

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 31st day of August, 2009

OA No.463/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Nathu Lal Mahavar
s/o Shri Radha Krishan,
r/o III-209, A.G. Colony, Bajaj Nagar, Jaipur.
Last employed as Senior Accountant
In the office of Accountant General (A&E),
Rajasthan, Jaipur

.. Applicant

(By Advocate: Shri S.K.Vyas)

Versus

1. Comptroller and Auditor General of India,
2, Bahadur Shah Zafar Marg,
New Delhi.
2. Accountant General (A&E),
Rajasthan, Jaipur
3. Deputy Accountant General (Admn.)
O/o Accountant General (A&E),
Rajasthan, Jaipur.
4. Senior Accounts Officer (Shri M.C.Saxena)
O/o Accountant General (A&E),
Rajasthan, Jaipur

.. Respondents

(By Advocate: Shri Sanjay Pareek)

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ORDER

Per M.L.Chauhan, M(J).

The applicant has challenged the order dated 11.6.2004, 26.8.2004 and 10.3.2005 (Ann.A1, A2 and A3) whereby the applicant was initially awarded a penalty of removal from service, which order was modified by the appellate authority by substituting the penalty of removal from service to that of compulsory retirement and revision petition filed by the applicant against the appellate order was dismissed.

2. Briefly stated, facts of the case are that the applicant while working as Senior Accountant took a personal loan of Rs. 80,000/- from State Bank of Bikaner and Jaipur, Gopalbari Branch, Jaipur by submitting salary/income certificate for the month of January, 2001, which was later on found bearing false pay details and bearing forged and fabricated signature of Shri M.P.Jain, Senior Accounts Officer. The factum of taking loan by the applicant was intimated to the authorities by the Branch Manager vide letter dated 27.11.2003. On receipt of the said letter, explanation of the applicant was sought vide letter dated 12.2.2004 and he was asked to give explanation reply within 5 days. The applicant did not submit any reply, therefore, a formal chargesheet under Rule 14 of the CCS (CCA) Rules was issued on 12.3.2004 containing above charges. The applicant did not submit any written statement of defence, as such, the Enquiry Officer and Presenting Officer were nominated by the Disciplinary Authority. During the course of enquiry, the applicant made unconditional and unambiguous

admission of the charges. Copy of the admission so made by the applicant has been placed by the applicant as Ann.A/9. This letter is addressed to the Enquiry Officer and copy has been endorsed to the Presenting Officer, in which the applicant has categorically stated that he admits all the allegations leveled in the chargesheet from item No. 1 to 6 and for unforeseen reasons, he could not give reply to the chargesheet for which he felt sorry. The said amount has been deposited by the applicant in the Bank and the Bank has also given receipt in lieu thereof which is also enclosed. It is also categorical stated that he will not repeat such mistake and taking into consideration the humanitarian aspect, the enquiry may be dropped. In view of this unconditional and categorical admission made by the applicant, the Enquiry Officer submitted his report (Ann.A/10) whereby in last para it has been stated that in view of the admission made by the applicant and the fact that he has deposited the loan amount, he is of the opinion that there is no need to further proceed in the matter. Copy of this report was made available to the applicant vide letter dated 13.5.2004 (Ann.A/11) and he was asked to file representation to the Disciplinary Authority, if any, against this report within a period of 15 days. As can be seen from reply filed by the applicant, the applicant did not make any representation against the enquiry report as submitted by the Enquiry Officer. Based on this, the Disciplinary Authority imposed the penalty of removal from service vide order dated 11.6.2004 (Ann.A/1). The applicant filed appeal dated 30.6.2004 to the Appellate Authority, copy of which has been

placed on record as Ann.A/12. Para 2(i) to 2(x) contain the factual aspects as to how his case for loan was processed by the agent and as the loan amount was deposited by him. In para 2(xi) the applicant has stated as to under what circumstances he has made so called admission. At this stage, it will be useful to quota 2(xi), which thus reads:-

"(2)(xi) I had explained that I had no role in submitting the Pay Certificate and Form 16 etc. to the Bank as these were later on managed by the agent of the Bank. This can be verified from the fact that these documents which were prepared by the Agent of the Bank do not bear my signatures. **However I was told that instead of contesting the charges, I should accept them. I was told that only if I admit the charges & clear the outstanding dues of the Bank, a lenient view may be taken against me. If I contest the charges, I am likely to be awarded major penalty.** Thus I was compelled to accept the charges. Accordingly, I have given to the I.O. (copy of the P.O.) a letter in which I have accepted the charges levelled against me and have also undertaken that similar error will not be repeated in future and requested that proceedings against me may kindly be dropped on humane considerations.

In grounds of appeal, the applicant has stated that "as a matter of fact, I had simply gone to I.O. for submitting the NDC dated 5.4.2004, issued by the bank. I was then advised that if at this very stage if I admit the charges, the case would be dropped." The applicant nowhere in the grounds of appeal has stated the factum of assurance given to him regarding admission of charge by the competent authority so that lenient view can be taken in the matter. However, the Appellate Authority taking lenient view in the matter substituted the penalty of removal from service to that of compulsory retirement. Further, from the grounds as taken in the review petition, the applicant has also not mentioned name of the

authority who has given assurance for admission of the charges and thereafter taking lenient view, in case he admits charges.

