

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1622/2015

Order Reserved on: 05.02.2016
Order pronounced on 26.02.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Manjeet Kaur (Regular Grade-I, DANICS)

Aged about 46 years

W/o Sh. Naresh Kumar

R/o DA-15B, Hari Nagar

New Delhi – 110 064.

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Applicant

(By Advocate: Sh. M.K.Bhardwaj)

Versus

Govt. of NCT of Delhi & Ors. through:

1. The Lt. Governor of Delhi
LG House, Raj Niwas, Delhi.
2. The Chief Secretary
Govt. of NCT of Delhi
New Secretariat
I.P.Estate
New Delhi.
3. The Director Employment
IARI, Pusa
Govt. of NCT of Delhi
New Delhi.
4. The Directorate of Education
Govt. of NCT of Delhi

Through its Director
Old Secretariat,
Civil Lines,
Delhi.

... Respondents

(By Advocate: Shri Pradeep Kumar for Sh. Vijay Pandita)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, who is holding the substantive post of Grade-I (DASS) and presently working as ad hoc DANICS under the respondent-Government of NCTD, filed the OA questioning the legality and validity of the impugned Annexures A2 and A1 Orders dated 29.01.2014 and 01.04.2015, in issuing the charge memorandum and in imposing the penalty of removal, respectively.

2. The seminal facts of the case are that while the applicant was holding the substantive post of Grade-I (DASS), the respondents vide Order No.626 dated 14.11.2012 appointed the applicant along with others with immediate effect, on ad hoc and emergent basis, against ex cadre post equivalent to DANICS carrying higher responsibilities for a period of six months or till further orders or the posts are filled up on regular basis. Accordingly, while the applicant is working as ad hoc DANICS/VATO, the respondents issued the impugned Annexure A2 Charge Memorandum dated 29.01.2014, in respect of certain omissions and commissions of the applicant. After conducting a regular departmental inquiry under Rule 14 of the CCS (CCA) Rules,

1965 and after providing opportunity to the applicant, the respondents vide the impugned Annexure A1 penalty order dated 01.04.2015 imposed the penalty of removal from service on her.

3. Shri M.K.Bhardwaj, the learned counsel for the applicant, though raised many grounds in his application, but restricted his arguments to the following grounds only, in support of the OA averments:

- i) The applicant is holding the substantive post of Grade-I (DASS) and as per Part-II of the schedule to the CCS (CCA) Rules, 1965 the disciplinary authority for imposing all penalties on the applicant is the Chief Secretary. Since the impugned Annexure A1 penalty order dated 01.04.2015 was passed by the 1st Respondent-Lt. Governor of Delhi, who is not the competent disciplinary authority, the impugned removal order is liable to be set aside.
- ii) Since the penalty order was passed by an authority higher than the disciplinary authority, the applicant lost his valuable substantive right of appeal and hence the impugned penalty order is liable to be quashed and set aside.
- iii) Appointment of the applicant as ad hoc DANICS cannot be equated to appointment to the service of DANICS on regular basis and hence, the 1st Respondent-Lt. Governor of Delhi cannot act as disciplinary authority on the applicant.
- iv) The learned counsel placed reliance on a Judgement of the Hon'ble Apex Court in **Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank and Others.**, (1995) 2 SCC 474.

4. Per contra, the learned counsel for the respondents, while denying the submissions of the applicant, would contend as under:

- i) The applicant is working as ad hoc DANICS and hence, a Group-B officer and the appointing authority for Group-B officers is the Lt. Governor of Delhi and being the appointing authority the Lt. Governor can impose the penalty of dismissal on the applicant.
- ii) Article 311 of the Constitution of India also empowers the appointing authority to dismiss or remove a civil servant from his service. Since the applicant who is working as ad hoc DANICS is removed from service by his appointing authority, i.e., the Lt. Governor of Delhi, the impugned order is valid and legal.
- iii) As per Rule 24 (1) (i) (b), an appeal is provided to the President where the penalty order is made by any other authority. Hence, the contention of the applicant that he lost the substantive right of appeal is incorrect.
- iv) The decision in **Surjit Ghosh** (supra) is not applicable to the facts of the present case.

