri Dulichand Soude, aged about 40 years, Ex-Safaiwala, Army War College, Mhow, R/o C/o Amarchand Sode, H.No.135/B, Shanti Niketan, Ayodhypuri Colony, Kodariya, Mhow (MP)

-Applicant

(By Advocate – Shri M.K.Verma)

V E R S U S

1. Union of India, through Secretary Ministry of Defence, South Block, New Delhi.
2. Director General, Military Training, General Staff Branch, Army Headquarter, D.H.Q., PO, New Delhi-11.
3. The Commandant, Army War College, Mhow (MP)

-Respondents

(By Advocate – Shri Umesh Gajankush)

(2) Original Application No.997 of 2005

Ajay Kumar Yadav, S/o Late Shri Ramautar Yadav, aged about 38 years, Ex-Civil Driver, Army War College, Mhow, R/o House No.2/B, Ayodhya Puri Colony, Near Kali Mata Mandir, Kodariya, Mhow (MP)

-Applicant

(By Advocate – Shri M.K.Verma)

V E R S U S

1. Union of India, through Secretary Ministry of Defence, South Block, New Delhi.

2. Director General, Military Training, General Staff Branch, Army Headquarter, D.H.Q., PO, New Delhi-11.

3. The Commandant, Army War College, Mhow (MP)

-Respondents

(By Advocate – Shri Umesh Gajankush)

(3) Original Application No.1039 of 2005

S.C.Sohra, Ex-UDC, Army War College, Mhow, S/o Shri Narayan Sohra, aged about 49 years, R/o Qr.No.CC-3/B, behind M.T. Company, Army War College, Mhow (MP)

-Applicant

(By Advocate – Shri M.K.Verma)

VERSUS

1. Union of India, through Secretary Ministry of Defence, South Block, New Delhi.

2. Director General, Military Training, General Staff Branch, Army Headquarter, D.H.Q., PO, New Delhi-11.

3. The Commandant, Army War College, Mhow (MP)

-Respondents

(By Advocate – Shri Umesh Gajankush)

COMMON ORDER

By A.K.Gaur, JM.-

As the facts are identical and the issue involved and the grounds raised are common, the aforementioned three OAs are being disposed of by this common order.

2. By filing these Original Applications, the applicants have challenged the orders of removal from service dated 19.10.2004

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and the appellate order dated 29.4.2005 by which their appeals have been rejected.

3. The brief facts of the case are that the applicants Kailash Chand Soude, Ajay Kumar Yadav and S.C.Sohra were working as Safaiwala, Civilian Car Driver and UDC respectively under the respondents. They were issued memo of charge dated 22.4.2003 wherein they have been charge-sheeted for the following offences:-
(i) they have taken money from the employees (names mentioned in the respective charge-sheets) of College of Combat for getting personal loans sanctioned from Indore Paraspar Sahakari Bank,Indore; (ii) they have accepted illegal gratification from their co-workers for arranging personal loan in wrongful way which amounts to misconduct under Rule 3(1)(i) & (iii) and 3-C(sic) (Govt.of India's decisions reproduced below Rule 3-C) 23(3),(4),(5)& (10) (2) of CCS (Conduct) Rules,1964; (iii) they have prepared false salary certificates of the employees (names mentioned in the respective charge sheets) affixed the office stamp without authorization and forged the signature of officer for ^{obtaining} ~~for~~ ^{obtaining} the personal loans ~~to~~ ^{for} the employees (names) mentioned in the respective charge-sheets), which amounts to misconduct under CCS (Conduct)Rules,1964. In OAs 690 & 997/2005 the applicants have also been charge-sheeted for obtaining personal loan of Rs.50,000/-each from the Indore Paraspar Sahkari Bank Ltd by submitting false salary certificates showing wrongly their monthly pay. They have prepared false salary certificate affixed the office stamp without authorization and forging the signature of an officer on the said certificate for the purpose of obtaining the loan of Rs.50,000/- from the Indore Paraspar Sahkari Bank Ltd.,which amounts to misconduct under the CCS (Conduct)Rules,1964.

4. The applicants have submitted their reply to the respective charge sheets, by which they have refuted all the allegations

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levelled against them. Thereafter, a full fledged inquiry was conducted against them. A copy of the enquiry report was also served to the applicants. They have submitted their representations against the inquiry report. The disciplinary authority after considering their representations and the enquiry report, imposed the major penalty of removal from service vide orders dated 29.10.2004. The applicants had preferred appeals, which were rejected vide impugned orders dated 29.4.2005. Hence these Original Applications.

5. Heard the learned counsel for the parties and carefully perused the records.

6. The main thrust of the arguments and the grounds taken by the applicants is that similarly placed 28 other employees were charge-sheeted for the same charges, however, those persons were imposed with a penalty of reduction of pay, whereas the applicants have been removed from service. On the other hand, the respondents have stated that the so called other employees were charge-sheeted on other grounds, and the charges framed against the applicants are severe in nature and the same cannot be compared with other employees.

