

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT BENCH AT GWALIOR

Original Application No. 144 of 1999

Gwalior, this the 27th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Bhagirath Prajapati, s/o. Shri
Deoram Prajapati Aged 45 years,
Occupation Section Officer in the
Office of Accountant General-II,
R/o. Q. No. 363 Type II, Shastri
Nagar, Gwalior, M.P.

... Applicant

(By Advocate - Shri S.C. Sharma)

V e r s u s

1. The Union of India, Through
the Comptroller & Auditor General
of India, Bahadurshah Zafar Marg,
New Delhi.
2. Dy. Comptroller & Auditor General
of India, Bahadurshah Zafar Marg,
New Delhi.
3. Accountant General (A&E) II, MP
New Building, Jhansi Road, Gwalior,
MP.
4. Accountant General (A&E) I, MP
New Building, Jhansi Road,
Gwalior, MP.

... Respondents

(By Advocate - Shri M. Rao)

O R D E R

By G. Shanthappa, Judicial Member -

The above Original Application is filed seeking the following
reliefs :-

"(A) That, orders in Annexure A-10, A-13 may kindly be declared as illegal, arbitrary and malafide being passed by the respondent No. 3, who had no power, authority and jurisdiction, hence be quashed.

(B) That, whole proceedings of inquiry initiated by the inquiry officer based on illegal charge-sheet be declared as illegal and out of jurisdiction hence declared to be vitiated.


(C) That, order imposing penalty contained in Annexure A-40 and the appellate order A-42 and order in revision order Annexure A-44 are inflicted

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on illegal chargesheet and illegal inquiry hence also vitiated and be quashed.

(D) That, since the order of suspension itself is void and thus orders regularisation contained in Annexure A-45, A-49 and A-50 are also illegal and deserve to be quashed."

2. The brief facts of the case are that the applicant was initially appointed on the post of Auditor on 16.6.7.1979 in AGMP, Gwalior. He was further promoted on the post of Asstt. Accounts Officer on 1.1.1991. While working as such the applicant was issued a charge sheet dated 27.12.1995 on the ground that he disobeyed the orders of his transfer and he did not hand over the charge to the reliever. Before the charge sheet was issued on the applicant for disobeying with the orders of his transfer he was suspended from service on 24.11.1995. Along with the charge list of witnesses was not supplied to the applicant. The applicant submitted his representation denying the charges. The Disciplinary Authority has appointed the enquiry officer. The enquiry officer has conducted the enquiry and in the enquiry proceedings the presenting officer and the applicant participated. The main grievance of the applicant is that when there are no witnesses mentioned in the charge, the charges cannot be proved without the witnesses. In the enquiry proceedings the enquiry officer had asked questions to the applicant. Hence the procedure followed by the enquiry officer is illegal. The enquiry officer generally does not ask questions with the delinquent officer in the enquiry proceedings. Hence the enquiry proceeding is liable to be rejected. After concluding the enquiry the enquiry report was submitted to the applicant. The applicant has submitted his representation and the disciplinary authority has imposed the penalty on 1.5.1997, of reduction in rank from the post of Asstt.



Account Officer for 3 years. The applicant was fixed at initial pay of Rs. 2300/- in the pay scale of Section Officer. It was further ordered that after completion of period of 3 years, if the post will be vacant and applicant will be found qualified he will be promoted on the post of Asstt. Account Officer. The grievance of the applicant is that the applicant is a Group-B employee and the disciplinary authority has no powers to impose penalty on the applicant. Hence the order^{is} passed by an in-competent authority. Against the said order the applicant preferred an appeal. The appellate authority has rejected the appeal by confirming the orders of the disciplinary authority. The appellate authority has not considered the case of the applicant. The impugned order is not a speaking order. Hence the orders of the appellate authority shall be set aside.

3. The respondents have filed their reply denying the averments made in the OA. The main ground regarding the competency to pass the order, they have produced the circular regarding CCS(CCA) Rules, 1965 - Appointing, Disciplinary and Appellate Authorities in IA&AD in respect of Groups B, C and D. A schedule annexed with the said circular provides as such :

Description of post	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rules	Appellate Authority
		11) Authority	Penalties

2. All Field offices (including training Institutions) subordinate to the Comptroller and Auditor-General of India other than Commercial Audit Offices; and

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Commercial Audit
Wing in Civil Audit
Offices

All Group B posts

Heads of Department
in the rank of
Principal Accountant
General/Accountant
General

Heads of
Department
in the rank
of Princi-
pal Account-
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All

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The said circular clearly states that the Principal Accountant General/Accountant General is the competent authority to pass the orders of the penalty. Accordingly the competent authority has passed the order.

