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Central Administrative Tribunal
Principal Bench

O.A. 535/1999

New Delhi this the 16th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

Shri H.L. Bola,
R/o Vill & PO - Nagana,
Distt. Rohtak (Haryana). ... Applicant.

(By Advocate Shri Sant Lal)

Versus

The Union of India, through
The Secretary,
Ministry of Communication, Deptt. of Posts,
Dak Bhawan, New Delhi. ... Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the punishment order passed by the respondents dated 7.7.1992 and the order dated 13.2.1998 passed by the President of India (Annexure A-I and A-3), respectively.

2. This is the second round of litigation by the applicant against the respondents. He had filed earlier OA 2579/92 which had been disposed of by Tribunal's order dated 24.11.1997 (Annexure A-5). In that order, it was ordered in the circumstances of the case that in the event applicant submits a self contained revision petition within one month, they will waive limitation, if any, and will dispose of the representation by means of a detailed, speaking and reasoned order.

3. In pursuance of the Tribunal's order dated 24.11.1997 in the aforesaid case, the applicant had made his

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representation to the respondents on 12.1.1998. This has been rejected by order dated 13.2.1998 which has been impugned in the present O.A. which reiterates the punishment already imposed by the President on the applicant for a cut of Rs.25/- per month on the monthly pension ordinarily applicable to him, on permanent basis. The impugned orders have been passed by the President under the provisions of Rule 9 of the CCS (Pension) Rules 1972 (hereinater referred to as 'the Pension Rules').

4. A number of grounds have been taken by Shri Sant Lal, learned counsel for the applicant in assailing the validity of the impugned orders, namely; (1) that the Inquiry Officer was not sufficiently senior to the applicant; (2) that as held by the Tribunal in **M. Nagalinga Reddy Vs. Govt. of Andhra Pradesh** (1987(2) ATR 433), the inquiry could not have been held in respect of an event which took place four years previously prior to the retirement; (3) that relevant documents have not been given to the applicant to properly defend his case. He has submitted that the documents called for are the relevant files which are connected with the articles of charge and denial of access to these documents or copies thereof has caused the applicant prejudice to defend his case; (4) He has submitted that while the President passed the impugned order dated 13.2.1998, he has not consulted the UPSC although he had done that before passing the earlier order dated 7.7.1992; (5) Relying on the advice tendered by the UPSC to the respondents in their letter dated 13.3.1992 (Annexure A-2), he has submitted that in paragraph 2.7 while dealing with Article VII, it has been recorded that the

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disciplinary authority had agreed with the findings of the Inquiry Officer and came to the conclusion that a minor penalty may be imposed and again on the basis of the findings, the UPSC itself recorded in paragraph 3.11 that "the lapses on the part of Shri H.L. Bola (applicant) are not very serious......". He has contended that when the respondents have continued the disciplinary proceedings after his retirement on 30.6.1991, under Rule 9 of the Pension Rules, it was required of the disciplinary authority to record a finding of "grave misconduct" or "negligence" before any penalty could be imposed on the applicant. He has submitted that such a finding has not been given by the President of India in either of the orders dated 7.7.1992 and 13.2.1998. Learned counsel has, therefore, submitted that the imposition of penalty amounting to a cut of Rs.25/- per month on the monthly pension otherwise due to the applicant and that too on a permanent basis, is not justified or legally tenable as the provisions of Rule 9 of the Pension Rules have not been satisfied; (6) He has contended that the charge-sheet was issued to the applicant on 9.3.1989 for alleged lapse on his part between 23.1.1982 and 31.5.1985. The Inquiry Officer has submitted his report on 10.10.1990 on which the applicant had also submitted his reply on 15.11.1990. The applicant has retired from service on superannuation on 30.6.1991. He has submitted that there was sufficient time for the respondents to conclude the proceedings and to pass the appropriate orders on the charges much before he retired. According to him, there was a gap of atleast 7 1/2 years in which necessary action could have been taken but this has deliberately not been done by the respondents in order to enable them to drag the case under Rule 9 of the Pension Rules, after the applicant's

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retirement. Relying on the judgement of the Supreme Court in **D.V. Kapoor Vs. Union of India & Ors.** (JT 1990(3) SC 403), learned counsel has submitted that as there is no finding that the applicant had committed "grave misconduct" as provided in Rule 9 of the Pension Rules, the impugned penalty orders are illegal and, therefore, should be quashed and set aside.

