

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH**

**No. O.A. 1740 OF 2016**

**Date of order: 27.03.2018**

**Present: Hon'ble Ms. Manjula Das, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Sri Swapan Kumar Bankura,  
Son of Late Surapati Bankura,  
Aged about 55 years,  
Residing at 3, Ram Kumar Ganguly Lane,  
B. Garden, Shibpur,  
Howrah – 711 103.**

**.. Applicant**

**Vs.**

- 1. Union of India service through the  
Secretary,  
Ministry of Labour & Employment,  
Rafi Marg, Shram Shakti Bhawan,  
New Delhi – 110 001.**
- 2. The Chairman/Chairperson,  
Executive Committee,  
Central Board of Trustee,  
Employees Provident Fund Organization,  
Secretary (L & E) Appellate Authority,  
Head Office,  
Ministry of Labour & Employment,  
Rafi Marg, Shram Shakti Bhawan,  
New Delhi – 110 001.**
- 3. The Central Provident Fund Commissioner,  
Vigilance Headquarter,  
Employees' Provident Fund Organization,  
Ministry of Labour & Employment,  
Government of India,  
14, Bhikaji Cama Place,  
New Delhi – 110 066.**
- 4. Addl. Central Provident Fund Commissioner  
(WB, JH),  
EPFO, DK Block, Salt Lake City,  
Sector – II,  
Kolkata – 700 091.**
- 5. The Regional Provident Fund Commissioner-I,  
Employees Provident Fund Organization,  
D.K. Block, Salt Lake City, Sector – II,  
Kolkata – 700 091.**
- 6. Regional P.F.Commissioner – II,  
EPFO, SRO,  
Durgapur, Red Cross Road,  
Durgapur.**

**.. Respondents**

**For the Applicant :** **Mr. S.K. Dutta, Counsel**  
**Mr. A. Chakraborty, Counsel**  
**Mr. B. Chatterjee, Counsel**

**For the Respondents :** **Mr. S. Banerjee, Counsel**

**ORDER****Per Dr. Nandita Chatterjee, Administrative Member:**

The instant application has been filed under Section 19 of the Administrative Tribunal Act, 1985, seeking the following relief:-

“i) Charge Memorandum/Sheet being no. Vig. XIV(6)10/86 dated 4.9.2012 issued by the Central Provident Fund Commissioner, Vigilance Headquarter, Employees’ Provident Fund Organization is not tenable in the eye of law and as such the same should be quashed;

ii) Office Order being no. Vig. XIV (06)10/Vol.III/2527 dated 02.11.2016 issued by the Chairman/Chairperson, Executive Committee, Central Board of Trustees, Employees Provident Fund Organization/Secretary (L&E) is not tenable in the eye of law and as such the same should be quashed.

iii) Office Order being No. Vig. XIV(06)10/Vol. III/1476 dated 22.6.2016 issued by the Central Provident Fund Commissioner, Vigilance Headquarter, Employees’ Provident Fund Organization is not tenable in the eye of law and most importantly the order was issued in exercise of the power which was not vested with the Appointing Authority but with the “Central Board” and as such the same should be quashed.

iv) Grant all consequential benefits after quashing the order of punishment.

v) Costs of and incidental to this application.

vi) Pass such further or other order or orders.”

II. Heard Ld. Counsel for the applicant and respondents, examined pleadings, documents on record as well as orders of the Hon’ble Apex Court as cited by the Ld. Counsel for the applicant. The Employees’ Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 (as amended upto 11.12.1993) was also examined in this context.

III. The submissions of the applicant, as canvassed by his Ld. Counsel, are as follows:-

That, the applicant is working as the Assistant Provident Fund Commissioner, EPFO, SRO, Durgapur under the authorities of the respondent organisation and that, on 4.9.2012, a disciplinary proceeding was initiated against the applicant under Rule 10 of the Employees' Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 on the following charges.

