CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 9 of 1994

Date of decision 28.4.95

Sri Subir Bhattacharjee — PETITIONER(S)

Mr. B.K.Das — ADVOCATE FOR THE PETITIONER(S)

VERSUS

Union of India & Ors. — RESPONDENT(S)

Sri A.K.Choudhury, Addl. C.G.S.C. — ADVOCATE FOR THE RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER(ADMINISTRATIVE).

1. Whether Reporters of local papers may be allowed to see the Judgement? yes

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the Judgement? } No

4. Whether the Judgement is to be circulated to the other Benches?

Judgement delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 9 of 1994.

Date of decision : This the 28th day of April 1995.

The Hon'ble Justice Shri M.G.Chaudhari, Vice-Chairman.
The Hon'ble Shri G.L.Sanglyine, Member(Administrative).

Shri Subir Bhattacharjee
Office of the Asstt. Local Audit Officer,
Supply Depot,
Dimapur
Nagaland ..... Applicant

By Advocate Mr. B.K.Das, Sr. Advocate.

-versus-

1. Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Defence,
New Delhi.

2. Controller General of Defence Accounts,
West Block-V,
R.K.Puram,
New Delhi-110066.

3. Controller of Defence Accounts,
Basistha,
Guwahati-781028. ..... Respondents

By Advocate Mr. A.K.Choudhury, Addl. C.G.S.C.

O R D E R

CHAUDHARI J (V.C.).

The applicant was appointed as Auditor in the office of the SLA, Bhalukmara, Assam under the Controller of Defence Accounts, Patna and at the material time was holding the post of Assistant Local

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Audit Officer, Supply Depot, Dimapur where he was posted on 12.7.89. An explanation was called from him by the Accounts Officer (Admn.) to show cause as to why displinary action should not be taken against him for alleged audit/supervisory lapses.

2. The applicant submitted his explanation on 31.7.89. However on 13.10.90 a Memorandum of charge with statement of articles of charge for alleged negligence and lack of devotion to duty was served upon him by the Joint Controller of Defence Accounts. The applicant submitted his reply thereto on 14.11.90. Thereafter an enquiry officer was appointed on 4.12.90 to conduct the enquiry. The applicant denied the charges framed against him. The enquiry officer at the conclusion of the enquiry made his report on 11.8.92 to the disciplinary authority. The enquiry officer held that all charges were proved against the applicant. He held that the applicant was proved to have exhibited gross negligence and lack of devotion to duty in allowing payment of bogus bills and thereby had violated the provisions contained in CCS (Conduct Rules) 1964. At the same time the enquiry officer expressed his view that the applicant seems to have passed the bills in question in good faith and the lapses in observing certain requirements on his part may have been due to inadvertance. He also observed that the applicant appeared to have been a victim of circumstances.

3. The disciplinary authority i.e. C.D.A. accepted the findings recorded by the enquiry officer. However stating that in the circumstances of the case a lenient

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view was being taken he imposed the penalty of reduction of pay by one stage for a period of six months without cumulative effect w.e.f. 1.10.92. He also specified that the penalty of reduction in pay was to reduce the pay of the applicant to the stage of Rs. 2060/- from the existing pay of Rs. 2120/- in thettime scale of Rs. 1640-60-2600-EB-75-2900. He clarified that the period of penalty will count for future increments. That order bearing No. AN/1/D/139/SB/Part/236 was passed on 30.9.92(Annexure-19).

4. The applicant preferred an appeal to the Controller General of Defence Accounts. The said Appellate Authority agreed with the order of the disciplinary authority and holding that the penalty imposed upon the applicant was just and commensurate with the gravity of the charge, dismissed the appeal by order No. AN/XIII/13600(387)/93/4 dated 4.3.94 (Annexure-21).

5. The aforesaid orders are one part of challenge in the instant application filed on 12.1.94. However though the applicant prays that the order dated 30.9.92 (the order of the disciplinary authority) be set aside, he has not in terms prayed ~~that~~ for quashing the Appellate Order. We imply that prayer from para 3 of the application which shows that the application has been filed against that order also. This is one part of the grivance.

