

CENTRAL ADMINISTRATIVE TRIBUNA
PRINCIPAL BENCH
NEW DELHI

O.A.No.348/1994

(10)

Friday this the 30th day of July, 1 999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Prem Kuamr,
Son of late Shri Pritam Behari,
Resident of House C.4, Multistorey flats
Baba Kharag Sing Marg,
New Delhi.

..Applicant

(By Advocate Mr. G.D. Gupta)

Vs.

1. Union of India through the Secretary
to the Government of India,
Ministry of Personnel Public Grievances
and Pensions,
Department of Personnel & Training
North Block,
New Delhi.
2. The Secretary to the Govt. of India
Ministry of Urban Development
Nirman Bhavan
New Delhi.1

(By Advocate Mr.V.S.R. Krishna)

The application having been heard on 30.7.1999, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Applicant Premkumar while working as Vice
Chairman of the Delhi Development Authority (DDA for
short) was served with a Memorandum of charges dated
1.8.89 which contain the following articles of charge:

(11)

Shri Prem Kumar while holding the posts of Special Assisant to the Union Minister of Energy, Director in the Department of Power, Ministry of Energy, Chairman-Cum-General Manager, Delhi Development Authority has committed gross misconducts inasmuch as:

(1) That he failed to obtain previous sanction of the competent authority for the acquisition of agricultural land measuring .95 acres during June, 1980 in the name of his wife Smt. Rani at Village Mohabe Bala, Clement Town, Dehradun and construction of a small house on the said plot thereafter;

(2) That Shri Prem Kumar also failed to intimate the competent authority regarding payments made by his sones Shri Sujit Gulati and Sri Sapen Gulati to the Delhi Development Authority during the period of December, 1981 to April, 1984 for the alkkotment of Category III Self Financing Scheme Flats amounting to Rs.1,77,329.50 and Rs.1,66,504.50 respectively;

(3) That Shri Prem Kuamr also failed to intimate the competent authority regading acquisiton of servant quarters No.2, Car garrage No.34and Scooter Garrage No.8 at Pocket A, Kalkaji Residential Scheme, Alaknanda, New Delhi which were acquired by him, during the period 1984, at the cost of Rs.38,049 and Rs.4,303.25 respectively.

(4) That Shri Prem Kuamr failed to take previous sanction from the competent authority for the acquisition of Shop No.1 Local ShoppingCentre,Alaknanda acquired in the name of his wife Smt.Raj Rani from Dehi Development Aiuthority at the cost of Rs.2,53,720.00 from the Delhi Development Authority on 13th May, 1985 when he was functioning as Vice Chairman, Dehi Development Authority.

5. That Shri Prem Kumaar also failed to obtaion previous sanction from the competent

authority or acquisition of Industrial Plot No.D-6/9 Okhla Industrial Area, Phase II New Delhi on 12th October, 1984 in the name of M/s Gulati Associates at the cost of Rs.6,52,011.00 from, the Delhi Development Authority when he was functioning as Vice Chairman Delhi Development Authority, New Delhi. He further failed to intimate the construction of factory building on this plot at the cost of Rs.4,13,823.00 carried out during 1986-87.

6. That Shri Prem Kumar also failed to intimate the competent authority regarding investment in National Savings Certificates for the value of Rs.10,000.00 Rs.15,000.00 and Rs.25,000.00 made by him on 30th January, 1984, 18th October, 1984 and 14th October, 1986 respectively; and
7. That Shri Prem Kumar also failed to intimate the competent authority regarding obtaining fixed deposit receipt of Rs.25,000/- from the central Bank of India, Gulmohar Park on the 22nd November, 1985, fixed deposit receipts of Rs.20,000.00 from the Central Bank of India, Vikas Minar on the 30th August, 1984 and fixed deposit receipts of Rs.1,00,300.00 from the Uco Bank, Parliament Street, New Delhi on 11th September, 1986.

