

Central Administrative Tribunal  
Principal Bench

O.A.No.178/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 10th day of August, 1999

Sh. Krishan Chandra Sharma  
Principal (Retired)  
45-C, Model Town (West)  
Ghaziabad (UP) - 201 009. ... Applicant

(By Shri M.K.Gupta, Advocate)

Vs.

1. Union of India through  
its Secretary  
Deptt. of Education  
Ministry of Human Resources  
Development  
Shastri Bhawan  
New Delhi - 110 001.
2. Lt. Governor  
Govt. of National Capital Territory of Delhi  
Raj Niwas  
Delhi.
3. Director of Education  
Govt. of N.C.T. of Delhi  
Old Sectt.  
Delhi - 110 054. ... Respondents

(By Shri V.K.Mehta with Shri Vijay Pandita, Advocate)

O R D E R (Oral)

By Reddy. J-

The applicant, who was superannuated on 1.10.1984, was issued a charge-sheet by Respondent No.2 alleging tampering of certain tender documents. An enquiry was held into the charges by the Enquiry Officer. The Enquiry Officer submitted his report to Respondent No.3, who is the disciplinary authority, holding that there is no clear evidence to indicate as to the charge of tampering of tender documents. It is, however, found that the checking of the handwritten comparative statement was not done properly by the applicant and the allegation to that extent was proved. Considering the above findings and

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the other evidence on record, the UPSC has concluded that the applicant was negligent in performing the duties of the custodian of the tender papers. The impugned order was passed by Respondent No.1 imposing the penalty of reduction in 5% of the monthly pension for a period of one year. This order is under challenge in this OA. (5)

2. The learned counsel for the applicant raises two contentions. Firstly, that the impugned order is in violation of the conditions prescribed in Rule 9 of the CCS (Pension) Rules, 1972 (hereinafter called, Pension Rules) as the competent authority has not found that the applicant was guilty of 'grave misconduct or negligence' during the period of his service. The said finding is condition precedent for awarding any punishment under Rule 9. Secondly, as the applicant was not found guilty of the charge framed against him, he should have been exonerated the penalty imposed was for an offence which the applicant was not charged. Hence the impugned order is liable to be set-aside. The learned counsel for the respondents submits that the applicant was found negligent in the custody of the tender documents, which is a grave negligence, hence, it was not again necessary to say that the delinquent was guilty of 'grave negligence'. Learned counsel for the respondents also submits that the charge against the applicant was comprehensive charge which includes not only the misconduct of the mere tampering of the tender documents but also the carelessness or the negligence of the applicant in the custody of the said

documents. Hence it is contended that the impugned order imposing the penalty for the negligence in the custody of the documents is also valid.

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3. Before appreciating the above contentions it is necessary to notice the facts in the case, in brief: The applicant was working as Principal of a School. He was delegated the work relating to purchase of furniture. In 1983-84 tenders were called for and received for purchase/hiring of various items for use in Delhi Council of Sports and Physical Education Branch, Directorate of Education, Delhi. Four tenders in all were received. The tenders were opened by members of purchase committee on 2.11.1983 in the presence of proprietors of all the tendering firms. Purchasing Committee declared all the four tenders as invalid, as in three tenders the required cash deposits was not deposited & fourth tender proposed to charge transportation expenses, which was against the terms and conditions of the department. In the course of the meeting of the purchasing committee some overwriting/interpolation/addition of words "5% less than the above rates" were noticed on the body of the tender of one of the firms i.e., M/s New Variety Tent House, Darya Ganj, New Delhi and below the rates shown in the comparative statements prepared, in respect of the above Company. The applicant was working at that time as the Principal of GBSSS, No.1 School and he was asked to finalise the work of inviting quotations/tenders and was processing the papers pertaining to such tenders with the help of J.E.O. and others.

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4. The charge that was levelled against the applicant was that he was responsible for tampering the tender documents and the typed copy of the comparative statement. On the basis of this allegation an enquiry was conducted and the enquiry officer found as follows:

"Since the event had taken place ten years back none of the witnesses could give a clear account of the events and in the absence of defence documents that have been allowed CO does not have the opportunity to prove that he had raised the issue. The addition in the tender of M/s. New Variety Tent House was done after 18.11.83. There is no clear evidence to indicate who had done this. However, the checking of the handwritten comparative statement was not done properly on 19.11.83 by the CO and the allegation is proved to this extent."

5. There upon the UPSC, considering the findings of the enquiry officer and other material on record, came to the conclusion, in its order dated 20.8.1997 as follows:

"3.3. The Commission observe that the Charged Officer was not supposed to handle the formalities relating to purchase of the articles in question. The Commission further observe that since the Charged Officer was delegated the power relating to finalisation of tenders, he cannot be held responsible in person on the charge of tampering the tender in question. The Charged Officer, however, is certainly responsible for negligence in performing the duties of custodian of the tender papers.

3.4. In the light of position explained, the Commission conclude that the Charged Officer is negligent in performing the duties of custodian of the tender papers."