3. The respondents in the reply have categorically stated that no assurance on admission of charge was given by any of the officer of this office. It is stated that the applicant was given sufficient opportunity to defend himself but he failed to explain about the forged and fabricated documents gathered and accepted all the charges. Thus, according to the respondents, under these circumstances, there is no infirmity when the authority has passed appropriate order on admission of guilt by the applicant.

4. The applicant has filed rejoinder. In the rejoinder, the applicant disputes the statement that the applicant had forged and fabricated signature of Shri M.P.Jain, Senior Accnts Officer and that he had used unauthorisedly the official seal as in the first place, the signatures of Shri M.P.Jain had not been subjected to examination by any handwriting expert who could have declared that signatures had been forged and fabricated by the applicant. Secondly, no other witness was examined who had been the eye witness to the alleged forging of the signatures by the applicant. Therefore, the above allegation is nothing but an uninvestigated assumption.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The sole question which requires our consideration is whether it was permissible for the Enquiry Officer to give findings and not to

proceed further in the matter on account of unconditional admission made by the applicant and whether such unconditional admission can be relied upon.

7. The law on this point is no longer res-integra. The Apex Court in the case of Swadesh Pal Baliyan vs. Air Force Commanding-in-Chief, 2005 (1) SLJ 285 has held that unconditional admission can be relied upon and when one has admitted clearly no other proof is required. It was further held that in view of admission during the enquiry it is not necessary to examine in depth details the bald and vague allegations in the explanation submitted more than 4 ½ year later reiterating the confession and the appellant was held guilty of the charges.

Further, the Hon'ble High Court in the case of Rabindra Mohan vs. Union of Territory of Tripura, AIR 1961 Tripura 1 held that when the delinquent admitted the charges and did not want an enquiry it is not necessary under Article 311 of the Constitution or under the CCS (CCA) Rules to hold an enquiry.

Further, in the case of K.Ventateswarlu vs. Nagarjuna Grameena Bank, 1995 (6) SLR A.P. 223 the High Court held that imposition of penalty on the basis of admission of guilt in reply to the charge-sheet is valid and question of inducement and coercion arises only when the confession is made prior to the charge. It was also held that admission made in reply to the charge-sheet in his own handwriting and it must be treated as voluntary and uninfluenced.



8. As can be seen from the admission made by the applicant (Ann.A/9), the applicant has categorically stated that he admits the charges levelled against him at item No. 1 to 6 of the chargesheet. It is not the case of the applicant that such confession statement was made by him under threat or coercion. However, the case of the applicant is that such confession/admission was made by him as he was assured by the authorities that in case, he admits the charges, lenient view in the matter shall be taken. As already stated above, the applicant has not mentioned name of the authority who has given such assurance to him. In order to prove the case that the applicant acted pursuant to such assurance it has to be established that such assurance must come from the competent authority, who in the instant case, was the Disciplinary Authority. As already stated above, the applicant has not mentioned this fact that such assurance was given by the Disciplinary Authority or any other higher authority. Rather, the stand taken by the respondents is that no assurance was given by any officer of the department. The said allegation has not been controverted by the applicant in the rejoinder. Further, the applicant has also failed to mention name of the authority who gave such assurance either in the ground of appeal taken before the Appellate Authority or while submitting his review petition before the Revising Authority. Even in the OA, the applicant has not stated that he was given assurance by the competent authority. Thus, this bald and vague statement made by the applicant that he was

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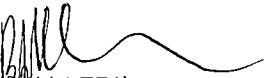
given assurance by the authority that in case he admits the charge lesser punishment will be given, cannot be accepted.

9. At this stage, we wish to mention that the said admission was made by the applicant before the Enquiry Officer. The role of the Enquiry Officer is to investigate the matter and to give findings on the charges and he is not the authority competent to impose punishment upon the applicant. Thus, in view of the law laid down by the Apex Court in the case of Swadesh Pal (supra), the authorities were competent to impose punishment upon the applicant on the basis of unconditional and unequivocal admission made by him and it was not necessary to proceed in the matter. At this stage we also wish to mention that copy of the so called enquiry report was given to the applicant and 15 days time was granted to him to file objections. The fact remains that the applicant did not file any objection to the enquiry report. It was permissible for him to file objections thereby retracting his earlier admission/confession made before the Enquiry Officer. Having not done so, the applicant cannot be permitted to raise such objections subsequently.

10. The learned counsel for the applicant while drawing our attention to Para 5(C) of the OA argued that in the case of the applicant severe penalty of removal from service/moderated to compulsory retirement has been imposed whereas in another case of an Assistant Accounts Officer who was charged to have submitted a false declaration of income for obtaining stipend for his son has been awarded a minor penalty of withholding two

increments. According to us, the applicant cannot raise this contention of discrimination based upon the aforesaid fact. The fact remains that the said Assistant Accounts Officer was charged for submitting a false declaration of income whereas the allegation levelled against the applicant were regarding fabricating of documents by submitting false information and managing signatures of senior officer besides other charges that he has brought the organization to disrepute. Thus, it cannot be said that charges levelled against the applicant is similar to that of Assistant Accounts Officer, so as to make out a case of discrimination.

11. For the foregoing reasons, we are of the view that there is no substance in the OA, which is accordingly, dismissed with no order as to costs.



(B.L.KHATRI)
Admv. Member



(M.L.CHAUHAN)
Judl. Member

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