CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.858/95

(23)

New Delhi this the **24th** day **October, 2000**.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMNV)

G.C. Verma,
S/o Prof. U.S. Verma,
No.28, Ferozshah Road,
Giridhar Apartments,
New Delhi-110 001.

...Applicant

(By Shri Vijay Bhadur Singh and Sh. Vijay Singh
Senior Counsel with Sh. S.K. Mishra, Counsel)

-Versus-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 011.

2. The Government of Punjab,
through its Chief Secretary,
Secretariat,
Chandigarh.

3. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

...Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant was an Indian Police Service (IPS) officer, allotted to the State of Punjab and Haryana. While he was working at Ludhiana in the year 1985 the following chargesheet was issued to him:

> "Shri G.C. Verma, IPS while posted as Assistant Supdt. of Police, Hoshiarpur, Jalandhar, Ludhiana, Sangruad and CID, Punjab, Chandigarh committed the following misconducts:
>
> (i) That he:

(i) repeatedly raised loans from various banks and individuals and failed to repay the same;

(ii) made purchases on credit and failed to make the payment for the same;

iii) stayed in Rest Houses and failed to make the payment for the same thereby leading to habitual indebtedness.

2. That the Indian Bank, Hoshiarpur launched legal proceeding against him for the recovery of debt and his pay was partly attached. He did not inform the Government about these proceedings/order of the Court as required under Sub-rule (2) of Rule 15 of the All India Services (Conduct) Rules, 1968.

3. That while posted in the CID at Chandigarh he remained wilfully absent from duty without prior permission for the period 5-10-83 to 24-11-83 and failed to, appear for medical examination in the PGI, Chandigarh.

4. That while posted in the CID at Chandigarh he again absented himself from duty from 21-12-83 to 31-1-1984.

5. That on 17-2-1984 while posted as Assistant Superintendent of Police, Ludhiana, he visited the shop of Dr. Sahib Singh and Sone Sector 17, Chandigarh in Police uniform in a Police Jeep, accompanied by a gun man, and purchased life saving drugs worth Rs.2104/- and issued a cheque, in payment, shown on the Industrial Estate, Ludhiana Branch of the Bank of Baroda which was dishonoured twice by the Bank on account of insufficient funds in the account. When the said firm approached him for payment, he threatened Shri Jatinder Sahib Singh, Proprietor of firm Dr. Sahib Sing and Sons. Sector 17, Chandigarh, to involve in false cases.

By his above acts, Shri G.C. Verma, IPS has contravened the provisions of All India Services (Conduct) Rules, 1968 and committed grave misconduct unbecoming of a member of the Indian Police Service."

2. As the applicant denied the allegations an enquiry was ~~held~~ ordered. As the applicant did not participate in the enquiry in spite of several notices the enquiry officer held an exparte enquiry and submitted his report on 13.4.91

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to the disciplinary authority. The report of the enquiry officer was communicated to the applicant to which he submitted his representation. The President after considering the report of the enquiry officer and after due consultation with the UPSC was of the opinion that by raising loans and making purchases on credit, the applicant failed to 'so manage his private affairs as to avoid habitual indebtedness' and hence contravened the provisions of Sub Rule (1) of Rule 15 of All India Service (Conduct) Rules, 1968. He thus held that the applicant was not a fit person to be retained in service and hence imposed the penalty of removal from service by order dated 13.10.94 which is under challenge in this OA.

