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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1410/2002

New Delhi this the 3rd day of January, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. C.S.CHADHA, MEMBER (ADMNV.)

Dr. K.K. Agarwal,
R/o IV/27, H.I.G. Flats,
Vaishali,
Ghaziabad (UP)

-Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through
the Secretary,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan,
New Delhi.

-Respondent

(By Advocate Shri M.M. Sudan)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondent's order issued in March 2002 whereby 25% cut in the monthly pension of the applicant for a period of five years has been imposed by the President under Rule-9 of CCS (Pension) Rules, 1972.

2. Applicant was appointed as Associate Professor of Pharmacology in the year 1961 and was working in the super time scale to CHS and posted as Medical Superintendent LNJP Hospital. Applicant was further transferred to GTB Hospital in the same capacity, whereby as per the Rules he was entrusted with the functions and duties of commissioning the indoor facilities also in various disciplines E&T, Surgery, etc. which was in the year 1987-88.

3. Applicant retired on superannuation on

31.12.1988 and was charge sheeted for a major penalty on 25.10.1988 on the allegations of his failure to maintain absolute integrity and devotion to duty, putting the Government to financial loss amounting to Rs.5.58 lacks in purchase of medical instruments.

4. An enquiry was proceeded against him whereby prosecution as well as court witnesses have been examined and on submission of written brief, applicant has been held to be guilty of the charge.

5. Finding of the enquiry officer was served on the applicant to which he has responded by filing representation and after consultation with the UPSC disciplinary authority imposed 25% cut in the monthly pension of the applicant for a period of 5 years, giving rise to the present OA.

6. Learned counsel for applicant Shri B.S. Mainee assails the Presidential order and the disciplinary proceedings on the following grounds:-

- i) The enquiry is vitiated as well as imposition of cut on his monthly pension on account of non-furnishing of copy of the advice of the UPSC prior to the imposition of aforesaid cut by the President and for this he places reliance on two decisions of this Bench in OA No. 2232/1999, Shri T.K. Nath Vs. Union of India and others decided on 17.4.2001 as well as OA No.694/2000 Shri M.I. Khan Vs. Union of India and another decided on 17.4.2001.

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ii) It is contended that the orders passed by the disciplinary authority, i.e., President is non-speaking without application of mind and for this he relies upon a decision of this Tribunal in OA No.1154/2002 Shri S.N. Narula Vs. Union of India & Others decided on 13.11.2002.

iii) According to him, applicant has been deprived of a reasonable opportunity by denial of an opportunity to cross examine prosecution witnesses namely, Subhash Basin and Shri R.S. Malik who have been examined behind his back despite request to the Inquiry Officer through Telegram to defer enquiry on account of his illness.

7. Shri Mainee drew our attention to the representation of the applicant to the findings and averments made in paragraph-5 whereby it is stated that the hearings of the enquiry were fixed on 16.7.1996 when applicant was serving at Nepal, the communication was wrongly sent at Ghaziabad which ultimately reached Nepal on 5.12.1996 and re-directed by his son. A telegram was sent on the same day to the I.O. requesting to defer the proceeding for 28.12.96 on account of illness of his wife but the enquiry was proceeded ex-parte, denying him reasonable opportunity to cross-examine witnesses. He further stated that in paragraphs 4.10 and 4.11 as well as para-5.3 of the OA, a specific ground has been taken which has not been specifically denied by the respondents. As such, the same is deemed to be admitted and on this ground alone the enquiry is vitiated, which is not in-consonance with the principles of natural justice and fair play.

8. On the other hand, respondent's counsel Shri M.M. Sudan denied the contentions of applicant and stated that in the light of the decision of the Full Bench of this Tribunal in Chiranjil Lal Vs. Union of India reported in ATFB (1997-2001) 52 after consultation with the UPSC it is not necessary to give further show cause notice to the Charged Officer with the copy of the UPSC advice received from UPSC. This Full Bench decision over-rides any decision of the Division Bench. Applicant has no right to be furnished copy of the UPSC advice and it is only to be given in case of disagreement. He further stated that it is not incumbent upon President if he agrees with the advice of UPSC and findings of the I.O. to record detailed reasons.

9. Lastly, it is contended that applicant who was aware of the proceedings and with whose consideration enquiry has been fixed has failed to appear either himself or through his defence assistant despite opportunity and having failed to bring on record a telegram sent for deferring the hearing, enquiry was proceeded ex-parte as per rules and after accord of further opportunities to applicant he has been held guilty of charge. As such there is no violation of principles of natural justice by referring to reply to para 4.10 to 4.18, it is stated that respondents have taken into account recourse of the enquiry and thereafter the penalty order imposing cut has been issued.

10. We have carefully considered the rival contentions of the parties and perused the material on record.

11. In so far as first plea of the applicant that copy of the advice of the UPSC is to be given before a penalty of cut in pension is imposed under Rule-9 of the Pension Rules (ibid) is concerned, and his resort to the two decisions of the Bench is concerned, we find that Full Bench decision of this Court in Chiranjilal's case (supra) has put at rest the aforesaid proposition of law by holding that as there is no provision to provide an opportunity to show cause at the second stage, i.e., at the time of imposition of penalty, UPSC advice need not be given in such cases and as per Rules 17 and 32 of the CCS (CCA) Rules, 1965, the same is to be provided along with the order of penalty. Moreover, the only exception to this is when there has been disagreement by the President to the advice of the UPSC. As the Full Bench over rides the decisions of coordinate Bench, same being binding on us, we respectfully follow the same.

12. Moreover the resort of the applicant to the decision of the Apex Court in State Bank of India and others Vs. D.C. Aggarwal and others (1993) 1 SCC 13, the same is distinguishable and therein what has been in issue was non-supply of CVC recommendation and the issue regarding furnishing UPSC advice prior to the imposition of the punishment has not been dealt with. As such the same would not apply to the facts and circumstances of the present case.

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13. As regards contention of applicant that he has been deprived of a reasonable opportunity to defend which has caused him a grave prejudice as the enquiry has been illegally proceeded ex-parte despite his request to defer the same which has denied him the opportunity to cross examine the witnesses is concerned, we have gone through the pleadings and find that this plea of the applicant taken in the OA has not been specifically denied by the respondent and the same is deemed to be admitted. Not only the vague reply to this legal submission by the respondents establishes denial of reasonable opportunity of cross examination to applicant but also reply to the finding where the applicant has clearly stated that as he was in Nepal and the communication was redirected by his son and he has sent telegram on 5.11.96 for deferring the enquiry, I.O. finding that the sitting of the enquiry for cross examination has been informed to applicant and his defence statement enquiry has been proceeded ex parte has not been countenanced as not even whisper has been stated by the I.O. as to how the request of applicant contained in his telegram has been dealt with. Moreover, neither the U.P.S.C. nor the President has taken into consideration this aspect of the enquiry. We also find that these witnesses have been examined in absence of applicant or his defence assistant and their testimony has been placed reliance to held him guilty of charge. Due to denial of opportunity of cross-examination and treating that material against the applicant he has certainly prejudiced in the enquiry as the substantial rules of procedure, i.e., right of cross examination has been denied to him. In Union of India vs. T.R.Verma AIR 1957 SC 882 Apex court in a Constitutional bench decision has held that denial of an

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opportunity of cross examining the witnesses is in violation of the principles of natural justice and fair play vitiates the enquiry.

✓ 14. We find that the respondents have nowhere controverted the contentions of the applicant. Having sent a telegram and made a request to the enquiry officer to defer the proceedings in the enquiry on medical grounds the conduct of the enquiry officer ignoring such request and proceeding ex parte cannot be countenanced in view of the decision of the Apex court in Union of India vs. I.S. Singh 1994 SCC (L&S) 1131.

15. We are of the considered view that denial of cross examination to applicant vitiates the enquiry as well as the consequent penalty order of imposition of pension cut.

✓ 16. Moreover, we also find that despite the detailed representation sent to the disciplinary authority passed is bald without containing reasons showing non-application of mind.

h 17. As held by the Apex court in Mahavir Prasad vs. State of U.P. AIR 1970 SC 1302 it is obligatory upon a quasi judicial authority to ensure that the decision reached is according to law and not as a result of caprice, whims or fancies. Reasons are to be recorded and this is necessitated to a greater extent if the order is subject to appeal. Having regard to the fact that after the order passed by the President there is no appeal provided it was incumbent upon the disciplinary authority to pass a

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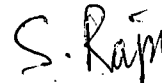
reasoned order dealing with the contentions of the applicant and to reveal the process adopted by the disciplinary authority. No reasons have come-forth to satisfy the principles of law and guidelines on the subject. We are in respectful agreement with the decisions of the Coordinate bench (supra) which in all four cover the present case as well.

18. In the result, for the foregoing reasons, the OA is partly allowed. Impugned order of imposition of pension cut by the President on the monthly pension of the applicant is quashed and set aside. However, this shall not preclude the respondent, if so advised, to act further in accordance with law. No costs.

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(C.S. CHADHA)

Member (A)



(SHANKER RAJU)

Member (J)

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