

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 045/00298/2016

Date of Order: This, the 06th day of March 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Sri Biraj Borthakur
Son of Late Dimbeswar Borthakur
Sub Area Organiser
O/o the Deputy Inspector General
Sector Headquarter, Sashastra Seema Bal
Bomdila, Arunachal Pradesh, Pin – 790001.

Permanent resident of:
Village – Madhabgaon, P.S. & P.O. – Jamugurihat
District – Sonitpur, Assam.

...Applicant

By Advocates: Mr. K. Bhattacharjee & Mr. C.S. Hazarika

-Versus-

1. The Union of India
Represented by the Secretary
To the Government of India, Ministry of Home Affairs
Central Secretariat, North Block, New Delhi – 110001.
2. The Cabinet Secretary
To the Government of India
Cabinet Secretariat, Government of India
Rashtrapati Bhawan, New Delhi – 110004, India.
3. The Sashastra Seema Bal
Directorate General, Sashastra Seema Bal
East Block – V, R. G. Puram, New Delhi – 110066
Represented by its Director General.
4. The Central Vigilance Commission
Satarkta Bhawan, G.P.O. Complex
Block A, INA, New Delhi – 110023, Represented by its Director.

5. The Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi – 110069
Represented by its Secretary.
6. The Deputy Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi – 110069.
7. The Deputy Inspector General
Sashastra Seema Bal
Sector Headquarter, Bomdila
Arunachal Pradesh – 790001.
8. The Deputy Inspector General (Pers)
Sashastra Seema Bal
Directorate General, Sashastra Seema Bal
East Block – V, R.G. Puram, New Delhi – 110066.
9. The Assistant Director (Persl)
Sashastra Seema Bal
Directorate General, Sashastra Seema Bal
East Block – V, R.G. Puram, New Delhi – 110066.
10. The Area Organiser
Sashastra Seema Bal
Sector Headquarter, Gangtok
Sikkim, Pin – 737101.

...Respondents

By Advocates: Mr. S.K. Ghosh, Addl. CGSC
Mr. H. Gupta for UPSC

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):

The present case has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “8.1 That the Hon’ble Tribunal be pleased to set aside and quash order imposing penalty upon the applicant issued under No. 12/SSB/Pers-I/2009(1)/2321-25 dated 12.02.2016 by the Assistant Director (Pers-I), Sashastra Seema Bal, Directorate General, New Delhi by order and in the name of the President.
- 8.2 That the Hon’ble Tribunal be pleased to set aside and quashed the following:-
- (i) The Office Memorandum dated 31.05.2011 issued by the Director, Central Vigilance Commission, New Delhi;
 - (ii) The Memorandum of charge dated 07.07.2011 issued to the applicant by order and in the name of the President by the deputy Inspector General (Pers), Directorate General, Sashastra Seema Bal, New Delhi;
 - (iii) The Inquiry Report dated 27.07.2013 prepared by Sri Apurba Kumar Nath, Area Organiser, Sashastra Seema Bal, Sector Headquarter, Sikkim;
 - (iv) The Disagreement Note dated 14.07.2014 prepared by the Assistant Director (Pers-I), Directorate General, Sashastra Seema Bal, New Delhi by order and in the name of the President;
 - (v) The Advice of the Union Public Service Commission dated 22.07.2015 issued by the Deputy Secretary of the Commission and
 - (vi) The order dated 02.03.2016 issued by the Deputy Inspector General, Sashastra Seema Bal, Sector Headquarter, Bomdila as a consequence of the penalty imposed upon the applicant.
- 8.3 That the Hon’ble Tribunal be pleased to direct the respondents to restore the applicant to his original pay, that is to say, the pay that he

would have enjoyed had he not been imposed with the penalty of reduction to a lower stage in the time scale of pay by means of the impugned penalty order dated 12.02.2016, and

8.4 Any and all consequential reliefs that the applicant is entitled to, as pointed out in the foregoing paragraphs of this original application."

2. Heard Mr. C.S. Hazarika, learned counsel for the applicant, Mr. S.K. Ghosh, learned Addl. CGSC for the respondents except respondent No. 5 i.e. UPSC and Mr. H. Gupta, learned counsel for respondent No. 5 i.e. UPSC. The applicant had filed written argument also on 07.02.2019.

