

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
B.K. SRIVASTAVA

DATE OF JUDGMENT: 24/10/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

THE 24TH DAY OF OCTOBER, 1997

Present:

Hon'ble Mrs. Justice Sujata V. Manohar
Hon'ble Mr. Justice D.P. Wadhwa

V.C. Mahajan, Sr. Advs. (Kishore Kr. Patel,) Adv. for Ms.
Anil Katiyar, Adv. for the with him for the appellants.
S.C. Agarwal, Sr. Advs., B.K. Mishra, Ms. Shabana and Ejaz
Maqbool, advs. with him for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

D.P. Wadhwa, J.

Leave granted.

Union of India is in appeal. It is aggrieved by the judgment dated December 10, 1996 passed by the Central Administrative Tribunal, Allahabad Bench (for short, short, the 'Tribunal') setting aside the enquiry report and the order of dismissal passed against the respondent by the Disciplinary Authority.

During the relevant period, the respondent was working as a cashier in the office of the Controller of Defence Accounts (Pensions). Disciplinary proceedings were initiated against him on five charges which were as under:

"Articles of Charges

Article on Charge -1

Shri B.K. Srivastava, SGA A/C No. 8262958 while serving as cashier in the office of the CDA (Pensions) Allahabad during the period 23.08.81 to 19.04.1984 misappropriated Rs.63, 790.36 (Rupees sixty three thousand seven hundred ninety and paise thirty six only) from public fund account which was found short with him at the time of surprise check carried out on 19.04.1984. Thus he did not maintain absolute integrity and acted in a manner most unbecoming of a Govt. severing in violating of rule 3(1)(i) and 3(1)(iii) of CCS

(Conduct Rules, 1964).
Article or Charge - II
Shri B.K. Srivastava, SGA (A/C No. 8262958) while serving as a cashier in the office of the CDA (Pension) Allahabad during the period 23.08.81 TO 19.04.1984 misappropriated Rs.63,790.36 (Rupees sixty three thousand seven hundred ninety and paise thirty six only) from public fund account which was fund short with him at the time of surprise check carried out on 19.04.1984. Thus he did not maintain absolute integrity and acted in a manner most unbecoming of a Govt. servant in violation of rule 3(1) (i) and 3(1) (iii) of CCS (Conduct Rules, 1964).

Article of Charges - III
Shri B.K. Srivastava, SGA (A/C No. 8262958) while serving as a cashier in the office of the CDA (Pension Allahabad during the period from 23.08.1981 to 19.04.1984, received a sum of Rs. 36,6000/- (Rupees thirty six thousand six hundred only) on 16.04.1984 from the Treasurer CDA (P) CSD Canteen for depositing the same in S.B.I. Allahabad in the S.B.A/c of unit canteen (CAS) CDA (P) Allahabad. Out of this amount he neither deposited a sum of Rs. 16.600/- (Rupees) sixteen thousand and six hundred only) in S.B.I. on account of Canteen (CSD) CDA (P) Allahabad, nor returned the said amount to the Treasurer, CDA (P) CSD Canteen. thus he misappropriated a sum of Rs. 16.600/- Rupees sixteen thousand and six hundred only) i account of sale proceeds of CDA (P). CSD Canteen whereby he did not maintain absolute integrity and acted in a manner most unbecoming of a Govt. servant in violation of Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article of Charges - IV
Shri B.K. Srivastava, SGA (A/C No. 8262958) while serving as a cashier in the office of the CDA (Pension) Allahabad during the period from 23.08.1981 to 19.04.,1984, did not hand over to the Treasurer CDA (P) Thrift and Credit Cooperative Society the total amount deducted by him from the pay and allowances of the staff on the pay day or Thereafter on account of cooperative dues in lump sum on month to month basis but in piece meal in arrears, whereby he misappropriated society's dues

amounting to Rs. 13,798.95 (Rupees thirteen thousand seven hundred eighty nine and paise ninety five only). Thus he did not maintain absolute integrity and devotion to duty and acted in a manner most unbecoming of a Govt. servant in violation of Rule 3(1)(i), 3(1)(ii) and 3(iii) of CCS (Conduct) Rules, 1964.

Article of Charges - V

Shri B.K. Srivastava, SGA (A/C NO. 8262958) while serving as a cashier in the office of the CDA (Pension) Allahabad during the period from 23.08.1981 to 19.04.1984, did not remit a sum of Rs. 2901/- (Rupees two thousand nine hundred one only) recovered from the staff of CDA (Pensions) Allahabad on account of Cooperative dues payable to the Thrift and Credit Cooperative Societies of other Controllers and misappropriated the same. Thus he did not maintain absolute integrity and acted in a manner most unbecoming of a Govt. servant in violation of Rule 3(1)(i), 3(1)(iii) of CCS (Conduct) Rule, 1964."

