

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/2537/2015

New Delhi, this the 24th day of April, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Dr.A.K. Mukhopadhyay
S/o Shri Deba Prasad Mukhopadhyay, Age 63 years
Flat No. 253, DDA SFA Flats
Sector-05, Pocket 01
Dwarka, New Delhi-75

... Applicant

(Through Shri Padma Kumar S., Advocate)

Versus

1. Union of India, through
Secretary,
Ministry of Defence
South Block, New Delhi-11
 2. Director General Quality Assurance,
Department of Defence Production
South Block,
New Delhi-11
 3. Secretary,
Union Public Service Commission
Jodhpur House,
Shahjahan Road,
New Delhi-110003
- ...Respondents

(Through Dr. Ch. Shamsuddin Khan, Advocate)

ORDER (Oral)

Justice L. Narasima Reddy, Chairman

The applicant was working as Joint Controller – II in the Office of the Director General Quality Assurance under the Ministry of Defence. In the year 2007, he was stationed at Kanpur. It is stated that in the respondent office, there was also Joint Controller - I along with the applicant and the said officers were working under the Controller.

2. On 26.02.2008, when the Controller and Joint Controller-I were absent, a proposal of joint testing of samples was put up to the applicant by the Deputy Controller. The proposal was otherwise required to be put up before the Joint Controller-I. The applicant agreed to the proposal put up before him. Subsequently, that is said to have been approved by the Controller also. It is stated that though the samples were approved, no purchases were made.

3. Disciplinary proceedings were initiated against the applicant vide charge memo dated 13.07.2011, alleging that the approval of the proposal was not proper. The applicant denied the charge mentioned therein. Hence, an Inquiry Officer (IO) was appointed.

In his report dated 11.03.2014, the IO held the charge as partly proved. The applicant retired from service in the meanwhile.

4. The Disciplinary Authority (DA) passed order dated 18.09.2014 imposing the penalty of withholding of 10% of the monthly pension otherwise admissible to the applicant, for a period of one year. The same is challenged in this OA.

5. The applicant contends that except that he has forwarded the proposal submitted by the Deputy Controller, he did not take any independent decision and that no material was purchased on account of the steps taken by him but still, the departmental proceedings were initiated against him. It is also stated that the respondents were not able to prove anything, so much so, the file in which the approval was accorded, was not even made available. He contends that the report of the IO was virtually based on no evidence and even the finding was only to the effect that the charge was partly proved.

6. The respondents filed counter affidavit opposing the OA. It is stated that the applicant was required to be vigilant in forwarding

the proposal and but for the steps taken by him, the necessity to conduct tests of the expired samples would not have arisen at all. It is stated that the required procedure was followed in conducting departmental proceedings.

7. We heard Shri Padma Kumar S., for the applicant and Dr.Ch. Shamsuddin Khan, for the respondents.

8. Even according to the respondents, the only lapse on the part of the applicant is that he forwarded the file to the Controller, though it was required to be sent through Joint Controller-I. It is not denied that the Joint Controller-I was not present on 26.02.2008. It was not even mentioned that the applicant took final decision on the file. He simply forwarded it and it is at a later point of time that the Controller approved the proposal. No material was purchased, much less any financial loss was caused to the State. If any illegality has taken place in the process, it is that the Deputy Controller initiated the proposal with the applicant. The very fact that the file was not available during the enquiry, discloses the amount of attention that was paid to the issue on the part of the respondents.

9. We are handicapped from recording a definite finding on entire issue because the file was not available at any stage. At the same time, we feel that the applicant ought to have waited till the concerned Joint Controller resumed duty, instead of himself proceeding in a matter of that nature. Under these circumstances, the penalty of withholding of 5% of pension for a period of six months is felt adequate and reasonable.

10. We, therefore, partly allow the OA and modify the penalty, to the one of withholding of pension of the applicant to the extent of 5% for a period of six months. The respondents shall work out the amount payable on account of modification of penalty and pay the same within a period of two months from the receipt of a certified copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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