

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING: Gwalior

Original Application No. 202/00527/2016

Jabalpur, this Wednesday, the 31st day of January, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Rajesh Kumar Gupta, S/o Late Shri B.L.Gupta,
Aged 46 years, Occupation: Senior Auditor,
Office of Accountant General (General & Social Sector Audit),
M.P. Gwalior, R/o 36, Kundan Nagar,
City centre Gwalior, (M.P.)-474002 -Applicant

(By Advocate –**Shri Alok Katare**)

Versus

1. Union of India through the Comptroller & Auditor General of India, 9, Deen Dayal Upadhyay Marg, New Delhi-110124
2. The Deputy Comptroller & Auditor General of India, Office of Comptroller & Auditor General of India, 9, Deen Dayal Upadhyay Marg, New Delhi-110124
3. The Accountant General (General & Social Sector Audit), MP, Audit Bhawan, Jhansi Road, Gwalior (M.P.)-474002

(By Advocate –Shri J.P.Saxena)

(Date of reserving the order:-11.10.2017)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant has filed this Original Application being aggrieved by the order dated 21.10.2014 (Annexure A-1) passed by

the respondent No.3, wherein major penalty of reversion has been imposed to the post of Senior Audit Officer in the Pay Band-II pay scale of Rs. 9300-34800/- with Grade Pay Rs. 4200/- from the post of AAO (Assistant Audit Officer) for a period of four years from 21.10.2014 alongwith fixing the pay at lower stage of Rs. 15780/- and forfeiture of seniority and also against the order dated 18.01.2016 (Annexure A-2) by which the order of punishment Annexure A-1 has been confirmed by respondent No.2. Further, the period of two days i.e. 16.03.2010 & 17.03.2010 has also been treated as dies-non.

2. The applicant has sought for the following reliefs in this Original Application:-

“8(8.1) That, the present application filed by the applicant may kindly be allowed.

(8.2) That, the order dated 21.10.2014 Annexure A/1 and the order dated 18.1.2016 Annexure A/2 passed by the respondents may kindly be directed to be set aside.

(8.3) That, any other just, suitable and proper relief, which this Hon’ble Tribunal deems fit, may also kindly be granted to the applicant. Costs be also awarded in favour of the applicant.”

3. Precisely the case of the applicant is that earlier he was working as Section Officer (now called as Assistant Audit Officer) as the post of Section Officer and Assistant Audit Officer have been merged and named as Assistant Audit Officer with effect

from 27.05.2009. The applicant earlier was working in the office of Accountant General (A&E) M.P., Gwalior as an accountant. After qualifying SOG examination in January 2007 the applicant was absorbed in the office of PAG (Civil and Commercial Audit), M.P., Gwalior as an AAO (Section Officer) vide order dated 04.10.2011 with effect from 27.09.2007. A copy of appointment letter is annexed as Annexure A-3. The applicant further submitted that during the course of service, the applicant have been part of local audit party conducting audit of the accounts of various auditee units and while the applicant was deputed to carry out the audit work at Morena, the applicant moved an application seeking permission to leave the camp-head quarter on 16.03.2010 and 17.03.2010. The application was submitted on 15.03.2010, as the mother of the applicant was seriously ill, as per the provision of O.A.D. which is annexed as Annexure A-3-A. The said application was forwarded by the In-charge Officer of the Camp and the entry of the same was also made in the outward register of office of the District Ayurvedic Officer at Morena. A copy of application is Annexure A-4 and a copy of outward register is Annexure A-5.

4. The applicant was served with a charge-sheet Annexure A-6 dated 11.01.2013 whereby three charges were leveled against the

applicant and alongwith the charge-sheet the respondents has also relied upon the documents as stated in the list of the documents.

5. During the course of enquiry, the applicant demanded the documents from the enquiry officer vide its application dated 19.02.2014 (Annexure A-9). The enquiry officer refused to grant the copy of the documents and proceeded with the enquiry. The applicant had submitted his second application dated 10.03.2014 (Annexure A-10) and the same was also refused to be given by the enquiry officer stating that to be irrelevant documents. That after conduction of the enquiry, the enquiry report was submitted by the enquiry officer, a copy of which is annexed as Annexure A-12 dated 06.05.2014.

