

Central Administrative Tribunal
Principal Bench: New Delhi

OA 541/2013

Reserved on: 21.09.2017
Pronounced on: 25.09.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Mukesh Sharma.
Accounts Officer,
Office of DPDO,
Meerut.

...Applicant

(By Advocate: Mr. E.J. Verghese)

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Controller General of Defence Accounts,
Ulan Batar Road, Palam
Delhi Cantt-110 010.

3. Controller of Defence Accounts (Army)
Meerut Cantt – 250 001.

...Respondents

(By Advocate: Sh. C. Bheemanna)

ORDER

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

(a) Quash the order dated 12.2.2010 passed by the Dy. CDA (Army) imposing the penalty of withholding of one increment of pay for one year without cumulative effect;

(b) Quash the order dated 18.8.2010 passed by the CDA (Army), Meerut dismissing the appeal of the applicant; and

(c) Quash the letter No.AN/XIII/13600 (718)/2011 dated 26th December, 2011 (sent through letter No.AN/DIS/106/15/MS dated 12.1.2012 and received by the applicant on 30.01.2012) passed by the respondent no.2 rejecting the revision petition of the applicant and affirming the order dated 12.2.2010 passed by the Dy.CDA (AN) of

CDA (Army), Meerut and the order dated 18.8.2010 passed by the CDA (Army) Meerut.

(d) And in consequence, promote the applicant to the post of Accounts Officer, as per the order dated 27.08.2009 and accord him seniority in the cadre of Accounts Officer.

(e) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Briefly stated, the facts of the case are that the applicant joined the service of respondent no.1 as Auditor on 13.08.1989 through Staff Selection Committee and was subsequently promoted to the post of Senior Auditor in 1996. It is submitted that after passing Subordinate Account Services Examination, the applicant was promoted to the post of Section Officer (Accounts) on 09.12.1996 and he was again given time bound promotion to the post Assistant Accounts Officer (AAO) in December, 2000. The applicant was transferred to L.A.O. (A), Dehradun on permanent posting on 11.11.2008. He was initially posted to A.N.VII Section on temporary attachment to CDA (Army), Meerut from 11.11.2008 to 31.03.2009 but this attachment continued till 30.06.2009. It is further submitted that the Dy. Controller of Defence Accounts vide letter dated 16.04.2009 called for the explanation of the applicant for his alleged failure to monitor the Defence Accounts Department (DAD) works in respect of the repairs of IDAS Mess. He was also asked for to explain with regard to the records maintained by the Caretaker for DAD Lekha Nagar Colony. The applicant submitted his explanation dated 27.04.2009, denying the accusations made

against him, that he has been timely reporting the progress to all the concerned authorities including the Dy. CDA. He also mentioned therein that the IDAS Mess site was handed over to MES and the progress of that work was taken up with Garrison Engineer (GE), South on several occasions. In respect of Lekha Nagar Colony, the applicant pointed out that the record was maintained as per the past practice since the very beginning i.e. since 1995 and the said practice is being followed till date.

3. Finding the explanation of the applicant not satisfactory, he was served with a Chargesheet dated 24.08.2009 for proposed action against him under Rule 16 of the CCS (CCA) Rules, 1965 on the charges that while serving in the AN-VII Section of CDA (Army), Meerut Cantt, the applicant was assigned with the task of supervision/monitoring of DAD works at the station, looking after the Lekha Nager Colony and attending to the complains of its residents, and he failed to discharge his entrusted duties and official responsibilities. Against the said chargesheet, the applicant submitted his defence statement on 10.09.2009 stating that the repairs to Mall i.e. IDAS Mess was carried out as per the sanction accorded by Meerut Sub Area and, therefore, its repairs and maintenance rest with the MES. He also pointed out that as per para 366 of RMES, it is the duty of the Engineering Authorities to look after the progress of work with reference to specifications as per the terms of the

contract or the quality of the material used as per para 367 of REMS. Insofar as the task of Lekha Nagar Colony, Meerut is concerned, the applicant submitted that the records available in Lekha Nagar Care Taker's office have been maintained in the same manner since 1995 and has not been objected to by any of the senior officer or by any of the inspecting team and none of the residents have ever made any complaint to AN-VII Section qua any unresolved or unattended work.

