

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 353/2013

ORDER RESERVED ON 11.08.2016

DATE OF ORDER: 23.08.2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Bhanwar Lal Verma S/o late Shri Ram Pal Verma, aged 57 years, working as Accounts Officer in the Employees Provident Fund Organization, Rajasthan Jaipur, presently resident of Plot No. 55/28, Rajat Path, Mansarovar, Jaipur.

....Applicant

Mr. R.D. Sharma, counsel for applicant.

VERSUS

1. The Union of India through Labour Secretary / the Vice Chairman, Executive Committee, Central Board of Trustees, E.P.F. Organisation, Ministry of Labour & Employment, Government of India, Shram Shakti Bhawan, New Delhi.
2. The Chairman, Central Board of Trustees, Ministry of Labour & Employment, Government of India, Shram Shakti Bhawan, New Delhi.
3. The Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Head Office, Bhavishyanidhi Bhawan, Bikai Ji Cama Place, New Delhi – 110066.
4. The Regional Provident Fund Commissioner, Nidhi Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur – 302005.

....Respondents

Mr. Amit Mathur, proxy counsel for
Mr. R.B. Mathur, counsel for respondents.

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, aggrieved with the order of imposition of penalty of 'Censure' by the Disciplinary Authority in the disciplinary proceedings and other subsequent orders passed by the appellate & revisional and higher authorities upholding the aforesaid penalty, thereby seeking the following reliefs: -



- "A) To admit this Original Application in the interest of justice.
- B) To set aside and quash the impugned order dated 02/05/2012 conveyed by the incompetent authority.
- C) To set aside and quash the order dated 04/10/2007, 24/08/2009 and 01/12/2010 being perverse, unreasoned and unspeaking in the eye of law and based on surmise.
- D) To set aside the order dated 04/10/2007 imposing arbitrarily the penalty of 'Censure' without evidence and exonerate the applicant from the alleged charge III.
- E) To pass order(s), direction(s) as may be necessary in the interest of justice.
- F) That the cost of the Original Application may kindly be awarded in favour of the applicant."

2. When the matter came up for consideration and hearing, Shri R.D. Sharma, learned counsel for the applicant, submitted that the order dated 04.10.2007 passed by the Disciplinary Authority imposing the penalty of 'Censure' on the applicant is arbitrary, and further the order of the Appellate Authority dated 24.08.2009 and the order of Revising Authority dated 01.12.2010 are unreasoned and unspeaking and further rejection of another appeal by the Central Government preferred by the applicant against the order of the revising authority vide order dated 02.05.2012, is also without any basis (all the aforesaid orders filed as Annexure A/1, collectively).

3. In this context, counsel for applicant submitted that the charge-sheet dated 12.08.2004 (Annexure A/3) was served upon the applicant in which there were IV Article of Charges. In the inquiry report dated 23.05.2007 (Annexure A/4), charge nos. I, II and IV were not found proved and only charge no. III was



found proved against the applicant, though without properly appreciating the evidence & documents on record and merely on the basis of which a penalty of 'Censure' was imposed upon the applicant vide order dated 04.10.2007 by the Disciplinary Authority. Counsel for applicant referred to Article of Charge-III (Annexure A/3), which reads as under: -

"ARTICLE-III

That the said B.L. Verma, EO (Under Suspension) while working as Enforcement Officer at Regional Office, Jaipur failed to comply with an order of his superior officers as he refused to acknowledge the receipt of the office order No. RC/NSSN dated 03.08.2004 regarding organizing a NSSN Camp at Neem-Ka-Thana and thereafter failed to proceed to the approved station. As a result the machine could not be installed at Neem-Ka-Thana for carrying out of NSSN work. He failed to attend official work on 03.08.2004 without any prior permission."

4. Counsel for applicant contended that in the first place this Article of Charge No. III itself is self-contradictory because on the one hand it is stated that the charged official/applicant refused to acknowledge the receipt of the office order No. RC/NSSN dated 03.08.2004 and at the same time, it is also said that he failed to attend official work on 03.08.2004 without any prior permission. Thus it is clearly a contradiction that when it is stated that he did not attend to official work on 03.08.2004, then how is it possible that he refused to acknowledge certain office orders on that date. Counsel for applicant further submitted that, as brought out, at page 12 in para 5.9 of the OA, the charged official i.e. the applicant was already suspended on 03.08.2004 (F.N.) and, therefore, the question of his refusing to accept any letter or order on the same date does not arise. Counsel for applicant then contended that the conclusion drawn by the Inquiry Officer in finding the Article-III proved is without

