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OA

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.09.2012

OA No. 284/2010

Mr. R.D. Sharma, Counsel for applicant.
Mr. Amit Mathur, Proxy counsel for
Mr. R.B. Mathur, Counsel for respondents.

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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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 10th day of September, 2012

CORAM :

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

1. **ORIGINAL APPLICATION No. 284/2010**

Prabhu Dayal Bunkar son of Shri Shankar Lal, aged about 52 years, at present working as Enforcement Officer in the office of Employees Provident Fund, Organisation, Sub-Regional Office, Vighyan Nagar, Kota (Rajasthan). Resident of Kota, in the quarter of EPFO, Jaipur.

... Applicant
(By Advocate : Mr. R.D. Sharma)

Versus

1. Union of India through through the Labour Secretary, Ministry of Labour, Government of India, Shram Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Head Office, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Palace, New Delhi.
3. The Regional Provident Fund Commissiner, Rajasthan Regional Office, Nidhi Bhawan, Jyoti Nagar, Jaipur (Rajasthan).

... Respondents
(By Advocate : Mr. Amit Mathur proxy to Mr. R.B. Mathur
)

2. **ORIGINAL APPLICATION No. 285/2010**

1. Rajender Kumar Thanwal son of Shri Laldas, aged about 48 years, resident of B-4, Residency Higher Secondary School, C-Scheme, Jaipur, at present working at Social Security Assistant in the Office of Employees Provident Fund Organisation, Regional Office, Jyoti Nagar, Jaipur (Rajasthan) (Deceased) Through

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1/2 Smt. Lalita wife of Shri Rajendra Kumar Thanwal aged 46 years, resident of B-4, Residency Higher Secondary School, C-Scheme, Jaipur.

1/3 Shri Lokesh Thanwal son of Late Shri Rajender Kumar Thanwal aged 28 years, resident of B-4, Residency Higher Secondary School, C-Scheme, Jaipur.

... Applicant

(By Advocate : Mr. R.D. Sharma)

Versus

1. Union of India through through the Labour Secretary, Ministry of Labour, Government of India, Shram Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Head Office, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Palace, New Delhi.
3. The Regional Provident Fund Commissiner, Rajasthan Regional Office, Nidhi Bhawan, Jyoti Nagar, Jaipur (Rajasthan).

... Respondents

(By Advocate : Mr. Amit Mathur proxy to Mr. R.B. Mathur

ORDER (ORAL)

Since the facts of OA No. 284/2010 and 285/2010 are similar, therefore, they are being disposed of by a common order. The facts of OA No. 284/2010 are being taken as a lead case.

2. The applicant has filed this OA praying for the following reliefs:-

"(i) That this OA may kindly be allowed and order dated 03.12.1009 of the respondent no. 2 enhancing the penalty of "Censure" imposed on the applicant by the respondent NO. 3 vide order dated 15.02.2008 to that "reduction of pay by one stage for a period of one year with immediate effect with the further direction that the applicant will not earn increments of pay during the period of reduction and that on

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expiry of such period, the reduction will not have the effect of postponing the future increments of pay" may kindly be quashed and set aside and the applicant may kindly be exonerated from the charges in view of the above submissions.

- (ii) That the respondents may kindly be restrained to recovery of 30% of pecuniary loss from pay of the applicant because action of the recovery of the losses from the applicant's pay is unconstitutional and illegal under Article 20(2) of the Constitution of India and such penalty is prohibited by law on the "principle of double jeopardy".
- (iii) That any other order/direction or relief may be granted in favour of the applicant which may be deemed just and proper in the facts and circumstances of the case.
- (iv) That cost of the OA may kindly be awarded in favour of the applicant."

3. Brief facts of this OA, as stated by the learned counsel for the applicant, are that the applicant while working as Section Supervisor with the respondent's department was served with a memorandum dated 29.08.2005 (Annexure A/9) for conducting the inquiry against him under Rule 10 of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971. The applicant denied the charges. Thereafter, the Inquiry Officer was appointed, who concluded the inquiry and submitted his report on 10.12.2007. A copy of the inquiry report was supplied to the applicant. The applicant submitted his written representation dated 18.01.2008 to the respondent no. 3 wherein he requested that the conclusion of the Inquiry Officer is not based on the material of records. On 15.02.2008, the Disciplinary Authority, respondent no. 3, concluded that the written brief of the applicant and the finding of the Inquiry officer do not establish any flaw in following the Manual of

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Accounting Procedure. However, by an order dated 15.02.2008, the respondent no. 3 (Disciplinary Authority) imposed a penalty of "Censure" on the applicant. On 28.07.2009, after about one and half year, the applicant received a memorandum dated 14.07.2009 thereby the respondent no. 2 called upon the applicant to submit written representation under Rule 25(1)(i) of the EPF Staff (CCA) Rules, 1971 and he proposed to enhance the penalty of "Censure" imposed by the Disciplinary Authority. The applicant submitted his written representation on 13.08.2009. By an order dated 03.12.2009, the respondent no. 2 enhanced the minor penalty of "Censure" to major penalty of reduction of pay by one stage for a period of one year with immediate effect with the further direction that the applicant will not earn increments of pay during the period of reduction and that on expiry of such period, the reduction will not have the effect of postponing the future increments of pay.

4. The learned counsel for the applicant submitted that this enhancement of the penalty was on a new charge for which the applicant was not prosecuted at all. On 11.03.2010, the respondent no. 3 issued again a notice calling upon the applicant to explain the reasons as to why the recovery of 30% of Rs.4,55,427/- causing loss to EPFO by his negligence may not be recovered from the applicant's pay. The action of the respondents is arbitrary, illegal, unreasonable and against the

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provisions of the Manual of Accounting Procedure. It infringes his fundamental right granted under Article 20(2) of the constitution as no person shall be prosecuted and punished for the same offence more than once.

5. Learned counsel for the applicant further argued that the applicant has followed the prescribed procedure of Accounting Manual, prevailing precedent in the Regional office for processing the claim. The respondents have not mentioned what are other requirement of law or any point. The applicant has performed his duties sincerely by following all the check points as per the requirement of law, prevailing precedent and instructions on the subject. Therefore, the findings of the Inquiry officer are not based on evidence and are wrong & perverse.

6. Learned counsel for the applicant further argued that the respondents have issued a Memorandum dated 14.07.2009 under Rule 25(1)(i) of the E.P.F. Staff (CCA) Rules, 1971 to enhance the minor penalty of "Censure" to major penalty on the altered charge. Article of charge, as stated in the Memorandum dated 29.08.2005 is different than the charge as stated in the show cause notice dated 14.07.2009. Therefore, he argued that enhancement of punishment on a altered charge is not permissible under the rules. It is settled law that Reviewing Authority cannot alter the charge and cannot

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enhanced the punishment imposed by the Disciplinary Authority. Therefore, the impugned order is liable to be quashed and set aside and to support his averment, he referred to the order of the High Court of Madras in the case of

A. Lawrance vs. the Deputy General Manager/Zonal Manager Reviewing Authority, Central Bank of India & Others in W.P. No. 13098 of 1998 decided on 05.04.2004, MANU/TN/0329/2004, wherein it was held that there is no scope for the Reviewing Authority to alter the charge much or less to enhance the punishment on the basis of altered charges.

7. He further argued that under Rule 25(1) of E.P.F. Staff (CCA) Rules, 1971, the Reviewing Authority can review the order of the Disciplinary Authority within a period of six months but after the expiry of six months, he cannot review the same. Notice has been issued under Rule 25(1) of E.P.F. Staff (CCA) Rules, 1971 and not under 25(A) of the E.P.F. Staff (CCA) Rules, 1971. Therefore, the Reviewing Authority could not have reviewed the decision after a lapse of one and a half year. Therefore, the order dated 03.12.2009 (Annexure A/1) is liable to be quashed and set aside.

