

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.01.2013

MA 34/2012 (OA No. 391/2009)

Mr. Ankit Sethi, Proxy counsel for
Mr. S.P. Sharma, Counsel for applicant.
Mr. Gaurav Sharma, Counsel for respondents.

MA No. 34/2012

The applicant has filed this MA for restoration of the OA, which was dismissed in default on 05.01.2012. We are convinced with the reasons stated in the MA. The MA is allowed. The OA is restored to its original number and position.

The MA stands disposed of accordingly.

OA No. 391/2009

Heard learned counsel for the parties. The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S.Rathore)
Member (J)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Tuesday, this the 22nd day of January, 2013

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

ORIGINAL APPLICATION No.123/2009

R.H.Vasnani
s/o late Shri Hamen Das Vasnani,
aged about 59 years,
r/o 3-THHA-27, Housing Board,
Shastri Nagar, Jaipur

.. Applicant

(By Advocate : Shri Ankit Sethi proxy counsel for Shri S.P.Sharma)

Versus

1. Central Council for Research in Ayurveda and Siddha through its Director,
61-65, Institutional Area,
Opposite D-Block,
Janakpuri, New Delhi.
2. Secretary, AYUSH Department,
Government of India,
Ministry of Health & Family Welfare,
Indian Red Cross Society Annexe Building,
IRCS Road, New Delhi.
3. Assistant Director,
Maharav Shekhaji Central Ayurveda Institute,
Indira Colony, Jhotwara Road,
Bani Park, Jaipur

.....Respondents

(By Advocate : Shri Gaurav Jain)

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 Indira Colony, Jhotwara Road,
 Bani Park, Jaipur

.....Respondents

(By Advocate : Shri Gaurav Jain)

ORDER (ORAL)

OA No. 123/2009 is directed against the order dated 23rd May, 2007 by which the applicant has been dismissed from service and against the order dated 12.2.2009 by which appeal

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preferred by the applicant has been rejected. Apart from order dated 23rd May, 2007 and 12.2.2009, the applicant has also challenged the inquiry report dated 14.3.2006.

2. Brief facts of the case are that at the relevant point of time, when the applicant was working as UDC/Cashier, an FIR No. 409/2000 was lodged against him by the SHO, Police Station Brähmpuri, Jaipur on the basis of a letter dated 22.9.2000 of Assistant Director (Incharge) under Section 409, 420, 467, 468 and 471 IPC and on 17.4.2001 the applicant was arrested pursuant to the aforesaid FIR. While the applicant was in judicial custody, a chargesheet was issued to the applicant under Rule 14 of the CCS (CCA) Rules, 1965 on 8.1.2003. The applicant moved application before the Trial Court in case no. 762/2001 stating therein that he is innocent and the alleged amount was not embezzled by him and other four persons are responsible who had been left out free by the police. The Trial Court vide its order dated 3.12.2001 directed the police to further investigate into the matter.

3. Aggrieved and dis-satisfied with the order dated 3.12.2001, the other accused have filed Criminal Misc. Petition No.1395/2001 before the Hon'ble High Court, Jaipur Bench. The Hon'ble High Court pleased to stay operation of the order dated 3.12.2001. It is stated at Bar that the stay order is still in operation

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and it is also not disputed that for nearly about 4 years, the applicant remained under judicial custody and ultimately was released on bail by the order of the Hon'ble Supreme Court on 13.5.2005.

4. The learned counsel appearing for the applicant stated that while the applicant was under judicial custody, Inquiry Officer was appointed by the respondent department and being in judicial custody the applicant could only submit a short application pointing out that he was in judicial custody and also did not accept the charges. It is further alleged that proper opportunity of being represented was not provided by the Inquiry Officer and the required documents were not provided to him. In the charge sheet, several instances have been treated as different categories of charges and in all 22 charges leveled relating to various cheques alleging that the applicant had wrongfully withdrew the amount in excess. It is also alleged that the applicant has confessed the same. The amount alleged to have been embezzled relates to the period from 16.12.1998 to 4.3.2000.

5. The official respondents started conducting inquiry on 11.7.2005 when the applicant was released on bail and the Inquiry Officer has submitted inquiry report on 14.3.2006 after providing opportunity to the applicant, though it is not admitted

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by the applicant and it is alleged that without giving proper opportunity to the applicant inquiry has been conducted. After receipt of inquiry report, the applicant submitted his detailed reply in which it is specifically mentioned that he is not wholly responsible for embezzlement and other co-accused are equally responsible as according to preliminary inquiry, the Research Officer, who was incharge and the Head Clerk were involved in the matter and were also responsible to verify the payment. However, the applicant alone was held guilty of the charges without any proof against him on the basis of surmises and conjectures.

6. The learned counsel appearing for the applicant further submits that the Central Vigilance Commission (CVC) has also given its opinion that the applicant and other several officers who were the key signatory of the cheques were responsible for the embezzlement vide its report dated 28.2.2002 and the same is also evident from the fact that the department also lodged FIR against four persons.

7. It is also submitted by the learned counsel appearing for the applicant that the Disciplinary Authority not considered the reply to the inquiry report and vide its order dated 23.5.2007, imposed penalty of dismissal from service upon the applicant whereas Dr. S.K. Dev was punished by reduction of only 5%



pension and Dr. KJ Dave was only given penalty of displeasure. Further Shri Prabhu Singh Rawat was only punished with stoppage of two grade increments permanently with cumulative effect and also stopping his promotion in future, while the applicant was dismissed from service.

