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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.11.2009

OA 164/2008

Mr.C.B.Sharma, counsel for applicant.
Mr.Gaurav Jain, counsel for respondents.

Reply to the order passed by this Tribunal on 22.9.2009 has been filed today.

Let the matter be listed for final hearing on 26.11.2009.

IR to continue till the next date.


(B.L.KHATRI)
MEMBER (A)

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26.11.2009

Mr C.B. Sharma, Counsel for applicant
Mr. Gaurav Jain, Counsel for respondents
Heard learned Counsel for the
parties.

Order Reserved.


(B.L.Khatri)
M(A)

03/12/09.

order pronounced
today in the open
Court by the
aforesaid Bench.
03/12/09

COURT OFFICER

3-12-09

The order is pronounced in
the open Court today.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 3rd day of December, 2009

ORIGINAL APPLICATION No.164/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Pradeep Kumar Jain,
Accountant,
Kota Head Post Office,
Kota.

... Applicant


(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Director Postal Services,
Rajasthan Southern Region,
Ajmer.
3. Sr.Supdt. of Post Offices,
Kota Postal Division,
Kota.
4. Director of Accounts (Postal),
Jaipur.
5. Assistant Supdt. of Post Offices (West),
Kota Sub Division,
Kota.

... Respondents

(By Advocate : Shri Gaurav Jain)



ORDERPER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against the memo dated 10.4.2008 (Ann.A/1), by which appeal preferred by the applicant has been rejected by respondent No.2 against punishment of recovery of Rs.38029/- imposed by respondent No.3 after initiation of disciplinary proceedings under Rule 16 of the CCS (CCA) Rules, 1965, on the allegation that applicant while working as Accountant in the office of respondent No.3 processed the pension as well as terminal benefits case of Late Shri Ram Karan Sharma, who was casual labour with temporary status instead of Group-D and on account of this lapse on his part, the retiral benefits which were not due to late Shri Ram Karan Sharma, had been paid to his widow. Through this OA, the applicant has prayed for the following relief :

- "i) That the entire record relating to the case be called for and after perusing the same respondents may be directed not to recover any amount from the applicant as ordered by quashing the appellate order dated 10.4.2008c with the punishment order dated 31.10.2007 (Ann.A/1 and A/2) with all consequential benefits.
- ii) That the charge memo dated 31.7.2007 with the show cause notice dated 9.11.2006 (Ann.A/5 and A/4) be quashed and set aside, as the same is not justified as per facts and circumstances with the further directions to the respondents not to allege the applicant for any irregular payment and not to pass any further order by initiating any further action.
- iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case."



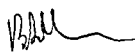
2. Learned counsel for the applicant mainly relied upon the pleadings made in the OA and, inter-alia, made the following submissions :

- i) That the applicant is a substantive employee of the respondent department and was holding the post of Accountant in the office of respondent No.3 with effect from 29.5.2001 to 27.5.2005. In Kota Division, one Shri Ram Karan Sharma was holding the post of Group-D and expired on 29.5.2001. As per procedure, pension and family pension papers are prepared by the appointing authority and sent to respondent No.4 through respondent No.3 for further action.
- ii) That the applicant while working as Accountant in the office of respondent No.3 completed the papers relating to family pension as well as terminal benefits after receipt from respondent No.5, who is appointing authority of Group-D, and also called for service book as well as last pay slip from the concerned Head Post Office. While completing the service record, respondent No.5 also issued orders for treating the period from 6.12.2000 to 18.12.2000 as dies-non with the further direction that the same will be countable for pension purpose. However, the Postmaster General, Rajasthan Southern Region, Ajmer, also directed to send proposal for regularization of the period from 6.12.2000 to 18.12.2000 and thereafter respondent No.4 being competent authority for sanctioning



the family pension as well as terminal benefits issued order for the same. Copy of the Pension Payment Order dated 27.9.2001 is annexed as Ann.A/3.