5. Heard both sides and perused the pleadings on record.

6. It is useful to refer, hereinafter, some of the rules which are relevant for the disposal of this OA.

Sl. Nos.28 and 32 of Part II – Central Civil Services Group ‘B’
(except for Civilians in Defence Services) of the Schedule to the CCS
(CCA) Rules, 1965 provides as under:

Serial Number	Description of service	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in Rule 11)		
			Authority		Penalties
(1)	(2)	(3)	(4)		(5)
28.	Delhi and Andaman and Nicobar Islands Civil Service, Grade II.	Joint Secretary, Ministry of Home Affairs.	Joint Secretary, Ministry of Home Affairs		
			In respect of a member of the Service, serving under Delhi Administration.	Chief Secretary, Delhi Administration.	(i) to (iv)
			In respect of a member of the Service, serving under the Andaman and Nicobar Administration.	Chief Secretary, Andaman and Nicobar Administration	(i) to (iv)
32.	General Central Service, Group ‘B’-	Secretary in the Ministry or Department.			
	(i) Post in any Ministry or Department of Government of India, other than the post in respect of which specific provision has been made by a general or special order of the President.		Secretary in the Ministry or Department.		All
	(i-a) Posts outside a Ministry or Department of Government of India, other		In respect of posts in an office under the control of a Head of Department	Head of the Department	All

	than the posts in respect of which specific provision has been made by a general or special order of the President.		directly under the Government. In respect of other posts. In respect of other posts.	Secretary in the Ministry or Department. Secretary in the Ministry or Department.	All
	(ii) Posts in Union Territories, other than Delhi Administration, the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindive Islands.	Administrator	Administrator/Head of the Department In the Union Territory of Himachal Pradesh	Head of the Department.	All (i) to (iv)
	(iii) Delhi Administration – All posts	Chief Secretary	Chief Secretary.		All
	(iv) The Andaman and Nicobar Islands – All Posts.	Chief Commissioner.	Chief Commissioner.		All
			In respect of posts in the Forest Department.	Chief Conservator of Forests.	(i) to (iv)
	(v) The Lakshadweep Administration – All posts.	Administrator	Administrator.		All

Some of the relevant rules of the Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nigar Haveli Civil Services Rules, 1996 (DANICS Rules, in short), are extracted below:

3. Composition of the Service and its classification.-

(1) There shall be constituted a Service known as the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Service consisting of persons appointed to the Service under rules 6 and 7.

(2) The Service shall be deemed to have and have four grades as specified in Schedule I with effect from the 1st day of January, 1996.

(3) The posts in Junior Administrative Grade-1, Junior Administrative Grade-II and Selection Grade shall be Central Civil Services Group "A" posts and those in the Entry Grade shall be Central Civil Services Group "B" posts.

5. Member of the Service.-

(1) The following persons shall be the members of the Service:-

(a) persons appointed to duty posts under rule 6; and

(b) persons appointed to duty posts under rule 7. (2) A person appointed under clause (a) of sub-rule (1) shall, on such appointment, be deemed to be the member of the Service in the appropriate grade applicable to him in Schedule I.

(3) A person appointed under clause (b) of sub-rule (1) shall be the member of the Service in the appropriate grade applicable to him in

Schedule I from the date of such appointment.

6. Initial constitution of the Service.-

(1) All existing officers holding duty posts on regular basis in Junior Administrative Grade, Grade-I and Grade-II of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Service shall be members of the Service in the respective grades.

7. Future maintenance of the Service.- (1) The vacancies in any of the grades referred to in Schedule I, after the initial constitution under rule 6, shall be filled in the manner hereinafter provided in this rule.

(2) (a) Fifty per cent of the posts in Entry Grade shall be filled by direct recruitment and the remaining fifty per cent by promotion."

7. Admittedly, the applicant is holding the substantive post of Grade-I (DASS), and was appointed as ad hoc DANICS. As per Rule 3 read with Rules 5 to 7 indicates that an employee can be called as a

member of the DANICS Service if he is appointed either under Rule 6, i.e., initial constitution of the Service or under Rule 7, i.e., future maintenance of the Service. Under Rule 7(2)(a), 50% of the posts in entry grade shall be filled by direct recruitment and the remaining 50% by promotion. The respondents failed to show any valid Rule to the effect that a person appointed as ad hoc DANICS can be considered as a member of the said Service.