3. Facts of the case are that the applicant joined SSB as Sub Inspector (Pharmacist), a combatised, non-gazetted post as a regular employee in 1984 at Tezpur, Assam. However, following advertisement for filling up vacancy for the post of Circle Organiser (a Civilian Gazetted post), the applicant applied for the said post and after going through the selection process, was appointed to the said post where he joined on 01.10.1991 at Jonai and thereafter he was transferred to various places and on 02.01.2004. He was promoted to the post of SAO (a Group – A post) and posted to Gangtok, Sikkim where he stayed till September 2008. Thereafter he was transferred to Bahraich, UP where he stayed from 15.09.2008 to

18.05.2015 and then he was again transferred to Bomdila (Arunachal Pradesh) where he is currently posted from 01.06.2015.

4. Smt. Chandra Lama, UDC in the office of Area Organiser, SSB, Sikkim applied for withdrawal of Rs. 2 lac from her General Provident Fund (GPF) in December 2007. Subsequently, she submitted an application dated 22.11.2008 regarding non receipt of GPF withdrawal of Rs. 2 lac. Later on it was found that the Demand Draft bearing No. 0466-112355 dated 27.12.2007 for Rs. 2 lac meant for payment of GPF withdrawal to Smt. Chandra Lama, UDC had been encashed at SBI Gangtok, Sikkim on the basis of authorization letter allegedly signed by the applicant in favour of one Mr. Ramesh Kumar. A Court of Inquiry was ordered by Deputy Inspector General, SHQ Ranidanga vide Memo dated 21.01.2009 to find out the facts of the case. Sequel of this Court of Inquiry Report, Memorandum No. 12/SSB/Pers-I/2009(1) dated 07.07.2011 was issued to the applicant containing the following the charges:-

Article-I: That Shri B. Borthakur, SAO, Bahraich Area while functioning as SAO/DDO of Sikkim Area during the period December, 2007 to august, 2008 fraudulently encashed GPF withdrawal Demand Draft No. 0466—112355 dated 27.12.2007 from SBI, Gangtok directly without depositing the draft in Govt. account being GPF withdrawal amounting to Rs. 2 Lakhs in respect of Smt. Chandra Lama, UDC of Sikkim Area by signing the authority letter in favour of Shri Ramesh Kumar who is not an SSB employee which tantamous to misconduct, unfaithfulness, dishonesty and fraud. Thus, Shri B. Borthakur, SAO violated Rule 3(1)(i)(ii)&(iii) and GOID-23(5) below Rule 3 of CCS (Conduct) Rules, 1964.

ARTICLE-II: That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Borthakur, SAO while functioning as DDO/officiating Area Organiser could not ensure official procedure in dealing with incoming/outgoing daks resulting in missing and embezzlement of Demand Draft No. 0466-112355 dated 27.12.2007 amounting to Rs. 2,00,000/- thereby violated Sub Rule 2 (i) of Rule 3 of CCS (Conduct) Rules, 1964.

ARTICLE-III: That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Borthakur, SAO misled the office by mentioning wrong date of issue of Demand Draft which he collected from PAO, SSB, New Delhi, thereby he caused unnecessary delay in investigation of missing draft which tantamount to misconduct in violation of Rule 3(1) (i) & (ii) of CCS (Conduct) Rules, 1964.

ARTICLE-IV: That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Borthakur, SAO being DDO of office used to keep cashier's key of Cash chest on Sundays and kept demand drafts meant for Area Organiser, Sikkim in his personal custody without making entry in the Diary register/valuable register for considerable period which tantamount to misconduct in violation of Rule 3(1)(i) & (ii) of CCS (Conduct) Rules, 1964.

ARTICLE-V: That the said Shri B. Borthakur, SAO has paid an amount of Rs. 2,00,000/- to Smt. Chandra Lama, UDC on 10.03.2010 in presence of her advocate when a court case was under subjudice which indicates that Shri B. Borthakur, SAO **personally involved in this fraudulent case**, which tantamount to an unbecoming act in violation of Rule 3(1)(i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

5. These charges were denied by the applicant vide his reply/representation dated 10.08.2011. Accordingly, enquiry was conducted and findings of the enquiry report was submitted vide letter dated 30.05.2013. The findings of the enquiry were as under:-

Articles of charges:Findings:

- (1) Article – I of Charge
- (2) Article – II of Charge
- (3) Article – III of Charge
- (4) Article – IV of Charge
- (5) Article – V of Charge

“Not Proved”.
 “Proved”.
 “Proved”.
 “Not Proved”.
 “Not Proved”.

6. After due examination, the Disciplinary Authority vide his Disagreement Note dated 04/14.07.2014 has concluded as under:

“The findings of the Enquiry Authority on Article II, III & IV were agreed to by the Disciplinary Authority and the applicant was directed to submit his representation, if any, within 15 days of receipt of inquiry report and Disagreement Note vide Memorandum dated 14.07.2014.”

