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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.3145/2001

New Delhi, this the 01...day of May, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Ishwer Datt,  
S/o Shri Bhagwan Dass,  
R/o B-195, Vivek Vihar-I,  
Delhi - 110 095

... Applicant

(By Advocate : Ms. Anuradha Priyadarshini)

Versus

1. Union of India,  
Thro' its Secretary,  
Ministry of External Affairs,  
South Block, New Delhi
2. The Jt. Secretary (C&V),  
Ministry of External Affairs,  
South Block, New Delhi

... Respondents

(By Advocate : Shri A.K. Bhardwaj)

O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

While working as Assistant Passport Officer-II in the Office of the Regional Passport Office, Delhi, during the period from 7.12.1989 to 20.8.1991, the applicant committed serious irregularities in issuing passports and was accordingly charge sheeted on 17.5.1993. The departmental proceedings thus initiated continued but could not be finalised before the applicant's retirement from service on 31.8.1996. The disciplinary proceedings were accordingly continued under rule 9 of CCS (Pension) Rules, 1972. It was tentatively decided by the department to impose the penalty of 10% cut in pension on him for a period of five years. An opportunity to show cause was accordingly given to him vide memorandum dated 4.8.1999 (P-4). A copy of the enquiry report was also forwarded to

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the applicant. However, before the records of the disciplinary proceedings could be forwarded to the Union Public Service Commission (UPSC) for their advice in the matter, the respondents became aware of an act of forgery committed by the applicant after his retirement.

2. The applicant was found to have already drawn his normal pension together with a substantial part of his gratuity on the basis of a forged letter dated 23.3.1998. The forgery aforesaid was confirmed by the CFSL, CBI, New Delhi. In accordance with rule 69 (1)(a) of the CCS (Pension) Rules, 1972, a retired Govt. servant against whom departmental proceedings might have been initiated while in active service is entitled to receive only provisional pension and not normal pension. In the light of the discovery of the aforesaid act of forgery, the matter was referred by the respondents to the Ministry of Law and Justice who, advised, inter alia, that the case relating to the fraudulent drawl of normal retirement benefit is to be processed in accordance with the provisions laid down in rule 8 of the CCS (Pension) Rules, 1972 as the misconduct in question took place after the applicant's retirement from service.

3. The matter was subsequently referred to the UPSC in accordance with the aforesaid recommendations made by the Ministry of Law and Justice. After consideration of the matter, the UPSC advised imposition of a penalty of 100% cut in pension on a permanent basis. Agreeing with the UPSC, the respondent-authority imposed the aforesaid penalty of hundred per cent cut in pension on the

applicant on a permanent basis by their order dated 1.8.2001 (R-28). The fact that the applicant was also found guilty of forgery as above was also mentioned in the aforesaid order of 1.8.2001. The same also finds mention in the UPSC's advice dated 11.5.2001 (P-7). On 28.9.2001 (R-30) the respondent-authority issued a corrigendum deleting the following paragraph from the order of penalty dated 1.8.2001:-

"Further, it has also come to the notice of the disciplinary authority, that Shri Ishwar Datt had adopted fraudulent means of getting his gratuity released on the basis of a fictitious authority letter, bearing No.551/3/96 dated 23.3.98, which was not even signed by Shri N.S. Negi, ex-SO (Vigilance). The misconduct was committed during the pendency of the RPO, Delhi case, in flagrant violation of Rule 69 of CCS (Pension) Rules, 1972. The forgery has been further corroborated by the handwriting experts in Central Forensic Science Laboratory, New Delhi."

4. The aforesaid deletion was carried out on the advice of the UPSC and the Ministry of Law & Justice. The aforesaid corrigendum clearly stated that, notwithstanding the deletion of the aforesaid paragraph, the penalty of 100% cut in the applicant's pension on a permanent basis already imposed on him will remain unaltered having regard to the proven charge of grave irregularities committed by him in issuing passports.

5. The learned counsel appearing on behalf of the applicant submitted that the respondent-authority has not followed correct procedure insofar as the charge of forgery is concerned, and has also committed a gross violation of the principle of natural justice by not

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putting the applicant to notice in respect of the aforesaid charge of forgery. She also submitted that from the advice given by the UPSC and the orders passed by the respondent-authority on 1.8.2001, it is clear that the charge of forgery, which the respondent-authority found to have been proved, weighed with the UPSC as well as with the respondent-authority respectively in rendering the aforesaid advice and in imposing the aforesaid penalty of 100% cut in the pension on a permanent basis. The impugned orders cannot, therefore, be sustained and according to him deserve to be quashed.

6. We have considered the submissions made by the learned counsel on either side and have also perused the material placed on record.