proper assessment of the evidence and documents. In this regard he referred to Daily order-sheet No. 10 (Annexure A/7) of the inquiry proceeding (specially page 68 of the O.A.) wherein in the cross examination of Shri M.M. Malhotra (then Assistant Provident Fund Commissioner – APFC-PW/5) made by the applicant, on a question "whether any NSSN team was in operation on 3rd & 4th August, 2004 at Tonk" Mr. Malhotra has replied that there no team was in operation and he has clearly not mentioned anything about the camp at Neem-Ka-Thana. Thus, it is clear that there was no camp at Neem-Ka-Thana on 3rd & 4th August, 2004. Counsel for applicant further argued that it is very important to note with reference to the Article of charge no. III that in the list of documents at serial no. 5 attached to the charge memorandum (page 41 of the OA), there is a reference to Office Order No. RC/NSSN dated 03.08.2004 regarding refusal to acknowledgement the receipt. In fact this document was never produced before the charged official i.e. the applicant during the inquiry and as may be seen from Ann.A/16 that the original office order No. RC/NSSN dated 03.08.2004, which the applicant obtained under RTI vide letter dated 03.09.2007, has no such note of the authorities that the applicant refused to acknowledge the said letter. Counsel for applicant also referred to the Vigilance Manual (Chapter XII, Para 8.4) and submitted that the same has not been followed because no such letter mentioning about his refusal to acknowledge the receipt of office order dated 03.08.2004 was annexed with the charge-sheet, as a relied upon the document in the inquiry, and without the same the punishment is void in law. Further this letter does not even bear a dispatch number, which is essential

in all communications & without the same it has no official sanctity and referred to points raised in this regard at para 1 and 2 of his appeal dated 15.10.2009 (Annexure A/10) at page 81 of the O.A. Thus, there is no record to his refusal to acknowledge the office order dated 03.08.2004 regarding NSSN camp at Neem Ka Thana and the findings arrived at by the Inquiry Officer and relied upon by the Disciplinary Authority are baseless and these issues have also not been considered in the appeal and revision, etc. In support of his contention Counsel for applicant relied upon the judgment in the case of **K. Sitaram vs. Vice Chancellor, S.V. University, Tirupati and another, 2000 (1) SLR 550 (AP)** wherein it has been held that even in case of circumstantial evidence, it is necessary that the circumstances on which the conclusion is to be drawn should be fully established. Counsel for applicant concluded that on all these grounds that the applicant was already suspended prior to his allegedly not acknowledging the receipt of office order No. RC/NSSN dated 03.08.2004, as referred to in the Article of Charge No. III, that the applicant never refused such a letter and that no such letter indicating his refusal was listed as a document with the list of documents, and even when he obtained the original letter dated 03.08.2004 it was found to have no dispatch number and as such all the orders regarding imposition of penalty of Censure in disciplinary proceedings and appellate/revisionary order upholding the same filed as Annexure A/1, collectively, are required to be quashed and set aside. Counsel for applicant also submitted that, as brought out in the rejoinder, the charge-sheet was issued to the applicant only because Shri S.L. Shrivastava, then RPFC(I) , who issued the

same was prejudiced against the applicant. Counsel for applicant also mentioned that the applicant has since retired and a penalty of 'Censure' without any basis is an unwarranted and unjustified blot on his otherwise unblemished career, therefore, on all these grounds, he prayed for the Original Application to be allowed.

5. Per contra learned Proxy counsel for the respondents, Shri Amit Mathur, contended that a bare perusal and reading of Article of Charge-III makes it clear that the applicant refused to acknowledge the receipt of the office order No. RC/NSSN dated 03.08.2004 regarding organizing a NSSN Camp at Neem-Ka-Thana and thereafter failed to proceed to the approved station and only because of that the machine could not be installed at Neem-Ka-Thana for carrying out of NSSN work and he failed to attend the official work on 03.08.2004 without any prior permission, and thus there is no contradiction whatsoever in the Charge No. III and the same is clear and unambiguous. By no stretch of imagination can it be said to be self-contradictory because the charge, read as a whole, and not in some isolated parts as the applicant has tried to do, makes it abundantly clear that the applicant after refusing to acknowledge the order No. RC/NSSN dated 03.08.2004, did not proceed to Neem-Ka-Thana and therefore failed to attend the official work there, for which he took or had no prior permission. With regard to the contention of the counsel for applicant that the applicant was already under suspension on 03.08.2004 prior to this office order, counsel for respondents contended that this is not correct because the applicant was actually suspended after his refusal to acknowledge the receipt of office order dated 03.08.2004 and

