

CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH

No. O.A. 350/731/2014

Date of order: 24.9.19.

Present: THE HON'BLE SMT. BIDISHA BANERJEE, MEMBER (J)
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)

Arvind Kumar Singh, son of Late Ramjee Singh, aged about 57 years, Ex-govt. Examiner of Questioned Documents under Chief Forensic Scientist, at present residing at Qrt. No. 7C, Central govt. extension Qrts., Dover Lane, Kolkata – 700029

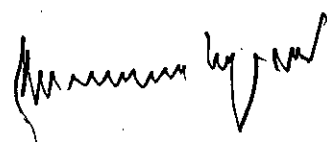
.. Applicant

-Versus-

1. Union of India through Secretary, Ministry of Home Affairs, (PM Division), Jaisalmer House, 26 Mansingh Road, New Delhi – 110011.
2. Chief Forensic Scientist, Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India, Block No. – 9, 8th floor, CGO Complex, Lodhi Road, New Delhi – 110003.
3. Under Secretary (S.I), Union Public Service Commission, (SANGH LOK SEVA AYOGE), Dholpur House, Shahjahan Road, New Delhi – 110069.

.. Respondents

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|----------------------------|---|---|
| For the Applicant | : | Sri A. Chakraborty |
| For the Respondents | : | Sri M.K. Ghara & Sri L.K. Chatterjee |



ORDER**NEKKHOMANG NEIHSIAL, MEMBER (A):**

The hearing of this O.A. was concluded on 12.06.2019 and reserved for orders. Parties were allowed to exchange their written notes of argument. However, no written note of argument is found submitted by the respondents.

2. The applicant by this O.A. seeking the following reliefs:-

- "i) To set aside and/or quash impugned charge memorandum dated 11.12.2006, Enquiry report dated 11.08.2009, Advice of UPSC dated 29.11.2012 and punishment order dated 04.11.2013.
- ii) To direct the respondents to reinstate your applicant into service in his former post with all consequential benefits.
- iii) Any other order and/or orders as the Hon'ble Tribunal may deem fit & proper."

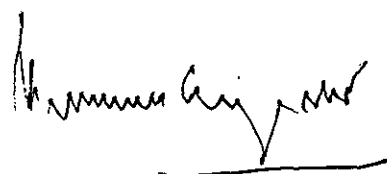
3. Brief facts as narrated by the applicant is that while he was working as Assistant Government Examiner of Questioned Documents, in the office of Government Examiner of Questioned Documents of Kolkata, a charge memorandum No. DFS/4(12)/2004 dated 11.12.2006 was issued against him by Director-cum-Chief Forensic Scientist on alleged grounds of misconduct as has been enumerated in the said Memorandum

M. N. Singh

of charges. He submitted a reply to the said charge sheet. An Inquiry Officer and Presiding Officer was appointed and an enquiry was conducted. Enquiry report was issued on 11.08.2009 and UPSC's advice was sought for. UPSC submitted it's advice on 29.11.2012 and basing on UPSC's advice, a punishment order of dismissal from service was issued on 04.11.2013 which is beyond Rules as the provision of appeal was snatched away, punishment order being issued by the President.

4. The grounds for relief are as follows:

- i. That the principles of natural justice has been flagrantly violated by the respondent authorities under the facts and circumstances of the case.
- ii. That since the order of punishment is issued by the President being a higher authorities than the Disciplinary Authority, it gives a good bye to the statutory provision of appeal as envisaged in the CCS (Classification, Control & Appeal) Rules 1965 and in turn lacks reasonableness & is arbitrary in nature being a direct breach of article 14, 16 & 21 of the Constitution of India.
- iii. That by the action of the respondent authorities the disciplinary proceeding has been vitiated and the applicant has been deprived of statutory provision of appeal as prescribed in Rule of CCS Rules, 1965.
- iv. That by their acts and action the respondent authorities has caused serious prejudice to the applicant hence rendering the disciplinary proceeding bad in law.