8. Learned counsel for the applicant further argued that the applicant by an order dated 18.02.2008 (Annexure A/8) has been appointed as an AAO by the respondent no. 2 and,

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therefore, the respondent no. 2 being an Appointing Authority, cannot review the order dated 03.12.2009. Under the rules, Labour Secretary and Vice Chairman of the CBT/ Chairperson of Executive Committee of CBT is the competent authority to review the order and not the Central Provident Fund Commissioner, who is the appointing authority of the applicant in this case. He drew our attention to the explanation of Rule 8 of E.P.F. Staff (CCA) Rules, 1971, which reads as under:-

“Explanation: Where an employee holding lower post is promoted, whether on probation or temporarily, to a higher post, she shall be deemed for the purpose of this rules as holding of higher post.”

Therefore, he submitted that the impugned order dated 03.12.2009 is passed by an incompetent authority and on this ground also, the impugned order is liable to be quashed and set aside.

9. Learned counsel for the applicant further argued that the applicant has followed the prescribed procedure of Accounting Manual. Therefore, he was not negligent in performing his duties and hence there was no misconduct on the part of the applicant and to support his averment, he referred to the order of the High Court of Delhi in the case **Union of India & Others vs. Shri Amrik Chand** in W.P.(C) No. 5299/1997 decided on 12.01.2007, MANU/DE/7069/2007. Hon'ble High Court in Para No. 24 of the order has held that:-

“24.It is probable that the respondent might have carelessly overpaid the missing amount at

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one of the four centers, or may have otherwise dropped it while on his way back to Mathura. That would be a case of carelessness and negligence cannot tantamount to misconduct. That is not to say that no act of carelessness or negligence can ever amount to misconduct. In *Union of India v. J. Ahmed*, MANU/SC/0481/1979: (1979)ILLJ 14SC, the Hon'ble Supreme Court held "a single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission result in serious or atrocious consequences the same may amount to misconduct..... Lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct..... failing to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct."

10. The learned counsel for the applicant submitted that the applicant ha performed his duties under good faith as prescribed under the rules and as such, no penalty can be imposed on the applicant. Therefore, the penalty dated 03.12.2009 (Annexure A/1) be quashed and set aside.

11. On the other hand, learned counsel for the respondents submitted that the applicant was served with a charge sheet on 29.08.2005 by the respondent no. 3. A detailed inquiry was conducted and thereafter, the Inquiry officer submitted his report. The Disciplinary Authority after considering the report, submitted by the Inquiry Officer and the representation submitted by the applicant, imposed the penalty of "Censure". Thereafter, the competent authority served a Memo under E.P.F. Staff (CCA) Rules, 1971 and after giving him an opportunity of hearing enhanced the punishment. He further submitted that no appeal was preferred by the applicant against the initial order of punishment i.e. "Censure" meaning

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thereby that the applicant has accepted the finding given by the Inquiry officer and also imposition of penalty of "Censure". Therefore, the applicant cannot now challenge the finding of the Inquiry Officer at this stage. If the applicant was aggrieved from the finding given by the Inquiry Officer then he should have filed an appeal against the order passed by the Disciplinary Authority based on the inquiry report. The applicant has not scrutinized the claim as per the requirement and, therefore, there is no flaw in the record submitted by the Inquiry Officer. There is no allegation of bias against the Inquiry Officer or any procedural lapse on the part of the Inquiry officer. The Inquiry Officer, after examining the witnesses and evidence on record came to the conclusion that the sole charge framed against the applicant is substantiated in full.

12. Learned counsel for the respondents further submitted that competent authority issued a Memorandum dated 14.07.2009. In the Memorandum, it was stated that the applicant was not charged with violation of Accounting Procedure. The Memorandum is about duty cast on the applicant to ensure verification of genuineness of claims as an ordinary prudent employee would do in the light of the fact that most of the 21 sets of Form 19 & 10 C mentioned the saving account were being maintained at "RHB Post Office, Bhiwadi, Alwar Rajasthan" and address "C/o 33/15, RHB Colony Bhiwadi, District Alwar" or "C/o Hari Om Auto Works, Main

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Road, Bhiwadi, District Alwar". It was the duty of the applicant to properly process the claim so that payment goes to the genuine member. There is no discrepancy in the memorandum issued by the competent authority. It is not based on the altered charge. The applicant committed misconduct, which is evident from the facts. The written representation submitted by the applicant was duly considered by the competent authority prior to passing of the order of punishment.