8. Sl. No.4(ii) of the Government of India's Instructions, which pertains to disciplinary proceedings against an employee officiating in a higher post on ad hoc basis, issued by the DoPT vide its OM No.11012/9/86-Estt.(A), dated 24.12.1986, issued under Rule 11 of the CCS (CCA) Rules, 1965, and on which the respondents placed reliance, only provides that where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short-term vacancy or a leave vacancy), and the Government has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him. It does not provide that the Government servant, who was appointed on ad hoc basis in a higher post, can be imposed with a punishment by the disciplinary authority of that higher post, though he was holding a lower post on substantive capacity, for which there is another disciplinary authority. Accordingly, the contention of the respondents,

that the Lt. Governor is the competent disciplinary authority for the applicant, is unsustainable.

9. Once the applicant cannot be considered as a member of the DANICS Service, he is covered under Sl. No.32 in Part-II of the Schedule *ibid*, and the disciplinary authority provided thereunder for imposing all penalties under Rule 11 is Chief Secretary.

10. Now, it is to be seen as the Lt. Governor, who is the appellate authority, imposed the punishment of removal on the applicant, whether the applicant lost his substantive right of appeal and that the same vitiates the impugned order.

11. In **U.P.Power Corporation Ltd. and Another v. Virender Lal (Dead), through LRs**, (2013) 10 SCC 39, wherein **Surjit Ghosh** (*supra*), on which the learned counsel for the applicant placed reliance was considered along with other decisions on the subject, the Hon'ble Apex Court held as under:

"15. In this context, we may fruitfully refer to the authority in **Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and others**[(1995) 2 SCC 474]. In the said case, the disciplinary proceeding was initiated against the delinquent employee by the Deputy General Manager of United Commercial Bank, the respondent therein. The disciplinary authority at the relevant time was the Divisional Manager/Assistant General Manager (Personnel) and an appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager a review lay to the General Manager. In this backdrop a contention was raised that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations and the same goes to the root of the dismissal order. The said contention was combatted by the employer contending, *inter alia*, that when the Deputy General Manager is higher in rank than the disciplinary authority and the order of punishment has been passed by the higher authority, no prejudice has been caused to the employee. A further contention was raised that in the facts and circumstances of the case it should be held that

when the order of punishment is passed by higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. Repelling the said argument the Court opined that it is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. Thereafter, the learned Judges proceeded to state thus:

“ The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.”

16. In **Balbir Chand v. Food Corporation of India Ltd. and others**[(1997) 3 SCC 371] the Court adverted to the relevant rule position and came to hold that in normal circumstances the Managing Director being the appellate authority should not have passed the order of punishment so as to enable the delinquent employee to avail right of appeal. The Court observed that it is a well-settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action, but there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. It is relevant to state here that the decision in *Surjit Ghosh (supra)* was pressed into service but the same was distinguished stating that in the said judgment under the Rules officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service and thereby, the remedy of appeal provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right pertaining to his case being considered by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. Be it noted, in the said case a right of second appeal/revision was provided to the Board and, in fact, an appeal was preferred to the Board. Regard being had to the said fact situation, this was Court declined to interfere.

17. Thus, from the aforesaid it is quite clear that in Balbir Chand (supra) though the Court approved the principles laid down in Surjit Ghosh (supra), yet distinguished the same keeping in view the rule position. Be it noted, the Court made a distinction between the non-availability of the appellate remedy in entirety and availability of a remedy or a revision with the higher authority and preservation and non-extinction of the said right.

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21. From the aforesaid enunciation of law it is graphically clear that a higher authority may pass an order imposing a punishment and the same would withstand scrutiny if the right of appeal is not taken away. That apart, if the appellate authority passes an order as the primary authority and there is provision for further appeal or revision or review it cannot be said that the said order suffers from any illegality."

12. In the backdrop of the aforesaid enunciation of law, we find force in the contention of the respondents that under Rule 24 (1)(i)(b) of the CCS (CCA) Rules, 1965, the applicant can prefer an appeal to the President against the impugned penalty order passed by the Lt. Governor, and accordingly his substantive right of appeal was not deprived and hence, the impugned order of removal cannot be interfered on that ground.

13. In the circumstances, the OA is devoid of any merit and accordingly, the same is dismissed. However, if the applicant prefers any appeal under Rule 24(1)(i)(b) of the CCS (CCA) Rules, 1965 to the President, within 45 days from the date of receipt of this order, the same shall be considered on merits, without reference to the period of limitation under Rule 25 thereof. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)