6. It appears that the applicant became eligible for being promoted to the grade of Assistant Accounts Officer in the scale of Rs. 2000-3200 in March 1990. At that time he was in the cadre of Junior Officer. However since the disciplinary proceedings against him was intended

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to be comenced the respondents applied 'sealed cover' procedure and kept the consideration of the question of his promotion in abeyance and seven other officers junior to him were promoted as Assistant Accounts Officer at that selection i.e. on 16.3.90. The applicant submitted a representation against his supersession on 28.5.90 and again on 18.7.90 but no action was taken on those representations. The applicant was eventually promoted to the post of Assistant Accounts Officer (Group B) (in the scale of pay Rs. 2000-60-2300-EB-75-3200) w.e.f. 4.10.93 with notional seniority and notional fixation of pay by order issued by ACDA (AN) No. PT II.O.O. No. 583 dated 17.11.93 (Annexure-22). The order shows that he was promoted consequent upon his selection for promotion, by the Controller of Defence Accounts, Guwahati. The order also directed that financial benefit will be allowed from the date of assignment of higher charge as Assistant Accounts Officer in the officiating capacity till successful completion of the probation of two years. The applicant has made that also the subject matter of the present application and has prayed that the respondents be directed to give retrospective effect to his promotion as AAO with effect from 16.3.90 i.e. the date when his juniors were promoted and claims all financial and other benefits on that basis. This is the second part of the grievance.

7. It is thus apparent that two distinct casues of action have been combined together by the applicant in this application. The application thus suffers from the defect of seeking plurarity of remedies requiring different considerations. This is precisely not permissible to do

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under Rule 10 of the CAT (Procedure) Rules 1987 which provides that the application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. The reliefs sought by the applicant cannot be construed as consequential to one another.

8. Mr. B.K.Das the learned counsel appearing for the applicant submitted that the claim for giving retrospective effect to the promotion is interwined with the disciplinary proceedings and consequently both the causes of action could be combined and therefore the application is not inconsistent with Rule 10 aforesaid. We find it difficult to accept this proposition but instead of rejecting the application on this ground at this stage we think it proper to consider the application in its entirety and decide the material issues arising therein.

9. We shall deal with the grievance relating to the order of the disciplinary authority imposing the penalty of reduction of pay by one stage for a period of six months in the first instance.

10. Mr. B.K.Das submitted that the enquiry officer at the end of his report virtually has indicated that the applicant may be exonerated but that neither the disciplinary authority nor the appellate authority have applied their mind to those observations and thus the impugned order suffers from non-application of mind and have caused prejudice to the applicant. The learned counsel submitted that had those observations been duly taken into account possibly the authorities might have exonerated the applicant or at least would have reduced the punishement further so

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as to render it a token punishment which would not prejudice the future career prospects of the applicant.

11. We have already set out the gist of the observations of the enquiry officer. At the cost of repetition in the context of the submissions of the learned counsel it may be worthwhile to set out the observations in the words of the enquiry officer himself. (Enquiry report annexure 17). Para 11 of the report reads as follows :

> "With no exception of any charge, all charges stand proved as discussed in the above report. I conclude my enquiry with the finding that the charged officer namely Shri Subir Bhattacharjee SO(A) was responsible for exhibiting gross negligence and lack of devotion towards his assigned duties and responsibilities in allowing payment of bogus bills and thereby violating the provisions contained in CCS (Conduct) Rules,1964. However, perusal of bills reveals that the same were complete in all respects. It was not possible for the charged officer to suspect those bills as false and bogus as the same did not look as such. All bills appear to have been passed in good faith presumably after satisfying the requisite informations/requirements had been furnished/ complied with. The lapses of certain audit requirements as explained above for each and every charge appear to have inadvertantly been committed by the charged officer who has, indeed, been victimised (~~see~~ sic) of the circumstances because of not ensuring compliance of vital audit requirements or not for seeing that claims may be even false specially those which were received in Main Office of CDA Guwahati after a considerable gap between

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the dates of initiation from the unit and the date of their receipt in CDA Guwahati as shown in Table below 10 (d) above".

