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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 27.09.2012

OA No. 501/2009

Mr. Vinod Goyal, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 501/2009

DATE OF ORDER: 27.09.2012

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Jagram Meena S/o Shri Ram Niwas Meena, aged 43 years, R/o II-302, AG Colony, Bajaj Nagar, Jaipur, presently posted as Sr. Auditor in the PAG Civil Audit, Rajasthan, Jaipur.

...Applicant

Mr. Vinod Goyal, counsel for applicant.

VERSUS

1. Union of India through the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi – 110002.
2. The Principal Accountant General (Civil Audit) Rajasthan, Jaanpath, Near Statue Circle, Jaipur.
3. The Senior Dy. Accountant General (Admn.) and Disciplinary Authority, AG Office Jaanpath, Near Statue Circle, Jaipur.

... Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

Brief facts of the case are that the applicant was found taking recourse to unfair means in the Computer System (Theory) paper of Section Officer Grade Examination Part-II (Civil Audit) 2007 held on 23.11.2007 in the Examination Hall. The Invigilation Officer caught him using unfair means in the said examination with the object of copying. On the report



submitted by the Invigilation Officer, the respondents have issued a Memo dated 10.04.2008 (Annexure A/4) by which the applicant has been debarred from appearing in the ensuing two Section Officer's Grade Examinations.

2. The respondents have also issued a Memorandum of Charge-sheet dated 21.05.2008 (Annexure A/1) to the applicant under Rule 14 of C.C.S. (C.C.A.) Rules, 1965 for the same charge of using unfair means in the Computer System (Theory) paper of Section Officer Grade Examination Part-II (Civil Audit) 2007 held on 23.11.2007 in the Examination Hall and, thus, the applicant being a Govt. Servant violated Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964.

3. Pursuant to this memorandum of charge-sheet dated 21.05.2008; the applicant has filed a detailed reply to the said memorandum of charge-sheet. After perusal of the reply submitted by the applicant, the Disciplinary Authority appointed the Inquiry Officer on 29.05.2008. The Inquiry Officer submitted his inquiry report (Annexure A/6) to the Disciplinary Authority, and the Inquiry Officer concluded that the charges in the article of charges stand proved. The Disciplinary Authority vide order dated 05.06.2009 (Annexure A/2) imposed the penalty of stoppage of one increment for 03 years without cumulative effect, upon the applicant. The applicant has filed an appeal dated 14.07.2009 (Annexure A/7) against the penalty order dated 05.06.2009 before the Appellate Authority. The Appellate

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Authority vide order dated 13.08.2009 (Annexure A/3) rejected the appeal of the applicant upholding the penalty awarded by the Disciplinary Authority.

4. Aggrieved and dissatisfied with the Memorandum of charge-sheet dated 21.05.2008 (Annexure A/1), impugned order dated 05.06.2009 (Annexure A/2) passed by the Disciplinary Authority and impugned order dated 13.08.2009 (Annexure A/3) passed by the Appellate Authority, the applicant has preferred the present Original Application praying for quashing and setting aside the aforesaid memorandum of charge-sheet and orders passed by the Disciplinary Authority as well as Appellate Authority, on the ground that the applicant had already been punished by way of debarring him from appearing in the ensuing two Section Officer's Grade Examinations, then initiation of the departmental proceedings and passing the punishment order is a case of double jeopardy, which is not sustainable in the eyes of law.

5. Learned counsel appearing for the applicant referred to para 9.10.12 of the MSO (Admn.) Vol.-I, which reads as under: -

"Candidate found taking recourse to any unfair means in the examination hall or intentionally / unintentionally extending to or receiving from other candidates any unfair assistance in the examination hall shall render themselves liable to expulsion at the discretion of the Presiding Officer. If any candidate is found taking recourse to any unfair means in the examination hall, the Presiding Officer shall also make an immediate report to Pr. AG/Pr.DA/AG who should decide whether the candidate should be or should not be precluded from taking the rest of the examination. Such action should be allowed later by a thorough

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investigation to see whether the candidate should be debarred permanently or for a few years only from appearing in the examination, apart from initiating disciplinary proceedings against the candidate as considered necessary. In respect SOG Exam and Revenue Audit Examination for Section Officer / Assistant Audit Officers a report in this regard together with the recommendation of Pr. AG/ Pr. DA should be sent to Headquarters office for final orders by Comptroller and Auditor General."

