

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 666/1998

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T.A. No.

DATE OF DECISION 4-8-99

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Sh.M.L.Gupta

....Petitioner

Sh.B.S.Oberoi

....Advocate for the
Petitioner(s)

VERSUS

UOI through Secretary
M/O Culture and Ors.

....Respondent

None for the respondents

....Advocate for the
Respondents.

CORAM

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

The Hon'ble Shri S.P.Biswas, Member (J)

1. To be referred to the Reporter or not? YES

2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 666/1998

New Delhi this the 4th day of August, 1999

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

M.L. Gupta,
S/o late Shri Fateh Chand,
1436/98, Laxmi Bhawan,
Tri Nagar, New Delhi. Applicant.

By Advocate Shri B.S. Oberoi.

Versus

1. Union of India,
through
Secretary,
Department of Culture,
Ministry of Human Resource Development,
C Wing, Shastri Bhawan,
New Delhi-110011.
2. Director and Chief Vigilance Officer,
Department of Culture,
Ministry of Human Resource Development,
C Wing, Shastri Bhawan,
New Delhi-110011.
3. Deputy Secretary (Admin),
Department of Culture,
Ministry of Human Resource Development,
C Wing, Shastri Bhawan,
New Delhi-110011. Respondents.

None for the respondents.

O R D E R (Oral)

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

The applicant is aggrieved by the order passed by the respondents dated 25.2.1997 by which the President acting under the provisions of Rule 9 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'Pension Rules') imposed a penalty of withholding 100% pension and gratuity of the applicant, who was Accounts Clerk (retired) and rejection of his appeal/representation by the subsequent order dated 1.1.1998.

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2. The brief facts of the case are that the applicant while working under the respondents was placed under suspension and a police case was registered against the applicant. A criminal case was also filed against him under FIR No. 648 /75 which culminated in his conviction under Sections 419/420/461/468/471 of the IPC by the learned ACMM, Delhi who had sentenced him to three years Rigorous Imprisonment (RI) u/s 419 IPC, RI for three years with fine of Rs.1000/- in default RI for three months u/s 420 IPC, RI for three years with fine of Rs.1000/- in default RI for three months u/s 468 IPC and with fine of Rs.1000/- in default RI for three months u/s 471 IPC. The applicant filed appeal against the conviction order dated 15.10.1988 and ordered of sentence of the same date. The court of learned Addl. Sessions Judge, by order dtd 25.11.1992, held that this was a case where the applicant should get the benefit of ~~the~~ Probation of Offenders Act, provided he enters upon a bond in the sum of Rs.5000/- with one surety of the like amount and to be of good behaviour and to keep peace for two years. The applicant thereafter superannuated from service w.e.f. 1.12.1993. The respondents on receipt of the aforesaid orders of the competent criminal courts convicting the applicant of the offences under various Sections of the IPC mentioned above, even though he had been given the benefit of ~~the~~ Probation of Offenders Act by the Appellate Court, proceeded for taking action against him under Rule 19(i) of the CCA (CCA) Rules, 1965 (hereinafter referred to as 'the Rules').

3. Shri B.S. Oberoi, learned counsel, has submitted that in terms of Rule 19(i) of the Rules a Memorandum dated 3.2.1995 had been issued to the applicant. In this memo, after noting the conviction of the applicant in the criminal court, it was stated that the President has

proposed to award an appropriate penalty under Rule 19 of the Rules. Considering the gravity of the charge, they had proposed imposition of the penalty of removal from service but as the applicant had retired, the President imposed on him the penalty of forfeiture of his pension and gratuity in full. Against this, the applicant had made a representation on 24.2.1995 to the competent authority.

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4. Prior to the aforesaid Memorandum issued on 3.2.1995, an earlier Memorandum had been issued to the applicant on 3.12.1993 proposing to impose the penalty of removal from service to which the applicant had also submitted a reply on 17.12.1993 and it is stated that the proceedings of inquiry had also been held on 2.12.1993. In this inquiry proceedings which has been signed by the applicant also on 2.12.1993, it is recorded that he had pleaded for sympathetic view to be taken in his case and he may be deemed to have been reinstated. It is relevant to point out here that by the time the Memorandum of 3.12.1993 was issued ^{to} the applicant had already superannuated from service w.e.f. 1.12.1993. In the circumstances, the later Memorandum dated 3.2.1995 had been issued proposing forfeiture of the penalty of pension and gratuity, to which the applicant had also made a representation on 24.2.1995.

5. The learned counsel for the applicant has contended that the impugned order passed by the President imposing a penalty of withholding 100% pension and gratuity of the applicant under Rule 19 of the CCS (Pension) Rules, 1972 does not disclose any reasons other than the fact that the applicant has been convicted in the criminal court on various charges under Sections 419/420/467/469 and 471 of the Indian Penal Code. He has further submitted that the penalty

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of withholding 100% of the retiral benefits to the applicant are very harsh and a sympathetic view should have been taken by the respondents, particularly having regard to the other social welfare measures which the Government undertakes for the old aged persons in the country. He has also submited that the applicant had rendered a long number of years service to the Government and, therefore, they should have been swayed by sympathy in not imposing 100% cut in pension and gratuity and given him some of the pension at least so that he can live. Learned counsel has, therefore, very vehemently submitted that the punishment order imposed on the applicant should be quashed and set aside. He has relied on the judgement of the Tribunal in **Sunil Massy Vs. Assistant Mechanical Engineer & Ors.** (AISLJ 1997(2) (CAT) 487).

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6. As none has appeared for the respondents, we have seen the reply filed by them. Their main contention is that the impugned orders have been passed by them in accordance with the relevant Rules. They have also stated that although the applicant had pleaded before the disciplinary authority on 2.12.1993 that a sympathetic view should be taken in the matter, but the impugned penalty orders have been passed after giving a reasonable opportunity to the applicant to make his representation on the proposed penalty and after seeing his reply/representation, the President had taken a decision to cut 100% pension and gratuity by order dated 25.2.1997.

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

Yours,

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8. The applicant had been convicted on several offences under the provisions of Indian Penal Code by the competent criminal court in its orders dated 15.10.1988 and 18.10.1988, which conviction has been upheld on appeal by the Addl. Sessions Judge in his order dated 25.11.1992. The Supreme Court in Hari Chand Vs. The Director of School Education (1998(1) Scale 136), has held that Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. Further it was observed that it cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from Government service. In the circumstances, merely because the appellate court in its order dated 25.11.1992 had given the applicant the benefit of the provisions of Sec.12 of Probation of Offenders Act, would not mean that the respondents cannot take into account the fact of his conviction while passing the penalty orders, as provided under the relevant Rules. Rule 19(i) of the Rules provides a Special procedure in certain cases which reads as under:

"Notwithstanding anything contained in Rule 14 to Rule 18 -

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) and (iii).....

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

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9. From the facts given above, it is seen that the respondents had issued the memorandum dated 3.2.1995 in which they have stated that in view of the applicant's conviction in the criminal court, the President has proposed to award him an appropriate penalty under Rule 19 of the Rules. The proposed penalty was also mentioned as penalty of forfeiture of pension and gratuity in full. Admittedly, the applicant had also made a representation against the proposed penalty which has been taken into account by the competent authority, i.e. the President. The impugned order has been passed under Rule 9 of the Pension Rules, as by the time the order was passed, admittedly, the applicant had superannuated from service w.e.f. 1.12.1993. Rule 9(I) of the Pension Rules empowers the President to withhold or withdraw the pension either in full or in part, whether permanently or for a specified period, if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. Sub-rule (2) of Rule 9 of the Pension Rules provides that 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 reemployment, shall, after the final retirement or the Government servant, be deemed to be proceedings 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. Proviso (b) to sub-rule (2) further provides that the departmental proceedings, if not instituted while the Government servant was in service, can be instituted with the sanction of the President. It is noted that the earlier memorandum issued on 3.12.1993 proposing the penalty of removal from service had, in fact, been issued after the date of superannuation of the applicant on 1.12.1993. Thereafter, the respondents had issued another memorandum on 3.2.1995 which

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had taken into account proviso (b) (ii) of sub-rule (2) of Rule 9 of the Pension Rules read with Rule 19 of the Rules.

10. The other main contention taken by learned counsel for the applicant is that no reasons have been given, other than the reason that the applicant had been convicted in the criminal court, by the President in the impugned order passed under Rule 9 of the Pension Rules for imposing penalty of withholding 100% pension and gratuity. In this regard, we note from the judgement of the Tribunal in Sunil Massy's case (supra) as under:

"In view of the fact that the order of punishment was passed merely by virtue of applicant's conviction, but his conduct leading to conviction has not been taken into consideration, the order of removal dated 4.5.1992 deserves to be quashed and is thereby quashed. It will be open to the disciplinary authority to pass fresh order in accordance with law indicated hereinabove, within 2 months of the service of this order upon him. On failure to pass any order the applicant will be entitled to be reinstated forthwith but without back wages".

11. We find some force in the contention of the learned counsel for the applicant that the respondents have passed the impugned order dated 25.2.1997 only on the ground of the gravity of misconduct of the applicant, who was Accounts Clerk (retired), which led to his conviction which according to them warrants imposition of a major penalty. In Sunil Massy's case (supra), the Tribunal had referred to the decision of the Supreme Court in **Divisional Personnel Officer, Southern Railway vs. T.R. Challappan** (1976(3) SCC 190) as laying down the law that Section 12 of the Offenders Act does not contemplate automatic disqualification of a person released on probation. Further, it has been held that conviction of a delinquent employee simpliciter without anything more will not result in his automatic dismissal or removal from service which if applied

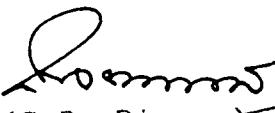
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to the present case, would mean that before the passing of the penalty order withholding 100% pension and gratuity of the applicant, the respondents should have considered not only the conviction but the conduct leading to his conviction. Rule 19 of the Rules itself provides that where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. In the present impugned order, the respondents have merely stated the reason of the conviction of the applicant and nothing else. Learned counsel for the applicant further states that he is not aware whether the advice of the UPSC which has been referred to in the last para. of the impugned order, which should have contained the reasons, has also been furnished to the applicant in the present case.

12. For the reasons given above, the impugned order dated 25.2.1997 passed by the respondents merely based on the fact of the applicant's conviction in the criminal court is quashed and set aside. It is, however, left open to the disciplinary authority to pass fresh orders in accordance with law, giving reasons as indicated above, within 2 months from the date of receipt of a copy of this order. It is, however, made clear that during the period, till the respondents pass an appropriate order giving reasons, the applicant shall not be eligible to any retiral benefits.

13. O.A. is disposed of, as above. No order as to costs.


(S.P. Biswas)
Member(A)

'SRD'


(Smt. Lakshmi Swaminathan)
Member(J)