

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(1)

O.A. No. 332/98

Decided on 5.8. 1998

Shri M.M. Haldar
(Applicant in Person)

Applicant

U.O.I. & Anr.
(By Advocate: ~~None~~)
R.V.Sinha

Respondents

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? Yes

Adige
(S.R. ADIGE)
Vice Chairman (A)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No. 332/1998

NEW DELHI 5.8.1998

HON'BLE M.R.S.R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri M.M.Haldar,

S/o Late Shri J.K.HALDAR,
R/o S-164, Greater Kailash Pt.II,
New Delhi-048

..... applicant.

(Applicant in person)

Versus

Union of India
through

1. Secretary,
Ministry of Commerce,
Govt. of India,
New Delhi.

2. Director General,
Directorate General of
Foreign Trade (Formerly
Known as Chief Controller of Imports
& Exports),
Ministry of Commerce,
Udyog Bhawan,
New Delhi

...., Respondent

(By Advocate: Shri R. V. Sinha)

JUDGMENT

HON'BLE M.R.S.R. ADIGE VICE CHAIRMAN (A).

Applicant impugns Respondents' order dated 25.7.97 (Annexure-p1) imposing a cut of 25% in his pension for 2 years and also prays for commuted value of pension calculated on the date he retired on superannuation, with interest thereon.

2. Applicant who belongs to SC community was working as Deputy Chief Controller of Imports & Exports (CCIE), Commerce Ministry, New Delhi upto 1985 and respondents do not deny that he was placed in select list of Grade I Officers

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of CSS in the year 1984. It appears that orders promoting him to the post of Joint CCIE had been issued, but those orders were subsequently withheld because of a criminal case against him under the Prevention of Corruption Act as well as his suspension after his house was searched on 18.2.86. He filed OA No.249/86 for revocation of his suspension and against withholding of his promotion. By order dated 28.5.87 the Tribunal revoked his suspension and Respondents were directed to restore him to duties forthwith. SLP filed by respondents against this judgment was dismissed by the Hon'ble Supreme Court on 22.7.87. Applicant attained the age of superannuation on 31.5.87. Meanwhile by orders dated 29.5.87 (Annexure-P3) respondents directed that the applicant should continue in service and under suspension for a period of 2 months beyond 31.5.87 i.e. upto 31.7.87. Applicant filed a CP No.54/87 alleging contumacious disobedience of the Tribunal's order dated 28.5.87 by the respondents, in reply to which respondents filed an unconditional apology (Annexure-P4). Applicant joined the promoted post of Joint CCIE sometime after 29.5.87 and eventually retired as such on 31.7.87.

3. Upon applicant's retirement (after the extended period of 2 months) on 31.7.87 he was granted provisional pension but no orders were passed regarding release of gratuity and commuted value of pension.

His representation in this regard was rejected.

Meanwhile before applicant demitted office a chargesheet dated 24.7.87 under Rule 14 CCS (CCA) Rules, 1965 was issued to him, which contained 2 Articles of Charge, namely;

- i) While functioning as Controller and Dy. Chief CIE during 1970-86 he was found in possession of assets to the tune of over 5.13 lakhs which were disproportionate to his known sources of income;
- ii) During the above period he failed to give intimation to his department regarding certain transactions made by his dependent son and/or wife and thereby violated the CCS(CONDUCT) Rules.

4. The reupon applicant filed OA No. 1015/89 and OA No. 750/90 both of which were disposed of by judgment dated 21.9.92. A perusal of the aforesaid judgment shows that in OA No. 758/90 applicant had prayed that commuted value of pension be paid to him with interest; gratuity also be released with interest and provisional pension be paid to him as regular and final pension. In OA No. 750/90 applicant had prayed for quashing of the disciplinary proceedings and grant of consequential benefits on the grounds that

- i) the enquiry pending against him should be quashed^(a) because certain pages in a particular file which he claims were necessary for his defence were allegedly torn out from the same, which he detected when he was allowed inspection of that file;

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(b) he was not allowed inspection of a second file despite his prayer for the same ;

ii) the charge sheet in the criminal case under the Prevention of Corruption Act had been withdrawn (because of defective sanction) and as no prosecution was pending against him when he retired from service the departmental proceedings pending against him should be quashed.

5. Dismissing the two OAs as being premature, but at the same time stressing the necessity for completion of the departmental proceedings as expeditiously as possible the Bench in its aforesaid judgment dated 21.9.92 held as follows :

i) Applicant retired on 31.7.87 and before this date the charge sheet had been filed by CBI before the Special Judge under the Prevention of Corruption Act. Thus the chargesheet was pending against him when he retired and while no doubt it was withdrawn on technical grounds on 20.2.89 it was filed again before the Special Judge and hence it could not be said that there was no chargesheet pending when he retired from service, and under the circumstance respondents had power to withhold gratuity, and pay only provisional pension and other dues when a prosecution was pending in a Court of Law. Final adjudication of pension could be made only after conclusion of the DE and the criminal proceedings pending against applicant.