6. After referring said para 9.10.12 of the MSO (Admn.) Vol.-I, learned counsel appearing for the applicant submits that since the material was found with the applicant in the examination hall, but the same was not used by him, as such, it cannot be said that provision of para 9.10.12 of the MSO (Admn.) Vol.-I was breached by the applicant.

7. Learned counsel appearing for the respondents referred to Annexure R/8 application of the applicant dated 11.05.2009 wherein it is admitted by the applicant that the material was found with him but the same was not used by him in the examination hall.

8. Learned counsel appearing for the respondents further referred to para 9.10.12 of the MSO (Admn.) Vol.-I and submitted that if any candidate is found taking recourse to any unfair means in the examination hall, the Presiding Officer shall also make an immediate report to Pr. AG/Pr.DA/AG who should decide whether the candidate should be or should not be precluded from taking the rest of the examination. Such action should be allowed later by a thorough investigation to see

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whether the candidate should be debarred permanently or for a few years only from appearing in the examination, *apart from initiating disciplinary proceedings against the candidate as considered necessary*. He further submits that the respondents thought it necessary to initiate disciplinary proceedings against the applicant as the applicant has violated the provisions of Rule 20 of C.C.S. (Conduct) Rules, 1964 and also violated the provisions of Rules 3 (1) (iii) of the CCS (Conduct) Rules, 1964. He also submits that although the charges leveled against the applicant was proved in the inquiry and also admitted by the applicant to the effect that the Invigilation Officer caught him with the unfair means but he was not used the same in the examination hall, thus, the Disciplinary Authority has taken a lenient view against the applicant and only awarded a penalty of stoppage of one increment for a period of three years without cumulative effect, which is admittedly a minor penalty. He further submits that similarly the Appellate Authority thoroughly considered the contention raised by the applicant in the appeal and observed that he has ensured that the provisions of CCS (CCA) Rules, 1965 were fully complied with in this case and the applicant was also given full opportunity of defence. The applicant has also not made any complaints in this regard. Further, the Appellate Authority observed that he feels that the applicant has set a bad example. The applicant has definitely violated Rules 3 (1) (iii) of the CCS (Conduct) Rules, 1964 and acted in a manner unbecoming of a Government Servant. The

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Appellate Authority held that in his opinion the penalty imposed by the Disciplinary Authority is adequate.

9. We have considered the submissions made on behalf of the respective parties and carefully gone through the pleadings, reply as well as documents available on record.

10. As discussed hereinabove, the applicant has admitted that he was found with unfair means in the examination hall, and the charges leveled against the applicant has been proved in the inquiry report, which reveals from the inquiry report submitted by the Inquiry Officer, and the Disciplinary Authority also taken a lenient view and only imposed a penalty of stoppage of one increment for 03 years without cumulative effect and the same has been upheld by the appellate authority, thus, the applicant has no ground for interference by this Tribunal in the memorandum of charge sheet as well as orders passed by the Disciplinary Authority as well as Appellate Authority.

11. Having considered the facts and circumstances of the case and considering para 9.10.12 of the MSO (Admn.) Vol.-I, we are not convinced with the submissions made by the applicant that this is a case of double jeopardy. As per para 9.10.12 of the MSO (Admn.) Vol.-I, the candidate may be debarred permanently or for a few years only from appearing in the examination, *apart from initiating disciplinary proceedings against the candidate as considered necessary*. In the present



case, the respondents thought it proper to initiate disciplinary proceedings also , and after holding the inquiry as per rules and after giving ample opportunity of being heard to the applicant, the Disciplinary Authority has taken a lenient view and only imposed a penalty of stoppage of one increment for 03 years without cumulative effect and the same has been upheld by the Appellate Authority.

12. In view of the discussions made hereinabove, we are of the view that the respondents have rightly initiated the disciplinary proceedings against the applicant besides debarring him from appearing in the ensuing two Section Officer's Grade Examination in view of para 9.10.12 of the MSO (Admn.) Vol.-I.

13. Therefore, we are of the considered opinion that the memorandum of charge-sheet dated 21.05.2008 (Annexure A/1), impugned order dated 05.06.2009 (Annexure A/2) passed by the Disciplinary Authority and impugned order dated 13.08.2009 (Annexure A/3) passed by the Appellate Authority require no interference by this Tribunal, and the Original Application deserves to be dismissed being bereft of merit.

14. Consequently, the present Original Application stands dismissed being bereft of merit with no order as to costs.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)