3. We have heard the learned counsel for the applicant and the respondents and considered their arguments. We have also seen the note and the points indicated therein. It is contended by the learned counsel for the applicant that the impugned order was vitiated on account of inordinate delay in initiating and completing the enquiry. Law is no doubt clear on this aspect. If there is inordinate delay in either initiation or completion of the enquiry, and the delay was not properly explained, it would be construed to cause prejudice to the charged officer. It is, therefore, necessary to see whether in the present case the delay was properly explained or not. It is averred in the counter that the enquiry was contemplated in 1985 and the applicant was suspended in 1985 itself. The chargesheet was issued in 1985 to which the applicant replied but thereafter the enquiry could not be proceeded only because the applicant's whereabouts were not found. In spite of several communications sent to the applicant's

address they have been returned unserved. He was not found at his given address. Several attempts were made to secure his presence in the enquiry. Because of his non-cooperation the enquiry was delayed. Though the enquiry report has been received by the disciplinary authority in 1990 the same could not be served on the applicant till 30.4.91 when the applicant happened to visit the office of the Director General of Police, Punjab. From the above it is apparent that the delay in the conduct of the enquiry cannot be placed against the respondents. The applicant himself was responsible for the same and no grievance can be made by him in this regard. The decision cited by the learned counsel for the applicant in State of A.P. v. N. Radhakishan, 1998 SCC (L&S) 1044 has no application to the present case. It was held therein that unexplained delay in conclusion of the proceedings would itself be an indication of prejudice caused to the employee and on that count the enquiry should be held as vitiated. In the present case, as the delay has been properly explained the proceedings cannot be held as vitiated. On the same principle of unexplained delay the proceedings were held as vitiated by the Supreme Court in State of M.P. v. Bani Singh, 1990 (supp.) SCC 738.

4. The learned counsel for the applicant on the ground of non-payment of subsistence allowance, argues that subsistence allowance being a valuable right its non-payment amounts to breach of natural justice. In our view this contention is wholly misconceived. The applicant has not shown to have made any grievance earlier pending the suspension or during the enquiry for payment of subsistence allowance as per rules. Further, it is stated

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in the counter that since the day of his suspension he was absconding and his whereabouts were not known and hence he cannnot claim subsistence allowance. In the judgement cited by the learned counsel for the applicant in Jagdamba Prasad Shukla v. State of U.P. & Others, JT 2000 (9) SC 457 it was ruled that the payment of subsistence allowance in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. However, on the facts of that case no justifiable grounds have been made out for non-payment of subsistence allowance all through the period of suspension i.e. from suspension till removal. The Court, therefore, held that it was a clear case of breach of the principles of natural justice, which amounts to denial of reasonable opportunity to the appellant to defend himself in the departmental enquiry. The enquiry and the consequent order of removal were quashed. In the instant case, as the applicant was absconding since the date of his suspension till the enquiry was completed, he cannot contend that his right for payment of subsistence allowance has been deprived by non-payment of the subsistence allowance and there was no breach of natural justice to defend his case.

5. It is the next contention of the learned counsel that the notices of enquiry were not served on the applicant, hence the exparte enquiry has to be set aside. Learned counsel contends that the applicant being a highly ranked police officer in the State, cannot be heard to say that he was not found to serve the notices and that he was absconding. He, therefore, argued that no serious attempts have been made to serve the notices on him and the exparte

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enquiry is illegal. We have perused the enquiry officer's report. It shows that the enquiry officer had made several attempts to serve the notices on him but all of them were returned unserved. Registered letters were sent on 4.1.88 on the available addresses of Ludhina and Ambala as well as through I.G. Police, PAP, Jullandhar asking the applicant to be present in the enquiry but the notices were returned undelivered. A notice was published in the Tribune on 10.1.88 but the applicant, it appears, has ignored this notice also. As the D.G.P. Punjab intimated the latest place that he might be available, another attempt was made through a registered letter on 16/22.9.89 to that address but it met the same fate, it was returned undelivered. Thus, having failed to serve the notice of the enquiry the enquiry had to be held exparte. It has to be noticed that the applicant had received the chargesheet, replied to it on 27.3.86. He knows that thereafter an enquiry would be held in his presence. But he made himself scarce till after the enquiry in 1991. Learned counsel, however, draws our attention to the rejoinder to show that he went to Ludhiana and from there he came to Delhi to live with his brother and that he left those addresses in the office of the D.G. Police, Punjab and I.G. P.A.P. Jallandhar. It is significant to note that the rejoinder was filed in September 2000, though the counter was filed in March, 1996. It is also noteworthy that it was not stated when he left Ludhiana to come to Delhi. When he furnished those change of address in the office of D.G. Punjab and I.G. Jallandhar why ~~he~~ did he not inform the enquiry officer or the disciplinary authority? Admittedly he was not available at the last known address. Then being a high ranked officer should it not occur to him that he