It is difficult to accept the proposition of the learned counsel ~~noted~~ ~~above~~ based on above concluding observations from the words "However, perusal of bills .... ." onwards. These observations have to be read with the findings recorded in the preceding portion based upon appreciation of evidence wherein it has been held that without any exception all the charges are proved against the applicant. The concluding observations cannot be read in isolation. It is contended by the learned counsel Mr. Das that this indeed introduces an inconsistency in the approach of the enquiry officer and the benefit of this conflict must go to the applicant. We however do not find any inconsistency or conflict in the two parts of the observations in para 11 of the report. The concluding protion thereof is intended to lay emphasis on the aspect that there was no element of intentional misconduct on the part of the applicant involving turpitude and that the circumstances pointed out by the applicant rather go to show that the lapse on his part was an inadvertant lapse in respect of audit requirements. These observations can at best be understood as enlisting the relevant circumstances to enable the disciplinary authority to determine the quantum of penalty commensurate with the nature of the misconduct proved and nothing more.

12. In this context it will be proper to briefly mention the charges that were framed against the applicant

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and have been held proved. The enquiry was held under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. First Head of Charge was "non-verification of specimen signature of the countersigning officer". Second Head of Charge was "non-verification of the voucher Control No.". The third Head of Charge was "failure of maintaining proper supply order/file/register". Fourth Head of Charge was "non-linking of supply orders". Fifth Head of Charge was "failure of making entry for verification of supply order and specimen signature in respect of certain vouchers" and the sixth Head of Charge was "failing to exercise proper scrutiny of the claims".

13. Shortly stated the case of the respondents leading to the disciplinary proceeding was that during the period from September 1983 to October 1988 number of L.P. Bills in batches, were received from 5 Mtn. Div. Sig. Regt. and were accepted and passed by the applicant for payment although these were not submitted by the unit concerned and were apparently bogus bills. The specimen signatures of the officer preferring Contingent Bills and those of countersigning officer as appearing on all contingent bills did not tally with those held on record. It was therefore alleged that the applicant had ignored the audit requirements at the time of processing and passing the bills as pointed out in Annexure-I dated 12.7.89 issued by the Accounts Officer (ADMIN) and that that had resulted in fraudulent payment ~~put the department to monetary loss~~. It was therefore decided that disciplinary action may be initiated against

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the applicant for his audit/supervisory lapses amounting to misconduct within the meaning of CCS Rules.

14. The report of the enquiry officer shows that he has investigated the various heads of charge taking into account the evidence produced by the presenting officer and the defence raised by the applicant in respect of each head of the charge. The report reveals that the entire material produced before him has been carefully analysed and evidence has been properly appreciated by the enquiry officer. His findings therefore are based upon proper appreciation of evidence and amount to findings of fact. The disciplianry authority has stated in his order that he had carefully considered the enquiry report and representation submitted by the applicant. He has also noted that the enquiry officer has held the charges proved on the basis of evidence adduced during the enquiry and he agrees with the findings of the enquiry officer. Similarly the appellate authority has also stated in his order that he had carefully perused the appeal in the light of the record of disciplinary proceedings and found that the charge stands established against the applicant. The appellate authority considered the grievance of the applicant that his pleas were looked upon with indifference by the disciplinary authority and held it to be untenable. He has also held that the bills under question were admitted without following the basic audit requirements which had resulted in fradulent payment and that the penalty imposed upon the applicant is just and commensurate with the gravity of the charge.

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15. It is thus not possible to hold that there was any conflict in the report of the enquiry officer as is sought to be projected by the learned counsel for the applicant and the concurrent findings on questions of fact arrived by the authorities below cannot be reopened by this Tribunal which cannot sit as an appellate authority and substitute its own findings in place of the findings recorded by the authorities below. It is well established that the jurisdiction of the Tribunal in such matters is limited and cannot be invoked unless it is shown that the order of penalty suffers from any illegality or patent irregularity or the appreciation of the evidence has been perverse or that there has been non-application of mind to the record on the part of the appellate authority. We find no such ground available in the instant case to warrant interference in the orders passed by the authorities below.