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ii) There was no legal bar to hold a departmental proceeding during the pendency of the criminal case even though the basis of the criminal case, and the subject matter of the charge in both the proceedings were one and the same. The facts and circumstance of each case had to be gone into to determine whether the simultaneous continuing of the criminal case as well as the departmental proceedings would prejudice the applicant. In the instant case as applicant had already disclosed his defence in the DE by filing his written statement, it could not be said that he would be prejudiced if the DE was allowed to continue during the pendency of the criminal case. The prosecution in the criminal trial and the Presenting Officer in the Disciplinary proceedings were required to prove that with the limited resources, applicant could not acquire disproportionate property without resorting to corrupt practices and as these facts could be proved or disproved on the basis of documents it could not be said that the continuance of the DE in which applicant would disclose his defence, would prejudice him in the criminal trial.

iii) In regard to the plot of land (S-164 Greater Kailash II, New Delhi) which applicant claimed was gifted to his sons by their maternal great grand father, there would have been a registered gift deed which is a public document. Similarly it could be presumed that applicant would have a copy of his application willing to stand guarantor for the loan raised by his sons from LIC for construction of a house on the said plot.

iv) Applicant would get a full opportunity to defend himself in the departmental proceeding if he was aggrieved with the disciplinary authority's order, he could

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challenge the same in appeal and if he was still dissatisfied thereafter he could approach the Tribunal under Section 19 A.T. Act.

6. Upon denial of the charges by applicant a DE was conducted by the Commissioner of Departmental Enquiries. Applicant filed OA No. 2327/95 praying that respondents be directed to complete the DE within a specified time. The Tribunal vide order dated 2.5.96 directed respondents to complete the same within 6 months. Thereafter applicant filed CP No. 149/97 in OA No. 2327/95. After issue of notice on respondents the DE was completed by Commissioner of Departmental Enquiries, who in his report dated 30.9.96 (taken on record) held Article I of the charge partly proved and Article II substantially proved. A copy of the I.O's report was furnished to applicant for making representation if any vide Memo dated 15.10.96. After consideration of applicant's representation, the President agreed with the I.O's findings and proposed a cut in applicant's pension. The case was referred to UPSC on 17.4.97 who in their advice dated 24.7.97 agreed with the I.O's and President's findings to the extent that applicant had acquired disproportionate assets to the tune of Rs. 2,60,405/- to the known sources of income. Regarding Article II, UPSC held that about non-intimation of monetary transactions to Govt., out of 7 items, 4 items stood proved while 3 items stood not proved against him. As applicant had

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retired in 1987, UPSC advised that the ends of justice would be met if a penalty of 25% cut in the pension otherwise admissible to applicant was imposed for 2 years. Agreeing with the same, respondents by the impugned order dated 25.7.97 imposed the aforesaid punishment on applicant.

7. Meanwhile C.P.No.149/97 was disposed of by order dated 28.7.97.

8. We have heard the applicant who argued his case in person and Shri R. V. Sinha for respondents.

9. During hearing applicant raised the following 3 points before us:

(i) A copy of the Presenting Officer's report was not supplied to him.

(ii) He was allowed to inspect the relevant files only after certain documents contained therein had been removed;

(iii) Income earned from other house property owned by him was not taken into account when he was held to be in possession of assets disproportionate to his known sources of income.

10. In so far as (i) above is concerned, no rule or instruction has been cited, requiring respondents to furnish a copy of any such document to the delinquent during the DE. In so far as (ii) is concerned, applicant has not been able to establish successfully which specific documents were removed from the file to his prejudice which would

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warrant our interference in this case. As regards (iii) above, this involves reassessment of evidence which we as a Tribunal exercising writ jurisdiction are precluded from doing. Furthermore, even assuming (without recording a finding) that as regards (ii) and (iii) above, applicant is correct in his contentions, items (i), (iv), (v) and (vi) in Article II of the charge against applicant still stand proved.

11. Under the circumstance the impugned order dated 25.7.97 warrants no interference. Furthermore, as the commuted value of pension is admissible only on pension as finally determined, and not on the provisional pension sanctioned to applicant consequent to the departmental proceedings which were pending against him on the date of his retirement, there can be no question of paying applicant the commuted value of his pension calculated on the date he retired on superannuation.

12. The OA is therefore dismissed. No costs.

Lakshmi
(MRS. LAKSHMINATHAN)
MEMBER(J)

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(S.R. ADIGE)
VICE CHAIRMAN (A)

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