- iii) That wife of late Shri Ram Karan Sharma was allowed family pension, DCRG, leave encashment and other benefits and she remained in receipt of the same upto September, 2006 and respondent No.3 issued a show-cause notice to Smt. Nirmala Sharma proposing stoppage of pension and recovery of Rs.204750/- on the ground that she has been wrongly allowed family pension as well as terminal benefits on the ground that her late husband was not regularized in Group-D cadre and was holding the post as temporary status Group-D inspite of the fact that the documents i.e. service book etc. and the correspondence with late husband of Smt.Nirmala Sharma shows that late Shri Ram Karan was holding the post on regular basis. However, the family pension as well as terminal benefits allowed by the competent authority and till date orders of family pension have not been withdrawn. Smt. Nirmala Sharma also approached this Tribunal by filing OA 462/2006 against the notice dated 9.11.2006 and the same is pending for adjudication with the next date i.e. 27.5.2008. She put up her case before this Tribunal after her late husband had been regularized on the post as per departmental record.



- iv) That the applicant while working as Accountant in the office of respondent No.3 put up the case before respondent No.3 and after approval and signed by respondent No.3 the case was forwarded for further sanction before respondent No.4, who issued the pension payment order and the orders relating to other terminal benefits and thereafter the widow of late Shri Ram Karan Sharma was allowed payments through respective Head Post Office and inspite of these facts respondent No.3 served minor penalty charge-sheet under Rule 16 of the CCS (CCA) Rules, 1965, vide memo dated 31.7.2007 on the allegation that the applicant while working as Accountant processed the case for family pension and other benefits without ascertaining eligibility and his action resulted in irregular payment of Rs.228172/- and by this action violated the provisions of CCS (Conduct) Rules, 1964. It is further submitted that the applicant made request for certain documents for submitting effective representation before respondent No.3 but respondent No.3 allowed only inspection of the documents and the applicant further made request to make available the photo-copies of the documents vide request dated 16.8.2007 (Ann.A/6) but respondent No.3 did not allow the same and in absence of the same the applicant submitted his representation against the charge-memo on 21.8.2007 (Ann.A/7).

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- v) That respondent No.3 without due consideration of facts and circumstances and the representation submitted by the applicant, imposed punishment of recovery of Rs.38029/- to be recovered in 34 monthly installments of Rs.1100/- and rest Rs.629/- and ordered for recovery from the pay for the month of November, 2007 vide memo dated 31.10.2007 (Ann.A/2) inspite of the fact that the applicant acted as per the directions of respondent No.3 and prepared pension case on the basis of the documents received from the Postmaster concerned and respondent No.5, who is appointing authority of late Shri Ram Karan Sharma.
- vi) That respondent No.3 is not competent for any action as taken on the ground that he himself involved in processing of the pension case and also approved the respective documents prior submission to competent authority for further action as respondent No.3 having full knowledge regarding status of the employees being divisional head and the applicant nowhere responsible for the so called wrong payment and acted as per directions as well as as per the documents received from the Postmaster concerned and respondent No.5. At one stage, respondent No.3 also sought guidelines from the Postmaster General, Rajasthan Southern Region, Ajmer, vide letter dated 5.9.2001 (Ann.A/9) for payment of amount of leave encashment and thereafter allowed the payment.



3. Notice of this OA was given to the respondents, who have filed their reply stating that the applicant while working as Accountant, Divisional Office Kota, from 29.5.2001 to 31.5.2005, processed the case for payment of terminal benefit of the family of deceased Shri Ram Karan Sharma, Ex-casual labour with temporary status Group-D without ascertaining the eligibility of payment of DCRG, family pension and leave encashment etc. It was further stated that the applicant prepared all the papers relating to above claims irregularly in contravention of CCS (Pension) Rules, 1972 and submitted to the competent authority for sanction, resulting in irregular payment to the tune of Rs.228172/-. Therefore, a penalty of recovery of Rs.38029/- (1/3rd of 50% of Rs.228172/-) was awarded to him vide office memo No.C4/308/Ch.II dated 31.10.2007. The applicant preferred an appeal dated 7.12.2007 against the said memo which was rejected by the Director Postal Services, Ajmer, vide Memo No.STA/SR/44-24(21)/08 dated 10.4.2008.