16. The learned counsel for the applicant sought to contend that the findings of the enquiry officer are perverse which circumstance has not been taken into account either by disciplinary authority or the appellate authority and thus their orders are also vitiated. The perversity arises according to the learned counsel for two reasons. Firstly it was not proved at the enquiry by the prosecuting agency that the applicant had not checked the bills to the extent of the percentage of check that is prescribed under the deparmental instructions issued by the Govt. of India vide circular No. AN/V/1289/Report dt. 27.7.88 (read with C.G.D.A. letter Dated 7.7.88 (Annexure 3) whereunder it is

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provided that amongst the checks to be exercised by the Section Officer (A) for ensuring audit verification of the specimen signature of claimants before payment of bills in respect of local purchase bills the percentage of check will be 5% in respect of claims below Rs. 25,000/-. The learned counsel submitted that the burden to prove this circumstance negatively was upon the prosecuting agency and the applicant was not required to establish that he had carried out the checks to this extent. Hence it could not be held that there was a lapse committed by the applicant.

17. We are not impressed by the above submission. It is too insignificant a point having regard to the small number of bills that were involved. The bills involved were only 31. The 5% thereof would be insignificant number and when all the bills were available at the time of enquiry it was not difficult for the applicant to have pointed out the bills in respect of which he had carried out the necessary verification in ~~proposition~~ proportion of the prescribed ~~proposition~~ proportion. This is not a circumstance in our view such as has materially affected the appreciation of the material by the enquiry officer as has been done by him and the findings arrived at by him after considering the totality of the material thus cannot be held to be perverse. Moreover that irregularity was also not the only head of charge for which the applicant was subjected to the enquiry. No other circumstance is pointed out to render the findings of the enquiry officer perverse. Obviously in the absence of any illegality or perversity in the findings recorded in the

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course of the disciplinary enquiry or discernible in the orders passed by the Disciplinary Authority or the Appellate Authority it is not possible to interfere with the impugned orders passed by them.

18. The learned counsel for the applicant submitted that it has been laid down by the Supreme Court ~~that~~ in several rulings that power of judicial review exercised by this Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution and that would enable us to go into the reasons considered by the enquiry officer and set aside the penalty. He referred to the latest decision of the Supreme Court in the case of Transport Commissioner Madras-5 Vs. A.R. Krishnamurthy (1995) 1 SCC 332. We do not think that the decision helps the applicant in the instant case since it has been held therein that the Tribunal has no jurisdiction to go into the truth of the allegations/charges except in a case where they are based on no evidence i.e. where they are perverse. While explaining the scope of the power of judicial review it has been observed that the Tribunal only examines the procedural correctness of the decision making process. As we find no such defect in the instant case we cannot interfere.

19. Mr. Das next submitted that the concluding observations of the enquiry officer in paragraph 11 of his report (already set out above) imply that the prosecuting agency had failed to establish any mensrea on the part of the applicant and therefore the penalty imposed

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upon him is illegal. The learned counsel submitted that as it has been held that there was no deliberate violation of the rules on the part of the applicant nor there was any such charge the mere unintentional and inadvertent lapse does not establish negligence much less intentional misconduct on the part of the applicant. It is true that a disciplinary enquiry pertakes the character of a quasi criminal proceeding. However the enquiry is necessarily held under the Central Civil Service CC & A Rules and the misconduct alleged related to the non-compliance with the rules. It must be remembered that the charge against the applicant was not that he was guilty of any misappropriation but was that his non-compliance with the basic audit requirements had resulted in fradulent payment and loss to the Department. The alleged fraud was on the part of those who allegedly had submitted bogus bills and not on the part of the applicant. The charge against him was of non-compliance with the instructions since he was under the duty to abide with them as he was holding the post of Controller and was the supervising officer whose job precisely was to prevent such fraudulent claims being passed for payment. The question of mensrea therefore does not enter into consideration in the instant case. The submission of the learned counsel based on that ground thus cannot be accepted.

