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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.528/2002

New Delhi this the 5<sup>th</sup> day of March, 2003.

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

HON'BLE SHRI A.P. NAGRATH, MEMBER (A)

Shri J.C. Bhandari,  
S/o late Shri Bhim Sen  
R/o 20, Nalanda Apartments,  
Vikaspuri, New Delhi-7 ... Applicant

(By Shri Sharad K. Agarwal, Advocate)

vs.

1. Union of India,  
Through Secretary,  
Ministry of Road Transport & Highways,  
(Previously Ministry of Surface Transport)  
Parivahan Bhawan,  
1, Parliament Street,  
New Delhi-1
2. Union Public Service Commission,  
Through its Secretary,  
Dholpur House,  
Shahjahan Road,  
New Delhi-11 ..... Respondents

(By Shri M.M. Sudan, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Applicant (J.C. Bhandari) joined the service on 8.9.1965. He was promoted as Superintending Engineer on 11.8.1980. He was granted Selection Grade in the scale of Rs.4500-5700 on 1.1.1986. On 13.5.1988, he was sent on deputation to the Indian Railway Construction Company (IRCON). He came back on 13.5.1993. On 20.1.1994, he was served with a charge-sheet with respect to certain acts while he was serving in IRCON. The articles of charge

*As Aggarwal*

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read:-

"Article-I

Shri J.C. Bhandari, Superintending Engineer (Mech.) in this Ministry while on deputation to IRCON and working with them as Sr. Manager/Chief Manager (Mech.) IRCON during the year 1989 and 1990 committed the following mis-conduct:

(i) He had made purchases of different items from the firms run by his relatives and favourite persons.

Article-II

During the period of his deputation with IRCON and while functioning as Sr. Manager/Chief Manager (Mech.) with IRCON during 1989 and 1990, Shri J.C. Bhandari made purchases and got the work of repairing etc. of the vehicles belonging to IRCON done from the firms owned/managed by his favourite persons."

An inquiry officer had been appointed. Needless to

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state that according to the applicant, on 11.11.994, the then Minister of State for Surface Transport had taken a decision that the applicant had not violated any norms and or manipulated anything and the disciplinary proceedings were closed. The disciplinary proceedings are said to have been re-initiated. Thereupon, the disciplinary authority after the applicant had superannuated, held that the acts of the applicant constitute grave mis-conduct and a cut of 30% in the pension of the applicant was imposed. The operative part of the impugned order reads:-

"AND WHEREAS the UPSC in its advice tendered vide its letter No.3/151/00-SI dated 19.4.2001 (copy enclosed) has observed that "the Commission consider that the charges proved against Shri J.C.Bhandari constitute grave misconduct and the ends of justice would be met in this if 30% of the monthly pension otherwise admissible to him is with-held for a period of three years"

AND WHEREAS the disciplinary authority i.e. President of India after independent examination of the case records including the findings of the IO as also the advice of UPSC dated 19/4/2001 and taking into account all other facts and circumstances relevant to the case in their totality has come to the conclusion that the charges stand fully proved against Shri J.C.Bhandari.

NOW, THEREFORE, the President of India after taking into consideration the gravity of the charges as have been established against Shri J.C.Bhandari, orders to withhold Thirty percent (30%) of the monthly pension otherwise admissible to him for a period of three years with immediate effect."

2. By virtue of the present application, the applicant assails the order reproduced above with a prayer that all retiral benefits should be released

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to him and further it be directed as if the applicant had retired as Chief Engineer with other consequential benefits thereto.

3. The applicant has been contested by the respondents pointing out that a decision had been taken by the disciplinary authority and this Tribunal will not sit as a court of appeal over its findings.

4. With respect to the alleged dereliction of duty on the part of the applicant, it has been pleaded that while the applicant was working on deputation with IRCON and had been sent back from deputation, a communication was received and a vigilance was conducted. The investigation report was sent to the Central Vigilance Commission. The Central Vigilance Commission approved the recommendation and advised initiation of major penalty proceedings against the applicant with respect to certain acts done while he was in IRCON. It was not disputed that the then Minister of State had opined that there was no need to pursue this case any further. The matter was again referred to the Central Vigilance Commission. The Commission observed that the department had overlooked the glaring irregularities committed by the applicant in placing purchase orders without quotations on

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firms owned by his close relatives by paying higher prices. As a result, a loss was caused to the IRCON. There was obviously no case for dropping the charges against him. The matter had been proceeded because the vigilance case was pending against the applicant. The findings of the Departmental Promotion Committee were kept in sealed cover. The applicant had filed OA No.1229/1995 before this Tribunal challenging the proceedings of the Departmental Promotion Committee. It has since been dismissed. According to the respondents, the impugned order was totally justified.