4. Learned counsel for the respondents mainly relied upon the reply filed and, inter-alia, made the following submissions :

- i) That so far as the contents made in para (i) of the facts, it is submitted that the pension papers are to be prepared by the Accountant, Divisional Office, and are to be sent to Director of Accounts (Postal) Jaipur under the signature of Senior Superintendent of Post Offices for issuing necessary sanction.



- ii) That so far as the contents made in para (ii) of the facts, it is submitted that the version of the applicant is not tenable. The applicant had to ensure himself by checking all relevant record that the pensionary benefits were admissible or not but applicant failed to do so. Moreover, there was a clear remark available in the service book of Shri Ram Karan Sharma that he was a casual labour and was conferred temporary Group-D status which clearly shows that pensionary benefits were not admissible to him. The applicant ignored that significant document on which pensionary benefits were based. Moreover, the applicant stated that respondent No.4 is competent authority for sanction of family pension as well as terminal benefits is not correct. On the receipt of pension case, the Accounts Officer i.e. respondent No.4 takes action under Rule 80-B of the CCS (Pension) Rules for authorization of family pension and other benefits admissible to the family of deceased. The Accounts Officer never takes any action on its own for authorisation of family pension. Apart from this, the Post Master General, Rajasthan, Southern Region, Ajmer, has given directions for early forwarding the pension papers did not make Shri Ram Karan Sharma entitle for pensionary benefits. The applicant while working as Accountant Divisional Office Kota should have confirmed the entitlement of Shri Ram Karan Sharma before forwarding the pension papers.



iii) That so far as the contents made in para (iii) of the facts, it is submitted that a clear remark is available in the service book of the deceased Shri Ram Karan Sharma that he was a casual labour with temporary Group-D status and his family was not entitled for family pension and pensionary benefits. However, it is further submitted that after death of Shri Ram Karan Sharma, all pensionary benefits were given to his wife Smt. Nirmala Devi treating him as regular employee w.e.f. 30.5.2001 erroneously. This mistake was detected by Circle Office Jaipur while considering the case of compassionate appointment case of her son in the year 2004. There is no relevancy with the pendency of the OA No.462/2006 filed by Smt.Nirmala Sharma wife of late Shri Ram Karan Sharma.

iv) That so far as the contents made in para (iv) of the facts, it is submitted that it is correct that respondent No.3 forwarded the case to respondent No.4 for sanction but the pension papers were duly prepared by the applicant himself and the applicant should ensure himself about eligibility of the pensionary benefits to the family of the deceased before preparing pension papers and putting them for signature before respondent No.3. There is no provision to provide photo copies of the documents as per Rule-77 of the Postal Manual Vol.III. The delinquent official i.e. the applicant can only be provided the opportunity to inspect the documents which was provided

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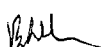
to him. However, the copies of the documents were also provided to him later on.

v) That so far as the contents made in para (v) of the facts, it is submitted that the applicant was working as Accountant Divisional Office Kota and he should have ensured himself the eligibility condition to grant family pension and other benefits before preparing the pension case but he ignored the basic documents i.e. service book etc.

vi) That so far as the contents made in para (vi) of the facts, it is submitted that respondent No.3 is fully competent for taking disciplinary action against the applicant being the appointing and disciplinary authority. Though it is correct that the applicant is not solely responsible but he is partly responsible & accordingly he was penalized with the penalty of recovery of Rs.38029/- which is 1/6 of the total loss of Rs.228172/-.

5. By filing rejoinder, the applicant inter-alia made the following submissions :

i) That as per the provisions of CCS (Pension) Rules, 1972, Head of Office is wholly responsible for payment of pension and other benefits after satisfying himself from the record of the concerned employee as provided in Rules 58, 59 & 61 and the applicant at every time acted as per the directions of the competent authority.



ii) That the applicant nowhere committed any irregularity and acted as per the papers received from respondent No.5 and put up the matter before respondent No.3 for onward submission to respondent No.4 and as stated in this para that authorities directed to complete the pension papers have not been denied by the respondents.

iii) That no remark is available in the service book as stated by the respondents and there is no provisions for putting the remarks whether the employee is entitled for pension or not and it is the sole duty of respondent No.3 and 5 to come to the conclusion whether any employee is entitled for pension or family pension or not. In the present case, the applicant simply processed the matter and the case relating to recovery as well as stoppage of pension preferred by Smt.Nirmala Sharma is pending before this Tribunal for due consideration in OA 148/2009.