6. The applicant has also submitted his reply on 19.08.2014 which is annexed as Annexure A-13. Thereafter, Annexure A-1 was passed by the respondents and a penalty was imposed upon the applicant. Thereafter the applicant preferred appeal before the appellate authority and the appellate authority vide its order dated 18.01.2016 (Annexure A-2) has dismissed the appeal.

7. The contention of the applicant is that the enquiry proceeding conducted by the enquiry officer is against the rule 14 & 15 of the CCS (CCA) Rules, 1965 (hereinafter called as 'the 1965 Rules') and also against the rule of natural justice.

8. The respondents Nos. 1 to 3 have filed the reply to the Original Application. The replying respondents have submitted that the applicant was appointed as Accounts Clerk on 22.08.1990 under Accountant General (A&E)-I M.P. Gwalior and subsequently he was promoted as accountant on 01.03.1999 in the same office. It was further submitted that after passing SOGE (Civil Audit), applicant was appointed as a Section Officer under respondent No.3, M.P.Gwalior on deputation-cum-absorption basis on 27.09.2007. Thereafter, the post of Section Officer and AAO was merged and renamed as Assistant Audit officer with effect from 27.05.2009. It was submitted that the charge memo dated 11.01.2013 under Rule 14 of the 1965 Rules (Annexure A-6) was served upon the applicant but the applicant did not accept the charges. Thereafter disciplinary authority ordered to conduct an enquiry into the charges and enquiry officer was appointed vide order dated 15.02.2013. Due to transfer of enquiry officer, new enquiry officer was appointed vide order dated 28.08.2013 to enquire into the charges. It is submitted by the replying respondents that enquiry officer conducted the enquiry during the period from 26.04.2013 to 18.03.2014 giving all reasonable and fair opportunities to the applicant to defend his case, including the services of defence assistance. The enquiry officer has submitted

the report establishing the charges. A copy of enquiry report was supplied to the applicant vide letter dated 18.07.2014. The applicant submitted his representation on 19.08.2014. It is submitted by the respondents that disciplinary authority recorded that the enquiry officer conducted the enquiry as per procedure laid down and following the principle of natural justice and accepted the said report and accordingly the penalty was imposed against the applicant vide order dated 21.10.2014 (Annexure A-1). The appeal was preferred by the applicant and the appellate respondent No.2 has duly considered the appeal and found no substance in the appeal and the same was rejected vide order dated 18.01.2016 (Annexure A-2).

9. We have heard the learned counsel for both the parties and also gone through the documents available on record.

10. The charge sheet Annexure A-6 dated 11.01.2013 was issued against the applicant with three charges which are namely:-

(1) That, the applicant has left his camp headquarter at Morena between the period from 16.03.2010 and 17.03.2010 without any permission from the competent authority.

(2) That, while the applicant was member of audit team between 21.12.2009 to 02.01.2010 has claimed TA bill of Rs. 500 per day for 15 days and it was alleged that the applicant claimed

Rs. 7500/- as TA bill for staying at Hotel namely Anand at Sehore from 19.12.2009 (7.00 P.M.) to 03.01.2010 (3.00 P.M.), whereas as per the letter of the Divisional Deputy Commissioner, Commercial Tax Inspector, Sehore, the applicant had occupied room No.135 and stayed in the hotel room from 21.12.2009 to 24.12.2009 and thereafter rechecked on 29.12.2009 and checked out on 01.01.2010 and actual tariff of the room was Rs. 300/- per day so out of it the applicant had claimed additional amount of TA bill which is a violation of the Central Civil Services (Conduct) Rules 1964, Rule 3 sub rule (1) of (i) & (iii).

(3) That, while the applicant was on a camp of audit with effect from 07.12.2009 to 11.12.2009 regarding the auditing of Unit Superintendent Employees State Insurance (Hospital Nagda), the applicant had claimed TA bill for 5 days at the rate of Rs. 500/- per day i.e. only Rs. 2500/- whereas as per letter of the Commercial Tax Officer the tariff of the said hotel was Rs. 250/- per day and the applicant had checked out at 3.00 P.M. and after checked out from Nagda have gone to Bhopal and stayed at Hotel Shreeji Palace, Bhopal wherein the applicant checked in on 11.12.2008 at 4.00 P.M. and the distance between Nagda to Bhopal is about 238 km. and it is not possible to complete the journey within one hours, which appears to be suspicious and it was alleged that the

information submitted by the applicant is a violation of Central Civil Services (Conduct) Rules 1964, Rule 3 sub rule (1) of (i) & (iii).