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should furnish the change of address to the enquiry officer when the enquiry was to be held in the chargesheet to which he replied. At least should he not make enquiries as to what happened to the enquiry? Did he not notice the publication in the newspaper Tribune? In our view, the enquiry officer had followed the procedure to serve the notice. ~~Thus~~, It is clear that the applicant himself was responsible for not participating in the enquiry. The decision cited by the learned counsel in Dr. Ramesh Chandra Tyagi v. Union of India and Others, 1994 (2) SCC 416 cannot have any application to the facts of the case. In that case, holding that the chargesheet was not served upon the applicant and finding that no effort was made to serve the chargesheet in any other manner under the Postal Act and the Rules thereunder, the court held that the exparte enquiry was illegal. In the present case the chargesheet has been served upon the applicant and he made his statement of defence and only thereafter he could not be served the enquiry notices. From the facts it is clear that all other efforts were made to serve upon him and the notice was also published in the Newspaper Tribune. Hence, this decision has no application.

6. The enquiry officer on the basis of the evidence on record found that the charges 1 and 3 only were proved. The charges 2, 4 and 5 have not been proved. The copy of the enquiry report was supplied to the applicant who made his representation against the finding in the report. Thereafter, it appears that the report and the representation of the applicant have been sent to the disciplinary authority and the entire record along with the above material record has been sent to the UPSC as per

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rules. The UPSC after considering the enquiry officer's report, came to the conclusion that the charges 1 and 5 were partially proved, charge No.2 was fully proved and charges 3 and 4 were not proved against the applicant. The President after considering the entire material including the advice tendered by the UPSC in its proceedings dated 19.8.94, passed the impugned order, removing the applicant from service.

7. It is the contention of the learned counsel for the applicant that charges 2 and 5 which have been held as not proved by the E.O. were found by the UPSC as proved. In view of the disagreement by the UPSC, in all fairness, an opportunity should have been given to the applicant to explain as regards its disagreement. We do not find any force in this contention. The Government is empowered under law to seek the advice of the UPSC before it takes a decision in the matter. It is part of the exercise in decision-making. The applicant is entitled to be afforded an opportunity to make his representation against the disagreement, if any, of the disciplinary authority in respect of the findings of the enquiry officer. He is not entitled under law for opportunity to make a representation against the advice tendered by the UPSC, as the advice is tendered for the consideration of the President/Government who is the disciplinary authority in passing the final order. Though the UPSC has disagreed with the enquiry officer on charges 2 and 5 in its advice to the President, the President had not taken these two charges into consideration while imposing the punishment. He only found fault with the applicant for raising loans and making purchases thus failing to manage his private affairs as to fall into habitual indebtedness.

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8. It is ~~Lacably~~ then contended that the explanation given by the applicant to justify the indebtedness has not been considered by the Enquiry Officer at all. It is the contention of the learned counsel that the misconduct alleged cannot be construed as misconduct in the eye of law, as no culpable damage has been caused to the Government or to public and as the loans have been discharged during the enquiry itself. The main charge against the applicant relates to his habitual indebtedness and violation of sub rule (1) of Rule 15 of the Rules. Sub Rule (1) of the Rules reads as under:

> "15. Insolvency and habitual indebtedness - (1) A member of the Service shall so manage his private affairs as to avoid habitual indebtedness or insolvency."