(a) The first charge was that during the period from 12.6.2007 to 7.7.2010, the applicant issued PF Code numbers to 19 contractor establishments without issuing orders for verification of documents before coverage/allotment of PF Code number through pre-coverage inspection and without minimum verification of address particulars of these establishments, in violation of Head Office directions communicated through letter dated 12.1.2005 reiterated with specific details or exact documentation required for the said purpose by Regional Office, Ranchi Circular dated 31.7.2008. It was also alleged that the applicant did not insist on submission of post coverage inspection reports from the Enforcement Officers. By covering the contractor establishments without ensuring pre and post coverage inspections, the applicant allowed 12 such contractor establishments to be non-complying establishments.

(b) The second charge alleged against the applicant was that during the period 12.6.2007 to 7.7.2010, the applicant issued PF Code numbers to 11 contractor establishments on the basis of fake/forged labour licenses. Further, the applicant issued PF Code numbers to 23 contractor establishments on the basis of a single work order submitted by the contractor establishments in violation of and in bypassing the HO guidelines issued on 12.1.2005 which had been reiterated with specific details for exact and minimum documentation by RO, Ranchi Circular dated 31.7.2008. Moreover, 09 contractor establishments were allotted PF

Code nos. on the basis of fake/forged work orders of unknown/unverifiable principal employer.

That, the applicant was functioning as an Assistant Provident Fund Commissioner (Compliance) at Regional Office, Ranchi from 17.12.2008 to 7.7.2009 and that as per the Inspector's Manual and circular dated 31.7.2008 issued by RPFC, Ranchi, the Enforcement Officers (EOs) who were the field officers, are to submit coverage proposal duly recommending the coverage of establishments after verifying the particulars mentioned in the coverage proposal with documents submitted by new establishments and that, based on such recommendations of the concerned EO, PF code number is to be allotted/denied to the establishments. That the applicant used to approve the proposal for coverage of the establishment based on the recommendations of the EOs and scrutiny by the compliance section.

That, in response to the charge memo dated 4.9.2012, the applicant had submitted a reply dated 24.9.2012 refuting the charges and pointing out his actual period of functioning as APFC (Compliance) (Annexure "A-2" to the O.A.) contradicted the period as noted in the memorandum of charges.

That, the Enquiry Officer conducted the enquiry and submitted his report on 9.7.2015 without properly analysing the evidence brought on record and the submissions of the applicant as contained in his written brief (annexed as Annexure A-3 to the O.A.) was ignored.

That, on 27.4.2016, the applicant submitted a representation against the enquiry report (Annexed as Annexure A-5 to the O.A.) and that the disciplinary authority, without considering his submissions in a fair manner, passed a non-speaking order on 22.6.2016 imposing upon the applicant a major penalty of "reduction of a lower stage of pay in the time scale for two years without cumulative effect and without effecting increments" in



exercise of powers vested under Rule 8(2) of the EPF Staff (CC&A) Rules, 1971.

That, it is the Central Board which is the competent authority under Rule 8(2) of the EPF Staff (CC &A) Rules, 1971 and hence the disciplinary authority's order was passed without competence or authority annexed as (Annexure A-6 to the O.A).

Thereafter, the applicant preferred an appeal which was rejected by the appellate authority on 2.11.2016 (Annexed as Annexure "A-7" to the O.A.).

That, the applicant is not guilty of any misconduct as because the applicant was following the guidelines of the respondent authorities and hence cannot be victimised on grounds of systematic deficiencies. Accordingly, being aggrieved, the instant application has been filed.

IV. Per contra, the Ld. Counsel for the respondents has argued that at no point of time was the applicant denied natural justice as because he was given enough opportunities to respond to the charge-memorandum. He had the right to call for any witness in his support during the enquiry proceedings and that he failed to do so. It was also argued that it is the duty of the applicant, who is the final authority for allotment of code number, to ensure that all eligibility criteria are fulfilled before allotment of code number to any establishment.

The respondents have, however, admitted that there were typographical mistakes whereby the year of his tenure was erroneously typed as 2010 instead of 2009 in the chargememo.

That, the guidelines do not debar the applicant from conducting a pre-coverage inspection and that guidelines were issued for ensuring verification of records before issuance of code numbers specifically to the contractor establishment. The applicant failed to implement such

guidelines.


That the competence of the disciplinary authority were authorised by Rule 7 of the EPF (CCA) Rules and that there was a typographical error in quoting the rule as 8(2) instead of 8(3) of the said Rules.