7. The applicant submitted his reply/representation dated 07.08.2014 denying all the charges leveled against him. A copy of the advice obtained from the Union Public Service Commission (in short UPSC) on departmental enquiry was also given to the applicant vide letter dated 26.08.2015 for making representation, if any. The applicant submitted his representation vide letter dated 08.10.2015 against the advice of the UPSC.

8. After going through the above process, the Disciplinary Authority vide his order No. 12/SSB/Pers-I/2009(1) dated 12.02.2016 imposed penalty of **‘reduction to a lower stage in the time scale of pay by 3 (three) stages for a period of 5 (five) years on the CO, Shri B. Borthakur, SAO, SSB with further directions that the CO will not earn increments of pay during the period of such reduction and, on the**

expiry of such period, the reduction will have the effect of postponing the future increments of his pay'.

The applicant has challenged the entire process of departmental proceedings on the ground of the adopted procedure being vitiated and also on the merits of the charges initiated against him.

9. We have carefully gone through the entire process of disciplinary proceeding initiated, followed and concluded by the Disciplinary Authority. We found that there is no any serious major deviation which would have adversely affected the interest of the applicant. Some of the points raised by the applicant, such as, approval of the Minister of Home Affairs not taken for initiation of the departmental proceedings, the need for taking approval of the Prime Minister, the complete Inquiry Reports not being forwarded etc. are found to be frivolous. The respondent authorities could not have proceeded without getting the approval of the competent authorities at various stages since the case has been routed through the Ministry of Home Affairs for initiating in the name of President of India and also for obtaining advice of the UPSC. The respondent authorities need not to indicate to the applicant whose approval has been taken at what stage. As such, we find no merit in the points raised by the applicant in regard to the procedure being adopted for initiation and finalization of the departmental proceedings.

However, in regard to the merit of charges which have been consistently and vehemently denied by the applicant, we are compelled to examine this aspect in the relevant context. This is particularly imperative in the context of the fact that the 3 (three) authorities namely – the Inquiry Authority, the Disciplinary Authority and the Advisor i.e. UPSC have found the Article of Charges with different conclusions on the same materials as hereunder:-

Article of charge in the charge sheet	Finding of the Inquiring Authority	Finding of the Disciplinary Authority in the Disagreement note	UPSC advice
I	Not proved	Proved	Proved
II	Proved	Proved	Proved
III	Proved	Proved	Partly Proved
IV	Not proved	Not proved	Not proved
V	Not Proved	Proved	Proved

10. The Article I of Charge is that the applicant had committed grave misconduct by fraudulently encashing GPF withdrawal Demand Draft No. 0466-112355 dated 27.12.2007 amounting to Rs. 2 lakhs from SBI, Gangtok. In the Charge in Article II is that the applicant while functioning as officiating Area Organiser could not ensure official procedure in dealing with incoming/outgoing daks resulting in missing and embezzlement of Demand Draft No. 0466-112355 dated 27.12.2007 amounting to Rs. 2,00,000/-. The plain reading of these Articles of Charges, the 1st charge may look genuine and straightforward but adding the

charge of Article II makes it very very strange and perplexing. In the Article I, the charge is that the applicant had fraudulently encashed the said Demand Draft. But in Article II, the charge is that he could not ensure official procedure in dealing with incoming/outgoing daks resulting in missing and embezzlement of Demand Draft as if somebody is charged of actually having done fraudulent encashment of the said Demand Draft and not the applicant. By instituting these two charges together against one persons, it appears as if somebody has been driven into a tunnel wherein at both ends tunnel, traps have been laid to catch hold of him. These two Articles of charges accordingly, are found to be contradictory in nature and against the principle of fairness and natural justice. If, anyone of them is charged, it would have look simple and genuine whereas putting them together as independent but combined charges are found to be unfair and not sustainable at all.

11. As regards to the charge under Article III, this is found to be frivolous and the applicant has been able to explain adequately and convincingly. But it may also be added that the mistake committed by the applicant appears to be quite genuine and he has been able to substantiate it with the detailed explanation. There appears to be no intention of misleading and causing unnecessary delay in investigation of the missing Demand Draft. Therefore, this charge is also found not sustainable.

12. As regards to the charge under Article IV, all the three authorities found 'not proved'. Accordingly, further judicial scrutiny on this point of charge is considered not necessary.