9. The impugned order was passed holding that the applicant failed to so manage his private affairs as to avoid his habitual indebtedness and thus contravened sub rule (1) of Rule 15 of the Rules. The charge of raising loans and making purchases on credit has been established by the enquiry officer. The same has also been admitted by the applicant in his statement of defence. The only question to consider, therefore, is whether the proof of mere indebtedness would be sufficient proof of the misconduct in terms of sub rule (1) of Rule 15 of the Rules and whether the justification of the indebtedness should also be required to be gone into for establishing the charge. It is the case of the applicant that while he was undergoing training in 1975 he was blessed with a son. But due to 'meningitis' suffered by his son heavy expenditure was incurred for saving the life of the child but his efforts could not save the life of his child and the child

succumbed to the disease and for that reason the applicant had to raise loans. This explanation apparently cannot be relevant as it is too distant from the event in respect of allegations levelled in the chargesheet. The alleged loans shown in the chargesheet are in respect to the year 1984-85 and thereafter. The facts in this case and the findings of the enquiry officer show that the applicant had raised several loans right from 1984 to 1994-95 from which it could be deduced that he was habitually raising loans to manage his affairs. A reading of the above rule shows that the misconduct comprises in falling into habitual indebtedness by the officer as not able to manage his private affairs in a proper manner, to keep the expenditure within the confines of the income of the family. It is expected of an officer to manage his affairs whatever they may be to avoid habitual indebtedness. If an employee crosses that limit then he commits the misconduct. It is, therefore, not necessary to establish the misconduct to examine the explanation given, which necessitated to fall into indebtedness. The rule does not absolve an officer if the indebtedness was for good and sufficient reasons. In our view, therefore, it cannot be said that the allegations made would not constitute misconduct in law or that the misconduct was not established or that the enquiry officer erred in not considering the explanation given by the applicant in justification of the allegations.

10. The last contention is that the punishment is wholly excessive to the misconduct alleged and proved. It is contended that the punishment should be proportionate to the misconduct and that it is permissible for the Tribunal to interfere with the punishment if it was not

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justified. The learned counsel cited B.C. Chaturvedi v. Union of India & Others, 1995 (6) SCC 749, U.P. State Road Transport Corporation and Others v. M.K. Mishra, 2000 (3) SCC 450, Union of India & Others v. Giriraj Sharma, AIR 1994 SC 215 and A.L. Kalra v. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361.

11. Having considered this contention we are unable to agree with the learned counsel. It was found in the impugned order that the applicant was not a fit person to be retained in service. The disciplinary authority, therefore, considered the misconduct of failure to so manage his private affairs as to avoid habitual indebtedness. Thus the misconduct committed by the applicant was held to be a grave one. The Supreme Court in B.C. Chaturvedi's case (supra), a three judge Bench judgment, held that the High Court would be right in interfering with the punishment if it was disproportionately excessive so as to shock the judicial conscience. It, therefore, appears that the Supreme Court has virtully placed it beyond the pale of interference by the Tribunal. The decision in A.L. Kalra's case is not applicable to the facts of this case. In that case it was held that the alleged misconduct did not fall under any of the misconduct specifically enumerated in the Rules. On that ground it was held that the removal from service was not proper. Giriraj Sharma's case (supra) was based upon the concession made by the learned counsel for the respondents. In U.P. State Road Transport Corporation's case (supra) the Supreme Court held that the High Court was right in interfering with the punishment of dismissal

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imposed on the Conductor of U.P. Road Transport Corporation when it was found that certain passengers were travelling with short-distance tickets, the deficiency amounts to 30 paise per head. On the facts of that case it was held that the Court was justified in interfering with the quantum of punishment. Thus, each case has to be decided on its facts. Unless the punishment awarded is unreasonable as no reasonable person would inflict the same, it is not possible for us to modify the punishment. The nature of the facts and circumstances of the present case do not warrant interference in the punishment awarded.

12. In view of the foregoing, the OA fails and is accordingly dismissed. We, however, order no costs.

(S.A.T. Rizvi)
Member (Admnv)

(V. Rajagopala Reddy)
Vice-Chairman (J)

'San.'