

*Before M.M. Kumar and Ritu Bahri, JJ.*

**ANIL DALAL,—Petitioner**

*versus*

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH  
BENCH, CHANDIGARH AND OTHERS,—Respondents**

**CWP No. 15066/CAT of 2003**

25th October, 2010

*Constitution of India, 1950—Art.226—Central Civil Service (Classification, Control and Appeal) Rules, 1965—Rls. 10 (2) & 14 (8)(a)—Charges against an Auditor for passing bills in haste—Removal from service—No charge of conspiracy levelled against petitioner but Inquiry Officer recording finding to that effect—Had there been no finding of conspiracy then disciplinary Authority may not have inflicted extreme punishment—Similarly situated persons who checked and passed bills not treated equally—No allegation with regard to embezzlement or misappropriation—Interference on quantum of punishment is warranted—Order of removal set aside and Disciplinary Authority directed to reconsider punishment inflicted upon petitioner.*

*Held*, that there was no charge of conspiracy levelled against the petitioner but the Inquiry Officer has recorded the finding to this effect. It is factually correct that the Inquiry Officer has travelled beyond the scope of the charges. Had there been no finding of the aforesaid nature then the Disciplinary Authority may not have inflicted on the petitioner extreme punishment of removal from service.

(Paras 14 & 15)

*Further held*, that person like Shri R. K. Kaul, who checked the bills and Shri K.S. Rastogi, Accounts Officer, who passed the bills, have not been treated equally although they were much more experienced and were holding more responsible posts. They were entrusted with the duty of checking the bills and final sanction of the payments. Therefore, the theory of conspiracy with the aforesaid officers cannot be supported on facts. In

any case, the extreme punishment of removal would be unwarranted in the facts and circumstances of the present case.

Dinesh Kumar, Advocate, *for the petitioner.*

Sanjay Goel, Advocate, *for the respondents.*

**M.M. KUMAR, J.**

(1) This petition filed under Article 226 of the Constitution is directed against the order dated 12th August, 2002, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') upholding the order of removal dated 19th April, 1999 (A-2), passed by the Controller of Defence Accounts (Western Command), Chandigarh.

(2) The facts as revealed in the order of the Tribunal are that the petitioner was working as Auditor in Stores Contract Section of the Controller of Defence Accounts (Western Command), Chandigarh, during the period from 3rd December, 1987 to 15th March, 1991. He was charged with a criminal offence and detained in custody on 19th June, 1992. He was placed under suspension with effect from 19th June, 1992 i.e. the date when he was detained in custody, in pursuance of an order dated 6th July, 1992. It was treated as deemed suspension in terms of Rule 10(2) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 (for brevity, 'the CCS Rules'). Thereafter, on 23rd July, 1992 a charge sheet under Rule 14 of the CCS Rules was issued to him (A-11). The article of charge framed against the petitioner as per the statement of article of charges, reads thus :

"That Shri Anil Dalal, A/C No. 8323026 while serving as Auditor in the office of C.D.A., Western Command, Chandigarh (Store Contract Sec.) during the period 3rd December, 1987 to 15th March, 1991 failed to exercise the fundamental audit checks and take adequate precautions to safeguard the public interest in discharge of his duties. Thereby he facilitated commission of embezzlement of public money to the tune of Rs. 29.20 lacs (Twenty Nine lacs twenty thousand only) apx. by negligently paying in undue haste, glaringly fake local purchase bills bearing *prime facie* fake documents purported to have been submitted by HQrs 627(I) AD Bde and 49 AD Regt.

Thus the officer exhibited lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant thereby violating the provisions of Rule 3(1)(i)(ii) and (iii) of CCS Conduct Rules 1964.”

(3) Along with the charge sheet a detailed statement of imputation of misconduct, list of documents, list of witnesses and lists of additional bills were also enclosed.

(4) After receipt of his reply etc., the respondents decided to initiate a departmental inquiry against him. During the inquiry, the petitioner made an application seeking permission to engage a legal practitioner in terms of Rule 14(8)(a) of the CCS Rules as no one in the department was willing to give him assistance. On 26th August, 1993, the Disciplinary Authority rejected the said application on the ground that the Presenting Officer in the case was not a legal practitioner as per the requirement of Rule 14(8)(a) of the CCS Rules. On 3rd April, 1998, the Inquiry Officer gave his report to the effect that the petitioner during the inquiry himself made admissions and accepted endorsements which proved that he was guilty and responsible for committing the irregularities deliberately. It has been specifically noticed by the Inquiry Officer that the petitioner also admitted about writing some documents in his own handwriting which also goes to prove that he was involved into a conspiracy with others. It was, thus, concluded that the charge against the petitioner stood proved.