13. As regards to the charge under Article V, it appears that this is the main Article under which the applicant has been finally found to be guilty of misconduct. In this connection, it may be recalled that the applicant consistently and vehemently denied the charge of having fraudulently encasing the said Demand Draft. The applicant claimed that there was no need for fraudulently encasing the Demand Draft for him when he has all the official power to encash the Demand Draft as authorized DDO.

14. On this point of argument, it is acceptable that he could have withdrawn the money officially and still denied payment to the lady i.e. Smt. Chandra Lama, UDC by manipulating the record in his own office. However, this is not point of the charge. The point of charge is that he had encashed the Demand Draft fraudulently and has not paid the amount to the beneficiary. We have looked at the certified copy of the Demand Draft No. 0466-112355 dated 27.12.2007. It is recorded on the said Demand Draft in favour of the Area Organiser, SSB, Sikkim. This means that the Demand Draft is supposed to be credited to the Current Account No. 01000050007 of office of the Area Organizer, SSB, Sikkim, Gangtok. The amount is

supposed to be withdrawn again through the Cheque Book issued by the Bank and payment made to the beneficiary after making necessary recording/obtaining of her signature. This has not been done. The Demand Draft has been directly allowed to be encashed by the Bank as well (inspite of being heavy amount). This was purportedly done on the strength of the authority letter dated 04.02.2008 in favour of a person by the name Shri Ramesh Kumar.

15. Now the crucial point is — who has authorized the so called Ramesh Kumar to encash the said Demand Draft? The specimen signatures of the applicant namely Shri Biraj Borthakur and the signature as appears in the letter dated 04.02.2008 at page 84 to the O.A. has been sent to the Forensic Scientific Laboratory at Kolkata by the police authorities for their assessment, opinion and report. The scientific authority i.e. Forensic Scientific Laboratory, Kolkata vide letter No. DXA-32/2009 dated 08.12.2009 has conveyed as under:

“The documents of this case have been carefully
And thoroughly examined.

2. The person who wrote the blue enclosed signatures stamped and marked S1 to S5 did not write the red enclosed signatures similarly stamped and marked Q1, Q6 and Q9.

3. It has not been possible to express any opinion on rest of the items on the basis of material at hand.”

It is observed that after this route has been blocked by the scientific expert opinion, probability of getting the point of the charge 'Proved' get shifted to the domain wherein the applicant along with others have paid Rs. 2 lacs to Smt. Chandra Lama, UDC. The averment is that since the applicant had agreed to pay the amount to the beneficiary, it has been concluded by the respondent authorities that he has admitted to have committed the 'misconduct of having fraudulently withdrawing the said Demand Draft'. The charge now got shifted from the principle of direct evidence to principle of preponderance of probability as the basis of proving the charges, which is of course considered to be adequate to establish the charge in departmental proceedings. However, putting the things in proper sequence, shifting the basis of 'Proved' from the Scientific to the preponderance of probability is considered to be highly unfair to the charged official. It appears as if the charged officer is somehow targeted so much so that after having failed to prove on the basis of expert scientific opinion, one has shifted to the principle of preponderance of probability. In fact, the applicant also has adequately explained in his representation dated 10.08.2011 against the statements of Article of charge framed against him wherein he had recorded as under:

"It is submitted that, simply because, under compelling circumstances, I also contributed towards compensating to the financial loss of a

Junior staff of mine, which loss occurred during official transactions between PAO New Delhi and A.O. Office Gangtok, it cannot be and must not be constructed in law that I am involved in the alleged offence."

16. This situation naturally takes the issue from the sphere of evidence to the realm of 'suspicion'. But suspicion however, strong may be the basis for finding somebody 'guilty' or 'proved' or used as 'proof of allegation'. In this connection, the learned counsel for the applicant drew our attention to the Hon'ble Supreme Court in the case of **Union of IndiaV. HC Goel – AIR 1964 SC 364, 370; PR. 27** held that:-

"Now, in this state of the evidence, how can it be said that respondent even attempted to offer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that respondent did not offer him a bribe. He merely refers to the fact that respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note duple folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned AttorneyGeneral, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent."

17. Considering the above facts and circumstances and the nature of Article of charges, among of which particularly Article I, II & V are contradictory to each other and also the fact that restricted point of the charge is basically fraudulent encashment of the said Demand Draft, we found that the respondent authorities have not been able to prove the charge leveled against the applicant. It is liable to be set aside. Accordingly, impugned order No. 12/SSB/Pers-I/2009(1) dated 12.02.2016 imposing the penalty is hereby quashed and set aside. The applicant is entitled to all consequential benefits as admissible under the rules.

18. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)