As the applicant did not admit the charges an enquiry was held. The applicant did not participate in the enquiry seeking postponement of the enquiry either on the ground of his illness or on the ground that as a criminal case against him was in progress disclosing his defence in the departmental proceedings was likely to prejudice his defence in the criminal case and so on. However, the Enquiry Officer ultimately held the enquiry ex parte and submitted the report to the

disciplinary authority holding the charges established. The disciplinary authority on consideration of the report of the enquiry officer tentatively came to the conclusion that in the nature of the charges proved against the applicant a major penalty of dismissal from service should be awarded. However, as required under proviso to Rule 15(4) of the CCS (CCA) Rules transmitted the enquiry report and connected documents to the Union Public Service Commission (UPSC for short) for its advise. The UPSC after careful consideration of the entire material agreed with the finding of the enquiry and disciplinary authorities that the charges framed against the applicant have been established but suggested that as the misconduct established against the applicant being of a technical nature ~~inasmuch as~~ ^{ie} violation of Rule 18(2) and Rule 18(3) of the CCS (Conduct) Rules a penalty of dismissal from service would be too harsh and a penalty of reduction to the lower scale of Rs.4500-5700 would be appropriate and adequate. However, the disciplinary authority namely the President again felt that a penalty of dismissal from service should be imposed on the applicant considering the gravity of his misconduct and therefore referred the matter again to the UPSC for reconsideration. The UPSC after reconsideration of the issue again came out with the opinion that the charges levelled and proved against the applicant being only violation of provisions of Rules 18(2) and 18(3) of the CCS (Conduct) Rules of not taking the permission of the competent authority before acquiring property in his or his dependents name, the ends of justice would meet by

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awarding a penalty of reduction to lower grade Rs.4500-5700. The disciplinary authority, however, would not accept the recommendations of the UPSC and therefore, by the impugned order dated 30.12.92 imposed on the applicant the penalty of dismissal from service. It is aggrieved by this order that the applicant has filed this application.

2. The applicant assailed the impugned order as also the proceedings which led to the impugned order on various grounds. It has been alleged that the enquiry authority has gone wrong in holding the enquiry *ex parte* and not postponing it as requested for by the applicant as the applicant would have been prejudiced had he disclosed his defence because a criminal case against him was pending, that the disciplinary authority has by not supplying to the applicant report of the Union Public Service Commission denied to the applicant a reasonable opportunity to make his representation and that the penalty imposed is unsustainable because he was punished for a charge which has not been alleged and proved.

3. The respondents have filed a detailed reply statement refuting the averments made in the application.

4. With meticulous care we have gone through the detailed pleadings and the documents which are brought on record. We have heard at considerable length the arguments of Shri G.D.Gupta, learned counsel appearing for the applicant and Shri V.S.R.Krishna, learned counsel appearing for the respondents. We are not very much impressed by the argument of the learned counsel



for the applicant that the applicant has been denied reasonable opportunity to defend inasmuch as his request for postponement of the enquiry was not acceded to by the Enquiry Officer. It is not borne out by the pleadings on record or by any other materials that the applicant was actually prevented by any sufficient cause from appearing before the Enquiry Officer and proceeding with the enquiry. The request for postponement of the enquiry on the ground that a criminal charge was in progress is not at all a reason for postponement of the enquiry in this case because the charges levelled against the applicant in the enquiry was only violation of Rules 18(2) and 18(3) of CCS (Conduct) Rules inasmuch as he did not intimate and obtain sanction of his superiors before he made acquisitions in his name and in the name of his dependents whereas the criminal investigation against the applicant is said to be on the allegation that he was found to be in possession of wealth far in excess of his known assets. Such a charge not being there in the departmental proceedings, there was no need to postpone the enquiry. It has been held by the Apex Court in a catena of rulings that there is no embargo in holding the departmental proceedings and criminal case simultaneously. Moreover in this case the criminal investigation was on a different set of allegations.