4. It is the contention of the applicant that the Dy. CDA (AN), without considering his reply in its true perspective, imposed the penalty of withholding of one increment of pay for one year without cumulative effect vide order dated 12.02.2010. Aggrieved, the applicant preferred an appeal before the CDA (Acrrmy), Meerut Cantt on 03.04.2010, which also came to be rejected upholding the punishment imposed by the disciplinary authority. The applicant also filed a revision petition before the Controller General of Defence Accounts on 01.02.2011 and the said revision petition was also dismissed without application of mind vide order dated 26.12.2011 and the same was served upon him on 30.01.2012. The applicant filed a representation on 29.02.2012 before the Reivisional Authority for re-consideration of his revision petition as well as setting aside of the impugned order passed by the disciplinary authority and the said representation was returned to him on the

ground that the revision petition has already been considered and rejected.

5. Apart from above, the applicant has contended that the chargesheet dated 24.08.2009 was served upon him on 31.08.2009 while in the meantime a list of promotion of 505 AAOs to the post of Accounts Officer Grade was approved by the competent authority vide letter dated 27.08.2009 and as he was eligible for the said promotion in view of the seniority of AAOs as his name in the seniority list figures at sl. No.394 but he was not considered for promotion on account of the aforesaid chargesheet having been issued to him. Finding no favourable response at the end of the respondents, the applicant is before this Tribunal by way of the instant OA.

6. The respondents have filed their written statement and denied the contents of the OA. They have, however, stated that on the request of the applicant, he was attached to the CDA (Army) Meerut initially for a period of three months and which attachment continued till 30.06.2009. Therefore, it was his duty to report the progress of the task assigned to him to the higher concerned authorities but the applicant never reported the progress to any authority including Dy. CDA nor any documentary evidence to this effect ever produced by him during execution of the work and also at the time of making representation/appeal against the penalty before the appellate authority. Hence, he failed to discharge his

obligation qua performance of official duties. They have also submitted that the representations, appeal and revision petition filed by the applicant before the concerned competent authorities were properly considered and finding no merit rejected the same by passing speaking and reasoned orders. Insofar as promotion of the applicant is concerned, the respondents submitted that he cannot be promoted to the post of Accounts Officer unless he is fully exonerated of the charges levelled against him. They further submitted that the applicant cannot be absolved for the lapses committed by him. Moreover, he cannot be permitted to have the benefit of posting of his own choice but not to be held liable for the lapses committed by him.

7. I have carefully gone through the pleadings available on record and given thoughtful consideration to the arguments so advanced by the counsels for the parties.

8. During the oral arguments, the learned counsel for the applicant submitted that this is a case of 'no evidence'. He argued that the charge of negligence in supervision is *ab initio* void because supervision of the concerned work was not part of his assigned duties. He placed before me a copy of the Office Manual Part-I, Chapter I-General which, according to him, mentions the general duties of AAOs. He further argued that these buildings, supervision of which has been the subject matter of the chargesheet, are not IDAS buildings but

are MES buildings, which are being repaired and maintained by MES. He further argued that MES itself has certified that the work has been satisfactorily completed. His next line of argument was on the ground of discrimination. Referring to a communication dated 01.12.2010 obtained under Right to Information Act, he tried to establish that one David Raphel was the person, who was responsible for the maintenance of Lekha Nagar Colony. He also tried to establish that as a matter of fact one Akhilesh Kumar, AAO was the in-charge of AN-VII and that the applicant was merely attached to the CDA (Army) Meerut. He further submitted that no action was taken against either David Raphel or Akhilesh Kumar and, therefore, he argued that the punishment imposed upon him was not maintainable on the ground of discrimination meted out to him. Expanding on his further relief about promotion, learned counsel submitted that the orders of promotion, which did not contain applicant's name, were issued on 27.08.2009 whereas the chargesheet was issued on 24.07.2009 and he received the same only on 21.08.2009. Therefore, on the date of order of promotion, there was nothing on record that could be legitimately held against him and denying him the promotion.

9. The respondents, on the other hand, refuted the claim of the applicant contending that on the request of the applicant, he was attached as AAO to the AN-VII Section with specific charge to deal with the administration and not with

Accounts Section and, therefore, the validity of the Office Manual, relied upon by the applicant, with regard to general duties of AAO will not be applicable in this case. The applicant was in-charge of the AN-VII Section from 09.08.2007 to 07.11.2008 and again from 11.11.2008 to 30.06.2009. During this period, he was assigned with the task of supervision of the progress of DAD works at the station under MES and also for looking after the Lekha Nagar Colony and maintenance of stock register. However, the applicant was amiss in performing his duties and, therefore, the chargesheet had rightly been issued to him. It was pointed out by the respondents that in response to show cause notice, the applicant has very clearly admitted that he inspected/visited the site on a number of times. In paragraph 2 of his reply, he further submitted that since the authentication of the entries of the receipt and issue of stores of respondents along with the inventory was not being done by any officers since the very beginning i.e. since 1995, he followed the practice and did not authenticate the entries made during his time. This reply, according to the respondents, is a clear admission of the fact that supervision of the two activities namely supervising the progress of DAD works as well as looking after the supervision of the activities of Lekha Nagar Colony were part of his duties. Learned counsel for the respondents further submitted that in the ACRs of the applicant for the period during which he was

posted in Meerut, he himself has mentioned in self-appraisal about supervision of these two activities and, therefore, the argument of the applicant that supervision of these activities was not part of his assigned duties is erroneous, misleading and baseless. The respondents have, therefore, sought dismissal of the OA.