6. Learned counsel for the applicant had relied upon the judgement of the Apex Court in the case of **Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah** [2006 SCC (L&S) 1486]. He had also relied upon the judgement rendered by this Tribunal on 28.5.2008 in OA 276/2008 [**N.M.D.Jain, Chief Engineer, North Zone-III, Jaipur v. Union of India & Anr.**] and submitted that the main responsibility lies with respondent No.5 who is appointing authority and who had forwarded the pension papers, as also of

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respondent No.3 who was also required to check all the pension papers before putting the signature, as per pension rules. The order of penalty passed by the competent authority is discriminatory in nature as no disciplinary proceedings had been initiated against respondents No.3 or 5, who were also responsible for the irregular payment of retiral benefits.

7. I have heard the rival submissions and perused the record as well as the relevant case law. In this case, as per memo dated 31.7.2007 (Ann.A/5), the following statement of imputation of misconduct or misbehavior against the applicant, Accountant, N.G.Mandi, H.O., Kota, were drawn :

"Shri Pradeep Kumar Jain, Accountant, N.G.Mandi H.O., Kota, while working as Accountant, D.O., Kota, from 29.5.2001 to 31.5.2005 processed the case for payment of terminal benefits to the family of Shri Ram Karan Sharma, Ex-Casual Labour Group-D with temporary status without ascertaining eligibility of payment of DCRG, family pension and leave encashment etc. to the family of above deceased.

Shri Pradeep Kumar Jain prepared all the papers relating to above claims irregularly in contravention of CCS (Pension) Rules, 1972 and submitted to the competent authority for sanction, resulting irregular payments have been made to the tune of Rs.228172/-.

By the above acts Shri Pradeep Kumar Jain has shown gross negligence and dereliction to duty.

Therefore, it is alleged tha above Shri Pradeep Kumar Jain, by the above acts failed to maintain devotion to duty as required under Rule 3(i)(ii) of the CCS (Conduct) Rules, 1964."

8. After having considered all the contentions raised by the applicant, the disciplinary authority i.e. Senior Superintendent of Post Offices [respondent No.3] had imposed penalty of recovery

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of Rs.38029/- upon the applicant. The applicant had also filed an appeal before the Director Postal Services who, vide order dated 10.4.2008, had rejected the appeal. Before deciding the controversy involved, it is necessary to analyze the facts, responsibility of the officers and the applicant and the rules on the subject. As per record, respondent No.5 i.e. ASPOs is the appointing authority for Group-D, who had forwarded the pension papers of Late Shri Ram Karan Sharma. Before sending the pension papers to respondent No.3, respondent No.5 should have checked the eligibility of pension. The pension papers were received by the applicant, who was holding the post of Accountant. It was also the duty of the Accountant to exercise proper check but he did not check the record properly and could not bring the factual position to the notice of the SSPOs Kota i.e. respondent No.3. However, I find that all these papers are to be put up before respondent No.3 by the Accountant i.e. the applicant. Respondent No.3 was required to examine all the papers with due diligence as per Rule-58 to 61 of the CCS (Pension) Rules, 1972. Rule 58 to 61 of the CCS (Pension) Rules, read as under :

"58. Preparation of pension papers

Every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

59. Stages for the completion of pension papers

(1) The Head of Office shall divide the period of preparatory work of two years referred to in Rule 58 in the following three stages :-

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(a) First Stage – Verification of service :

- (i) The Head of Office shall go through the Service Book of the Government servant and satisfy himself as to whether the certificates of verification for the entire service are recorded therein.
- (ii) In respect of the unverified portion or portions of service, he shall arrange to verify the portion or portions of such service, as the case may be, with reference to pay bills, acquittance rolls or other relevant records and record necessary certificates in the Service Book.
- (iii) If the service for any period is not capable of being verified in the manner specified in sub-clause (i) and sub-clause (ii), that period of service having been rendered by the Government servant in another office or Department, a reference shall be made to the Head of Office in which the Government servant is shown to have served during that period for the purpose of verification.
- (iv) If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-clause (i), or sub-clause (ii), or sub-clause (iii), the Government servant shall be asked to file a written statement on plain paper stating that he had in fact rendered that period of service, and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall in support of such declaration produce all documentary evidence and furnish all information which is in his power to produce or furnish.
- (v) The Head of Office shall, after taking into consideration the facts in the written statement and the evidence produced and the information furnished by that Government servant in support of the said period of service, admit that portion of service as having been rendered for the purpose of calculating the pension of that Government servant.