11. The counsel for the applicant has relied upon various judgments of the Hon'ble Apex Court which are as under:-

The Hon'ble Supreme Court in the matters of **L.I.C. of India and Another vs. Ram Pal Singh Bisen**, 2010 (3) JT (SC) 54 has held as under:-

(26).We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

12. The Hon'ble Apex Court in the matters of **Kuldeep Singh vs. The Commissioner of Police & Others**, JT 1998 (8) SC 603 has held that ***“There was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.”***

13. The Hon'ble Apex Court in the matters of **Roop Singh Negi vs. Punjab National Bank and others**, 2009 (2) SCC 570 has held that:-

“(10).Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.”

14. The Hon'ble Apex Court in the matters of **Madula India vs. Kamakshya Singh Deo**, 1988 (4) SCC 619 has held that in a disciplinary proceedings documents are the tools for the delinquent employee for cross-examining the witnesses who deposed against him.

15. Further, the Hon'ble Apex Court in its judgment in the matters of **Hardwari Lal vs. State of U.P. & Others**, 1999(8) SCC 582 has held that in a departmental enquiry proceedings examination of material witnesses is a must.

16. The Hon'ble Apex Court in the case of **State of U.P.& Ors. vs. Saroj Kumar Sinha**, 2010 (2) SLJ 59 that the function of the Inquiry Officer is to examine the evidence produced before him by the department but since only oral evidences have been examined,

the documents could not have held to be proved. The relevant part of the said order reads as under:-

“(26).....Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

(27). Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.”

17. Sub rule (14) of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 says that:-

“On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points

on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.”

Sub-rule (17) of Rule 14 (ibid) says that:-

“(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.”

Sub-rule (18) of Rule 14 (ibid) says that:-

“(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”

18. Regarding charge No. 1 as per Annexure A-4 the applicant has written an application on 15.03.2010 at place Morena, which is addressed to Senior Audit Officer, O.A.D.-M, Camp Morena with the submission that due to ill health of mother of the applicant, the applicant has to go his home (Jhansi, U.P.) and has requested with permission to leave the station with effect from 16.03.2010 to 17.03.2010 and it has been noticed by us that the same has been forwarded on the same date to Branch Audit office. The applicant has also annexed a copy of outward register as Annexure A-5,

which is dated 15.03.2010, which has been attested by District Ayurvedic Officer. We have also gone through Annexure A/3-A wherein in sub clause iv the procedure has been prescribed in a situation of urgent leave.

19. The counsel for the applicant submitted that the memorandum dated 23.03.2010 (Annexure A-14) was being reviewed as per Para 10.2 of the enquiry report dated 06.05.2014 the enquiry officer has given the reasons to the effect that the applicant should have made fax/speed post/registered letter to the authority, before leaving the station. We have perused Annexure A-4 coupled with Annexure A-5, it is clear that the information has been forwarded by the office in-charge of the camp to the competent authority for sanction. Moreover, on 07.03.2010 there was a holiday. Moreover, in the departmental enquiry the Inspecting Officer was never examined in the Departmental enquiry and the applicant was also not allowed to cross-examine the Inspecting officer. Furthermore, above period was also regularized on 28.07.2010 vide Annexure A-20. So this charge is neither proved and nor the applicant was allowed to cross examine the witnesses. So it is a clear cut violation of rule and law of natural justice.

20. Regarding charge No.2, a copy of statement of hotel owner is annexed as Annexure A-7 and prior to obtaining statement of hotel owner a letter was written by the respondents regarding the verification of the receipt submitted by the applicant claiming his TA bill. In reply to it the letter was written by the Deputy Commissioner, Commercial Tax, Bhopal stating that an ex-parte enquiry was conducted by Commercial Tax Officer (CTO) and the stated that the tariff of room was Rs. 300/- per day and the applicant had checked in on 21.10.2009 and checked out on 01.01.2010. The statement of hotel owner is annexed as Annexure A-7, wherein it has been specifically stated that one Manager of the hotel namely Shekhar Rajak has made the fake receipt from series 2100 and due to misleading of Shekar Rajak the applicant has been saddled with a punishment. Though the enquiry officer has relied upon the statement of witness whose statement has been taken into account, but during the course of the enquiry this witness was not examined by the department and the applicant was prejudiced by way of not giving any opportunity to cross-examine the said witness which is a violation of Rule 14 of the 1965 Rules. The enquiry officer has relied upon the enquiry as conducted by the Commercial Tax Officer who has stated the tariff to be Rs. 300/- per day but the enquiry done by CTO was ex-parte enquiry and