(5) On 3rd April, 1998, the Disciplinary Authority supplied copy of the inquiry report to the petitioner for making any representation by him, which was to be submitted in writing within 15 days (A-1). On 30th April, 1998, the petitioner submitted his representation raising various issues against the inquiry report. After considering the representation, the Disciplinary Authority passed an order removing the petitioner from service with effect from 20th April, 1999. The relevant portion of the impugned order dated 19th April, 1999 (A-2) reads thus :

“6. Considering the documentary evidence on record, findings of the inquiry officer, points raised by Shri Dalal in his representation and totality of circumstances, the undersigned finds that Shri Anil Dalal not only failed to exercise fundamental audit checks and take adequate precaution to safeguard public

interest which resulted in negligently paying in undue haste, of glaringly fake local purchase bills, but he also prepared certain documents in his own handwriting in an unauthorised manner thereby involving a conspiracy with others. And since such conduct renders him unfit for —(sic)— of “Removal from Service” upon Shri Dalal.

7. Now, therefore, the undersigned hereby imposes upon the said Shri Anil Dalal, Auditor, A/C No. 8323026, the penalty of ‘Removal from service’ with effect from 20th April, 1999.”

(6) The petitioner preferred a statutory departmental appeal against the order dated 19th April, 1999, which was rejected by the Appellate Authority,—*vide* order dated 14th September, 1999 (A-4). The petitioner then filed O.A. No. 92/CH/2000 before the Tribunal challenging the aforementioned orders. The Tribunal also rejected the arguments advanced by the petitioner and dismissed the original application,—*vide* order dated 12th August, 2002. The relevant extract of the order passed by the Tribunal is reproduced as under :—

“Learned counsel for the applicant while referring to the findings of the Inquiry Officer, drew our attention specifically to the portion of the findings, wherein it has been stated : “He also has admitted about writing some documents in his own hand writing which also goes to prove that he was involved into a conspiracy with others” to contend that this was going beyond the charge levelled against the applicant. There was no charge of ‘conspiracy’ and if the same has been proved by the I.O. and became the basis of the order of penalty passed by the disciplinary authority, such an order is not sustainable legally. We find that it is an attempt to only focus attention on a part of the findings. The findings also include that the C.O. had admitted almost all the irregularities except a few and that he attributed these irregularities either to lack of knowledge or rush of work. The applicant had also admitted the fact of even making endorsement in some other bills about the fund-availability certificate. He has also admitted about writing some documents in his own handwriting, which he was not supposed to do. The use of the

word 'conspiracy' in the inquiry report, cannot take away the fact of his failure to exercise the fundamental checks and to take adequate precautions to safeguard the public interest in discharge of his duties. In fact the Article of charge also stated that he facilitated commission of embezzlement by others of public money to the tune of Rs. 29.20 lacs by negligently paying in undue haste fake local purchase bills. Only that has been referred to by the disciplinary authority by use of word 'conspiracy'. Charge of facilitating embezzlement was already there. He has been held guilty of allowing this irregularity to occur. There is no reason for us to hold otherwise. The inquiry has been conducted following the required procedure and the orders of the disciplinary and appellate authorities are well reasoned and do not call for any interference by us.

As regards the plea of the applicant that the penalty imposed on him is not commensurate with the gravity of charge committed, it is to point out that a Tribunal/court in its power of judicial review, cannot normally substitute its own conclusion on penalty for that of the one decided by the competent authority. The disciplinary/appellate authorities being fact-finding authorities have exclusive power to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. However, if the punishment imposed by these authorities shocks the conscience of a Tribunal or court, in appropriate cases, the relief can be moulded either directing the disciplinary/appellate authorities to reconsider the penalty imposed, or in exceptional and rare cases appropriate punishment can be imposed with cogent reasons in support thereof. This has been the view taken by Hon'ble Supreme Court in **B.C. Chaturvedi versus Union of India and others** 1995 (5) SLR 778. The case on hand is not such as calls for our interference with the penalty imposed."