13. Learned counsel for the respondents further submitted that Chief Provident Fund Commissioner was the Revising Authority of the applicant. The applicant was posted as Section Supervisor when the Memorandum was served upon him and, therefore, Central Provident Fund Commissioner was the Revising Authority and in that capacity, he issued the show cause notice for enhancement of penalty. Thus, he was competent to issue show cause notice to the applicant. He further argued that as per the Gazette notification dated 30.03.1996, the Central Provident Fund Commissioner is competent authority to enhance the punishment of the applicant even on his promoted post of AAO. He further argued that there is no time limit for serving show cause under Rule 25 -A for the Central Provident Fund Commissioner being the Revising Authority.

14. Learned counsel for the respondents argued that in cases where payment is made to the workers, it was incumbent upon

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the applicant to verify the signature of the authorized signatory and only thereafter clear the claims specially in view of the fact that there was same address on the 23 claims. The applicant did not verify the signature of the authorized signatory and because of this conduct of the applicant, more than Rs.400,000/- were fraudulently withdrawn. This amount belonged to the poor workmen. The poor workmen have suffered loss due to the conduct of the applicant.

15. He further submitted that Hon'ble Supreme Court has categorically held that there cannot be any interference in the punishment order if the same has been passed in accordance with law and further in accordance with principles of natural justice. It is not the case of the applicant that the principle of natural justice has not been followed. The applicant has also not stated that he was not given opportunity of hearing or the authorities were biased. Thus looking from any angle, this OA has no merit and it should be dismissed with costs.

16. Heard learned counsel for the parties, perused the documents on record and case law referred to by the parties. Learned counsel for the applicant as well as learned counsel for the respondents have filed their written submissions as well. The applicant was served a Memorandum dated 29.08.2005 by the respondents for conducting inquiry against him under Rule 10 of the of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971 and on denial of the charges by the applicant, an

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Inquiry officer was appointed by the respondents. The Inquiry officer conducted inquiry as per the procedure laid down. He examined the witnesses. The applicant was given proper opportunity to defend himself. The Inquiry Officer submitted his report on 10.12.2007 (Annexure A/22) in which he held that sole charge framed against the applicant is substantiated in full. A copy of the inquiry report was given to the applicant who submitted his representation. Thereafter, the Disciplinary Authority after going through the written brief of the applicant and also the findings of the Inquiry officer, imposed the penalty of "Censure". The Disciplinary Authority did not find any reason to disagree with the finding of the Inquiry Officer. The order of the Disciplinary Authority or the findings of the Inquiry Officer were not challenged by the applicant. Further, the Revising Authority issued a Memorandum dated 14.07.2009 where he proposed to enhanced the punishment of "Censure". He proposed the penalty that the pay of Shri P.D. Bunkar, SS be reduced to one stage for a period of one year with immediate effect with the further direction that Sh. P.D. Bunkar, SS will not earn increment of pay during the period of reduction and that on expiry of such period, the reduction will not have the effect of postponing his future increments of pay. The applicant submitted his representation dated 13.08.2009 against this Memorandum dated 14.07.2009. The Revising Authority i.e. Central Provident Fund Commissioner vide its order dated 03.12.2009 enhanced the penalty of "Censure" because he did not find the penalty of "Censure" as commensurate with the

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gravity of the charges proved against the applicant. The Central Provident Fund Commissioner gave an opportunity to the applicant to make a representation against the proposed enhance penalty. He has also gone through the inquiry report and order passed by the Disciplinary Authority and after following the due procedure, order dated 03.12.2009 of enhancing the penalty was passed by the Revising Authority. Thus in the entire departmental inquiry, due procedure was followed and the applicant was given proper opportunity to defend himself at all stages i.e. at the level of the Inquiry officer/Disciplinary Authority as well as at the level of Revising Authority. It is an admitted fact that the applicant has not challenged the penalty of "Censure" imposed upon him by the Disciplinary Authority, which was based on the finding of the inquiry report. Therefore, in our opinion the applicant cannot at this stage challenge the findings of the Inquiry officer.