3.1. Regarding the legality of the enquiry proceedings the respondents have stated that the nature of the mis conduct is that the applicant himself disobeyed the orders of the transfer and accordingly he was suspended. No witnesses are required. The enquiry officer submitted his report proving the guilt of the applicant. The applicant had submitted his representation to the enquiry report ^{and} on the basis of the enquiry report and the representation of the applicant the competent authority has passed the orders imposing the penalty. No principles of natural justice has been violated. When the competent authority has imposed the penalty stating the reasons, this Tribunal shall not exercise its power to interfere with the orders passed by the competent authority. The impugned order is a speaking order. The appellate authority has also considered the representation of the applicant and the order of the disciplinary authority and passed a speaking order by confirming the orders passed by the disciplinary authority. Hence there is no illegality or irregularity committed by the respondents while passing the impugned

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orders. Hence the Original Application is liable to be dismissed.


4. Heard the learned counsel for the applicant and the respondents and perused the records carefully.

5. The advocate for the applicant has contended that the authority who passed the impugned order of penalty has no authority to pass the same. Hence the impugned order is nonest and the same is liable to be quashed. We have perused the rule position submitted by the respondents. As per the circular dated 13th September, 1988 the appointing authority in respect of Group-B officers is the Heads of Department in the rank of Principal Accountant General/Accountant General. The appellate authority is the Deputy Comptroller and Auditor General of India/Additional Deputy Comptroller and Auditor General. The relevant portion of the said circular is extracted below. Since the applicant belongs to Group-B category, the Principal Accountant General is the competent authority and the same authority has imposed the penalty. Hence we reject the contention of the applicant by holding that the authority who has imposed the penalty is the competent authority. Regarding procedural aspect in the enquiry report the nature of the misconduct is that the applicant did not obey the orders of the superior and also did not hand over the charge to the reliever. To that effect he was suspended. When such being the case the applicant has stated in the OA. that the enquiry officer during the enquiry proceedings asked questions to the applicant. In the enquiry proceedings the applicant did not had any objections and he participated in the enquiry. At this stage he is challenging the enquiry proceedings. The argument taken

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by the applicant is not tenable. In this respect the applicant has referred to a judgment of the Hon'ble Supreme Court in the case of State of U.P. Vs. Ravindra Nath Chaturvedi, 1995 Supp 3 SCC 592. The facts of the said judgment are that alongwith the charge memo list of witnesses were not provided. Accordingly the proceedings were quashed in the said case. In the present case the list of witnesses was not mentioned alongwith the charge. The applicant has stated that the proceedings is illegal in view of the judgment of the Hon'ble Supreme Court referred to above. The said case of the Hon'ble Supreme Court is distinguishable.

5.1. We find that the applicant has himself has committed mistake by dis-obeying the orders of the higher authority by not handing over the charge. Hence the contention taken by the applicant in respect of that no list of witnesses alongwith the charge has been given is rejected. The applicant has also taken a contention that the enquiry officer has himself cross-examined the applicant. It is not permissible in the enquiry proceedings. Thus the entire proceeding is illegal and the same is liable to be quashed. We perused the enquiry proceedings and whatever questions is asked by the enquiry officer the applicant has answered to it and at no point of time he has raised this objection during the enquiry proceedings. When the applicant did not take any objection then the ground taken by the applicant that the enquiry proceeding is illegal is not tenable. Hence the contention of the applicant is rejected. Regarding the legality of the order passed by the disciplinary authority and the appellate authority we consider that both the authorities have passed considered and reasoned order. The said orders did not



violates the principles of natural justice. Regarding interference with the factual things in the enquiry proceedings and also the quantum of punishment. the Hon'ble Supreme Court has time and again held that the Tribunal should not interfere with the factual things in the enquiry proceedings and also the quantum of punishment. Accordingly, we do not interfere with the orders passed by the authorities.

6. In view of the aforesaid we find that the applicant has failed to prove his case and accordingly, the Original Application is dismissed. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

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पूरांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि
(1) सचिव
(2) अवर सचिव
(3) प्रत्यक्षी
(4) वकील,
सूचना एवं आवश्यक कार्यवाही हेतु
उप सचिव

SC Shrivastava
M. Rao, Adv.
Eul.