

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.1447/2012

New Delhi this the 1st day of June, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Dr. Birender Kumar Sinha, Member (A)**

Pradeep Rai,
Assistant (Retired),
Group 'B',
S/o Late Laxmi Narain,
A-18A, Vijay Nagar,
Delhi-110009.

.....Applicant

(Argued by: Shri Ashish Nischal, Advocate)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.

2. JS (Training) & CAO,
Ministry of Defence
C-II Hutments,
New Delhi-110001. ..Respondents

(By Advocate: Dr. Chaudhary Shamsuddin Khan)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge, in the instant Original Application (OA), filed by the applicant, Shri Pradeep Rai, is to the impugned order dated 23.07.2009 (Annexure A-I), whereby the penalty of withholding of increments for two years, with cumulative effect, was imposed on him by the Disciplinary Authority (DA) and order dated 09.05.2011 (Annexure A-2), by virtue of

which the Revision Petition filed by him, was dismissed by the Revisional Authority (President).

2. Tersely, the facts and material, culminating in the commencement, relevant for deciding the present O.A, and emanating from the record, is that, the applicant, while working as Assistant, in A.G. Branch of respondents, obtained loan amount of Rs.5,05431/- by various transactions, from different financial institutions, in his name and in the names of family member, without intimation to the prescribed authority, which was mandatory under the rules. Thus, he was stated to have exhibited the misconduct, lacking devotion to duty as well as unbecoming of a government servant.

3. As a consequence thereof, he was served with the following, impugned Article of charges dated 08.07.2008 (Annexure A-3):-

“ARTICLE-I”

Shri Pradeep Rai, Assistant obtained several loans amounting to Rs.5,05,431 from various financial institutions in his and his family members name. However, he did not intimate the transactions to the prescribed authority which is mandatory under the rules.

By his above acts and omissions, Shri Pradeep Rai, Assistant has violated Rule 18 (3) of the CCS (Conduct) Rules, 1964 and also Rule 3(1) (ii) and 3 (1) (iii).

ARTICLE-II

Financial Institutions intimated that after obtaining the loans, as stated in Art-1, Shri Pradeep Rai, Assistant stopped payment of EMIs to them towards repayment of loans. Thus, he failed to

manage his private affairs so as to avoid habitual indebtedness or insolvency.

By his above act, Shri Pradeep Rai, Assistant has violated R. 17 of CCS (Conduct) Rules, 1964 and has also exhibited conduct lacking devotion to (sic) duty and unbecoming of a Govt. servant in contravention of Rules 3(1) (ii) and 3 (1) (iii).

ARTICLE-III

Financial Institutions filed legal suits against Shri Pradeep Rai, Assistant in Competent Court for recovery of the loans. As per rule, Sh. Rai was required to intimate full facts of the cases filed against him in the court which he did not do.

By his above act, Shri Rai has violated R. 17 of CCS (Conduct) Rules, 1964. He has also exhibited conduct lacking devotion to duty as well as unbecoming of a Govt. servant and thereby violated R.3(1) (ii) & 3(1) (iii) of CCS (Conduct) Rules.

ARTICLE-IV

Shri Rai managed to get sureties from his colleagues for obtaining loans in the name of his wife, son, and daughter in good faith. But his members deliberately did not pay a single instalment. Therefore, the salaries of sureties were attached by the concerned court for loans taken by him causing financial and mental harassment to the sureties.

By his above acts and omissions, Shri Pradeep Rai, Assistant has violated Rule 3(1) (i), 3 (1) (ii) and 3 (1) (iii), CCS(Conduct) Rules, 1964.

ARTICLE-V

Shri Pradeep Rai, Assistant obtained a huge amount as loan from several financial institutions as stated in Art.1, despite knowing that payment of all EMIs was practically impossible from his salary. Hence, obtaining loans and subsequently not re-paying the instalments towards recovery of loans by Sh. Pradeep Rai, Assistant, was deliberate.