(b) Second Stage – Making good omission in the Service Book :

- (i) The Head of Office while scrutinizing the certificates of verification of service, shall also identify if there are any other omission,



imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying for pension.

- (ii) Every effort shall be made to complete the verification of service, as in Clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i) of this clause. Any omissions, imperfections or deficiencies including the portion of service shown as unverified in the Service Book which it has not been possible to verify in accordance with the procedure laid down in Clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the Service Book.
 - (iii) Calculation of average emoluments – For the purpose of calculation of average emoluments, the Head of Office shall verify from the service Book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the Service Book, the Head of Office may verify the correctness of emoluments for the period of twenty-four months only preceding the date of retirement of a Government servant, and not for any period prior to that date.
- (c) Third Stage – As soon as the second stage is completed and in any case not later than ten months prior to the date of retirement of the Government servant, the Head of Office shall take the following action :-
- (i) He shall furnish to the retiring Government servant a certificate regarding the length of qualifying service proposed to be admitted for purpose of pension and gratuity as also the emoluments and the average emoluments proposed to be reckoned with for retirement gratuity and pension. In case the certified service and emoluments as indicated by the Head of Office are not acceptable to him, he shall furnish to the Head of Office the reasons for non-acceptance, inter-alia, supported by the relevant documents in support of his claim.
 - (ii) In case of any difficulty in determining the length of qualifying service on account of non-availability of service records, the retiring Government servant shall be asked to file a

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written statement of service as provided in Clause (ii) of sub-rule (1) and sub-rule (2) of Rule 64.

(iii) Forward to the retiring Government servant Form 4 and Form 5 advising him to submit the same duly completed in all respects so as to reach the Head of Office not later than eight months prior to his date of retirement.

(2) Action under Clauses (a), (b) and (c) of sub-rule (1) shall be completed eight months prior to the date of retirement of the Government servant.

60. Completion of pension papers

The Head of Office shall complete Part-I of Form 7 [not later than six months of the date of retirement] of the Government servant.

61. Forwarding of pension papers to Accounts Officer

(1) After complying with the requirement of Rules 59 and 60, the Head of Office shall forward to the Accounts Officer Form 5 and Form 7 duly completed with a covering letter in Form 8 alongwith Service Book of the Government servant duly completed, up-to-date, and any other documents relied upon for the verification of service.

(2) The Head of Office shall retain a copy of each of the Forms referred to in sub-rule (1) for his records.

(3) Where the payment is desired in another circle of accounting unit, the Head of Office shall send Form 7 in duplicate to the Accounts Officer.

(4) The papers referred to in sub-rule (1) shall be forwarded to the Accounts Officer not later than six months before the date of retirement of Government servant."

As per these rules, the Head of Office was required to examine all the papers as per rules including the eligibility of pension to Late Shri Ram Karan Sharma. It appears that he had solely relied upon the papers put up by the lower authorities and did not examine those papers with due diligence and care.

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9. As per rules, respondent No.3, 5 and the applicant were jointly responsible to check all the facts. The total loss was also divided proportionally. The applicant was held responsible for 1/3rd of the total loss. In this connection, it is considered necessary to reproduce the order passed by this Bench on 22.9.2009, which reads as under :

"In para-10 of the OA it was pleaded that though respondents No.3 and 5 were equally responsible alongwith the applicant for the lapse of paying pension to the widow of Late Shri Ram Karan Sharma but no action has been taken against them.

The respondents are hereby directed to intimate, on the next date of hearing, whether they have initiated any action against respondents No.3 and 5 or not.