5. Shri G.D.Gupta, learned counsel for the applicant argued that the action of the disciplinary authority in imposing a penalty of dismissal from service differing from the repeated advice given by the Union Public Service Commission without giving a copy

(b)

of the report of the UPSC and notifying an intention to differ from it is not only opposed to the principles of natural justice but is vitiated because the applicant has been awarded a penalty of dismissal finding on the basis of a finding which was not either alleged or established. Referring to the articles of charge and the statement of impugnation one by one, learned counsel argued that there is not even a suggestion of dishonesty or concealment of wealth. Learned counsel next invited our attention to the last paragraph of the impugned order which reads as follows:

"The disciplinary authority ie., the President while agreeing with the above conclusions of the commission as to the findings on the charges, disagree with the Commission with regard to the quantum of penalty inasmuch as the misconduct, as proved against Shri Prem Kumar has not only brought out technical violations but also has shown a larger scheme of concealing huge acquisitions/welath for which he really had no means to explain. The Disciplianry authority further holds that this proven misconduct required a stiff major penalty of dismissal from service, in order to meet the ends of justice. The President, therefore, order that Shri Prem Kumar be dismissed from service."

(Emphasis is ours)

(1)

The imposition of penalty of dismissal from service taking the misconduct proved against the applicant not only technical violations as observed by the UPSC, but also as showing a large scheme of concealing huge acquisitions/wealth for which he really had no means to explain, according to the applicant is opposed to the principles of audi alteram partem. The learned counsel of the respondents Shri V.S.R. Krishna argued that the charges levelled against the applicant though are violation of Sub Rule (2) and Sub Rule (3) of Rule 18 of CCS (Conduct) Rules if the articles of charges are clearly scrutinised it could be seen that the allegations were of failure to intimate the competent authority and obtain sanction for making the acquisitions. This according to the counsel would amount to a charge of concealment and therefore, there is nothing wrong in the impugned order of penalty being ordered, argued the learned counsel. We find ourselves unable to accept the argument of the learned counsel of the respondents while we absolutely agree with the argument of Shri G.D.Gupta that by imposing a penalty of dismissal from service on the ground that the applicant apart from violating the provisions of Rules 18(2) and 18(3) of the Central Civil Services (Conduct) Rules has shown a large scheme of concealing huge acquisition/wealth for which he actually had no means to explain amounts to imposing a penalty for a charge which has not been alleged or proved. It as a matter of fact the disciplinary authority had reason to believe that the acquisitions were disproportionate

to the known sources of income of the applicant, and that the applicant had concealed the acquisitions a charge to that effect should have been drawn up and the applicant would have had an opportunity to defend himself against them. Without doing so to hold that the applicant was guilty of concealment of huge acquisition/wealth for which he really had no means to explain and to award to the applicant a penalty of dismissal from service a few days prior to his retirement to our mind appears to be wholly unjustified and violative of principles of natural justice.

6. Shri V.S.R. Krishna, learned counsel further argued that the opinion of the UPSC is only recommendatory or advisory in nature and has no binding force and the disciplinary authority is competent to reject the recommendations and come to a different decision. This is a well established principle of law. The question here is not whether the disciplinary authority had gone wrong in rejecting the recommendations of the UPSC, but is whether the disciplinary authority was competent to impose a penalty for misconduct, which has not been part of the charge.

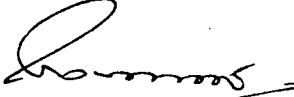
7. In the light of what is stated above, we allow this application in part and set aside the impugned order of penalty. We do not interfere with the finding that the applicant is guilty of the charges ~~framed~~ ~~found~~. The disciplinary authority, therefore, may pass

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a fresh order on the disciplinary proceedings commensurate with the gravity of misconduct alleged and proved, not being a penalty of dismissal or removal from service which would be shockingly disproportionate to the gravity of charge proved. The final order shall be passed within a month from the date of receipt of a copy of this order. No order as to costs.

Dated the 30th day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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