5. The respondent authorities submitted their written statement on 26.06.2015 wherein they have pointed out at para 6.11 as under:

"11. That the Hon'ble Supreme Court of India in Civil Appeal No. 2093 of 2007 (Panchmahal Vadodara Gramin Bank & Others V.D.M. Parmar) observed that "on an examination of the enquiry report, we find that there were as many as ten charges against D.M. Parmar and the charges were of serious nature and out of these charges, only one charge was not fully proved, one charge was partly proved and one charge was deleted and rest of the charges were proved....These findings are all based on adequate material referred to the inquiry report and these materials are mainly bank records. As has been held by this Court in the recent decision in General Manager (P), Punjab & Sind Bank & Others Vs. Daya Singh (2010) 11 SCC 233 in which one of us (H.L. Gokhale, J.) was a party, as long as there are materials and evidence in support of the findings, the High Court cannot interfere with such findings in exercise of powers of judicial review under Article 226 of the Constitution of India. The learned single judge of the High Court and the Division Bench of the High Court have, therefore, rightly not interfered with the findings. Once the findings of the Enquiry Officer, which have been quoted above, are not interfered with, we fail to see how the delinquent officer can avoid the punishment of dismissal from service. The findings include not only serious acts of negligence but also acts of dishonesty and lack of probity. The Court cannot probably take a view that punishment of dismissal was shockingly or strikingly disproportionate to the gravity of charges proved against D.M. Parmar." The deponent submitted that in the departmental proceedings against Shri. A.K. Singh, herein the applicant of the present O.A., as many as eight charges were framed and all the charges were proved with the materials and evidence in support of findings. Hence, the present application has no legal validity and to be rejected."

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6. In regard to roll and responsibility of the UPSC, they have also pointed out as under:-

"The UPSC is an advisory body and their advice had been sought in the case in accordance with the requirement of consultation with them as laid down in Article 320(3)(c) of the Constitution read with regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958.

Every case is thoroughly examined by the Commission with the prime focus on upholding the principles of natural justice and an independent opinion, without any bias, is tendered on the basis of conclusions arrived at after thorough facts, charges framed and representation of the charged officer, Inquiry Report and other circumstances supported by their evidence on record and the documents made available by the Ministry in each individual case.

The advice of the Commission has been tendered keeping in view of the specific allegations as brought out in Article of charges and statement of imputations of misconduct, which give a full and precise recitation of specific and relevant omissions and commissions against the petitioner and the documents and records made available to substantiate the charges made in Articles.

The advice of the Commission is self contained, self explanatory and well reasoned."

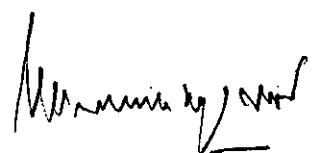
7. The applicant submitted his rejoinder on 24.11.2017 wherein he repeated once again at par 7; his grievance of being denied the opportunity of appeal. The applicant also submitted written Notes of Argument dated 27.06.2019 and received through this Tribunal vide letter under No. CAT/CAL/JUDL/O.A.731/2014 dated 28.06.2019. He

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contested that UPSC has exceeded its jurisdiction for recommending penalty of dismissal from service, which is the sole prerogative of the Disciplinary Authority. It is seen from para 11 of Written Notes of Argument that the applicant has cited the judgment of Hon'ble Apex Court in the case of **Union of India & another Vs. Hemraj Singh Chauhan**, reported in **(2010) 4 SCC 290**.

This appears to be a case of holding DPC for promotion which is irrelevant of this present case.

8. We have gone through the records, submissions, pleadings and arguments by both the parties. It is observed that the applicant was charge-sheeted vide Memorandum under No. DFS/4(12)/2004 dated 11.12.2006 containing as many as 8 Articles of charges. Enquiry has been conducted and concluded and the Inquiry Authority submitted his report on 11.08.2009. The enquiry authority found all the 8 charges "Proved". Copy of the enquiry was made available to the applicant to submit his written representation vide letter No. DFS/4(12)2004/PM.II dated 22.09.2009. Advice of UPSC was obtained on the case including the quantum of



penalty proposed vide letter dated 29.11.2012. Copy of advice of UPSC was made available to the applicant vide letter No. DFS4(12)/2004/PM-II dated 02.01.2013 and the order of punishment of dismissal from service which shall ordinarily be disqualification for future employment under the Government" was issued in the name of the President of India vide order No. DFSS/4(12)/2004 dated 04.11.2013 through detail speaking order.

9. We have carefully gone through entire disciplinary proceedings. We found no infirmity in the proceedings adopted by the respondent authorities, leading to ultimately imposition of above penalty in the name of the President of India. The main contention of the applicant is that he has not been afforded opportunity of filing appeal against the penalty since the order was issued in the name of the President of India. But he has not cited any specific Rules or orders of the Govt. or any other pronouncement of judicial authorities in support of his contention. The assertion that the UPSC has exceeded its jurisdiction in recommending the quantum of penalty to be imposed is

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also not supported by any order or judicial pronouncement.

10. Keeping in view of this, we found that the O.A. is devoid of merit and liable to be dismissed.

11. Accordingly, the O.A. is hereby dismissed. No order as to costs.

(NEKKHOMANG NEHSIAL)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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