

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2030/97

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 11th day of August, 2000

Virender J. Sood,
S/o Shri Mehanga Ram Sood,
R/o 7531 McWhorter Place,
Aptt # 301 Annandale
VA 22003 - USA.

...Applicant

(By Advocate Dr. D.C. Vohra)

-Versus-

1. Union of India through
the Foreign Secretary,
Government of India,
Ministry of External Affairs,
South Block,
New Delhi-110 011.
2. Head of Mission,
Embassy of India,
Washington D C
c/o Ministry of External Affairs,
South Block,
New Delhi 110011.

...Respondents

(By Advocate Shri K.R. Sachdeva)

ORDER

By Justice Rajagopala Reddy:

The applicant was a Section Officer in the Indian Foreign Service. While he was working as such, a charge memo dated 10.2.84 has been issued, alleging that after being relieved of his duties in the Embassy of India at Washington on 30.6.83 on transfer to New Delhi, he absented himself from duty in an unauthorised manner. A departmental enquiry has been initiated and the enquiry officer found that charge was partially proved. But the disciplinary authority having disagreed with the finding, holding that the charge was fully proved, the penalty of dismissal was imposed upon him by order dated 6.12.85. Thereafter the applicant filed a review before the President against the above order but it was rejected. He

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thereupon filed OA-307/87 before the Principal Bench and the Tribunal in its order dated 15.5.92 quashed the ~~penalty~~ order on the ground that the disciplinary authority had failed to give an opportunity to the applicant to make his representation against the reasons for disagreement with the findings of the enquiry officer. The Tribunal, however, gave freedom to the disciplinary authority to proceed further after giving such show cause notice to the applicant. Meanwhile, the applicant superannuated on 31.8.90. The departmental proceedings were continued under Rule 9 of the the CCS (Pension) Rules. As per the directions of the Bench the disciplinary authority complied with the directions and conveyed the reasons for disagreement and after considering the representation made by the applicant to the said notice, it concluded that the charges were established and he proposed the penalty of withholding of entire pension permanently. The President thereupon in consultation with the UPSC imposed the penalty of withholding the entire pension and gratuity permanently by the impugned order dated 17.1.96. Aggrieved by the above order the applicant filed the present OA.

2. The learned counsel for the applicant Dr. D.C. Vohra contends that as the enquiry officer had found that as the charges were established partially, and in the absence of a finding by the disciplinary authority that the charges were established fully the disciplinary authority went wrong in proceeding that the charges were established. It should be remembered that the disciplinary authority having disagreed with the findings of the enquiry officer has recorded his reasons for disagreement and gave opportunity to the applicant to make his representation and thereafter the impugned order was passed holding that the applicant was guilty of the

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charges. Thus, it is evident that the disciplinary authority considered the evidence itself and came to the conclusion that the charges as framed were established. In the circumstances, it cannot be said that the charges were not proved against the applicant.

3. Rule 9 of the Pension Rules enables the disciplinary authority to proceed with the enquiry even after the charged officer was retired from service pending the enquiry. Accordingly, though the applicant was retired the disciplinary proceedings were continued against the applicant as if he was in service. Under the above rules, the President is invested with the right of withholding pension or gratuity or both, either in full or in part, or withdraw pension in full or in part, if in the departmental proceedings the pensionary was found guilty of the "grave misconduct or negligence". The learned counsel Dr. D.C. Vohra vehemently contends that as the impugned order does not reveal that the applicant was guilty of the grave misconduct or negligence, Rule-9 cannot be invoked, for withdrawing the pension.

4. The short question that arises for consideration, therefore, is whether there should be a specific finding to the effect that the pensioner was guilty of the grave misconduct or negligence? In the impugned order such an expression was not used in so many terms.

5. The charge against the applicant is that on transfer he absented himself from duty and he has disobeyed the transfer order. The said charge has now been established. Once it is shown that the charge has been established, it is nothing short of grave misconduct or negligence of the

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employee. The rule only cotemplates that the employer should be found guilty of grave misconduct or negligence during the period of service. In the present case it cannot be disputed that he was found guilty of grave misconduct or negligence.

6. In D.V. Kapoor v. Union of India & Others, 1990 (14) ATC (SC) 906, which is cited by the learned counsel for the applicant, there is no finding that the appellant therein was guilty of the charge of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the office of Ministry of External Affairs, Government of India. The enquiry officer found that though the appellant derelicted his duty to report to duty, it was not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension. Hence the Supreme Court held that the order withholding the gratuity as a measure of penalty was illegal and devoid of jurisdiction. In the instant case, however, a clear finding was given that the applicant was guilty of the charge. Hence, the above decision will not help the applicant. We are therefore of the view that disciplinary authority need not mention in the order that he was guilty of grave misconduct or negligence. It has to be seen whether the charge was established, which amounted to grave misconduct or negligence. We are supported in our view by the judgment of the Principal Bench of the Tribunal in Shri R.P. Aggarwal Vs. Union of India & Others, 1987(4) ATC 369, wherein on similar facts and circumstances, on the proof of the charge of unauthorised absence and disobeying the order of transfer, it

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was held that once the allegations were proved, it was nothing short of misconduct or negligence on the part of the member of the Indian Forest Service.

7. In view of the above discussion, we do not find any merit in this OA. The OA is therefore dismissed, in the circumstances, without costs.

Shanta K
(Smt. Shanta Shastri)
Member (Admnv)

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

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