(7) Mr. Dinesh Kumar, learned counsel for the petitioner has attacked the order of the Tribunal by raising two issues. His first submission is that in terms of Rule 14(8)(a) of the CCS Rules, the petitioner was entitled to the assistance of a legal practitioner because the Presenting Officer was an expert in conducting departmental inquiries, although he was not a legal practitioner or qualified law graduate. According to the learned counsel, the

expression used in the Rule that 'the disciplinary authority having regard to the circumstances of the case' must permit a delinquent officer to engage the services of a legal practitioner and in the facts and circumstances of the case it was incumbent on the disciplinary authority to grant permission to the petitioner to engage the services of a legal practitioner. In support of his submission, learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **J.K. Aggarwal versus Haryana Seeds Development Corporation Ltd., (1)** and argued that in that case prosecution was represented by a legally trained mind although he was not a legal practitioner, yet the Supreme Court viewed the refusal to accord sanction for engaging a lawyer in the inquiry as improper exercise of discretion, which resulted in failure of natural justice. He has drawn our attention in particular to paragraphs 8, 9 and 10 in support of his submission. Learned counsel has also placed reliance on another judgment of Hon'ble the Supreme Court rendered in the case of **C.L. Subramaniam versus Collector of Customs, Cochin, (2)**.

(8) The other submission made by the learned counsel is that in the charge sheet the role of the petitioner as Auditor has been incorporated alongwith the names of Shri R.K. Kaul, who checked the bills and Shri K.S. Rastogi, Accounts Officer, who passed the bills. According to the learned counsel there is hostile discrimination, inasmuch as, in the departmental inquiry separately conducted against other two persons they have either been exonerated or they are let off with a small punishment. The argument is that such a hostile discrimination is impermissible because the payment on the basis of the bills is one integrated transaction and it is not open to segregation. The argument appears to be that all the officers share responsibility in processing, checking and passing of the bills which were eventually found to be false and all of them have their own role to play. It is on account of the integrated transaction that the allegation of conspiracy has been found to be proved but at the same time the others like S/Sh. R.K. Kaul and K.S. Rastogi have been left out.

(9) Another argument raised by the learned counsel is that the petitioner has been found guilty of hatching a conspiracy alongwith others, which was not even part of the charge sheet and, therefore, there is flagrant violation of the principles of natural justice.

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(1) 1991 (5) S.L.R. 78

(2) (1972) 3 S.C.C. 542

(M.M. Kumar, J.)

(10) Mr. Sanjay Goel, learned counsel for the respondents has vehemently argued that full opportunity was afforded to the petitioner in the departmental inquiry and there is no violation of principles of natural justice causing any prejudice to the rights of the petitioner. He has maintained that the CCS Rules have been religiously followed and the petitioner has failed to point out any patent violation of the Rules. He has referred to the inquiry report dated 3rd April, 1988 (A-1) showing that all the relevant documents were supplied to the petitioner. He was also provided with the copies of all the listed documents as desired by him and he was permitted to inspect the listed as well as additional documents. He has then referred to the statement of admission made by the petitioner which admitted to stem from lack of knowledge. He also admitted that many irregularities could not be tackled on account of rush of work. The petitioner has also admitted the writing on the documents in his own handwriting and referred to the prevailing practice by covering of deficiency in one bill by adjusting the amount from others. Learned counsel has then mentioned about the finding that endorsement has been made by the petitioner himself which prove that he is guilty and is subjected for committing these irregularities deliberately.

(11) On the issue of engagement of a legal practitioner, learned counsel for the respondents has argued that the legal practitioner could be engaged under Rule 14(8)(a) of the CCS Rules only when the Presenting Officer is a law graduate. The mere fact that the Presenting Officer had conducted few inquiries would not make him a legal practitioner or bring him within the four-corner of the Rules so as to permit the assistance of a legal practitioner. According to the learned counsel the petitioner has to show how on account of the non-engagement of legal practitioner he has suffered prejudice even if his argument is accepted that he was entitled to engage a legal practitioner. In respect of the judgments of Hon'ble the Supreme Court, learned counsel has argued that in the case of J.K. Aggarwal (*supra*) the rule was entirely different as in that case Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, was under consideration whereas in the present case CCS Rules are applicable. His last submission on the aforesaid issue is that in any case the petitioner could not have claimed the assistance of a legal practitioner, especially when the Presenting Officer was not a legal practitioner or a law graduate. In respect of the question of discrimination, Mr. Goel has submitted that the petitioner has not been subjected to any discrimination. According to the learned counsel, the petitioner has admitted the charges which facilitated payment of over

Rs. 29 lacs against the fake local purchases. Had the petitioner followed the procedure for processing of the bills then such a fraudulent transaction could have been avoided and the fake bills could have been detected.

(12) It will be appropriate first to read the provisions of Rule 14(8)(a) of the CCS Rules, which read as under :—

“14. Procedure for imposing major penalties

(1) to (7) XXX XXX XXX

(8) (a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the *disciplinary authority, having regard to the circumstances of the case, so permits* :

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

*Note.*—The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.”