By his above act, Shri Pradeep Rai, Assistant failed to maintain absolute integrity and also exhibited conduct lacking devotion to duty as well as unbecoming of Govt. servants and thereby violated R 3(1) (i), 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules, 1964.

4. Sequelly, the applicant has acknowledged almost all the allegations assigned to him in his reply dated 29.07.2008 (Annexure A-4) filed in pursuance to the charge sheet.

5. Likewise, the Enquiry Officer (EO) recorded & evaluated the evidence, and observed that charged officer has admitted the charges No. 1 to 3. At the same time, EO came to the conclusion that the Article of Charges no. 4 and 5 stand duly established, on the basis of evidence on record vide his report dated 22.12.2008 (Annexure A-5). The copy of inquiry report was supplied, and the applicant made representation dated 17.02.2009 against it.

6. Having completed all the codal formalities, agreeing with the findings of the EO and taking into consideration, the representation of the applicant, the above mentioned penalty was imposed on him vide order (Annexure- A-I) by the DA. The Revision Petition (Annexure A-7) filed by him, was dismissed as well vide impugned order (Annexure A-2) by the Revisional Authority (President).

7. Aggrieved thereby, the applicant has preferred the present O.A to challenge the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 on the following grounds:-

“(A) Because the findings of the disciplinary authority, on the face of it, are patently wrong. The applicant has been penalized of those loans which were taken by his family members over whom the applicant has no control. As such the Articles I, II and III although admitted by the applicant, cannot be a ground for imposition of the present impugned penalty order. The disciplinary authority ought to have taken into consideration this aspect while imposing the present penalty.

(B) Because the entire disciplinary proceedings stand vitiated the movement the documents are not proved by their

respective authors. In the present case, the authors of these (sic) documents were not examined, what to talk of proving the documents and cross examination of these persons. It is trite law of land that only the author of the document can prove his document. In the present case, since the author was not examined it goes without saying the documents were not proved (sic) at all.

(C) Because the general examination of the applicant under Rule 14 sub-rule (18) of the CCS (CCA) Rules, 1965 is a sham and has no legs to stand judicial scrutiny, in view of the dictum of catena of judgments on this point. The general examination, on the face of it, shows that the questions put by the Inquiry Officer to the applicant were vague and as such could not be effectively answered to by the applicant.

(D) Because the impugned penalty order dated 23.07.2009, on the face of it, shows no-application of mind by the disciplinary authority and is a non-speaking order. The disciplinary authority by taking the path of least resistance, agreed with the findings of the Inquiry Officer and imposed the present impugned penalty. It is trite law of land that the orders either passed on the administrative side or quasi judicial side must be reasoned orders so that the same can be effectively assailed before the appellate body".

7. On the basis of aforesaid grounds, the applicant sought, quashing of the impugned orders, in the manner indicated herein above.

8 The contesting respondents refuted the claim of the applicant, filed the reply, and acknowledged the factual matrix. However, on merits, it was pleaded that keeping in view the pointed misconduct, an inquiry in the matter was instituted against the applicant vide order dated 18.08.2008. He admitted the first three charges during the preliminary hearing and hence, no inquiry was held in support of these three Articles of Charge on account of his admission. The EO conducted the inquiry, with respect to remaining two charges, i.e., No.4 & 5, as per the procedure and found the applicant guilty & submitted his report dated 22.12.2008 (Annexure R-

2). The DA, after following the due procedure, awarded the above mentioned punishment to the applicant vide impugned order (Annexure A-1). The Revision Petition filed by him was rightly dismissed by the President vide impugned order at (Annexure A-2).

9. Virtually, reiterating the validity of the impugned orders, it was claimed by the respondents that the applicant is not entitled for any relief. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the O.A and prayed for its dismissal.

10. Controverting the pleadings of the reply filed by the respondents and reiterating the grounds contained in the O.A, the applicant filed his rejoinder. That is how we are seized of the matter.

11. Having heard the learned counsel for the parties, having gone through the records with their valuable help, we are of the firm view that the instant O.A deserve to be partly accepted for the reasons mentioned herein below.

