CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.738 of 2001

New Delhi, this the 1st day of May, 2002

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

Dr. S.C. Aggarwal
Sh. Shree Kishan Aggarwal
BJ-73 (West) Shalimar Bagh,
New Delhi. **-APPLICANT**

(By Advocate: Shri S.C. Sharma)

Versus

1. Union of India
(Through Secretary, Ministry of Agriculture)
Krishi Bhawan,
New Delhi.

2. Indian Council of Agricultural Research,
(Secy. ICAR), Krishi Bhawan,
New Delhi.

3. The President, ICAR,
Krishi Bhawan,
New Delhi.

4. Officer-in-Charge,
Survey of India,
Complex Office,
Doranda, Ranchi (Jharkahnad). **-RESPONDENTS**

(By Advocate: Shri B.S. Mor)

O R D E R

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

The applicant assails the order dated 12.1.2000, Annexure P-1 vide which the penalty of compulsory retirement has been imposed upon the applicant.

2. The applicant was proceeded departmentally on the allegation that while functioning as Director, Indian Lac Research Institute, Ranchi (hereinafter referred to as IRLI), in June, 1995 he submitted a false TA claim for an excess amount of Rs.860/-, himself sanctioned the same, accepted excess payment and retained it for five

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months. When investigations started in the matter, he returned the money in an attempt to save himself as such it is alleged that the applicant had temporarily embezzled the amount and by this act, failed to maintain absolute integrity, devotion to duty and this act on his part was unbecoming of an ICAR employee as he has violated Rule 3 (1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964 as made applicable to ICAR employees.

3. The explanation of the applicant to this charge was that as a usual practice on return of the applicant, details of the journey were passed over to the PA, who used to prepare the TA Bill. The applicant signed the bill prepared by the PA who was under mistaken belief that the applicant normally used to travel by air, or A/C Sleeper if the journey was performed by train and ignored the instructions that the journey was performed by sleeper class as A/C Sleeper was not available on the said day on the said train. Thus the bill was prepared inadvertently and the applicant came to know of the said mistake after 5 months and 7 days and as soon as he came to know of that, he deposited the excess amount.

4. In the grounds to challenge, the applicant has submitted that he had refunded the money with interest so there is no gain to the applicant or loss to the Government.

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5. It is further pleaded that the respondents have failed to consider the entire records of the service of the applicant which is blot free and there is not a single incident of misconduct than what to talk about punishment. Even warning had never been given to the applicant nor there was any adverse entry, so the order of compulsory retirement is bad in law.

6. The respondents are contesting the OA. The respondents submitted that it is a well established law that the Courts/Tribunals cannot decide about the quantum of punishment. It is the disciplinary authority who has to decide about it. In the absence of any procedural lapse or irregularities in the conduct of disciplinary proceedings, the applicant cannot challenge the order of compulsory retirement and the punishment imposed in this case is not disproportionate to the misconduct of the applicant.

7. It is also submitted that during the course of enquiry the applicant was given full opportunity to present his case before the Commissioner of Departmental Enquiries, Central Vigilance Commission (CVC) and Inquiry Officer (IO) and after hearing both the State and defence arguments, the IO held the charge framed against the applicant as proved and thereafter the applicant had been rightly imposed the penalty of compulsory retirement.

8. We have heard the learned counsel for the parties and gone through the records of the case.

9. The main plea of the applicant is that since his career throughout had been satisfactory and that he had never earned any adverse entry as there is no mention of the same in his ACR, rather he was instrumental for the progress of the institute in which he was working that goes to show that he was working with full devotion so this type of extreme punishment of compulsory retirement should not have been imposed upon the applicant. To support his case the applicant has relied upon 2001(20 SC 193 entitled as State of Gujarat VS. Umedbhai M. Patel wherein the Hon'ble Supreme Court had laid down the law with regard to compulsory retirement of persons. However, we find that the facts of the said case are not applicable to the present case because in the judgment relied upon by the applicant the official in that case was not awarded the penalty of compulsory retirement after holding a departmental enquiry rather his case was reviewed after attainment of age beyond 50 years and 55 years and simultaneously he was also facing a departmental enquiry so without waiting for the result of the departmental enquiry, the Government decided to retire the applicant therein compulsorily under the rules of compulsory retirement not by way of imposing any punishment upon the applicant but as he was facing an enquiry so it was only in that context that the Supreme Court has observed that without awaiting for the conclusion of the enquiry the compulsory retirement was unjustified.

10. But in the present case the applicant has not been made to compulsory retire because he has at a particular time crossed the age and because of that he is

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to be allowed to continue in service or not, but on the contrary he was awarded a penalty of compulsory retirement for temporary embezzlement of Government funds so the ratio of the ruling relied upon by the applicant is not applicable to the facts of the present case.

11. Now coming to the quantum of punishment the learned counsel for the respondents submitted that normally the Tribunal or courts should not interfere with the quantum of punishment unless the court comes to the conclusion that a particular punishment awarded to the delinquent shocks the judicial conscious. However, in this case even there is no scope for that because in this case the applicant was functioning as a Director of the ILRI and he was head of the department and it is he who had submitted a false TA bill under his signatures and then himself sanctioned the same and even accepted the excess payment and retained it for a period of 5 months and 7 days but returned the same when investigation in the matter started so it does not behove the head of the department or a Director of the Institute to first submit his false journey particulars and then sanction the same and ultimately withdraw the amount. Assuming that the TA bill was prepared by the PA but before submitting the same, the applicant must have singed and then he withdrew the money which was in excess of the amount which he has spent on his journey. Thus it was a deliberate withdrawal of excess amount by the applicant, so there is no scope for interfering with the quantum of punishment awarded to the applicant.

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12. In our view also though the applicant has served the institute for 35 years with all his dedication and devotion as claimed by him, but the one lapse on his part that too at the stage when he had reached the post of Director, being head of the institute and had drawn excess amount on his TA bill which was sanctioned by himself and had retained the money and deposited it only when the investigation started, shows that it was a deliberate attempt on his part. Hence we are of the considered opinion that there is no scope for judicial interference in the OA or with regard to the punishment awarded to the applicant.

13. In view of the above, there is no merit in the OA which is accordingly dismissed. No costs.

(S.A.T. RIZVI)
MEMBER(A)

(KULDIP SINGH)
MEMBER JUDL)

Rakesh