6. The first respondent had passed the impugned order on the basis of the findings given by the Enquiry Officer and the advice given by the UPSC with the following observations:

"4. The President had reached a provisional conclusion that based on the case records and other facts and circumstances relevant to this case,

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imposing of a penalty is warranted and therefore, referred the case to the Union Public Service Commission. The Union Public Service Commission vide

their letter No.F.3/11/97-S.1 dated 20th August, 1997 have communicated their advice in this case.

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5. The President has carefully considered the records of the proceedings, the report of the Inquiring Authority, the representation made by Shri K.C.Sharma on the report of the Inquiry Officer and the advice of the Union Public Service Commission referred to above. The President agrees with the conclusions of the Union Public Service Commission and holds that the ends of justice would be met in this case if 5% (five per cent) of the monthly pension admissible to Shri K.C.Sharma is withheld for a period of one year. The President orders accordingly."

7. The UPSC found that the applicant was not responsible for the charge of tampering the tender documents in question but it was observed that the applicant was responsible for negligence in performing the duties of the custodian of the tender papers. This finding was accepted by Respondent No.1 in passing the impugned order. Thus there is no finding that applicant was guilty of grave misconduct or grave negligence as enjoined under Rule 9 of the CCS (Pension) Rules, 1972. The order of withholding of pension can be passed only in case of the pensioner was guilty of 'grave misconduct' or grave negligence during the period of his service. In fact, the UPSC, having exonerated the applicant of the grave charge of tampering of the tender documents, the applicant was found guilty, of the misconduct of mere negligence in the custody of the tender documents which cannot be said to be grave in its nature. The learned counsel for the respondents submits that Rule does not contemplate the finding of "grave negligence". He contends that the word "grave" used in the expression of 'grave misconduct' should be construed disjunctively and not conjunctively as not to qualify word 'negligence' and action can be taken under Rule 9

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even if the pensioner was found guilty of mere negligence. We do not agree. The pensioner's right to get pension is a statutory right and that right cannot be deprived of unless the Rules are strictly complied with. The conditions precedent for taking action under Rule 9 is admittedly, a clear finding that the pensioner was guilty of grave misconduct or negligence. Cant it be said that the pension is liable to be deprived of his pension or part of it on the commission of mere negligence when the Rule contemplates the commission of 'grave misconduct' and negligence? It is well settled that the words should be construed in the context in which they are used in the Section or Rule. Contextually, negligence committed must be negligence of serious nature. Negligence must be read in parity with "grave misconduct". Hence, we are of the view that the Rule contemplates commission of 'grave misconduct' or 'grave negligence'. There is no discussion in the order of UPSC regarding the failure of the applicant in his duty as custodian of the tender documents for the simple reason that no such charge was directed against the applicant. As found by UPSC, the applicant was not the only officer who was in custody of the tender documents, JEO also, was found to have kept the tenders in his house overnight on 18.11.1983 and he handed them over to applicant on 19.11.1983. In the back drop of above facts, we are of the view that the finding as to the negligence in respect of the applicant can only be said to be of serious nature otherwise he should have been found guilty of serious misconduct Rule 9 of the said Rules is therefore not attracted.

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8. We are also inclined to agree with the second submission made by the learned counsel for the applicant. He submits that the applicant is entitled to be exonerated on the findings of Enquiry Officer and UPSC. The applicant was charged with the tampering of tender documents and for not making properly the comparative statement. The Enquiry Officer after considering the entire evidence on the record, came to the conclusion, that there is no evidence in support of the charge. The UPSC has also found that the applicant was not responsible for tampering of the documents. In view of the above clear findings, he is entitled to be exonerated of the only charge levelled against him. The learned counsel for the respondents, however, submits that the applicant was not only charged for tampering of the documents but also for the entire event in which not only tampering of the tender documents was committed but also for the negligence of the applicant in allowing such tampering, he was therefore charged for negligence and lack of integrity for the entire incident that came to light on 25.11.1983. It is true that it only stated in the charge that the documents were in his custody but he was not accused of any negligence on his part as the custodian of the documents which led to tampering of the documents. Unless the charge clearly brings out the misconduct alleged against the applicant, he cannot be found guilty, alternatively, for something which he was not directly charged. The charge is very clear. The gravamen of it is about the act of tampering the tenders. There is only one article of charge. He was

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not further accused of his negligence or misconduct as the custodian. There was no evidence to substantiate or to establish this charge.

9. Neither before the Enquiry Officer nor the UPSC, we do not find any discussion regarding the negligence as custodian. The UPSC, in fact, observed that the applicant, who was a Principal, was delegated the work of finalisation of tenders. It was also observed that on 18.11.1983, the tenders were taken by JEO and it was pleaded by the applicant that JEO might have been responsible for the tampering. Thus the file was also with JEO. Hence the finding that the applicant was solely negligent as custodian is opposed to the evidence and the findings.

10. In view of the above discussion, we hold that the impugned order is vitiated, on more than one ground. It is accordingly quashed. The OA is allowed. No costs.

*R. K. Ahooja*  
(R.K. AHOOJA)  
MEMBER(A)

/RAO/

*V. Rajagopala Reddy*  
(V. RAJAGOPALA REDDY)  
VICE-CHAIRMAN(J)