(b) XXX XXX XXX

(9) to (23) XXX XXX XXX” (*Italics by us*)

(13) The un-amended Rule, which was Rule 15(5) of the CCS Rules and akin to the aforesaid Rule came up for interpretation of their Lordships’ of Honble the Supreme Court in **C.L. Subramaniam’s case** (*supra*). Interpreting the italics part of the Rule their Lordships’ of Hon’ble the Supreme Court held that in the facts and circumstances of that case, the Presenting Officer was a trained prosecutor although not a legal practitioner/law graduate and non-consideration of the application of a delinquent officer to engage a counsel in such circumstances was held to be violation of the Rule. However, when we apply the Rule to the facts of the present case, there is no finding recorded by any authority that the petitioner was pitted against a trained prosecutor. There is nothing on record to suggest that the Presenting Officer in the present case was such a trained person that only a legally trained practitioner could have been a match to



his legal skill. Moreover, the facts were not complicated which would warrant engagement of a legal practitioner. Therefore, we do not find any substance in the aforesaid argument advanced on behalf of the petitioner.

(14) There are two other factors which have been urged in support of the petition, namely, that there was no charge of conspiracy levelled against the petitioner but the Inquiry Officer has recorded the finding to this effect. The concluding part of the Inquiry Report would show the finding which reads thus :-

“....The very fact that he himself made these endorsements, goes to prove that she (he?) is guilty and is responsible for committing these irregularities deliberately. He also has admitted about writing some documents in his own hand writing which also goes to prove that he was involved into a conspiracy with others. To this extent I am prepared to agree to the arguments put forward by the PO in his written brief.”

(15) It is factually correct that the Inquiry Officer has travelled beyond the scope of the charges. Had there been no finding of the aforesaid nature then the Disciplinary Authority may not have inflicted on the petitioner extreme punishment of removal from service.

(16) Another factor which would have bearing on the instant case is that person like Shri R.K. Kaul, who checked the bills and Shri K.S. Rastogi, Accounts Officer, who passed the bills, have not been treated equally although they were much more experienced and were holding more responsible posts. They were entrusted with the duty of checking the bills and final sanction of the payments. Therefore, the theory of conspiracy with the aforesaid officers cannot be supported on facts. In any case, the extreme punishment of removal would be un-warranted in the facts and circumstances of the present case.

(17) It may be true that unless there is violation of mandatory provisions of the Rules, the quantum of punishment cannot be interfered with. For the aforesaid proposition reliance may be placed on the judgments of Hon'ble the Supreme Court in the cases of **Mithilesh Singh versus Union of India** (3) **B.C. Chaturvedi versus Union of India**, (4) and **Om Kumar versus Union of India**, (5) However, the aforesaid legal

(3) (2003) 3 S.C.C. 309

(4) (1995) 6 S.C.C. 749

(5) (2001) 2 S.C.C. 386

principle is subject to a further qualification which emerges from 'Wednesbury' concept. The principle emerging from 'Wednesbury' concept has been crystallised by a Seven-Judges Bench judgment in the case of **Rameshwar Prasad (VI) versus Union of India, (6)** by observing as under :—

“242. The *Wednesbury* [Associated Provincial Picture Houses Ltd. V. *Wednesbury* Corpn., (1948) 1 KB 223] principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the *Wednesbury* principle is that a decision will be said to be unreasonable in the *Wednesbury* sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.”

(18) Once the aforesaid position in law is accepted then interference on the quantum of punishment is fully supported and warranted. In the imputation of charges levelled against the petitioner there is no allegation with regard to embezzlement or misappropriation. The charges pertained to passing of bills in haste. The petitioner has admitted that on account of rush of work such a lapse had occurred.

(19) As a sequel to the above discussion, the impugned judgment passed by the Tribunal, dated 12th August, 2002, and the order of removal, dated 19th April, 1999 (A-2), are hereby set aside. The Disciplinary Authority is directed to re-consider the punishment inflicted upon the petitioner and pass an appropriate order. The punishment awarded to others like Shri R.K. Kaul, who checked the bills and Shri K.S. Rastogi, Accounts Officer, who passed the bills, shall also be taken into account, especially in view of the fact that passing of the bill leading to payment constitute one integral transaction, which has been dealt by three hands in the present case. The needful shall be done within a period of three months from the date of receipt of a copy of this order.

(20) The writ petition stands disposed of in the above terms.

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**R.N.R.**