### **ISSUES**

V. The issue that requires to be decided upon in the context of adjudication of the instant application is whether the disciplinary proceedings as conducted against the applicant suffer from such infirmities so as to make the proceedings bad in law which call for judicial review.

### **FINDINGS**

VI. The following is deciphered from the oral submissions, pleadings and documents on record:

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- (i) Disciplinary proceedings was initiated under Rule 10 of the Employees' Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 vide charge memorandum No. Vig. XIV (6) 10/86 dated 4.9.2012 alleging:
    - (a) That during the period from 12.6.2007 to 7.7.2010, the applicant issued PF Code numbers to 19 contractor establishments without issuing orders for verification of documents before coverage/allotment of PF Code number through pre-coverage inspection and without minimum verification of address particulars of these establishments, in violation of Head Office directions communicated through letter dated 12.1.2005 reiterated with directions for specific details or exact documentation required for the said purpose by Regional Offices' (Ranchi) Circular dated 31.7.2008. That the applicant did not insist on and ensure the submission of post coverage inspection reports from the Enforcement

Officers and thereby allowed 12 such contractor establishments to be non-complying establishments.

(b) The second charge alleged against the applicant was that during the period 12.6.2007 to 7.7.2010, the applicant issued PF Code numbers to 11 contractor establishments on the basis of fake/forged labour licenses and that the applicant issued PF Code numbers to 23 contractor establishments on the basis of a single work order submitted by the contractor establishments in violation of and in bypassing the HO guidelines issued on 12.1.2005 which had been reiterated with specific details for exact and minimum documentation by RO, Ranchi Circular dated 31.7.2008. Further, 09 contractor establishments were allotted PF Code nos. on the basis of fake/forged work orders of unknown/unverifiable principal employer.



(ii) The charge memo did not contain any list of witnesses.


(iii) It is admitted by the respondents that the tenure of the applicant has been wrongly incorporated in the charge memo. No attempt, however, was made by the respondents to amend the charge memo although, as held in **Braja Kishore Das v. State of Orissa, AIR 1965 Ori 183 (DB)**, amendment of a charge is merely a matter of procedure and so long as ample notice of such amendment or alteration is given and adequate opportunity for defence is afforded, the proceedings will not be vitiated.

(iv) Contrary to the principles of natural justice, the applicants' defence, although noted, has not been discussed or examined in

depth in the order of the disciplinary authority. This violates Rule 11(2-A) of the EPF Staff (CC & A) Rules, 1971 which is quoted hereunder:-

“(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the employee and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).”

v. The Schedule attached to the EPF (CC & A), 1971 is referred to in this regard and the following is noted with respect to the disciplinary authority of the APFC.



S. No.	Description of Service	Appointing Authority vide Rule 5	Authority competent to impose penalties & Penalties which it may impose (with reference to item numbers in Rule 7 & 8	Penalties
IV.	GROUP 'A' - Addl. CPFC - Director (Vig.) - Law Officer - Superintending Engineer - RPFC (Gr. I) - RPFC (Gr. II) - Dy. Director (Vigilance) - Dy. Director (Training) - Senior Admn. Officer (NATRSS) - Senior Analyst - APFC	CPFC	CPFC	All (Both minor & major)

Rule 8(2) of the said Rules states as follows:

“8(2) The Central Board may impose any of the penalties specified in Rule 7 on any employee for whom the Central Board is the appointing authority under Section 5(D)(3) of the Act.



Rule 8(3) of the said Rules states as follows:-

“8(3) Without prejudice to the provisions of Sub-Rule (1) and (2), the appointing authority or authority specified in the Schedule to this rule, may impose any of the penalties specified in Rule 7 on any employee to the extent specified in the Schedule.”

The concluding paragraph of the disciplinary authority's order dated 22.6.2016 (Annexure as A-6 to the O.A.) reads as under:-

“Now, THEREFORE, the undersigned being the Disciplinary Authority in exercise of the powers vested under Rule 8(2) of the EPF Staff (CCA) Rules, 1971 has come to the considered view to impose a penalty of “reduction to a lower stage of pay in the time scale for two years without cumulative effect and without affecting increments” upon Sh. S.K. Bankura, APFC and orders accordingly.