5. We have perused the reply filed by the respondents and heard Shri K.R. Sachdeva, learned counsel. He has controverted the averments made by the applicant. He has relied on another judgement of the Supreme Court in **Union of India & Ors. Vs. Shri B. Dev** (1999 SLJ (Vol.I)196 - Para 12). He has submitted that Rule 9 of the Pension Rules gives a right to the President to withhold or withdraw pension even on a permanent basis, subject to the conditions mentioned therein. He has submitted that in the present case the applicant had been issued the charges under Rule 14 of the CCS (CCA) Rules,1965, which are major penalty proceedings. He has submitted that as such there is no infirmity in the final punishment order passed by the President under Rule 9 of the Pension Rules because the applicant had retired in the meantime, while the proceedings under Rule 14 of the CCS (CCA) Rules,1965 were still pending. According to him, if the major disciplinary proceedings initiated before retirement are continued after retirement and concluded in the establishment of the charge, then under Chapter XVI, Para 2 of the Vigilance Manual (copy placed on record), it is not necessary for the President to consult the UPSC again before passing the impugned order dated 13.2.1998, as the same did not result in over-ruling or modifying the earlier order dated 7.7.1992. In view of

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these provisions, he has submitted that the contention of Shri Sant Lal, learned counsel, is not tenable. Learned counsel for the respondents has submitted that at the time when the charge-sheet was issued to the applicant, he was a Group 'B' officer whereas the IO was a Group 'A' officer and, therefore, there is no infirmity on this ground also. Shri Sant Lal, learned counsel during the course of arguments had submitted that the applicant was officiating in a higher post, but the averment of the respondents has not been denied by the applicant in the rejoinder. Therefore, we do not see any force in this ground and it is accordingly rejected.

6. Learned counsel for the respondents has submitted that, as the inquiry initiated against the applicant before his retirement had been continued and concluded correctly under Rule 9 of the Pension Rules, there is no infirmity in the impugned orders. He has also pointed out that the impugned order dated 13.2.1998 has been passed in pursuance of the Tribunal's order dated 24.11.1997 in OA 2579/92. He has submitted that the guidelines issued by the Department, which is relied upon by the applicant, cannot be given effect to contrary to the Rules. He has relied on the judgement of the Tribunal in **Smt. Kalpagam Bhaskaran, Commissioner of Income-Tax Vs. Union of India & Anr.** (SLJ 2000(1) CAT page 187). The submission of the learned counsel for the respondents is that the guidelines given in the Vigilance Manual, even if followed does not vitiate their action. He has also relied on the judgement of the Tribunal in **V.J. Sud Vs. Union of India** (OA 2030/97), decided on 11.8.2000, (although copy of that order has not

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been placed on record). He has, therefore, prayed that there is no merit in this O.A. and the same may be dismissed.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. Regarding the contention of the applicant that he had not been given the relevant documents, we have seen the reply filed by the respondents in paragraph 5.5. In paragraph 5.5 of the O.A., the applicant has referred to the relevant documents he was required for proper defence of his case. The respondents in their reply have submitted, inter alia, that "the applicant himself has stated that the additional documents allowed to be produced by the I.O. were not available which makes it clear that genuine efforts were made to produce the same". They have further submitted that the applicant is raising this objection at a belated stage. The documents and files called for by the applicant as mentioned by him in the O.A. do appear to be germane to the charges levelled against him. Besides, the conclusion of the respondents that as the applicant himself knew that the documents were not available and, therefore, it is clear that genuine efforts were made to produce the same appears to beg the question. The respondents have not clearly shown as to how these documents were not available when the disciplinary proceedings initiated against the applicant on 9.3.1989 were still pending at the relevant time. Therefore, in the facts and circumstances of the case, the contention of Shri Sant Lal, learned counsel that the denial to supply the relevant documents has led to prejudice to the applicant cannot be outrightly rejected.