where no opportunity of hearing was given to cross examine the enquiry officer (CTO) and simply the information was forwarded to respondent No.3. So such enquiry is a violation of principle of natural justice and the CTO and the hotel owner at Sehore was required to be called upon but they were not produced and important right of the applicant/delinquent to cross examine the witnesses has been done away with. It is also important to indicate that as per Annexure A-18, the applicant has submitted the detailed reply to the respondents and also requested to view documents which were never supplied, to be submitted to the applicant also. The respondents denied the supplying of the documents which is clear as per Annexure A-19 dated 11.09.2012. so denying the important documents which are required by the delinquent is itself a violation of natural justice and also the violation of law laid down by the applicant, resultantly the applicant is prejudiced by not supplying the necessary documents which can be used as an important document for the purpose of defence. Moreover, we have noticed the some discrepancy as examined from Annexure A-24 page 45 of the rejoinder whereby the applicant's name is at serial no. 2 and in the right column of the remark it has been written that the applicant has been checked in on 21.12.2009 and checked out on 24.12.2009 and re-checked in on 29.12.2009 on this basis of

which charge No.2 was framed and it is quite unacceptable that once the applicant is checked out on 24.12.2009 then the fresh entry is to be required to be made in the register and the enquiry officer has remissed this important document on record. Further denial on account of enquiry officer is evident from order sheet Annexure A-25 & A-26. So enquiry proceeding is against the proviso of Rule 14 (1) of the 1965 Rules and rules of natural justice. Moreover, there is a violation of Rule 14 (5) of the 1965 Rules.

21. Regarding charge number 3 the applicant had checked in at about 9.00 A.M. on 07.12.2009 and checked out on 11.12.2009 at around 12:15 P.M. and had applied for TA bill of Rs. 500/- per day. As per report of the Divisional Deputy Commissioner, Commercial Tax the enquiry was conducted by the Commercial Tax Officer wherein it has been stated that the applicant has checked out on 11.12.2009 at around 3.00 P.M. and tariff of Rs. 250/- per day was applicable. The owner/manager of the hotel was examined by the Commercial Tax Officer who has conducted the ex-parte enquiry and the statement of Manager who had issued the receipt to the applicant who was still working in the hotel were not taken which clearly reflects the malafide and prejudiced caused to the applicant. The applicant has raised the objection that the

handwriting of the register was mismatched as is evident from Annexure A-39. As it is clear that applicant is at serial No. 3 and the handwriting in which the entries are made are mismatching with each other. A document at page 100 of the rejoinder depicts that these entries have been inflated thereafter. It is a basic law for the evidence that the author or writer of the document should have been produced in the witness box but it is not done so. So there is a clear cut violation of the principle of natural justice and cannot be relied upon with all.

22. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of

surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

23. The law has also been settled by the Hon'ble Apex Court that if the statutory rules are violated or there is a violation of Rule of natural justice during the proceeding of the enquiry then the enquiry itself is illegal and unlawful.

24. In the instant case, in view of the observation in the previous Paras (Supra) there is no evidence on record which prove the charge alleged against the applicant. Rather the enquiry itself is in violation of the natural justice and the provisions of the CCS (CCA) Rules, 1965. The statements on which the charges are framed, are not examined by the presenting officer and however, the statement of those witnesses have not been proved as per law, the Hon'ble Apex Court in view of the judgments discussed supra have stated that if the charges are not proved and simply by relying upon statement amounts to illegality and such statements are not to be read while coming to the conclusion of proving the charges. Moreover, despite the request made by the applicant regarding the important documents on which the delinquent wants to take his defence are denied to be made available to the applicant. Hence on this count also there is a violation of natural justice during the enquiry proceedings. In our view, the prejudice has been caused to

the applicant and the enquiry proceeding and the punishment thereto is illegal and unlawful.

25. Resultantly, the Original Application is allowed and Annexure A-1 dated 21.10.2014 & Annexure A-2 dated 18.01.2016 are quashed and set aside with all consequential benefits.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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