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Central Administrative Tribunal, Principal Bench

Original Application No.1354 of 2002

New Delhi, this the 7th day of March, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. A.P. Nagrath, Member(A)

T.P. Venugopalan,
S/o late Shri M. Narayana Menon,
R/o Flat No.53, Type III
North-West Moti Bagh,
New Delhi-21

..... Applicant

(By Advocate: Shri R.G. James)

Versus

1. The Secretary
Ministry of Defence,
Govt. of India,
R.No. 101A, South Block,
New Delhi-11
2. The Secretary (Defence Finance)
Govt. of India,
R.No.139, South Block,
Ministry of Defence,
New Delhi-11
3. The Controller General of
Defence Accounts
West Block-V, R.K. Puram,
New Delhi-66
4. The Controller General of
Defence Accounts (HQ)
'G' Block,
New Delhi-11
5. The Deputy Controller General of
Defence Accounts (Admn.),
West Block-V, R.K. Puram,
New Delhi-66
6. Shri J.K. Mehra,
Under Secretary,
Govt. of India,
Union Public Service Commission
Shahjahan Road,
Dholpur House,
New Delhi-11
7. Shri P.T.S. Kumar,
Inquiring Authority,
Office of the Central
Vigilance Commission
Commissioner of Departmental Inquiries,
Jamnagar House,
New Delhi-11

..... Respondents

(By Advocate: Shri M.M. Sudan)

9

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant T.P. Venugopalan was employed as Senior Accounts Officer in the office of the Controller of Defence Accounts. He was suspended from duty on 29.10.97. Articles of Charge were served upon him. They were numbering four. The applicant superannuated on 30.4.98. The enquiry had been conducted and thereupon after considering the advice of the Union Public Service Commission (UPSC), the disciplinary authority vide the impugned order dated 21.8.2001, imposed a penalty of withholding of 50% of the monthly pension on permanent basis and 50% of the gratuity admissible to the applicant. By virtue of the present application, the applicant assails the said order on various grounds.

2. Needless to state that in the reply filed, the application has been contested.

3. During the course of submissions, learned counsel for the applicant contended that the disciplinary authority acted on the advice of the UPSC and extraneous consideration had been taken into account which was not a part of the charges served and, therefore, the impugned order has to be quashed. Keeping in view this fact, we are not dwelling into the other controversies nor giving any finding thereto which would be embarrassing to either party.

4. The statement of Articles of Charge served upon the applicant were four in number. We take liberty in

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10

reproducing the same:

ARTICLE-I - That the said Shri T.P.Venugopalan, Sr.A.O. while functioning as Sr.A.O. in-charge 'M' Section during the period 1.1.96 to 29.10.97 in the office of CDA (Hqrs) New Delhi failed to discharge his duties effectively as provided for in Appendix - I to Defence Accounts Department Office Manual Part-I which led to authorisation of payment against 10 fraudulent claims to Shri Venkateshwara Enterprises to the tune of Rs.2.23 crores approximately. Thus the said Shri T.P. Venugopalan, Sr.A.O. failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure the integrity and devotion to duty of all Govt. servants for the time being under his control and authority, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules 1964.

ARTICLE-II - That during the aforesaid period and while functioning in the aforesaid office the said Shri T.P. Venugopalan failed to detect that (i) the fraudulent claims have been floated again fake sanctions purported to have been issued by Ministry of Defence, that (ii) the contingent bill have not been preferred by the officers of DGOS authorised to do so, and that (iii) the appropriate procurement procedure relevant to the value of the stores procured has not been followed. The said Shri T.P. Venugopalan, Sr.A.O. also failed to ensure that budget allotment was available for effecting the procurement. Thus, the said Shri T.P. Venugopalan, Sr.A.O. failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed in the performance of his official duties in the exercise of powers conferred on him except when he is acting under the directions of his official superior, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(ii) of CCS (Conduct) Rules 1964.

ARTICLE-III - That during the period and while functioning in the aforesaid office, the said Shri T.P. Venugopalan, SAO authorised the payments of the 10 fraudulent claims to the tune of Rs.2.23 crores approximately as Officer in-charge 'M' Section, although the expenditure as per the fake sanctions was debitable to the Revenue Head "Ordnance Stores", contrary to the functions of 'M' Section as prescribed in Chapter VIII of OM Part-XII and without even getting the local purchase bills noted in Accounts Section as prescribed vide Para 437 of OM Part-II Vol.I. Thus the said Shri T.P. Venugopalan, Sr. A.O. failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure the integrity and devotion to duty of all Govt. servants for the

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11

time being under his control and authority, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules 1964.

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ARTICLE-IV - That during the aforesaid period and while functioning in the aforesaid office, the said Shri T.P. Venugopalan, SAO authorised payments against 10 fraudulent claims to the tune of Rs.2.23 crores approximately with undue haste, without reasonable care and caution. The bills were authorised for payment either on the same day or the next day of the receipt of the claim. The said Shri T.P. Venugopalan did get a doubt about the need for following TPC procedure while processing one of the fraudulent claims but he promptly settled his own query on the grounds that Government sanctions in support of procurement did exist, (the sanction purported to have been issued by the Govt. was not found attached with the relevant vouchers) although even the similar fake sanctions attached with other fake bills stipulated procurement by following the prescribed procurement procedure. Thus the said Shri T.P. Venugopalan, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed in the performance of his official duties in the exercise of powers conferred on him except when he is acting under the directions of his official superior, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules 1964."

5. The enquiry officer had held that the charges were proved. The charges pertained to dereliction of duty violating Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964. The UPSC in its letter addressed to the Secretary, Govt. of India of 21.3.2001 also concluded that the charges stood proved but in the ultimate paragraph 5 further recorded:

"In the light of their findings as discussed and after taking into account all other aspects relevant to the case, the Commission observe that the CO has been found guilty of violating the provision of Rules 3(1)(i) to 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964 which amounts to gross misconduct and they consider that the ends of justice would be met in this case if 50% of the monthly pension otherwise admissible to Shri T.P. Venugopalan is withheld on permanent basis and further 50% of gratuity admissible to him should

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2

also be withheld. They advise accordingly."

6. It is acting on the said advice of the UPSC and appraisal of the record that the penalty referred to above was imposed. Rule 3 of the CCS (Conduct) Rules, 1964 refers to different aspects with respect to the conduct of the Govt. servants. Sub-rule 2(i) to 2(iv) of Rule 3 unfolds them as under:

V "(2)(i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority;

(ii) No Government servant shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior;

(iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided, as far as possible. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter:

W (iv) A Government servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing."

7. From the aforesaid, it is abundantly clear that every Government servant is expected to maintain absolute integrity. Maintaining of absolute integrity is totally different from devotion to duty. In case of maintaining absolute integrity, honesty is the foremost pre-requisite. Devotion to duty may contemplate on certain cases of dereliction of duty. The difference between the two would vary with the facts and circumstances of each case but is as clear as cheese and the chalk.

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13

-6-

8. What has happened in the present case? While in the charge served on the applicant there was no reference of any dereliction with respect to Rule 3(1)(i) of CCS (Conduct) Rules but the UPSC found him guilty with respect to the same namely that the applicant failed to maintain absolute integrity. In the absence of any charge having been so served, the applicant is justified in claiming that he is prejudiced because with respect to the same, no chargesheet was issued nor he contested the matter thereto. In the impugned order as already referred to above, the advice of the UPSC which has been consulted, has been highlighted. The same has been accepted. Therefore it is obvious that extraneous consideration has weighed with the authorities in this regard.

9. The disciplinary authority is necessarily expected to act fairly and punishment can only be awarded in terms of the chargesheet. Something which is not there, if considered, would be extraneous to the charge and will not withstand judicial scrutiny.

10. Learned counsel for the respondents has pointed to Annexure R-7 and on basis of the same, contended that on 12.8.2002 the UPSC had corrected the said mistake and that in fact it is a typographical mistake that rule 3(1)(i) of the Conduct Rules has been mentioned. The letter has been issued after the impugned order has been passed. Therefore it is of little consequence because it was too late to correct the mistake for purposes of the present

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14

application.

11. Confronted with that position, learned counsel for the respondents urged that in any case it had not influenced the advice of the UPSC. Here also, we find that it is difficult to accept the plea. In para 4.4.2, the UPSC has advised:

"4.4.2 The IO has held that the fraudulent bills were cleared on the same day or next day while evidence shows that other contingent bills were kept pending. Only fraudulent bills were processed, doubt settled with the help of unauthorised source and payment authorised with speed and enthusiasm. He held the charge as established."

and once again in paragraph 5 which has already been reproduced above, it has been opined that the applicant was guilty of violating rule 3(1)(i) of the Conduct Rules.

12. Perusal of paragraph 4.4.2 referred to above, clearly indicates that the advice was that the fraudulent bills were processed, doubt was settled with the help of unauthorised source and payment was made with speed and enthusiasm. This clearly refers to something which is connected with maintaining absolute integrity also. Therefore the said plea that it has not influenced the UPSC while giving the advice, must be rejected.

13. Once extraneous consideration had crept in, we have no hesitation in holding that the impugned order cannot be sustained because on basis of the same, the disciplinary authority had passed the order. It could be

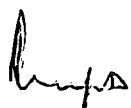
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15

same punishment or lesser punishment regarding which we are not expressing any opinion.

14. For these reasons, the application is allowed. The impugned order (Annexure A-10) is quashed. The disciplinary authority may pick up the loose threads and if so advised, pass a fresh order since violation of rule 3(1)(i) of the Conduct Rules is not a part of the charge. It may pass any other order with respect to other charges stated to have been proved. We make it clear that no opinion is being expressed with respect to other pleas of the applicant.

Announced.


(A.P. Nagrath)
Member (A)


(V.S. Aggarwal)
Chairman

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