10. It is true that inspection of buildings and supervision of construction of buildings or maintenance of buildings are not the general duties assigned to AAOs under the Office Manual. However, the facts in this case are different. The applicant himself wanted to stay in Meerut because of his personal difficulties and had made a request to this effect to the authorities and he was accordingly accommodated. He was initially attached for a period of three months which attachment continued for nearly two years. There is nothing on record to suggest that he wanted to be relieved of the duties assigned to him during this attachment period. Therefore, it can be concluded that he was willing to carry out the tasks assigned to him including the task of supervision of DAD works and looking after the Lekha Nagar Colony. He cannot obviously take this plea that while he is willing to accept the administrative work for two years at Meerut station but not to be held responsible on the ground that he is an accounts man and looking after the administrative work is not part of his assigned duties. Such an argument is not acceptable. I also notice from the record that while replying

to SCN on 17.04.2009, he had never taken this ground that the so-called responsibilities were not part of his assigned duties. This plea he has taken only in his second communication to the respondents dated 10.09.2009 where he has stated that these were not his part of assigned duties. His position in this regard is further compromised on account of the fact that in his ACRs for the above period, he has clearly mentioned such activities as part of his self-appraisal.

11. In view of these facts, it does not stand to logic and legality that the applicant should take a defence at this stage to challenge the punishment on the aforesaid grounds. As a matter of fact, in Para-4 (h) of the OA, he has clearly indicated that in fact he has been supervising this work and has been timely reporting the progress to the higher authorities. One of his defences is that he has tried his level best to report the progress and the problem, if any, to the concerned authorities.

12. Viewed in light of these facts, the claim of the applicant that he cannot be proceeded against departmentally for the charges mentioned in the chargesheet is not acceptable and needs to be rejected forthwith. The applicant has not pointed out any procedural lapse on the part of the respondents in conducting the enquiry. As it is case of minor punishment, therefore, elaborate process of enquiry, appointment of enquiry officer and presenting officer, leading evidence etc.

were not required under the rules. Therefore, on this count also, the impugned order cannot be held to be wrong or illegal.

13. The scope of interference in matters of departmental enquiries is very limited and has been explicitly laid down by a large number of decisions of the Apex Court. Reliance on some of such judgments has been placed by the learned counsel for the respondents namely **B.C. Chaturvedi vs. Union of India & Ors.** [1996 (SCC) (L&S) 80]; **Union of India vs. H.C. Goel** [1964 (4) SCR 781]; **S.R. Tewari vs. Union of India & Anr.** [2013 SCC 602]; **Tata Cellular vs. Union of India** [AIR 1996 SC 11]; **People's Union for Civil Liberties & Anr. Vs. Union of India** [AIR 2004 (SC) 456]; and **Government of Andhra Pradesh & Ors. vs. Mohd. Nasrullah Khan** [AIR 2006 (SC) 1214]. This position remains undisputed.

14. As regards the other relief of promotion claimed by the applicant in this OA, my view is that this is an entirely independent claim and the grounds placed before me by the applicant at the time of oral arguments were namely that on the date of promotion order i.e. 27.08.2009, there was nothing against him by way of a chargesheet or departmental enquiry. This ground for assailing the respondents action in not giving him promotion creates a separate and independent cause of action and the applicant will be well advised to seek

this remedy by way of fresh OA rather than linking this relief with the relief of quashing of chargesheet. It goes without saying that had it been held that issuance of chargesheet or imposition of minor punishment was not in order, the applicant would have got the benefit of consideration of promotion from the due date. That being not the case, I will restrict my finding to the legality or otherwise of the chargesheet and subsequent punishment order upheld in appeal and revision.

15. In light of above discussion, I have no hesitation in holding that the chargesheet issued, punishment imposed upon the applicant and rejection of his appeal and revision are all in order and do not suffer from any legal infirmity. This OA does not merit and, therefore, needs no interference and deserves to be dismissed. The OA is accordingly dismissed. No costs.

(Udai Kumar Varma)
Member (A)

/Ahuja/