5. During the course of submissions, the first and foremost argument advanced by the learned counsel for the applicant in this regard was that the then Minister of State on perusal of the record had recorded that there was no need to pursue the disciplinary proceedings against the applicant. A copy of the note of the then Minister of State dated 11.11.1994 has been placed on the record which reads:-

"I have gone through the record and explanation submitted by Shri J.C. Bhandari. He has intimated that no loss has been caused to M/s IRCON. What IRCON is following is simply a matter of procedure. In fact, M/s IRCON themselves do not have any Procedure Manual, as brought out in the file. As such, the question of bypassing the procedures/guidelines/rules does not arise. Vigilance Department of IRCON has also

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mentioned that no manipulation has been done by the officer in the matter relating to processing of quotations. Practically M/s IRCON has not been put to any financial loss. Their case has little basis and as stated by MOST officials, it has been highlighted to harass the charged officer, specially when he is due to promotion.

There is no need to pursue the case anymore. It may be closed.

Sd/-  
(Jagdish Tytler)  
11.11.94"

According to the learned counsel for the applicant, once such a decision had been taken by the concerned authority in exercise of the delegated powers, the said fact could not be re-opened in any event.

6. We would have dealt with in detail, the said controversy but for the fact that the applicant had earlier filed OA No.1229/1995 which was decided on 7.5.1996 by this Tribunal. When a similar argument had been advanced, the same had been negatived by this Tribunal holding:-

"5. We have given consideration to the arguments advanced by Shri Kaul. In our view, the essential question is whether a decision taken by the Minister on file tantamounts to final order of the Disciplinary Authority. It is correct that the Minister acts as a delegatee of the President. However, the orders passed in the name of the President have to be authenticated by an officer duly authorised in this behalf. It is an admitted fact on both sides that such an order has not been issued so far. In our view the test of finality of the order is whether or not such an order on file can be changed by that authority. If it is found that the Minister having recorded his decision on the file cannot change or modulate it then this decision must be considered to be final for the purpose of CCS (CCA) Rules. On this point, however, Shri Kaul was not able to

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satisfy us. The reference to CVC implies that the Disciplinary Authority has the option to change its decision in the light of the fresh advice of the CVC. Shri Kaul's argument that the Disciplinary Authority is barred from consulting the CVC once it has taken a final decision is in our view not tenable. The Disciplinary Authority which is a delegatee of the President is also bound by the instructions which subject the exercise of the delegated power. The DOP and AR OM No.118/2/78/AVDI dt. 28.9.78 (R-1) states in para 2 thereof.

"With a view to bringing about greater uniformity in examining on behalf of the President the advice tendered by the CVC and taking decision thereon it has been decided .... (Emphasis supplied) ..."

6. The orders issued by the DOPT are also in exercise of the powers given under allocation of Business Rules. Thus, the Disciplinary Authority is clearly required to follow certain procedures while exercising delegated powers in the name of the President. In any case there is no provision of law and rules brought to our notice by Shri Kaul which would show that the Minister is barred from reconsidering his own decision on file on the advice of CVC or on the advice of his Ministry officials or on his own initiative. In our view so long as the power of revision rests with the Disciplinary Authority to change its opinion, such a decision is not a final decision."

Once it has been concluded inter se between the parties that the said decision could be reconsidered and it has been held that there is no provision that the Minister is barred from reconsidering his own decision on the advice of the Central Vigilance Commission, this particular plea at this stage must be held to be barred.

7. In that event, the learned counsel for the applicant eloquently pointed that the order cutting the pension of the applicant had been passed after

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3 years of the applicant attaining the age of superannuation on 31.1.1998 and, therefore, it must be held to be bad in law. According to him, there is inordinate delay in this regard.

8. At the outset, we may deem it necessary to mention that all courts have come heavily against delay in the initiation of the departmental proceedings against an individual but whenever there is delay, the matter has to be examined on the touch-stone of prejudice, if any, that is caused to the individual. It is also a matter which has to be examined on the facts of each case. In case no prejudice is caused to the individual, the abovesaid argument in that particular facts of the case will be of little consequence.

9. In the present case in hand, the departmental proceedings had been initiated against the applicant while he was in service. The charges had been served and answered by him. In that event, even if he had superannuated and thereafter the impugned order is passed, the same will be no ground by itself to quash the said order. As referred to above, the applicant had to show that prejudice had been caused to him. When applicant had full opportunity to contest the matter knowing well the nature of the charges against him, in that event the said plea will be of no avail. No

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prejudice is shown to have been caused. Merely because penalty/punishment order had been passed, it will not by itself, therefore, in the facts of the present case be a good cause to prompt us to entertain the abovesaid contention. It must be rejected.