(Dr. V.P.Joy)  
Central Provident Fund Commissioner”

It is a settled principle of law that the entire procedure for initiating and concluding disciplinary proceedings is generally governed by rules having statutory force.

In **Punjab National Bank v. Kunj Behari Misra** reported in (1998) 7 SCC 84 it has been held as under:-

“In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority. As such when the enquiry is conducted by the Inquiry Officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded with the completion of the enquiry. The disciplinary proceedings stand concluded with the decision of the Disciplinary Authority.”

It has also been held in **Yoginath D. Bagde v. State of Maharashtra** reported in (1999) 7 SCC 739 that departmental proceedings are not concluded on the submission of the enquiry report. They come to an end only when the disciplinary authority on consideration of the report either exonerates or imposes punishment on the delinquent.

Hence, the first task is to identify who is the disciplinary authority in relation to the concerned public servant. This is important because almost all the rules contemplate initiation of the departmental proceedings on the

satisfaction of the disciplinary authority and the punishment to be imposed is also a matter of discretion of the disciplinary authority. The Rules very often provide a schedule which indicates who is the disciplinary authority in relation to the several posts in the organisation. Competent authority would generally mean the appointing authority or an authority equivalent to or co-ordinate in rank with the appointing authority as observed in **Krishna Kumar v. Divisional Assistant Electrical Engineer AIR 1979 SC 1912.**

In **Indian Airlines Ltd. v. Prabha D. Kanan, (2006) 11 SCC 67** it has been held that, "If the entire Board is the appropriate authority for taking a decision, it is only that authority which was required to take decision and not any other."

It has been held in **B.C. Chaturvedi v. Union of India & ors.** reported in **1996 SCC (L&S) 80** as under:-

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such

as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.”

VII. The Ld. Counsel for the applicant, in his support, has furnished three decisions of the Hon’ble Apex Court as follows:-

(a) **1993 SCC (L&S) 318 Union of India & ors. v. R.K. Desai** wherein it has been held as under:-

“7. It seems difficult beyond dispute, and is not in fact disputed before us, that it is not as if an officer belong to the Central Civil Service is totally immune from disciplinary proceedings wherever he discharges quasi-judicial or judicial functions.

Xxxxxxxxxxxxxxx

Merely because he gives a judicial or quasi-judicial decision which is erroneous or even palpably erroneous no disciplinary proceedings would lie.”

(b) **Roop Singh Negi v. Punjab National Bank & ors.** reported in **(2009) 2 SCC 570**, wherein the Hon’ble Court has observed:-

“44..... The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.”

(c) The ratio decidendi in **Union of India & ors. v. J. Ahmed** reported in **AIR 1979 SC 1022** has also been referred to:-

“.....There followed the usual search for a scapegoat and the respondent came handy. Some charged were framed none of which could constitute misconduct in law.”

VIII. It has also been held in **Chairman, LIC of India v. A. Masilamani** , **2012 (8)Supreme Today 224 (SC)**; that it is a settled legal proposition, that once the Court sets aside an order of punishment on the ground that the enquiry was not properly conducted it must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same.

The disciplinary authority’s order is void ab initio as because the disciplinary authority, namely, the CPFC, was not empowered under Rule

8(2) of the EPF (CC & A) Rules, 1971. Such an error cannot be trivially argued as a mere typographical error as recorded in the pleadings.

Hence, we conclude that the disciplinary authority had erroneously passed his orders concluding the disciplinary proceedings. The disciplinary authority acted beyond the authority that was delegated to him under EPF Staff (CC & A) Rules, 1971 and hence the entire order of disciplinary authority deserves to be set aside. Since, however, the order is being quashed on technical grounds, based on the settled legal proposition that once the Court sets aside the order of punishment on the ground that the enquiry was not properly conducted, we remit the case back to the disciplinary authority to conduct the proceedings from the point wherefrom it stood vitiated and to conclude the same.

Hence, we set aside the order of the disciplinary authority and we remand it back to the disciplinary authority to initiate the proceedings afresh and in accordance with rules.

IX. The O.A. is hereby allowed to the extent of the above decision.

Parties will bear their respective costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Manjula Das)**  
**Judicial Member**

**SP**