8. Against the order of dismissal dated 23.5.2007, the applicant filed appeal dated 20.6.2007 in Hindi and thereafter on 9.7.2007 in English. He also requested in his appeal for personal hearing. Since appeal of the applicant was not decided, the applicant filed SB Civil Writ Petition No. 6738/2008 before Hon'ble High Court at Jaipur Bench and the Hon'ble High Court vide its order dated 21.7.2008 disposed of the Writ Petition directing the respondents to dispose of the appeal within two months from the date of receipt of the copy of the order. Ultimately, the appeal was decided vide order dated 12.2.2009.

9. Aggrieved and dis-satisfied by the order passed by the Disciplinary Authority and Appellate Authority, this OA has been preferred on the ground that since the criminal trial is still pending on the basis of same charges, the Disciplinary Authority cannot initiated the disciplinary proceedings. Further challenged on the ground that the respondents have not provided copies of the required documents and in absence of such documents, the applicant could not represent his case properly before the



Disciplinary Authority. Further submitted that the applicant being Cashier could not be held solely responsible and it is also the responsibility of the Head Clerk and Senior Officer to check the disbursement made through cheque or cash. Also stated that the amount alleged to have been embezzled relates to the period from 16.12.1998 to 4.3.2000 and all the charges for which the charge sheet has been issued to the applicant were under the signature of the officer who clearly made their own signature and it was also mentioned in the cash book. It is also submitted that the issue raised in the departmental enquiry is identical to the charges which are to be examined by the competent court and the applicant submits that in none of the cheques there is any signature of the applicant, as such, he could not have been held responsible for the amount which was released by the bank. Further submits that the CVC also gave its opinion that the applicant and the other several officers who were the key signatory of the cheques, were responsible for the embezzlement and the applicant was wholly innocent.

10. It is stated at Bar that during under custody for a period of four years, the applicant developed physical infirmity and he is hard of hearing and also lost his speech and looking to the agony of the applicant, his case may have been considered

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afresh after providing proper opportunity and providing required documents to him.

11. Per contra, the learned counsel appearing for the respondents referred Ann.R/3 written by the applicant to the Assistant Director (Incharge), Central Research Institute, Ayurveda, Jaipur, and submitted that the applicant has made confession and embezzled the amount to the tune of Rs. 3,15,830. Further, he was ready to deposit the said amount and requested that a lenient view be taken. The learned counsel further referred Ann.R/4 letter dated 10.9.2004 written to the Presiding Officer of the Trial Court in which the applicant has confessed the embezzlement. Even the applicant has confessed, but despite of his confession, he was provided full opportunity to represent his case which is evident by the detailed reply to the charge sheet submitted by the applicant and the detailed appeal submitted to the Appellate Authority and after having considered each and every aspect and having considered the confession as well as the allegation which are fully proved that the applicant was responsible in the aforesaid embezzlement, the penalty was imposed upon the applicant. It is further stated by the learned counsel appearing for the respondents that the CVC on 28.2.2002 given advise and agreed to initiate major penalty proceedings against 5 persons.

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Accordingly, common chargesheet was prepared against the officials found guilty in supervisory lapses. However, a separate chargesheet was prepared against the prime accused applicant Shri R.H.Vasnani. The common chargesheet was issued to the officials on 21.6.2002 whereas a separate chargesheet was issued to the applicant on 8.1.2003. It is also submitted that the respondents have followed the prescribed procedure and the guidelines issued by the CVC as also the direction issued by the Ministry of Health and Family Welfare and after considering the material available and the opinion of the Central Vigilance Commission, the Disciplinary Authority imposed penalty of dismissal from service on the applicant vide order dated 23.5.2007 on receipt of the approval of the Ministry of Health and Family Welfare in his capacity as President of the Governing Body. It is also submitted that the Cashier is the person who draws the cash from the bank and physically disburses the same with the approval of the Drawing and Disbursing Officer and for which the Cashier gets cash handling allowance per month. Thus looking to the gravity of the charges inquiry was ordered to be initiated under Rule 14 of the CCS (CCA) Rules, 1965 for major penalty and after conducting the inquiry, the Inquiry Officer submitted report, as stated hereinabove, and on the basis of the material available on record and considering all aspects of the



matter, imposed punishment of dismissal from service upon the applicant. The Appellate Authority also affirmed the order passed by the Disciplinary Authority, which is absolutely in accordance with the provisions of law and the guidelines issued by the official respondents from time to time.

12. We have heard the learned counsel for the respective parties and carefully perused the material available on record as well as the submissions made on behalf of the respective parties. Looking to the gravity of the charges, which are admitted by the applicant himself, it cannot be said that it is under duress or threat as the applicant from the jail itself has written letter addressed to the Presiding Officer that he is solely responsible for embezzlement of the amount and he is ready to deposit the same and requested that a lenient view be taken against him. Despite confession of the applicant, the respondents have given proper opportunity to the applicant to defend his case.

13. It is not disputed that the Hon'ble Rajasthan High Court has stayed the order passed by the Trial Court and trial is still pending. In such circumstances, the relief claimed by the applicant cannot be granted at this stage. However, after the trial is over and if the Trial Court acquits the applicant from criminal charges, then only, the applicant can claim relief as has been claimed in the present OA, but at this stage, we find no

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merit in this OA and the OA being bereft of merit fails and the same is hereby dismissed.

14. So far as OA No.391/2009 is concerned, since the OA No.123/2009 challenging punishment order of dismissal from service on account of embezzlement of amount has been dismissed, therefore, we find no merit in OA No.391/2009 challenging the notice for depositing the aforesaid amount and accordingly the same is also dismissed.

15. Resultantly, both the OAs stand dismissed with no order as to costs.

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

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