

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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DATED: THE 28th DAY OF JUNE 1999

CORAM : HON'BLE MR. R.K.AHOJA, A.M..
HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO. 1171 OF 1998

Moti Lal Shakya (Retd.)
S/o Sh. Kamla Prasad Shakya,
R/o 22 Rajinder Prasad Road,
New Delhi-110001

.... Applicant

(C/A Shri G. S. Lobana, Adv.)

Versus

1. Union of India through Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhavan, New Delhi-110001.
2. Union Public Service Commission,
through its Secretary,
Shahjahan Road, Dak Bhavan,
New Delhi - 110001.
3. Superintendent of Post Offices,
Etah postal Division,
Etah (U.P.)

.... Respondents

(B/R Shri N. S. Mehta, Adv.)

ORDER

HON'BLE BY MR. S.L.JAIN, J.M.

The applicant has challenged the order dated
16.4.98, Annexure-A to Compilation No.1 by which the
full monthly pension is with-held on permanent basis.

S. L. Jain -



The enquiry report dated 26.1.91 and the advice of U.P.S.C. dated 16.3.98/^{is sought to be quashed} with a direction to the respondents to pay entire arrears of pension and other pensionary benefits and continued to pay the same every month along with cost of the petition.

2. The applicant has challenged in his earlier O.A. No. 1485/93. The Presidential order dated 12.3.93 and the Central Administrative Tribunal Bench, Allahabad on 25.9.93 passed the following order:-

"We, therefore, dispose of this application with the observation that the appellate authority may reconsider whether in the facts and circumstances of the case, lesser punishment may be imposed on the applicant. The appellate authority shall pass final orders in this regard within a period of 4 months from the date of communication of this order. There shall be no order as to costs."

3. The respondents filed a Review Application No. 128 of 1995 in respect of the said order and the same was disposed of on 1.1.97 modifying earlier direction passed in O.A.No. 1485/93:

para-5 "We therefore modify our directions given in paragraph 16 of the aforesaid order as follows:-

In the facts and circumstances of the case the applicant may file representation to the President of India for reconsideration of the penalty imposed on him and if such representation is filed, it may be disposed off in accordance with law. Review Application is disposed of accordingly."

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4. The applicant filed a Civil Contempt petition No. CCA 52/96 in respect of O.A.No.1485/93 against respondent no.1 in June 1996 on account of non compliance of the judgment and order dated 8.3.95 passed by the Tribunal in O.A.No.1485/93. The said CCA No.52/96 was disposed of by the Tribunal vide order dated 29.5.97.

5. The applicant submitted representation to the President of India through the Superintendent of Post Offices, Etawah Postal Division on 12.2.97. The Hon'ble President of India reconsidered the representation of the applicant dated 14.2.97 in pursuance to the modified direction of the Tribunal in consultation with Union Public Service Commission who reiterated their advice conveyed by letter dated 19.2.93 and consequently the President accepted the advice of the U.P.S.C. and had passed the impugned order dated 16.4.98.

6. On perusal of the order passed in Review Application No.123/95. The only liberty given to the applicant was to file representation to the president of India for reconsideration of the penalty imposed on him, and if such representation is filed ^{it} it may be disposed of in accordance with law. The applicant has filed the representation and the President of India has reconsidered the representation in consultation with U.P.S.C. and passed the impugned order and has ordered that having regard to the fact of the case the department of posts order no.9-14/92-VP dated 12.3.93 will remain unchallenged. The earlier order referred in the impugned order is full monthly pension otherwise admissible to the applicant be withheld on a permanent basis.

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7. The applicant has challenged the same impugned order on the ground that it is passed in violation of statutory provisions contained in Rule 9(2A) of CCS that (pension) Rules 1972, inasmuch as the Superintendent or post Offices, Etah who has issued the charge-sheet had no occasion to examine the enquiry report and the representation of the applicant and to submit his findings on each charge to the President to enable him to further examine the case in consultation with U.P.S.C. The punishment is not at all commensurate with the offence allegedly committed by the applicant, his previous record has been cleaned and nothing adverse about his past record has been mentioned, the enquiry report submitted by the Enquiry Officer was not eligible or competent to hold enquiry according to the Departmental Rules. None has recorded the findings regarding gross misconduct, negligence on the part of the applicant, the fact has established makes it clear that the applicant cannot be held guilty and his co-worker Ram Sewan, E.D. is responsible for the said mislead. The F.I.R. lodged by the respondent, a final report was accepted by the Magistrate and respondents did not challenge the acceptance of the final report expert's opinion in respect of hand-writing. The said expert was never examined, the enquiry officer was prejudiced, the loss caused to the Government was recovered.

8. At the out set it is mentioned that this is a second round of litigation and keeping in view the order passed in Review Application No.128 of 1995 the scope for deciding this O.A, is limited one and that is the penalty imposed on the applicant. The applicant is not entitled to challenge the other points in respect of initiation of enquiry till a representation before the

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Hon'ble President of India in respect of the fact that he was not ~~not~~ guilty in respect of his misdeeds.

9. Rule 9(1) of CCS(Pension) Rules 1972 is as under:-

9(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;

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five per mensem."

On perusal of the same it is clear that the pensioner is found guilty of grave misconduct or negligence during the period of service, only in that circumstance, the President reserves him the right of withholding the pension or gratuity or both either in full or in part.

10. We have carefully perused the order passed by the President order dated 16.4.98 and ^{we} ^{of} ~~are~~ considered opinion that the order does not speak of the fact of negligence ^{gave} or ~~misconduct~~. J.D.M.

(5)

11. In O.A.No. 196/88 D.R.Vajaj V. Union of India decided on 30.7.93 it has been held that a condition precedent before exercising a power in Rule 9(1) of CCS Rules is not established. In A.I.R.1990 SC 1923 D.B.Kapoo v. Union of India and others, the Apex Court of the land has held that before withholding of pension as a measure of punishment the president is to record a finding that the delinquent officer is guilty of grave misconduct or negligence. In absence of a finding to the same effect the president would not be competent to impose the penalty of withholding any pension or part of it.

12. Looking to the misdeeds of the applicant the order imposing penalty of withholding pension dated ^{16.4.1998} ~~16.4.95~~ is hereby quashed. Liberty is however reserved to take further steps in the matter of giving an opportunity of showing cause to the petitioner as expeditious as possible against the proposed action regarding imposing of penalty. No order as to cost.

P.L. Singh
JUDICIAL MEMBER

R. K. Singh
ADMINISTRATIVE MEMBER

(X) Corrected with Courts
order dated 23.7.99
passed on the levity sheet
itself by Hon. Mr. Justice

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