12. As is evident from the record that the applicant has duly admitted the Article of charges no. 1 to 3, whereas substantially conceded the allegations pertaining to remaining Article of Charges no. 4 & 5 in his reply (Annexure A-4). He prayed for a favourable and sympathetical consideration of

the matter. Moreover, the EO concluded that Article of Charges no. 4 & 5 stand proved on record vide his inquiry report dated 22.12.2008 (Annexure A-5).

13. Thus, it would be seen that the facts of the case are neither intricate nor much disputed. The DA has passed the impugned punishment order, which was confirmed by the Revisional Authority. It is not the matter of dispute that applicant has already superannuated on 29.02.2012.

14. What cannot possibly be disputed here is that, the applicant has fairly admitted all the allegations attributed to him in his reply and prayed for sympathetic consideration. Even his learned counsel has fairly acknowledged that in view of the admission of the applicant, he would not be able to assail the impugned orders.

15. Therefore, in the absence of any procedural illegality and irregularity, in conduct of DE, it has to be held that the Articles of Charge against the applicant stood proved, and no ground to interfere with the impugned orders, on merits, is made out, in view of law laid down by Hon'ble Apex Court in the case of ***Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others (2009) 15 SCC 620.***

16. Be that as it may, however, the contention of learned counsel that applicant is entitled to some leniency in the matter of punishment, on account of his retirement, has considerable force. Although, learned counsel for respondents has opposed this prayer of the applicant.

17. Having regards to the rival contentions of the learned counsel for the parties, we are of the considered opinion that the impugned orders deserve to be partly modified.

18. We are aware of our power of judicial review in the matter of punishment awarded by the Disciplinary Authorities. At the same time, it is now well settled law that, in case, the Tribunal comes to the conclusion that the punishment imposed by the DA or the AA is excessive, then it would appropriately mould the relief and modify the punishment by recoding cogent reasons to shorten the litigation. The reliance in this regard can be placed on the judgment of the Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. U.O.I. (1995) 6 SCC 749**, in which it was ruled as under:-

“4.....The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof”.

19. Again, the same view was reiterated in ***Mukul Kumar Choudhuri's case*** (supra).

20. As is evident from the record, that (i) The applicant has fairly admitted the charges attributed to him, in his reply dated 20.07.2008 (Annexure A-4), and prayed for favourable sympathetic consideration due to financial constraints and other family liabilities in the matter. (ii) The only allegations attributed to the applicant are that he did not inform the prescribed authorities about the pointed loan transactions and no other allegation, involving moral turpitude is assigned to him. (iii) The applicant has already retired from service on 29.02.2012 and he has two major and minor sons, besides other family members to maintain. (iv) The penalty (with cumulative effect) awarded to the applicant by DA, would naturally adversely affect his pensionary benefits throughout his life. (v) The financial institutions have already initiated the proceedings to recover the amount of loan, from the applicant and his family members, before Assistant Collector, Office of the Registrar, Cooperative Societies, Recovery Branch.

21. Therefore, taking into consideration the indicated peculiar facts, special circumstances & mitigating relatable factors, we are of the considered opinion, that it would be expedient in the interest and, justice would be sub-served, if

the penalty of withholding of increment for 2 years with cumulative effect, is modified to that of awarding a penalty of withholding of 2 increments without cumulative effect. Therefore, the word, “without cumulative effect” is substituted, in place of word “with cumulative effect” in the impugned penalty order.

22. In the light of the aforesaid reasons, the OA is partly allowed and the impugned order of withholding of increment for 2 years with cumulative effect, is modified to the extent of awarding penalty of **withholding of 2 increments without cumulative effect**. Accordingly, the impugned orders are modified in the manner and to the extent indicated hereinabove. However, the parties shall bear their own costs.

(Dr. BIRENDRA KUMAR SINHA) (JUSTICE M.S. SULLAR)
MEMBER (A) MEMBER (J)

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