20. Lastly Mr. Das submitted that the punishment is not commensurate with the misconduct as is held proved. He submitted that the disciplinary authority ought to have in the light of the observations made by the enquiry officer

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in para 11 of his report considered imposing a minor penalty such as censure or warning and the penalty as is imposed is disproportionate and cannot be sustained. Here also we find it extremely difficult to agree with the learned counsel. It appears to us that the penalty imposed is very lenient and all safeguards are provided in the order while imposing the penalty so that no difficulty can arise in the way of the applicant in respect of his future prospects in the service. In fact despite the punishment the respondents in all fairness have already promoted the applicant. Moreover on principle there would be no difference whether the penalty awarded is of reduction of pay for a short duration or whether it is by way of censure. That would not amount to exoneration of the applicant from the charge of misconduct levelled against him. Moreover it is well settled that the Tribunal would not ordinarily interfere on the question of quantum of penalty when an Appellate Authority had found it proper. In that connection Mr. A.K.Choudhury, the learned counsel for the respondents drew our attention to the decision of the Supreme Court in the case of Union of India Vs. Parma Nanda, AIR 1989 Supreme Court, 1185 wherein Their Lordships have held that the Tribunal cannot interfere with the penalty imposed on a delinquent employee by the competent authority on the ground that the penalty is not commensurate with the delinquency of the employee. It is observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction and that it is appropriate to remember that the power to impose penalty

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on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. It is further held that if the penalty can lawfully be imposed on the proved misconduct the Tribunal has no power to substitute its own discretion for that of the authority unless it is malafide. With respect this ratio clearly applies to the instant case and in the absence of any allegation of malafides against any of the authorities. We reject the submission that the penalty imposed upon the applicant is bad.

21. In the light of the forgoing discussion we find no ground to interfere with the impugned order dated 30.9.92 or the appellate order dated 4.3.93 and therefore the relief sought in clause (i) of para 8 of the application is refused.

22. We shall now turn to the second ~~poart~~ part of the grievance relating to the promotion. In that connection once it is found that the disciplinary enquiry proceeding had intervened between the date on which the applicant was eligible to be considered for promotion i.e. 16.3.90 and till the period of penalty was over there could arise no question of the applicant being entitled to be promoted as that would result in an incongruous situation. It is true that on 16.3.90 when the applicant had become eligible for promotion and when officers junior to him were promoted the disciplinary enquiry had not been initiated and although the respondents purported to adopt the 'sealed cover' procedure that was not quite in order. However disciplinary proceeding was in contemplation and steps were taken by

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calling the explanation of the applicant on 12.7.89 vide Annexure I. The Chargesheet was issued on 13.10.90. From the date of issuance of the Chargesheet till the period of penalty of six months was over the applicant could not be considered for promotion. The gap between 16.3.90 and the date of issuance of Chargesheet i.e. 13.10.90 is of no help to relate back the promotion to 16.3.90 by reason of the enquiry proceeding having followed thereafter and concluded with the appellate order on 4.3.93. Even assuming that the respondents could not have withheld the promotion on 16.3.90 and should have considered the eligibility of the applicant as the disciplinary proceeding had not been initiated, that not being the subject matter of this O.A. nor that claim would be within limitation that cannot afford any ground to render the impugned order of penalty illegal. We do not thus find any illegality in giving the benefit of promotion to the applicant as is given notionally with effect from 4.10.93 after the penalty period of six months from the date of the appellate order had expired. If the applicant was exonerated from the charges of misconduct framed against him then possibly he could have contended that the order of promotion dated 17.11.93 effecting the promotion from 4.10.93 should have been given retrospective effect from the date when his juniors were promoted. Since he has not been exonerated such a question does not arise. Consequently the relief sought by the applicant in para 8 (ii) of the application must be rejected and is rejected.

In the result, the application is dismissed. There will be no order as to costs.

(G.L.SANGLYINE) 28/4/95
Member

(M.G.CHAUDHARI)
Vice-Chairman

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