this is a point which the applicant has himself raised in his appeal dated 15.10.2009 (Annexure A/10) at para 6, which makes it very clear that the suspension followed and was not prior to the issue of office order No. RC/NSSN dated 03.08.2004, which the applicant refused to acknowledge. Counsel for respondents also clarified that the original office order dated 03.08.2004, which has also been filed by the applicant at page 108 of the paper book of OA, as part of Annexure A/16, issued by Shri Sanjay Kumar, the then Regional P.F. Commissioner (II) (NSSN) to the applicant, that as this office order was addressed to the applicant and, therefore, when he refused to acknowledge the same after it being served upon him by Shri Malhotra, then APFC, the officer made a noting on the office copy and the office copy was a relied upon as the document at serial no. 5 of the list of documents by which the Article of Charge was proposed to be sustained, which may be seen from the list of documents attached Charge-sheet dated 12.08.2004 (Annexure A/3). Thus, the contention of the counsel for applicant that such a document noting down his refusal was not supplied to him during the disciplinary proceeding or that there is no such noting on record is not correct and that applicant did not have opportunity of rebutting or defending himself against the same, carries no force.

6. Counsel for respondents also submitted that Annexure A/7 daily order sheet no. 10 referred to by the counsel for applicant with regard to cross examination of Shri M.M. Malhotra (PW/5) only refers to NSSN team not being in operation on 3rd and 4th August, 2004 at Tonk but in this case the matter relates to NSSN

Camp at Neem-Ka-Thana, which is not in District Tonk and in any case, the camp at Neem-Ka-Thana could not be organized because the applicant refused to acknowledge the order and failed to proceed to the approved destination. This evidence of PW-5 does not in any way disprove the allegation against the applicant. Referring to the findings in inquiry report of the Inquiry Officer at Annexure A/4 dated 23.05.2007 with regard to the contention raised by the counsel for applicant that the office order dated 03.08.2004 had no dispatch or diary number, counsel for respondents submitted that whenever there is 'top priority work' in the organization, on many occasions orders were also hand delivered without giving any dispatch /outward number and this has been clearly brought out in the testimony of PW-3 Shri Sanjay Kumar then RPFC(page 62) in the Daily order-sheet no. 7 itself which has been filed by the applicant himself at Annexure A/6. Counsel for respondents further submitted that the applicant in the rejoinder has mentioned that disciplinary proceedings especially the charge-sheet was issued against him because of the prejudice of Shri S. L. Shrivastava, then Regional Commissioner, EPFO, RO, Jaipur who issued the charge sheet but this is a bald allegation without substance and moreover the applicant has fully participated in the inquiry and disciplinary proceedings i.e. filed a reply to the charge-sheet, made an appeal, revision and even another appeal against the order of revision and never raised this point before, therefore, at this late stage this has no relevance or validity. With regard to the submission of counsel for applicant that the authorities have not been fair and just and the orders are arbitrary, counsel for respondents submitted that as can be seen the Inquiry Officer

has done a fair job and when he found Articles of Charge-I, II & IV not proved, he made the relevant observations and when he found Article of Charge-III proved, he stated it to be proved. Further the Disciplinary Authority has only given a penalty of 'Censure' which is lowest in the ranking of penalties and his appeal and revisions have been decided in a fair manner and, therefore, no case is made out by the applicant for setting aside any of the orders filed collectively as Annexure A/1. Counsel for respondents submitted that the applicant has failed to make out any case for allowing the Original Application and he therefore, prayed for dismissal of the Original Application.

