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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

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Original Application No.2965 of 2002

New Delhi, this the 3rd day of November, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S.K. NAIK, MEMBER (A)

M.P. Jain
S/o Shri B.S. Jain
52, Mandakini Enclave,
Kalkaji,
New Delhi.

...Applicant

(By Advocate: Dr. Aparna Bhardwaj)

Versus

1. Union of India
Through its Secretary,
Ministry of Personnel Public Grievances
and Pensions Secretariat,
New Delhi.
 2. Under Secretary
to the Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel and Training,
New Delhi.
 3. Union Public Service Commission
Through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi.
 4. The Government of Uttar Pradesh
Through Secretary (Appointment)
Secretariat, Lucknow,
Uttar Pradesh.
- ...Respondents

(By Advocate: Shri K.C.D. Gangwani)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl) :-

The applicant is a promotee officer of the Indian Administrative Service and after serving the State of Uttar Pradesh for a period of 33 years had superannuated on 31.1.1993.

2. In the year 1991-92 the applicant was posted as District Magistrate, Hardoi. A project for
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construction of house meant for the development of rural area, was undertaken by the Government of Uttar Pradesh under Indira Avas Yojana and Gram Vikas Yojana. The applicant retired on 31.1.1993. However, on 29.1.993 a memo was issued to the applicant levelling various allegations against him while he was working as District Magistrate during the period of 13.11.92 to 18.11.1992. The charge-sheet so issued was with regard to irregularities for the material provided for the construction of houses under the above referred schemes. There were 8 head of charges regarding irregularities in procurement of materials for the constructions of the said houses.

3. In pursuance of the said memo an enquiry was held and finally the impugned order imposing 50% monthly cut of pension was imposed on a permanent basis with immediate effect. The said order was passed on November 12, 2001. It is this order which is being assailed in this OA.

4. In the grounds to assail the same the applicant submits that the reasoning given by the Inquiry Officer is not sustainable in the eyes of law because the order is based on the enquiry report dated 24.4.1998 which itself is incorrect, illegal and arbitrary in the eyes of law.

5. It is stated that the mandatory provision as contained in the All India Services (Discipline & Appeal) Rules, 1969 have not been followed by the Inquiry Officer at all.

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6. It is also stated that the enquiry suffers from vice of bias and arbitrariness as the findings are based on no evidence. No documents were exhibited in evidence nor any witness was examined and thus the applicant had been held guilty on the basis of pure conjectures of his own.

7. It is also pleaded that the applicant had been made scape-goat whereas the Disciplinary Authority as well the inquiring authority knew it very well that the applicant had no role to play in procurement of the material. It was different officials at various levels such as Chief Development Officer, District Development Officer and Block Development Officer who were responsible to directly supervise various aspects of the project. The job of the applicant was to merely co-ordinate the work so as to achieve the target.

8. It is further stated that the Chief Development Officer who was also tried and had been found guilty should have been tried in a common enquiry in accordance with the Rule 13 of the All India Services (Discipline and Appeal) Rules, 1969 as the present one was a case of apportionment of the blame even in view of the findings arrived at by the Inquiry Officer.

9. It is further stated that the rules and procedure for supplying of documents had not been followed by the department nor adhered to by the Inquiry Officer thus the order is liable to be quashed.



10. The respondents, i.e., the State of Uttar Pradesh had filed a separate counter-affidavit and the Government of India have filed a separate counter-affidavit.

11. The respondent insisted that the Inquiry Officer had conducted inquiry strictly in accordance with the the IAS (Discipline and Appeal) Rules and instructions issued by the Government of India from time to time and the findings of the Inquiry Officer are well reasoned findings.

12. It is further stated that a perusal of the enquiry report will show that the Inquiry Officer has scrutinised the material in a very scientific manner and has recorded the finding of guilt against the applicant.

13. It is further submitted that the enquiry report having been approved by the UPSC accepted by the State Government and Central Government serves to be confirmed by this Hon'ble Tribunal.

14. The Union of India who have filed their separated reply submitted that the applicant being a District Magistrate had overall responsibility of getting the works implemented according to the rules and financial propriety. Though the applicant was charge-sheeted in respect of 8 charges for committing financial/administrative irregularities in as much as the applicant had taken a decision for use of girder, stones and patties in constructions of houses under the Housing Plan

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for the weaker Sections of Society and the orders for supply of these items were placed on a private firm which was not registered.

15. Thus the Inquiry Officer held that the charges 1,2,3 and 4 were proved against the applicants and charges 5, 6 and 7 were found not proved and charge 8. was partly proved by the Inquiring Authority. As required under the procedure, a copy of the Inquiry Officer's report was forwarded to the Charged Officer by the State Government vide letter dated 8.6.98 for obtaining the representation of the applicant. The applicant thereafter submitted a representation. It was also considered and somehow the other officials who were separately proceeded were also held guilty.

