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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH  
NEW DELHI

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DATED THE 28 TH DAY OF JUNE, 1999

CORAM : Hon'ble Mr. R.K.Ahooja, A.M.  
Hon'ble Mr. S.L.Jain, J.M.

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ORIGINAL APPLICATION NO.277/96

D.R.Bajaj S/o Shri K.S.Bajaj aged 72 years  
R/o A-167, Defence Colony,  
New Delhi - 110 014

Superannuated as Asstt. Director General  
from Department of Telecommunication.

... Applicant

(C/A Shri R.Doraiswamy, Adv.)

Versus

Union of India - through

the Secretary,  
Govt. of India,  
Deptt. of Telecommunications,  
West Block No.1  
Wing No.2, Ground Floor,  
R.K.Puram, Sector-1  
New Delhi - 110 066.

.... Respondent

(C/R N.S.Mehta, Adv.)

ORDER

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

This is an application under section 19 of the  
Administrative Tribunal Act 1985 to quash show cause  
notice dated 1.12.93 and order dated 8.2.95 along with  
the U.P.Sc's advice dated 2.1.95, direction to the respondent

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respondent to release the balance of pension, arrears along with 18% interest from the dates monthly pension become due effective from 8.4.85 and a direction to restore the pension in full for the future and direction to pay the pension arrears with 18% interest within a specified period of 3 months from the date of the order.

2. On 30.7.93 while deciding the O.A. No.196/98 the following order was passed:-

"Liberty is, however, reserved to take further steps in the matter after giving an opportunity of showing cause to the petitioner as expeditiously as possible."

3. After the decision of the said O.A. the respondent issued show cause notice dated 1.12.93, the applicant submitted his reply to the same and the impugned order dated 8.2.95 was passed.

4. The said impugned order is challenged on the ground that operative part of the order dated 30th July 1993 is to be read along with para 2 and 3 of the same order once penalty is quashed the order becomes nonest, hence to take further steps can only mean denovo proceedings. The notice dated 1.12.93 cannot be regarded as further step contemplated by order dated 30.7.93. In alternative it is alleged that show cause notice does not contain the details to the effect that how the grave misconduct or grave negligence is made out. Hence it was only a formality, it is a flagrant disregard of order dated 30.7.93, not a proper compliance, order dated 28.2.95 is ab initio illegal as it seeks to revive the earlier order dated 6.4.95 which was quashed, UPSC's advice

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shows total lack of application of mind and shows clear bias and eagerness to sustain and reiterate their earlier advice as it was not open to the disciplinary authority to arrive at a different set of findings than the first one. Hence O.A. for the above said reliefs.

5. The claim is resisted by the respondents with a prayer for the dismissal of the O.A. along with cost.

6. Order dated 30.7.93 which is mentioned above makes it clear that the further step which was to be taken was in the matter after giving an opportunity of showing cause to the applicant. Reading the whole order makes it clear that the impugned order of the said O.A. was quashed only in respect of imposing penalty of withholding of 10% pension.

7. The applicant relied on (1973) 3 Supreme Court Cases 149 Shri B.D.Gupta v. State of Haryana for the proposition that the show cause notice in the present case is vague one as no real opportunity to defend is afforded. We have perused with caution the above said notice and we find that notice is sufficient one to afford an opportunity to the applicant to answer the same, hence the said authority does not assist the applicant in any way.

8. The applicant argued that rule 8(5) CCS(Pension) Rules 1972 defines "serious crime" and "grave misconduct" which can be the subject of withholding or withdrawing pension. On perusal of the explanation in rule 8 (5) of CCS (Pension) Rules 1972, it is clear that the definition of both the words starts with "the expression "serious crime and grave misconduct" includes, which is

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suggestive of the fact that the definition given, is inclusive one and not exhaustive one, hence the other Acts ~~of~~ which amounts to misconduct of the retired Govt. servant are covered by it.

9. As further steps were to be taken only in respect of imposing penalty hence it cannot be expected that proceedings were to be commenced denovo or the findings in respect of the guilt of the applicant was to be reconsidered.

10. The subject matter of O.A.No.196 of 1998 was with respect to order dated 8.4.85. It is true that after issuance of the show cause notice dated 1.12.93, punishment is imposed on 8.2.95 and the punishment is with holding of 10% pension since 8.4.85. It cannot be said that the order is illegal as it is retrospective in operation which cannot be passed in view of rule 9 of CCS(Pension) Rules 1972.

11. Rule 9(1) is as under: -

"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."

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11. Perused of the same gives wide power to the President to withheld or withdrew the pension in full or in part whether permanently or for a specified period. Thus the order cannot be said to be in violation of rule 9 of CCS (Pension) Rules 1972.

12. It is entirely within the province of the government authorities to impose penalty and Tribunal can interfere in it only when it shocks to the conscience of the Tribunal. The applicant who was found guilty of not constituting D.P.C., not evolving the written papers in a fair and objective manner, rejecting the candidates for lack of physical fitness without obtaining medical certificate, ordering irregular transfer of telephones, and termination of services of telephones operators illegally deserves the penalty imposed against him.

13. We, therefore, found no ground to interfere in the show cause notice dated 1.12.93, U.P.S.C's advice dated 2.1.95 and the impugned order dated 2.2.95, The O.A. deserves to be dismissed and is dismissed accordingly with no order as to cost.

  
JUDICIAL MEMBER

  
ADMINISTRATIVE MEMBER