17. Learned counsel for the respondents argued that under Rule 25-A of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971, there is no time limit for serving a show cause notice for enhancing of penalty to the applicant. We have gone through the Rule 25-A of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971 and are of the opinion that under this Rule, no time limit has been prescribed either for issuing the show cause notice for enhancing of penalty or for review a decision taken by the Disciplinary Authority.

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18. With regard to the averment of the learned counsel for the applicant that Central Provident Fund Commissioner is not competent authority to enhance the penalty order because the applicant was promoted in the year 2008, learned counsel for the respondents argued that after amendment in Rule 25-A of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971 in the year 1996 itself, Central Provident Fund Commissioner is competent to pass such order. Therefore, the averment made by the learned counsel for the applicant on this account that Central Provident Fund Commissioner is not competent to enhance punishment does not hold good. We have gone through the amendment made vide Gazette notification dated 30.03.1996 and we are of the view that in view of this amendment, Central Provident Fund Commissioner is competent to issue show cause notice and to enhance the penalty imposed by the Disciplinary Authority to the applicant inspite of the fact that he was promoted in the year 2008.

19. Learned counsel for the applicant also argued that enhancement of punishment was made on altered charge. We have carefully gone through the articles of charge as issued to the applicant vide Memorandum dated 29.08.2005 (Annexure A/9) and Memorandum dated 14.07.2009 (Annexure A/25) and we are of the view that there is no change in the articles of charges. Hence, it cannot be said that the penalty order has been enhanced on the basis of altered charge. Therefore, the ratio laid down by the High Court of Madras in the case of **A.**

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Lawrance vs. the Deputy General Manger/Zonal Manager Reviewing Authority, Central Bank of India & Others in W.P. No. 13098 of 1998 decided on 05.04.2004, MANU/TN/0329/2004, is not applicable under the facts & circumstances of the present case.

20. With regard to the averment made by the learned counsel for the applicant that there is no misconduct in the present case, in our opinion, the Inquiry Officer has categorically stated in his finding that the sole charge framed against the applicant is substantiated in full. The respondents have also stated that due to negligence and misconduct on the part of the applicant, there was a loss of Rs.4,55,427/- This amount belonged to the poor workmen. Thus negligence on the part of the applicant amounts to misconduct, which resulted in fraudulent withdrawal. Therefore, in our opinion, the ratio decided by the High Court of Delhi in the case **Union of India & Others vs. Shri Amrik Chand** in W.P.(C) No. 5299/1997 decided on 12.01.2007, MANU/DE/7069/2007 and the ratio decided by the High Court of Calcutta in APO No. 196/2009 and W.P. No. 1861 of 2005 decided on 15.12.2010 in the case of Narendra Kumar Tripathi vs. Union of India & Others, MANU/WB/0768/2010 are not applicable under the facts & circumstances of the present case. Thus, we are of the view that looking from angle, the applicant has failed to make out any case for our interference in this OA. The applicant is not entitled to any relief in this OA.

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21. Consequenlty, the OA being devoid of merit is dismissed with no order as to costs.

22. In OA No. 285/2010, the applicant, Shri Rajendra Kumar Thanwal, expired during the pendency of the OA. Vide MA No. 120/2011, the legal heirs representing the deceased applicant have been taken on record.

23. Since the facts & circumstances of OA No. 285/2010 are identical, therefore, a copy of this order be placed on the file of OA No. 285/2010.

Anil Kumar
(Anil Kumar)

Member (A)

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

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