7. The applicants have also taken an objection that they were not provided the defence assistants during the course of inquiry. In reply to this, the respondents have stated that the applicants have been given full opportunity to produce their defence assistants but they declined to produce the same before the inquiry officer by stating that they themselves will conduct the inquiry and therefore the applicants' allegation that they were denied the opportunity of defence assistants is based on wrong premises. The respondents have further stated that the applicants have availed the full

opportunity and cross-examined the prosecution witnesses as is clearly evident from the inquiry reports. (5)

8. We have also gone through the written submissions filed by the learned counsel for the parties and perused the cases cited by them.

9. It has been argued on behalf of the applicants that the charge sheet has been issued with malafide intention. We, however, find that the applicants have failed to specify the specific instance of malafide in order to sustain the charge of malafide. There must be a specific plea of malafide and the person against whom malafide is alleged should be impleaded by name as one of the respondents. This view gets support from the decision of the Hon'ble Supreme Court in the case of **All India State Bank Officers' Federation Vs. Union of India**, 1997 SCC (L&S)1004. The Hon'ble Supreme Court has also clearly laid down that there must be a strong and convincing evidence to establish malafide [See **State of UP and another Vs. Dr. V.N.Prasad**, 1995 SCC (L&S) 781].

10. The other ground advanced by the learned counsel for the applicants is that the applicants have not committed any misconduct whatsoever in terms of service jurisprudence and, therefore, the penalty orders are bad in the eyes of law. We have carefully considered this aspect of the matter, and we have also gone through the pleadings of the parties in this regard. In their replies in the respective OAs, the respondents have clearly stated that carrying ~~of~~ other services like insurance, bank and other business besides the regular ^{duties} ~~appointment~~ of a Government servant is not permissible under Rule 15(3)&(6) of CCS (Conduct) Rules, 1964 unless prior permission is obtained from the Government. In the instant case, no such permission has been brought on record, and as such, we are of the considered opinion that the act done by the applicants falls within the purview of CCS(Conduct)Rules.

11. It has been argued on behalf of the applicants that other persons against whom charge sheets had been issued have been imposed lesser punishment, whereas the applicants have been imposed the severe penalty of removal from service. We have also considered this point and we are in agreement with the plea advanced by the learned counsel for the respondents that the applicants have misguided the co-workers; forged the documents; accepted the illegal gratification from co-workers for arranging personal loans, which are very serious offences for which the penalty of removal from service is a right action by the disciplinary authority in order to set an example for other employees. After considering the representations submitted by the applicants, the disciplinary authority looking into gravity of charges passed the orders of removal from service, which according to the respondents is proportionate to the misconduct of the applicants.

12. The other submission made on behalf of the applicants is that there is no evidence on record to sustain the charge against them. We have also considered this aspect of the matter and we find that the officer's signature and the office stamps were found forged on the loan documents after due verification. Witnesses have also revealed during the inquiry that the loan documents were prepared by the applicants. The witnesses have also stated that the applicants have accepted the illegal gratification for obtaining the loan from the bank. The applicants have been given full opportunities to produce the defence assistant but they themselves have declined to avail that opportunity. Thus, the inquiry has been conducted against the applicants as per rules. Copies of the inquiry reports were also served on the applicants. Thus, the principles of natural justice

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have also been complied with. The Hon'ble Supreme Court has time and again held that if there is some evidence, the Courts or Tribunals should not sit as court of appeal over the findings recorded by the disciplinary authority. In the case of **B.C.Chaturvedi Vs. Union of India and others**, AIR 1996 SC 484 in paragraph 13, their lordships have observed as under:

“13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In **Union of India v. H.C.Goel** (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”.

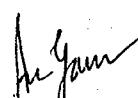
The view taken by the Hon'ble Supreme Court in **Bank of India and another Vs. Degala Suryanarayana**, 1999 SCC (L&S) 1036 is also very relevant and useful for the purpose of these cases. In the said case, their lordships have clearly observed that the Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. It has been further held in the said case that “the court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding”.

13. The learned counsel for the applicants has claimed parity on the ground that similarly placed persons were imposed with the penalty of reduction in pay, whereas the applicants have been imposed the extreme penalty of removal from service. In this

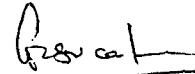
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context he has cited the decisions of the Hon'ble Supreme Court in the cases of **Director General of Police and another Vs. G.Dasayan**, (1998) 2 SCC 407 and **Tata Engineering and locomotive Co.Ltd. Vs. Jitendra Pd. Singh and another**, 2002 SCC(L&S)909. We have carefully seen those judgments and we are of the considered view that the aforesaid decisions are distinguishable in as much as that in the present case the applicants have misguided the co-workers, forged the documents, accepted the illegal gratification for arranging personal loans, which are very serious offences. Whereas, the other similarly placed persons with whom parity has been claimed by the applicants on the strength of the aforesaid decisions of the Hon'ble Supreme Court, had very small role to play. Thus, we find that the punishment of removal from service imposed on the applicants do^{not} call for any interference by this Tribunal keeping in view the charges levelled and proved against them.

14. In the conspectus of above findings, we do not find any merit in these Original Applications and the same are accordingly dismissed, however, without any orders as to costs.


(A.K.Gaur)
Judicial Member

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(Dr. G.C. Srivastava)
Vice Chairman