7. We will first deal with the charge of forgery alleged to have been committed by the applicant after his retirement from service. Such cases are to be dealt with in accordance with rule 8 of the CCS (Pension) Rules, 1972. The aforesaid rule lays down that future good conduct shall be an implied condition of every grant of pension and its continuance under these rules, and that the appointing authority may, by order in writing, withhold full pension even permanently if a pensioner is found guilty of grave misconduct. The aforesaid rule further lays down that if the appointing authority considers the pensioner prima facie guilty of grave misconduct, it shall before passing orders withholding pension permanently, serve upon the pensioner a notice specifying the action proposed to be taken against him and

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the ground on which it is proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him at the same time to submit a representation in the matter. On receipt of the pensioner's representation, the appointing authority could, after considering the same, pass orders withholding pension permanently. Rule 8 aforesaid further provides that where the authority competent to pass an order under sub-rule (1) of the rule is the President, the UPSC shall be consulted before the order is passed.

8. Respondents' memorandum dated 29.1.2001 is, in our view, in the nature of a show cause notice in the manner contemplated in rule 8 of the CCS (Pension) Rules, 1972, except that the action proposed to be taken against the applicant has not been specified therein. As a matter of fact, a perusal of the aforesaid memorandum reveals that even before the aforesaid memorandum was issued, the respondent-authority had issued a memorandum dated 30.10.2000 which related to the vigilance case initiated against the applicant in respect of irregularities committed by him in issuing passports as also to the charge of forgery. A reply to that memorandum was sent not by the applicant himself but by his wife Mrs. Prem Sharma. The aforesaid memorandum dated 29.1.2001 which also clearly refers to the fact of forgery of which the applicant was found guilty has been replied to again by Mrs. Prem Sharma, and not by the applicant, by Mrs. Prem Sharma's aforesaid letter. It does not, in so many words, refer to the charge of forgery nor to the earlier charge on which departmental action was initiated. In the

aforesaid circumstances, this could have meant that the applicant was put to notice in relation to the charge of forgery but for the flaw caused due to the proposed action not being specified in the notice. That the applicant himself did not respond to the aforesaid memorandums and did not co-operate with the respondent-authority in coming to a proper and final conclusion in that regard cannot, in our judgement, materially alter the situation and it will be in order to hold that the applicant was not put to notice in a proper manner insofar as the charge of forgery is concerned.

9. Though the respondents have nothing much to say by way of an explanation for the act of deletion performed by issuing the corrigendum in question, we are convinced that since the notice contemplated under rule 8, insofar as the charge of forgery is concerned, was not properly issued, they decided to delete the paragraph in question to make the impugned order dated 1.8.2001 look like an order passed entirely on the basis of the earlier charge of irregularities committed in issuing passports. In view of the aforesaid inference drawn by us, the impugned order cannot be sustained as the charge of forgery can be correctly presumed to have weighed with the respondents at the time the said order was passed and the same is true of UPSC's advice.

10. Having regard to the position outlined in the preceding paragraphs, it appears to us that having issued a show cause notice for imposition of a penalty of 10% cut in pension for five years on the basis of the earlier


charge of irregularities committed in issuing passports, it was equally necessary on the part of the respondents to issue a further notice proposing the imposition of the penalty of 100% cut in pension on permanent basis before proceeding to impose the said penalty on the applicant vide impugned order dated 1.8.2001, even if the charge of forgery is, for a moment ignored.

11. The notice issued under Rule 8 aforesaid would still have to specify the penalty of 100% cut in pension permanently, if both the charges are taken into account. The memorandums dated 30.10.2000 and 29.1.2001 no doubt took both the charges into account but these fell short of the requirement going strictly by the provisions made in rule 8 (3) (a) of the CCS (Pension) Rules, 1972. The said rule clearly requires that such notices should be issued with the action proposed to be taken specified therein. In the aforesaid memorandums of 30.10.2000 and 29.1.2001, the proposal to impose the penalty of 100% cut in pension on permanent basis has not at all been indicated and this is where the principle of natural justice appears to have been violated, and, to this extent, the provisions made in rule 8 (3) (a) also cannot be said to have been complied with. Despite strenuous arguments made on behalf of the respondents, they have failed to convince us that the opportunity as above to show cause against the punishment of 100% cut in pension on a permanent basis was actually given to the applicant. The action taken against the applicant, in the circumstances, fails and we are constrained to quash and set aside the impugned order dated 1.8.2000 as well as the corrigendum dated 28.9.2001.

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The respondents will be at liberty to issue a fresh show cause to the applicant in literal compliance of the provisions of rule 8 of the CCS (Pension) Rules, 1972, if so advised, by indicating the penalty proposed to be imposed and by keeping in view the charges of irregularities committed in issuing passports as well as the charge of forgery. The applicant will be given sufficient opportunity to state his defence in accordance with the same rule, namely, rule 8 of the CCS (Pension) Rules, 1972 and it is only thereafter that appropriate orders will be passed as deemed fit by the respondent-authority on the merits of the case. If the respondents do decide to issue a fresh notice as above, the exercise contemplated in the above direction will be completed in three months' time from the date of receipt of a copy of this order.

12. The present OA is disposed of in the aforestated terms. There shall be no order as to costs.

  
(S.A.T. RIZVI)  
Member (A)

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(KULDIP SINGH)  
Member (J)