

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 816 of 1999

Jabalpur, this the 10th day of February, 2004

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

Acchhelal Jharia,
UDC (Cashier), No. 44,
Party (CC), 54 yrs.
Survey of India, resident
of Type II/16, CPWD Quarters,
White Church, Indore (MP).

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through
Secretary, Ministry of
Science & Technology,
New Delhi.
2. Director, Central Circle,
Survey of India, 314,
Napier Town, Jabalpur.
3. The Officer-in-Charge, No.
44, Party (CC) Survey of
India, CGO Complex, Shivaji
Chouraha, A.B. Road,
Indore - 452001.

... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (Oral)

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicant
has claimed the following main reliefs :

"(a) set aside the order dt. 29.4.98 Annexure A-1
above.

(c) to provide the arrears of subsistence
allowance to the applicant w.e.f. 1.1.1996 to
7.11.1997 by counting revision of pay as per 5th Pay
Commission recommendations,

(d) to provide all consequential benefits to the
applicant as if the impugned order dt. 29.4.98 is
never passed,

(e) an exemplary cost may kindly be imposed.

(f) to release yearly increments to the applicant
from 1979 till date and be further directed to pay
the arrears of the same along with interest on the

the respondents to treat the suspension period as spent on duty by further directing them to pay the arrears of salary minus subsistence allowance for the period of suspension.

(h) hold that the provisions of FR 17-A as ultra virus and unconstitutional, accordingly quash the provisions of 17-A of Fundamental Rules."

According to the learned counsel for the applicant he will press only the reliefs No. 7(b) (d). He does not press the remaining reliefs as it ⁱⁿ ~~has~~ been rendered infructuous.

2. The brief facts of the case as stated by the earlier applicant are that the applicant earlier was working as U.D.C (Cashier) under respondent No. 3. While working as such he was issued with a charge sheet dated 03.12.1997. The following charges were levelled against the applicant:

Article-I : That the said Shri A.L. Jhariya, UDC while functioning as the Cashier in No. 44 Party (CC) during the period October, 1979 proceeded on leave for indefinite period without getting it sanctioned and left station without permission of competent authority knowing fully well that this could sabotage work in the office. Thus he violated the provisions of Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article-II : That during the aforesaid period and while functioning in the aforesaid office of No. 44 Party (CC) the said Shri A.L. Jhariya, UDC caused an embezzlement of Rs. 23,494.88 p of Government money. Thus he violated the provisions of Rule 3(1)(i) of the CCS (Conduct) Rules, 1964.

Article-III : That during the aforesaid period and while functioning in the aforesaid office of No. 44 Party (CC), the said Shri A.L. Jhariya, UDC (working as Cashier in the period June to October 1979) habitually failed to perform the task assigned to him within the time set for the purpose and thus failed to maintain devotion to duty. In that, during the period between June to October 1979 he did not maintain the Cash Book properly and did not enter the cash transaction regularly on the Cash Book. Thus he violated the provisions of Rule 3(1)(ii) of the CCS(Conduct) Rules, 1964.

Article-IV : That during the aforesaid period and while functioning in the aforesaid office of No. 44 Party (CC), the said Shri A L Jhariya, UDC forged the Cash Book, the Advance Register and the Acquittance Roll and thereby defalcated Rs. 1690/- of Government money. In this manner

provisions of Rule 3(1) (i) and Rule 3(1) (iii) of the CCS(Conduct) Rules, 1964.

Article-V : That during the aforesaid period and while functioning in the aforesaid office of No. 44 Party (CC), the said Shri A L Jhariya, UDC while under suspension in the months of October, November & December 1979, was arrested by Police in the last week of Oct 1979 and was kept in Police custody before being remanded to the judicial custody from 9.11.1979 to 21.12.1979. He was released on bail on 21.12.1979. Shri A L Jhariya did not officially inform the position of his arrest and being placed in the jail in the aforesaid dates. In so supressing the material information, Shri A L Jhariya violated the provisions of Rule 3(1) (i) and Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964.

Article-VI : That during the aforesaid period and while functioning in the aforesaid office of No. 44 Party (CC), the said Shri A.L. Jhariya, UDC was given to Satta (Gambling) and lost approximately Rs. 24,000/- of Government money in Satta. Thus he violated the provisions of Rule 3(1) (i) and Rule 3(1) (iii) of the CCS(Conduct) Rules, 1964.

Article-VII : That during the aforesaid period and while functioning in the aforesaid office of No. 44 Party (CC), the said Shri A.L. Jhariya, UDC while under suspension during the year 1995 and 1996 left the station without the permission of the competent authority. Thus he violated the provisions of Rule 3 (1) (ii) of the CCS(Conduct) Rules, 1964."

The applicant has approached this Tribunal by filing OA No. 103/1998. The Tribunal vide its order dated 26th August, 1999 has allowed the OA and the charge sheet issued against the applicant was quashed and the respondents were directed to grant all consequential benefits to the applicant. This order was challenged by the respondents in appeal by filing a WP No. 6437/2000 before the Hon'ble High Court of Madhya Pradesh. The same was dismissed on 10.07.2001 by the Hon'ble High Court of Madhya Pradesh. The applicant has been granted all consequential benefits except the period from 15.10.1979 to 25.10.1979 has not been regularised. The respondents vide their order dated 29th April, 1998 have treated this period as unauthorised absence. Due to only 10 days absence, the entire past service has been forfeited by applying the provisions of FR 17-A. The effect and operation of the said order ..

cause forfeiture of the entire past service and the applicant's pension and other retiral benefits will be affected. We find that this period from 15.10.1979 to 25.10.1979 was one of the articles of charge levelled against the applicant vide charge sheet dated 3.12.1997. Since the entire charge sheet has been quashed by the Tribunal, then there was no ground for the respondents to again reconsider the so called or alleged unauthorised absence from duty from 15.10.1979 to 25.10.1979 and to pass the order dated 29th April, 1998, treating this period as unauthorised absence by applying the provisions of FR 17-A. The order passed by the respondents is illegal and does not stand and is against all canons of justice.

3. The learned counsel for the respondents has submitted that this order has been passed by the respondents by initiating the action against the applicant under FR 17-A, which is in accordance with rule and law.

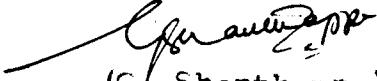
4. Heard the learned counsel for the parties and perused the records carefully.

5. We have given careful consideration to the rival contentions made on behalf of the parties. We find that when the entire charge sheet which included the period of alleged unauthorised absence from 15.10.1979 to 25.10.1979 had been quashed by the Tribunal, there was no ground for the respondents to take any action against the applicant. The action taken by the respondents is against all canons of justice. We also find that the order has been passed by a very senior officer, who is of the rank of a Brigadier. He has not cared to follow the basic rule and law and has also not applied his mind while passing the said order. The order is highly arbitrary which has put the applicant under



great mental stress and has compelled him to approach this Tribunal to get the relief.

6. Accordingly, the Original Application is allowed. We quash the impugned order dated 29th April, 1998 (Annexure A-1). The applicant will be entitled for all consequential benefits. Since the applicant has been made to suffer under great mental agony and harrasment for such a long time, we impose a cost of Rs. 10,000/- on the respondents which is to be paid to the applicant.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

S. Paul
SA Dharma Vilas


D. Venkateswaran

9/5/04

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