

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A No. 1744 of 1997

New Delhi: this the 1st day of FEBRUARY, 2000.

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

HON'BLE MR. KULDIP SINGH, MEMBER (J)

(50)

Shri Chiranjit Lal,
R/o RZ 62, Gali No. 5/5,
Sagarpur Main, Pankha Road,
New Delhi

..... Applicant.

(BY Advocate: Shri D. R. Gupta).

Versus

1. Union of India
through
Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
(Dept. of Personnel & Training),
North Block,
New Delhi.

2. Secretary,
Ministry of Defence,
South Block,
New Delhi.

3. Chairman,
Union Public Service Commission,
Bhulpur House,
New Delhi.

4. Secretary,
Ministry of Chemicals & Fertilizers,
Dept. of Chemicals & Petrochemicals,
Shastri Bhawan,
New Delhi.

..... Respondents.

(By Advocate: Shri VSR Krishna)

ORDER

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

Applicant impugns the Disciplinary Authority's order dated 17.12.96 (Annexure A I) imposing a 20% cut in applicant's pension for 5 years, and seeks consequential benefits.

2. By O.M. dated 18.9.94 (Annexure-A2), an explanation was called for from applicant as to why he, while functioning as Asstt. Financial Adviser in Defence Ministry (Pension Section), countersigned the order sanctioning disability pension to ex-gunner Chettan Prakash by restricting the sanction to 1 year w.e.f. 1.4.88 despite the clear cut advice of the Legal Adviser, Defence Ministry that the Supreme Court's order dated 2.5.88 in compliance with which the disability pension was being granted, stipulated no such restriction, and further the sanction countersigned by applicant was also silent about the further course of action to be taken beyond 31.3.89.

3. Applicant submitted his explanation on 12.12.94 (Annexure-A3) in which he denied any wrong doing.

4. Not satisfied with the aforesaid explanation, respondents initiated proceedings for a minor penalty under Rule 16 CCS(CCA) Rules, 1965 vide Memo dated 12.3.96 (Annexure-A5).

5. Applicant submitted his explanation on 29.3.96 (Annexure-A6).

6. Meanwhile as applicant had retired on superannuation on 31.5.96, respondents by Memorandum dated 12.7.96 (Annexure-A7) desired the said proceedings to be proceedings under Rule 9 CCS(Pension) Rules, 1972 and the competent authority had proposed that applicant's negligence (emphasis supplied) merited a token penalty in applicant's pension of Rs.50/- p.m. for one year. Applicant was given an opportunity to file representation, if any.

7. Applicant submitted his representation on 24.7.96.

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8. Thereupon respondents sought UPSC's advice on 20.9.96. The UPSC in their advice dated 20.11.96 held that applicant had been guilty of negligence as well as grave misconduct (emphasis supplied) and recommended a 20% cut in applicant's admissible pension for a period of 5 years.

9. Accepting the UPSC's advice, respondents issued the impugned order dated 17.12.96, and with it enclosed a copy of UPSC's advice dated 20.11.96, against which applicant filed the present OA.

10. Upon completion of pleadings this OA was heard by a Division Bench, and in the light of the rulings in Suresh C. Singhal Vs. UOI & Ors. 1992(19) ATC 17 and Chiranjit Singh Khurana Vs. UOI 1994(2) SLJ 360 with which the Division Bench differed, a reference was made to a Full Bench of the Tribunal, whether

- i) Under Rule 9 CCS(Pension) Rules, 1972 the memorandum of charges issued against the applicant under Rule 16 CCS(CCA) Rules, 1965 for imposition of a minor penalty can be continued after his retirement under sub-rule (2) of Rule 9 or such proceedings automatically ceased after his retirement; and
- ii) in proceedings under Rule 9 CCS(Pension) Rules, 1972, a further show cause notice needs to be given to the charged officer together with a copy of the advice received from the UPSC as provided under Article 311 (2) of the Constitution and principles of natural justice.

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11. A Full Bench of the Tribunal in its order dated 22.4.99 answered both the points referred to it in the negative.

12. In the light of the above, we are now called upon to adjudicate on this O.A.

13. We have heard applicant's counsel Shri D.R. Gupta, respondents' counsel Shri VSR Krishna.

14. The first ground taken by Shri D.R. Gupta is that applicant has been imposed a major penalty of 20% pension cut, without even holding an inquiry, and by following the procedure admissible only for imposition of minor penalties under Rule 16 CCS(CCA) Rules.

15. Secondly it has been urged that UPSC's advice should have been made available to applicant in accordance with Article 311(2) and the principles of natural justice. In this connection, the ruling in Khurana's case (supra) has been relied upon.

16. Lastly Shri Gupta has contended that applicant committed no misconduct at all, much less grave misconduct. He has argued that misconduct has been defined as a forbidden act, or improper or wrong behaviour which is wilful in character. It is synonymous with misdemeanour, and is not mere negligence, or carelessness. In this connection, he has placed reliance on the rulings in UOI Vs. J. Ahmed 1979(2) SCC 286 and State of Punjab Vs. Ram Singh 1992(4) SCC 54 which define what is misconduct. Relying upon the Hon'ble Supreme Court's judgment in D.V.Kapoor' Vs. UOI 1990(14) ATC 906, it is contended that the exercise of

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the power of the President is hedged with a condition precedent that a finding should be recorded either in a departmental enquiry or judicial proceeding that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, but no such finding has been recorded in the present case and in the absence of such a finding the President is without authority of law to impose a penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period.

17. We have considered these contentions carefully.

18. In our considered opinion, even if the respondents had acted in accordance with DP & T's OM dated 31.7.87 as contended by them, they should have given applicant an opportunity to meet the specific imputation/misconduct before holding him guilty of the same. It must be remembered that the Disciplinary authority himself had come to the tentative conclusion that the applicant was guilty not of grave misconduct but only of negligence and had, by impugned memorandum dated 12.7.96, asked him to show cause against a token cut in pension of Rs.50/- p.m. for a period of one year. Applicant had been asked to meet the charge only of negligence, which implies some act of omission and he had accordingly replied to the same. However, on the basis of UPSC's advice contained in letter dated 20.11.96 that there was not only negligent

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on applicant's part but he was also responsible for grave misconduct, which implies some grave act of omission, the Disciplinary Authority changed his mind and without giving any ~~such~~ opportunity to applicant to meet the specific ^{imputation} ~~charge~~ of having committed grave misconduct, agreed with the UPSC's advice, and by his impugned order dated 17.12.96 greatly enhanced the proposed penalty from ^a mere cut in pension of Rs.50/- p.m. for a period of one year, to a 20% cut in applicant's pension for a period of five years.

19. By not giving applicant a reasonable opportunity to meet imputation of having committed grave misconduct before the issue of impugned order dated 17.12.96, there has been a denial of the principles of natural justice, which gravely prejudiced the applicant. This by itself is sufficient to warrant judicial interference in the impugned order dated 17.12.96.

20. In the result, the OA succeeds and is allowed to the extent that the impugned order dated 17.12.96 is quashed and set aside. Applicant's pension together with arrears should be restored within 3 months from the date of receipt of a copy of this order. It will be open to respondents to proceed against applicant in accordance with law, but while doing so they should keep squarely in view the fact that applicant has superannuated on 31.5.96 and would already have undergone sufficient mental stress in this case. No costs.

Kuldeep
(KULDIP SINGH)
MEMBER(J)

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