

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.2284/2017
MA No.4274/2017

New Delhi, this the 7th day of December, 2017

**Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)**

A.K. Bhardwaj, Aged 60 years
S/o Shri S.L. Bhardwaj
Retired from the post of Deputy Director of Operations
Directorate General of Civil Aviation, New Delhi
R/o 1299, Sector 12, R.K. Puram
New DelhiApplicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
New Delhi-110003
2. Under Secretary to the Govt. Of India
Ministry of Civil Aviation,
B-Block, Rajiv Gandhi Bhawan,
New Delhi-110003
3. The Director General
Directorate General of Civil Aviation,
Opposite Safdarjung Airport,
New Delhi-110003Respondents

(Through Shri R.K. Sharma, Advocate)

O R D E R (Oral)**Hon'ble Mrs. Jasmine Ahmed, Member (J)**

The applicant was appointed in the Directorate of Civil Aviation to the post of Assistant Director of Operations on 28.08.1998 and superannuated from the post of Deputy Director of Operations on 31.12.2016 on completion of age of retirement. During his service, on 18.10.2012, a charge sheet for minor penalty under Rule 16 of the CCS (CCA) Rules 1965 was issued to the applicant alleging that:

"Shri A.K. Bhardwaj was negligent in dealing with case of Ms. Garima Passi and had wrongly approved CPL to Ms. Garima Passi despite her being ineligible for the same. Thus, Shri A.K. Bhardwaj has violated the provision of rule 3 (1) (ii) of CCS (Conduct) Rules, 1964 and rendered himself liable to disciplinary action under rule 16 of the CCS (CCA) Rules, 1965."

2. After getting the charge sheet, the applicant submitted his detailed reply dated 5.12.2012. The disciplinary authority decided to conduct an inquiry and after holding the inquiry, the Inquiry Officer (IO) submitted his report on 9.04.2013 with the conclusion that no charges have been proved against the applicant and the IO clearly observed that the charges framed vide memorandum dated 18.10.2012 by the disciplinary authority are not sustainable. It is contended

that as no disagreement note was issued to the IO report, the applicant submitted his representation dated 30.05.2013 in agreement with the conclusion arrived in para 6 of the inquiry report. The disciplinary authority decided to take second stage advice and a copy of the same was furnished to the applicant vide memorandum dated 11.02.2015, to which the applicant submitted a detailed representation dated 20.02.2015. The disciplinary authority agreed with the reply submitted against the CVC advice and vide speaking order dated 24.05.2016 decided and ordered that charge framed against the applicant may be dropped. But subsequently, the disciplinary authority sought advice from the DoP&T and on advice received from the DoP&T, the respondents issued impugned penalty order dated 29.06.2017 imposing the penalty of 'censure' with 'displeasure' to the applicant after his retirement on 31.12.2016. It is the contention of the learned counsel for the applicant that there is no provision in the rules of taking DoP&T advice in such matters.

3. Learned counsel for the applicant further stated that when the disciplinary authority vide its speaking order dated 24.05.2016 has already directed that charges framed against the applicant may be dropped, then only on the basis of advice of the DoP&T, imposition of penalty of 'censure' with 'displeasure' was not justified. It is so because firstly there

is no provision under CCS (CCA) Rules to take advice of the DoP&T and secondly, the applicant was not supplied with the copy of the DoP&T advice before taking any final decision on such advice. It is also contended that the advice given by the DoP&T to impose penalty of 'censure' was only to avoid opening of the sealed cover of the applicant for his promotion, which is totally illegal and arbitrary action of the respondents.

4. It is further contended on behalf of the applicant that penalty can be imposed only if the charges are proved and in the case in hand, no misconduct or charge has been proved by any of the authorities including the advisory bodies and, therefore, only for the sake of penalty, the applicant has been imposed the penalty of 'censure' with 'displeasure' only to deprive him from his due promotion, which is totally illegal and arbitrary in the eyes of law. Another limb of the argument of the learned counsel for the applicant is that the applicant has already retired from service on 31.12.2016 and accordingly the impugned order dated 29.06.2017 could not be served upon him as there was no master and servant relationship existing on that date. Thus on this count also, the impugned order dated 29.06.2017 is completely misplaced and liable to be quashed and set aside.

5. The respondents in their reply have controverted the allegations made by the applicant. However, during the course of arguments, the learned counsel for the respondents very fairly admitted that charges were not proved against the applicant and also the impugned order has been passed long after his retirement on superannuation.

6. We have heard the learned counsel for the parties and gone through the pleadings available on record.

7. We are of the opinion that when the charges were not proved after holding proper inquiry by the disciplinary authority as well as other advisory authorities also, the penalty of 'censure' with 'displeasure' could not have been imposed on the applicant, that too after his retirement on superannuation. Accordingly, the OA is allowed. The impugned penalty order dated 29.06.2017 and charge sheet dated 18.10.2012 are quashed and set aside. The respondents are directed to open the sealed cover of the applicant and if he is found fit, promote him to the post of Joint Director General from the date his junior was promoted with all consequential benefits. Time calendared for

compliance of the order of this Tribunal is two months from the date of receipt of a copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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