Since there was criminal prosecution against the respondent on the first charge, the enquiry proceedings relating to that charge were stayed. The enquiry officer held the charges two to five proved against the respondent. On the basis of the enquiry report, by order dated June 13, 1988 passed by the Controller General of Defence Accounts, the Disciplinary Authority, the respondent was imposed the penalty of dismissal from service w.e.f. July 8, 1988. the respondent appealed. His appeal was dismissed by the Secretary (Defence Finance) & FA by order dated October 31, 1989 and the order imposing penalty of dismissal on the respondent was affirmed.

The respondent challenged the order of dismissal before the Tribunal. The Tribunal, while setting aside the enquiry report and the orders of Disciplinary and Appellate Authorities, directed that the respondent be treated as having continued in service till his date of superannuation and at the same time gave liberty to the appellants herein to proceed against the respondent in a departmental enquiry office onwards. The Tribunal held that proper opportunity was not granted to the respondent by the enquiry officer and that the report of the enquiry officer was not furnished to him and that there was no evidence to sustain the charges against the respondent.

We are, however, of the view that the Tribunal was not right in its approach. It has acted more as a court of appeal which it was not entitled to do so. We have been taken through the enquiry proceedings and we find that numerous adjournments were granted to the respondent and on many dates of hearing, he was stated to be on leave on account of ill-health. Respondent was given opportunity to inspect the record which he did. it cannot be said that as he was not given photo copies of certain documents, he had been prejudiced in the defence of his case. After examining the evidence on record, the enquiry officer came to the

conclusion that the charges stood proved against the respondent. It is not that there was no evidence was before the enquiry officer. In view of the judgment of this Court in Union of India & Ors. vs. Mohd. Ramzan Khan [(1991) 1 SCC 688], which was affirmed by the constitution Bench in Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors. [(1993) 4 SCC 797]. In Ramzan LKhan's case, this Court held that non furnishing of the report to the delinquent employee would be violative of the principles of natural justice rendering the final order invalid but also held that this statement of law would have prospective effect only. The respondent, therefore, cannot have any grievance that the enquiry report which is dated June 29, 1988 was not supplied to him and on that account the whole enquiry proceedings stood vitiated. The Disciplinary Authority duly considered the report of the enquiry officer and after examining whole of the enquiry proceedings was satisfied that the charges stood proved. He acceded the enquiry report and "taking into account all aspects of the case and especially the extreme gravity of charges which show that Shri B.K. Srivastava who was entrusted with the sensitive matter of cash exhibited complete lack on integrity and misappropriated the same" Imposed upon him the penalty of dismissal from service. The Appellate Authority also examined the case afresh, considered the contentions of the respondent and by reasoned order was also satisfied that the respondent was guilty of the charges for which he was imposed the penalty. The Appellate Authority did not find any justification for setting aside or modifying the penalty of dismissal from service.

The Tribunal could not sit in appeal against the orders of the Disciplinary and Appellant Authorities in exercise of its powers of Judicial review. The Tribunal wrongly came to the conclusion that the proceedings conducted by the enquiry officer were violative of the principles of natural justice. Rather we find too many opportunities were given to the respondent and the enquiry proceedings were adjourned from time to time at the instance of the respondent. These proceedings started on December 10, 1985 and ended on May 1, 1987 whereafter enquiry report was submitted. On 18 dates when the proceedings were taken up, the respondent attended only on five hearings. It is not a case where there was no evidence on record. To illustrate. Article of Charge-III related to misappropriation of an amount of Rs. 16,6000/- by the respondent. This amount was balance amount out of Rs.36,600/- which the respondent received on April 16, 1984 from the controller CDA (P) CAS Canteen for depositing the same in the Saving account of CSD Canteen. That the respondent received this amount was duly evidenced by receipt signed by him. Counter foil of pay-in-slip of the State Bank of India showed that only a sum of Rs. 20,000/- was deposited. Clearly, the respondent kept the balance amount of Rs. 16,6000/- which he misappropriated. The respondent nowhere denied that the receipt did not bear his signatures. With such being the state of affairs, the Tribunal could not say that there was no evidence to hold the charges proved against the respondent. The Tribunal otherwise did not find any illegality in the procedure adopted by the enquiry officer or in the orders imposing penalty on the respondent by the Disciplinary Authority and the Order dismissing the appeal of the respondent by the Appellate Authority.

We find that fair treatment had been given to the respondent in the enquiry. There has been lawful exercise of power by the Disciplinary and Appellate Authorities.

There has been no abuse of power. In these circumstances, the Tribunal should have stayed its hands. It is no part of the function of the Tribunal to substitute its own decision when enquiry is held in accordance with rules and punishment is imposed by the authorities considering all the relevant circumstances and which it is entitled to impose.

We are, therefore, of the opinion that the Tribunal wrongly exercised its jurisdiction. The impugned order cannot be sustained. It is set aside. The appeal is allowed and D.A. 916 of 1989 filed by the respondent before the Central Administrative Tribunal, Allahabad Bench is dismissed. There will be, however, no order as to costs.

JUDIS