10. In that event, the learned counsel had further argued that some of the documents during the course of the inquiry were not supplied and consequently, the applicant did not get a fair chance to defend the disciplinary proceedings. He referred us to the fact that the additional documents were claimed by the applicant time and again but were not supplied. A copy of the letter written by the applicant dated 18.9.1997 has been placed on the record. This is a letter written by the Chief Engineer who was the inquiry officer pointing:-

"The defence assistant submitted that not providing the requisitioned additional documents in the inquiry amounts to short-circuiting the proceedings which will be highly detrimental to the interests of the charged officer. The additional documents have been requested for the chief reason that all the relevant documents have not been cited by the prosecution in the charge sheet memo and it is necessary for the learned Inquiry Officer to make assessment of the charge on the basis of all the relevant documentary as well as oral evidence. The defence assistant further stated that the charged officer would like to make a representation in the matter and that the inquiry proceedings may be proceeded with

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only after disposal of the representation."

The documents obviously had been supplied because the applicant had repeated such a request subsequently on 1.12.1997 vide a copy of the letter that has been placed on the record. The documents were supplied and the details of the same indicate that certain copies were supplied and some other documents as such were inspected by the applicant. Ultimately on 21.4.1998, the applicant had recorded that two documents should be obtained from the IRCON and supplied to him. The letter reads:-

"Kindly refer to my application dated 23.3.1998, on the above subject.

2. It is respectfully submitted that while going through the various documents relevant to my case, it was noticed by me that 2 documents had not been included in the list of Additional Documents submitted to you by me, due to oversight/inadvertence.

3. It is, therefore, requested that the 2 documents, mentioned in the enclosed list of Additional Documents, may kindly be obtained from IRCON Ltd., New Delhi for the inquiry. Inconvenience caused is deeply regretted.

4. You may kindly consider fixing the regular hearing in my case, as soon as the additional documents, requested by me vide my application dated 23.3.1998 and this application, are made available for my inspection and photocopies thereof have been supplied to me.

Yours faithfully,  
Sd/-  
(J.C. Bhandari)"

On 18.5.1998, the applicant again had written to the inquiry officer that out of the two documents, the letter of late Mrs. Usha, Prop. M/s. Trans Auto

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Engineers, Delhi had been made available and he had inspected the same. However, he wanted the note containing the fact recorded by him about the compliance of the provisions of the Central Civil Services (Conduct) Rules. A copy of the said note is on the file and reads:-

"Consequent upon my joining IRCON with effect from 13.3.1988(FN), I am residing in the 1st floor of my parental house situated at 256/3A, Padam Nagar, Kishan Ganj, Delhi-110007 and have to intimate as follows:

1. That my youngest brother namely Shri Narinder Kumar Bhandari who is occupying entire Ground Floor for his residential and business purpose is an active member of the Bharatiya Janta Party and is the Secretary of the BJP Mandal at present.

2. That my brother Mr. Narinder Kumar is a partner of the business firm namely M/s Manish Sales Corporation, 256/3A, Padam Nagar, Kishan Ganj, Delhi-110007 which is functioning from the above mentioned premises since 1977.

Submitted for kind information and further action, if any."

11. A copy of the note which the applicant wanted is on the record. Perusal of the report of the inquiry officer indicates that the inquiry officer even had considered the said documents and had come to a particular conclusion. These facts clearly indicate that the documents called for were supplied. The same were available on the record and considered by the inquiry officer. When such is the situation, the said argument which was so

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much thought of and put forward must be rejected.

12. The learned counsel for the applicant confronting with that position strongly relied upon a decision of the Delhi High Court in the case of **Union of India and others v. Lt.Gen M.S.Sandhu**, 2001 V AD(DELHI) 441. On perusal of the said decision, it is patent that it will have no application in the facts of the present case. In the case of Lt.Gen M.S.Sandhu (supra) after his retirement, an order was passed pertaining to the cut in pension. No inquiry was held. That is not the position herein. In the present case, an inquiry officer had been appointed and he had submitted the report in accordance with the procedure. Thereupon the disciplinary authority had passed the order as such.

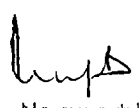
13. The last submission which requires consideration and was agitated was that the role of the Union Public Service Commission is advisory but it cannot be taken into consideration to override the decision of the disciplinary authority.

14. The Union Public Service Commission is a constitutional body established in pursuance of Article 320 of the Constitution. In matters contemplated, it can advise the Government while in other matters consultation of the Union Public

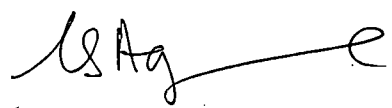
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Service Commission is required. A perusal of the impugned order, the operative part of which has already been reproduced above, indicates that the advice of the Union Public Service Commission had been taken and after accepting the same, the order in question was passed. The Union Public Service Commission in its advisory capacity even can differ with the inquiry officer because it has to opine independently and advise the Government of India wherever the same is sought. If the advice has been acted upon, it cannot be termed that the order would become illegal.

15. Resultantly, the present application being without merit must fail and is dismissed. No costs.

  
(A.P. Nagrath)  
Member (A)

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(V.S. Aggarwal)  
Chairman