Let the matter be listed on 27.10.2009. IR to continue till the next date."

In response to the above order, the SSPOs Kota, vide letter dated 11.11.2009, had informed this Bench that the department had not initiated any action against respondent No.3 and 5 till date. From perusal of the reply, it is evident that there is no proposal to initiate any action against respondent No.3 and 5.

10. In this connection, it is considered necessary to quote para 27 to 29 of the judgement of the Apex Court in the case of **Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah** (supra), as under :

"27. There is, however, another aspect of the matter which cannot be lost sight of, Identical allegations were made against seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

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28. The first respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.1.2003 as affirmed by the High Court is substituted by a direction that the first respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.

29. The impugned judgement is modified to the aforementioned extent. This appeal is allowed in part and to the extent mentioned hereinabove. There shall be no order as to costs."

11. It is also considered pertinent to reproduce para 18 & 19 of the judgement dated 28.5.2008, rendered by this Tribunal in OA 276/2007 [**N.M.D.Jain, Chief Engineer, North Zone-III, Jaipur v. Union of India & Anr.**], which read as under :

"**18.** At this stage, it will be useful to quote a decision of Apex Court in the case of **Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah**, 2006 SCC (L&S) 1486. That was a case where the respondent therein, alongwith his other colleagues, held a meeting in the lawn of the appellant without permission and leveled false allegation against his senior officer and behaved badly with him. Other allegation was that the respondent, alongwith other colleagues, forcefully entered into the cabin of Mr.Shreedharani, who was at that point of time in serious discussion with his Accountant, despite his raising objection to the same, beside other allegations. However, inquiry was initiated only against one person i.e. respondent and subsequently he was dismissed from service. However, the order of dismissal was set aside by the Labour Court, upheld by the High Court and as such the matter was carried before the Apex Court. The Apex Court in para-27 of the Judgement has made the following observations :

"**27.** There is, however, another aspect of the matter which cannot be lost sight of, Identical allegations were made against

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seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

The ratio as laid down by the Apex Court in the case of Anand Regional Coop. (supra) is squarely applicable in the facts and circumstances of this case. In the instant case, the respondents have proceeded not to initiate inquiry against the Shri S.P.Banwait, who was the main culprit and against whom the complaint was lodged and matter investigated, which resulted into imposition of minor penalty so far as the applicant is concerned, whereas Shri S.P.Banwait was let scot-free and allowed to retire on superannuation. According to us, such a course was not permissible. The Apex Court has repeatedly held that the delinquent officer similarly situated should be dealt with similarly and if the charges against the employee are identical, it is desirable that they be dealt with similarly. Thus, beside on the merit of the case, as discussed above, the applicant is entitled to get relief on this account also.

19. Under the facts and circumstances, as above, we find that it is a case of prejudiced approach on the part of the respondents with an evident discrimination against the applicant and violation of the provisions contained in Article-14 of the Constitution of India and thus, in the interest of Justice, the OA is allowed and the impugned memorandum of charge-sheet dated 11.4.2005 (Ann.A/2) and the order dated 18.7.2007 (Ann.A/1), imposing penalty of stoppage of two increments without cumulative effect for a period of two years, are quashed and set aside. No order as to costs."

12. After having considered the facts of the case and the case law on the subject, I am of the opinion that the order of penalty dated 31.10.2007 (Ann.A/2), passed by the competent authority against the applicant, is discriminatory in nature. According to me, the main responsibility lies with respondent No.3 and 5 who had been let scot-free by the respondents and no disciplinary proceedings had been initiated against them so far. Therefore, after having considered the facts of the case as also the relevant

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case law cited in this order, I find that discrimination against the applicant is evident from the orders and the information received from the respondents.

13. In the result, the OA is allowed and the impugned charge-memo dated 31.7.2007 (Ann.A/5), order of the competent authority, imposing penalty, dated 31.10.2007 (Ann.A/2), and the order of the appellate authority, rejecting appeal, dated 10.4.2008 (Ann.A/1) are hereby quashed and set aside. No order as to costs.


(B.L. KHATRI)
MEMBER (A)

v/k

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