7. Considered the aforesaid contentions and perused the record.

As far as the contention of the counsel for applicant regarding the applicant already being suspended on 03.08.2004, before the order no. RC/NSSN also dated 03.08.2004 was issued, and that therefore the question of any order being served upon or refusal by a suspended officer does not arise, is concerned, it is clear from the reply filed by the respondents and also from a perusal of the Appeal dated 15.10.2009 (Annexure A/10) that in para 6 of the Appeal, the applicant himself has taken the ground that refusal to acknowledge the order dated 03.08.2004 was one of the grounds for suspension (though as per the applicant unjustified and illegal) and this fact has been mentioned in para 5.12 of the OA also. Thus it is clear that suspension followed and was not prior to the order dated 03.08.2004 regarding NSSN Camp at Neem-Ka-Thana being served upon the applicant and being refused by him; rather it was the basis of the suspension order. Therefore the plea of the applicant that he was already

suspended before the order of the Camp at Neem-Ka-Thana was served has no tenability. As far as the question of the Article of Charge No. III suffering from self-contradiction as raised by the counsel of applicant is concerned, it is clear from a bare perusal of the Charge-III that the charge relates to the applicant's refusal to acknowledge the receipt of office order dated 03.08.2004, and further not proceeding to the approved destination and because of this NSSN Camp at Neem-Ka-Thana could not be organized and the official thereby did not attend to his official work on the same date, without permission. As argued by the counsel for respondents an inference cannot be drawn from the perusal of the Charge to imply that because the official failed to attend to his official work therefore the question of refusal to acknowledge the order does not arise. Thus there appears to be no force in the argument of the counsel of applicant in this regard and the charge cannot be said to be self-contradictory. As far as the substantive question of documents and evidence is concerned, it seems clear from a perusal of the record that the Original office order dated 03.08.2004 (also filed as Annexure A/16 by the applicant) was addressed to the applicant and because he refused to acknowledge the same, the relevant noting was made in the office copy of the said order, and the same was included in the list of documents at Sl. No. 5 when the charge-sheet was issued. Therefore, there is no force in the contention of the counsel for applicant that the relevant document upon which the charge-III was framed was not supplied to him or that he was not given an opportunity to defend the same. At the same time, it is also seen that nowhere in the cross examination of Shri M.M. Malhotra, then APFC,

(PW/5), it has been mentioned that there was no camp to be organized at Neem-Ka-Thana. Rather it is seen from the examination-in-chief that he clearly brought out the position regarding refusal of the applicant to acknowledge the order. Further, in order-sheet no. 7 dated 31.07.2006 (Annexure A/6) Shri Sanjay Kumar then RPFC(NSSN) has also clearly stated that Shri M.M. Malhotra, APFC informed him about the refusal of the applicant to acknowledge the order. Thus there is no valid basis to assume that the findings of the Inquiry Officer are without a proper appreciation of evidence in finding the charge No. III proved and that the orders of the disciplinary authority or the higher authorities are illegal on this ground. Further the ground of counsel for applicant that the original office order dated 03.08.2004 does not have a dispatch number cannot come to the rescue of the applicant because as has been brought out by Shri Sanjay Kumar then RPFC in his evidence in cross-examination at Ann.A/6 that "Office orders are dispatched by officials lower down in the hierarchy; however, since NSSN work was a "top priority work" of the organization and decisions were communicated at short intervals since the necessary thrust had to be given to the said work. Therefore, on many occasions orders were also hand delivered without giving any dispatch/outward number." In a situation of urgency, it is a normal administrative practice to give orders by hand and dispatch numbers are not put and that does not take away from the sanctity or the validity of the order. The points raised by the applicant in the rejoinder against the prejudice of Shri S.L. Shrivastava, then RPFC have no relevance at this stage because, as brought out by the respondents, that the applicant replied to

the charge-sheet, fully participated in the inquiry and thereafter filed appeal against the order of disciplinary authority, revision and also another appeal against the order of revision and did not raise this point at any stage. Therefore, at this point this issue has no relevance whatsoever. It is also noted that after following all due procedures and due opportunity of hearing, only a penalty of 'Censure' was imposed upon the applicant after the Article of Charge-III was found proved against the applicant and there appears to be no violation of the principles laid down in the case of **K. Sitaram vs. Vice Chancellor, S.V. University, Tirupati and another** referred to by the counsel for applicant. Further, the penalty is also not in any way highly disproportionate to warrant any interference in the orders on that ground. There is thus nothing on record to show that the order dated 04.10.2007 passed by the Disciplinary Authority, the order of the Appellate Authority dated 24.08.2009, the order of Revising Authority dated 01.12.2010 and further rejection of another appeal (preferred against the order of the revising authority) vide order dated 02.05.2012, were passed without following the due procedures and/or application of mind. Thus, there appears no ground to grant any relief sought for by the applicant in this Original Application.

Accordingly, the Original Application is dismissed with no order as to costs.

Meenakshi
(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER