

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3231/2002

New Delhi this the 30th day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Shri G.R. Anand
172, Pocket C-7
Sector 7
Rohini
New Delhi-85.

... Applicant

(By Shri Rajinder Nischal, Advocate)

vs.

Union of India
Through Secretary
Ministry of Human Resource Development
New Delhi. Respondent

(By R.P. Aggarwal, Advocate)

O R D E R

Justice V.S. Aggarwal:-

The departmental proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, "the Rules") had been initiated against the applicant (Shri G.R. Anand). The article of charge was to the following effect:-

"That the said Sh. Anand while posted to work with Sh. V.D. Guleri, Asst. Educational Adviser (Sanskrit) and Sh. S.R. Dogra, Under Secretary (University 5), as PA neglected his official duties and was not available for assisting Sh. Dogra when required for urgent official work. It was reported by Sh. Dogra that Sh. Anand was of no use to him as PA as Sh. Anand had stated to have health problems, sitting problems and he did not make himself available whenever required. Sh. Anand was expected to provide stenographic assistance to Sh. Dogra in disposing off urgent parliamentary work and court cases being handled by Sh. Dogra. Sh. Anand, however, failed in his duties of

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assisting Sh.Dogra and further absented himself from duty from 6.12.2000 to 8.12.2000 without prior approval when his services were most required to deal with urgent parliamentary work. He submitted earned leave application only after joining duties on 11.12.2000 on the ground of sickness. He, however, refused to show proof of medical treatment and advice of AMA when specifically asked for by his controlling officer Shri Dogra who subsequently did not recommend the leave. This was not the first complaint against Sh.Anand. Sh. Anand is a habitual shirker of work and several complaints have been received against him about his bad behaviour and his negligence towards work. He has been warned for his lack of devotion of duty in writing but he did not improve himself and complaints continued to be received against him from his superior officers with whom he was posted, as detailed in the enclosed statement of Imputation in Annexure.II, the latest being by Sh.Dogra.

Sh.G.R.Anand, PA, has by his above acts exhibited lack of devotion to duty and conducted himself in a manner which is unbecoming of a government servant thereby violating sub-rule (ii) & (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964."

On consideration of the inquiry report and also the opinion of the Union Public Service Commission, a penalty of 25% cut in pension on a permanent basis was imposed upon the applicant. By virtue of the present application, the applicant seeks quashing of the said order imposing the penalty referred to above.

2. The applicant was served with the said charge-sheet a few months before his attaining the age of superannuation though the final order of cut in his pension by 25%, as referred to above, had been passed after he superannuated.

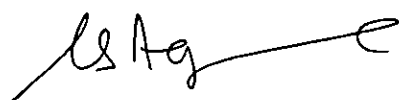
3. The application has been contested. It is asserted that the disciplinary proceedings had not



been initiated against the applicant merely for his unauthorised absence from 6.12.2000 to 8.12.2000. A complaint had been received from the Controlling Officer of the applicant on 4.12.2000 that he was of no use to him as Personal Assistant since he could not work on computers: he was not available in emergencies and he had sitting as well as health problems. The leave of the applicant was not recommended. In the past also, there were complaints against him. It was on these broad facts that the disciplinary proceedings had been initiated against the applicant.

4. A feeble attempt, at the outset while arguing the matter, had been made to urge that there has been inordinate delay in initiation and conclusion of the departmental proceedings and consequently the same are liable to be quashed. The said contention indeed in the peculiar facts is totally devoid of any merit for the reason that in the present case, one has not least hesitation in concluding that there in fact has been any delay. The main charge pertained to the dereliction of duty in December 2000. The proceedings were initiated on 13.2.2001 when article of charge was served and the penalty had been imposed on 10.10.2002. These facts clearly spell out that there is no delay on the part of the respondents.

5. However, the learned counsel contended



that there has been a total breach and violation of sub-rule (16) to Rule 14 of the Rules because the applicant was not granted an opportunity to state his defence. Sub-rule (16) to Rule 14 runs as under:-

" When the case for the Disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed."

It certainly prescribes that if the disciplinary authority closes the evidence, the Government servant can be required to state his defence orally or in writing. Herein, the applicant does not make available anything on the record to indicate that no opportunity at all had been given to him. He simply pleads that he was not given opportunity to state his defence during the course of the inquiry, but the statement of defence is a part of the procedure. If the applicant is allowed to address his submissions, in that process if he states his defence, it cannot be termed that prejudice would be caused to him. Sub-rule (16) to Rule 14 is also part of the procedure. All laws of procedure are ~~handmade~~ ^{hand-made} before the concerned authorities to effect justice and meet the principle of natural justice. In the present case, as referred to above, when the applicant was allowed to address his submissions that would amount to stating his defence orally. In the absence of it being shown in specific terms

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that it would cause prejudice, the contention necessarily must be rejected.

6. Otherwise also, the Supreme Court in the case of **State Bank of Patiala & Ors.v. S.K.Sharma**, JT 1996(3) SC 722 has gone into this controversy and it was held:-

"4(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee."

7. In that event, reliance has been placed on Rule 9 of the Central Civil Services (Pension) Rules, 1972 (for short, "the Pension Rules") to contend that in the facts of the present case, the order withholding the pension could not have been passed. Sub-rule (1) to Rule 9 of the Pension Rules was pressed into service and we reproduce the same for the sake of facility:-

"9. Right of the President to withhold or withdraw pension. (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service

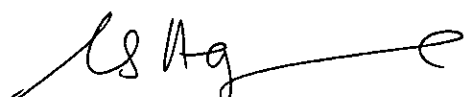
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Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five (Rupees One thousand two hundred and seventy-five from 1.1.1996- see GID below Rule 49) per mensem."

The language of Rule 9 is clear and unambiguous. A power has been reserved to withhold the pension or gratuity or both either in full or in part whether permanently or for a specified period if a particular pensioner is held guilty of grave misconduct or pecuniary loss had been caused to the Government or there had been negligence on his part. Our attention has been drawn by the learned counsel to a decision of the Supreme Court in the case of D.V.Kapoor v. Union of India and Ors., (1990) 3 S.C.R.697. A perusal of the facts in the case of D.V.Kapoor clearly reveal that it no way deals with the question that has been agitated before us. In fact, it was held that merely because Shri D.V.Kapoor was allowed to retire, the Government was not lacking jurisdiction or power to continue with the departmental proceedings. The Supreme Court had held:-

"6. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee,



subject to minimum of Rs.60.

8. In the present case in hand, there are two parts of the charge which we have reproduced above. In the latter part of the charge, it has been pointed that the applicant was a habitual shirker of work and several complaints had been received about his bad behaviour and his negligence towards work for which he had been warned by his superiors. To put an end to this controversy, we had called for the Confidential Reports of the applicant and the respondents' counsel had made the same available for our perusal. The Confidential Reports of the applicant do show that though for the past 5 to 6 years, it was not reflected in his reports, but there were complaints made by Shri Vijay Bharat, Director, Shri S.R.Singh, Ex-DEA, Shri Mohan Singh, Ex.DO and Shri P.K.Mohanty, AEA about his being habitual late comer, absence from seat, slow work and bad behaviour. The second part of the charge, therefore, is established that there was lack of devotion on the part of the applicant towards duty.

9. The other part of the charge was that the applicant neglected his official duty and was not available for assisting Shri Dogra for official work and absented for three days without prior approval besides refusing to show proof of medical treatment. The evidence on the record clearly indicated that there was material to establish the same. This Tribunal, therefore, will not delve

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further into re-appraising the evidence on that count.

10. In that event, as referred to above, the plea raised was that by any act of the applicant, no pecuniary loss was caused to the Government nor the applicant was negligent in the performance of his duties. In the present case indeed, there is no plea that the applicant was negligent because misconduct and negligence are different notions. We take advantage in referring to a decision of the Bombay High Court in the case of **Ramkrishna Ramnath Shop v. Union of India and others**, AIR 1960 Bombay 344 wherein it was held that some kinds of negligence may amount to misconduct while some kinds of negligence may not amount to misconduct. The applicant is alleged to have absented himself without prior permission and was a shirker of work which was not negligence but a misconduct.

11. In that event, the argument proceeded to urge that under sub-rule (1) to Rule 9, it is not the mere misconduct but the grave misconduct which permits a cut in the pension. The expression, "grave misconduct" has been considered by the Punjab and Haryana High Court in the case of **Bhagwat Parshad v. Inspector General of Police, Punjab and others**, AIR 1970 Punjab and Haryana 81. The expressions "misconduct" and "grave" were described to be:-

"10. "Misconduct is a generic term and

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means "to conduct amiss; to mismanage; wrong or improper conduct; bad behaviour; unlawful behaviour or conduct." It includes malfeasance, misdemeanour, delinquency and offence. The term "misconduct" does not necessarily imply corruption or criminal intent.

11. The word "grave" is used in many senses and implied seriousness, importance, weight etc. there is, however, a distinction between misconduct and grave misconduct. The adjective 'grave' in this context makes the character of the conduct, serious or very serious."

6 We find no reason to take a different view. The grave misconduct would be something more than the mere misconduct. It would make a conduct more serious.

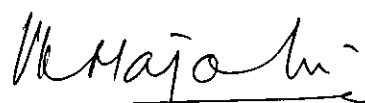
12. Can in the facts of the present case it be termed that the applicant has misconducted himself or not? After the applicant had absented himself for three days without prior permission, perhaps in the facts it could be termed that it was a simple misconduct, but herein the applicant was posted as a Personal Assistant to Shri S.R.Dogra to provide stenographic assistance and make himself available to dispose of urgent Parliamentary work and court cases. So much so when he submitted his leave application, he was called upon to give the proof of the medical treatment, but he refused to give proof in this regard. It is all these factors which aggravated the misconduct and, it can simply be termed that it was a grave misconduct.


13. Despite that, can it be said that a

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person whose grave misconduct of the nature referred to above came into being towards the end of his career, be imposed a cut of 25% in his pension. The cut in pension is 25% on permanent basis. The pension is also described as a hard earned amount which is paid for the service rendered before superannuation. It appears that taking stock of the facts and circumstances and even the abovesaid grave misconduct, the cut of 25% in applicant's pension on permanent basis to be disproportionate to the dereliction of duty. Since it is within the domain of the disciplinary authority to pass an appropriate order, we remit the matter to that authority for modifying the penalty as may be deemed appropriate.

14. The present application is disposed of in the aforestated terms with no order as to costs.


(V.K. Majotra)
Member (A)


(V.S. Aggarwal)
Chairman

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