9. The relevant portions of Rule 9 of the Pension Rules read as follows:

"9. **Right of President to withhold or withdraw pension.**

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

x x x x x x x

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided x x x x x"

(Emphasis added)

10. In the present case, as the applicant had been issued the chage-sheet while he was in service on 9.3.1989, the proceedings are stated to have been continued under the aforesaid provisions of Rule 9. Taking into account the further facts in this case, namely, that the Inquiry Officer's report has been submitted on 10.10.1990 to which the applicant had also submitted his reply by 15.11.1990, we find force in the submissions made by Shri Sant Lal, learned counsel, that the proceedings initiated against the applicant could have been reasonably concluded much before his superannuation w.e.f. 30.6.1991. However, we find that

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the respondents for no apparent reasons stated in the reply, other than the fact that they had to consult the UPSC did not do so. The respondents have submitted that they had to consult the UPSC in the present case. We note from the advice given by the UPSC in their letter dated 13.3.1992, that is before the first impugned order was passed by the President on 7.7.1992 (Annexure A-1), that they have recorded as follows:

> "...The disciplinary authority had agreed with the findings of the IO and come to the conclusion that a minor penalty may be imposed. The case was referred to the Commission in May, 1991 and since the CO was due to retire w.e.f. 30.6.91 and that defence documents were not sent along with the case, it was returned back to the Department to send the defence documents and also to take a decision whether the disciplinary authority would like to continue the proceedings under CCS (Pension) Rules. The President i.e. the concerned Minister had taken a decision for tentatively imposing a cut in pension of a token or nominal cut on the CO. The case now been referred to the Commission for advice".

11. We find force in the submissions made by the learned counsel for the applicant that under Rule 9 of the Pension Rules unless the pensioner is found guilty of grave misconduct or negligence the Presidential power under this Rule cannot be validly exercised. We are fortified in the view we have taken by the judgements of the Hon'ble Supreme Court in **D.V. Kapoor's and B. Dev's case** (supra) which have also been relied upon by the parties.

12. In **D.V. Kapur's case**, it has been held as under:

> "It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. <u>The condition precedent is that in any departmental enquiry or the judicial proceedings,</u>

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the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition"... The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it is not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

9. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs.60/-".

(Emphasis added)

13. Learned counsel for the respondents has relied on **B. Dev's case** (supra). In paragraph 12 of that judgement, the Apex Court has held that under Rule 9 of the Pension Rules, "this power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore, can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service...". This judgment of the Hon'ble Apex Court also confirms that the exercise of the power of the President under Rule 9 of the Rules is possible in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service.

14. In the light of the judgements of the Hon'ble Supreme Curt referred to above, we have read and re-read the impugned orders passed by the President. In the ultimate analysis of the facts and evidence in the case, the President has concluded in paragraph 6 of the order dated 7.7.1992 that a cut of Rs.25/- per month on the monthly pension should be imposed on the applicant. Similarly, in the order dated 13.2.1998, the President, after discussing the relevant facts and history of the case, held as follows:

> "...It may be observed that the decision to impose a nominal cut in the pension of the petitioner was taken by the President after considering all aspects. The punishment awarded to the petitioner in fact is very reasonable and there appears to be no scope for any further leniency. It is also worth noting that while the petitioner has raised all sorts of unmerited technical points in his petition, he has not broughtforth anything to refute the charges proved against him.
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> 8. In view of the foregoing, there is no merit in the petition.
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> 9. President hereby accordingly rejects the revision petition dated 12.1.1998 of Shri H.L. Bola, Retd. SPOs, Faridabad Division".

15. From the above,it is seen that the revision petition has been rejected and the penalty has been confirmed. However, there is no specific finding by the President as to the guilt of the pensioner or that there is grave misconduct or negligence on his part as required under Rule 9 of the Pension Rules and held in the judgements of the Supreme Court (supra). The reliance placed by the learned counsel for the respondents on the Tribunal's order in **V.J. Sud's case** (supra) on which he has made oral submissions, without the copy of the orders, is not relevant to the facts of the case, particularly having regard to the judgements of the Hon'ble Supreme Court in **D.V. Kapoor's** case and **B. Dev's** case (supra) which are binding on us. As

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mentioned above, in the impugned orders there is no specific finding given by the President, in exercise of the powers under Rule 9 of the Pension Rules, of the guilt of the pensioner as "grave misconduct or negligence" during the period of his service, which was the subject matter of the charge, on the basis of which he has proceeded to impose the penalty of cut in the pension. In this view of the matter, it cannot be held that the impugned penalty orders have been passed in accordance with the relevant law and rules.

16. Therefore, having regard to the reasons given above and following the judgements of the Supreme Court (supra), we find merit in the application. Accordingly, the impugned orders dated 7.7.1992 and 13.2.1998 are quashed and set aside. The applicant shall, therefore, be entitled to the consequential benefits in accordance with law, rules and instructions. As the applicant is a pensioner, necessary action shall be taken by the respondents as expeditiously as possible and in any case within two months from the date of receipt of a copy of this order. No order as to costs.

V.K. Majotra
(V.K. Majotra)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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