16. The Government of U.P. after examination of the findings of the Inquiry Officer and various submissions made by the applicant in his representation dated 20.6.98 against the Inquiry Officer's report found that there was not much substance in the contentions of the Charged Officer.

17. In the light of the above conclusions/findings of the State Government agreed with the findings of the Inquiry Officer and conclusions of the State Government there. However, as the four charges which were very serious and grave in nature, were held to be proved in the departmental enquiry against Shri Jain, the department of Personnel & Training did not agree with the recommendation of the State Government on the quantum of penalty imposed on the officer for the proven misconduct.

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Therefore, the Central Government after examination of the case records, recorded disciplinary proceedings against the delinquent official decided to impose 50% cut in the monthly pension and after taking this view the records of the departmental case was referred to the UPSC for advice vide DOP&T letter dated 4.8.99 and subsequent letter dated 9.2.2001 **after obtaining additional documents from the State Government** (emphasis supplied).

18. UPSC after through examination of the case records observed that from the facts while the Chief Development Officer and the charged official was also responsible as far Charge No.1 is concerned. Regarding charge No.2 it was concluded by the Commission that when the Inquiry Officer has stated that the Housing Development Officer/Chief Development Officer were equally responsible for irregularities it does not mean that Shri Jain was not responsible for the same.

19. The UPSC also found the applicant guilty of all the 4 charges, i.e., charge no.1 to 4. However, it further held that charge No.8 was not proved against the applicant. After the receipt of the advice of the Commission of DOP&T the case was further examined in view of the representation dated 20.6.98 submitted by the applicant and UPSC came to the conclusion that various submissions/contentions made by the applicant in his representation referred to above, were without any basis. It was concluded by the Central Government that looking into the gravity of the charges found proved against the Charged Officer, the penalty recommended by the Commission was warranted in this case, therefore, there

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is no substance in the contention of the applicant that respondent No.2, i.e. U.O.I without properly and judiciously applying its mind passed the impugned order dated 12.11.2001 imposing the said penalty on him as such it is prayed that the OA has no merits and the same be dismissed.

20. We have heard the learned counsel for the parties and gone through the record of the case.

21. It is a well settled law that in every enquiry against any delinquent official the principles of natural justice play a significant role that is why in a catena of judgments the Tribunal as well as the High Courts and Supreme Court had observed that whatever the documents is to be used against the delinquent official the same has to be supplied to the delinquent so that an effective opportunity of defending the case is provided to the delinquent.

22. In this case admittedly after the submission of the enquiry report by the Inquiry Officer and after the representation having been made by the applicant against the report of the Inquiry Officer the disciplinary authority did consider the additional documents which were not annexed with the charge-sheet and that is why para 12 of the final order states as under:-

"12. And whereas, after receipt of relevant information/additional documents from the state Government on 30.10.2000 the case was further examined in the department of Personnel and Training. Thereafter, the case records of the disciplinary proceedings against the Charged Officer referred to UPSC

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for advice vide Department of Personnel & Training's letter of even number dated 9.2.2001".

23. The above clearly shows that after the submission of the documents by the applicant on the report of the Inquiry Officer, additional documents were taken into consideration by the disciplinary authority for passing the final order. Thus no opportunity at all was provided to the applicant to be heard with regard to his claim which had influenced the disciplinary authority to pass the impugned order.

24. This fact was also substantiated by respondent Nos.1 and 2 in their written statement on page 8 because in the Written statement they also speak about passing of the order after obtaining additional documents from the State Government. Thus it is quite clear that the disciplinary authority while passing the final order of imposing penalty of cut in pension had taken into consideration extraneous material to pass the final order against the applicant without providing any opportunity to the applicant to defend his case based on additional documents.

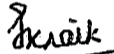
25. Neither the order passed by the disciplinary authority nor the written statement filed by respondent Nos. 1 and 2 speak about the nature of additional documents obtained from State Government before passing of the impugned order.

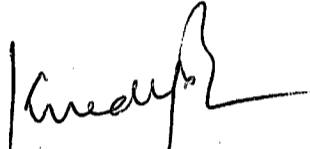
26. Thus we find that no effective opportunity had been granted to the applicant for imposing a major penalty of cut in pension and since the order is passed on

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extraneous/additional document which have been obtained after the submission of the representation by the applicant on enquiry report so we hold that the impugned order is not sustainable. Hence we are of the view that the OA deserves to be allowed.

27. According, we allow the OA and quash the impugned order dated 12.11.2001 passed by the respondent No.2. Pension of the applicant be re-stored and arrears be also paid. These directions may be implemented within a period of 3 months from the date of receipt of a copy of this order. No costs.


(S.K. NAIK)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh