

Central Administrative Tribunal
Principal Bench

O.A. No. 1617 of 2000

New Delhi, dated this the 9th July, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri B.R. Khera,
S/o Shri P.R. Khera,
R/o 58/20, Ashok Nagar,
Tilak Nagar,
New Delhi-110018. Applicant

(By Advocate: Shri R.P. Kapoor)

Versus

1. Union of India through
the Secretary,
the Ministry of Urban Development
& Poverty Alleviation,
Nirman Bhawan, New Delhi-110011.
2. The Director General of Works,
Central Public Works Dept.,
Nirman Bhawan, New Delhi-110011.
3. The Director of Administration,
Directorate General of Works,
Central Public Works Dept.,
Nirman Bhawan, New Delhi-110011.
4. Union Public Service Commission
through the Secretary,
Dholpur House,
New Delhi-110011.
5. Shri R.D. Aggarwal,
Superintending Engineer (Inquiry),
Nirman Bhawan, New Delhi-110011.
6. Shri S.C. Hande,
Executive Engineer, ITPO,
through the D.G. (W),
Nirman Bhawan,
New Delhi-110011.
7. Shri A.K. Murarka,
Superintending Engineer (HQ),
Vidvat Bhawan,
New Delhi-110001. Respondents

(By Advocate: Shri A.K. Bhardwaj)

ORDER (Oral)

S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated
24.7.2000 by which a penalty of withholding increment

(10)

for three years with cumulative effect has been imposed upon him and the period of absence from 24.7.95 to 12.2.98 ~~has to be~~ directed to be treated as dies non under Rule 27 COS (Pension) Rules, 1972 without forfeiting past service.

2. We have heard applicant's counsel Shri R.P.Kapoor and Respondents' counsel shri A.K. Bhardwaj.

3. A perusal of the impugned order dated 24.7.2000 reveals that it stands in the name of the President. However, respondents in their reply do not deny that UPSC was not consulted before the impugned orders were passed.

4. During the course of hearing respondents' counsel Shri A.K. Bhardwaj averred that this is not ~~an~~ Presidential order in the strict sense of the term and indeed it had been passed with the approval of the Minister incharge because the Director General (Works) did not possess statutory powers at the time.

5. In this connection in Respondents' reply to Para 4.14 of the O.A. it had been stated that consultation with the UPSC was not mandatory as D.G. (W) is not competent to impose a penalty to an A.E. and the order has been in the name of President only for the reason that D.G.(W) did not possess the

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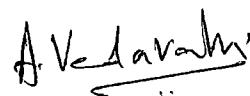
statutory powers and the orders were issued with the approval of the Hon'ble Minister in charge who is the next higher authority.

6. Disciplinary proceedings against Central Government servants are conducted in accordance with the provisions of the CCS (CCA) Rules, 1965 which have been framed under Article 309 of the Constitution. If the impugned order dated 24.7.2000 is deemed to be a Presidential order, consultation with the UPSC was necessary in accordance with the provisions of Article 320 (3) (c) of the Constitution which was not done in the present case. In the event that the aforesaid impugned order dated 24.7.2000 is not a Presidential order, it is only the disciplinary authority who could have imposed the aforesaid penalty, and in item 22 of the Schedule to the CCS (CCA) Rules, 1965 specifying the authority competent to impugn penalties under Rule 11, ~~as~~ CCS (CCA) Rules, 1965, it is clear that it is the Engineer-in-Chief, CPWD [now redesignated as Director General (Works)], CPWD who alone is the competent authority to impose the penalty with regard to officers of Electrical Engineering Services Group B to which applicant belongs. In either circumstance, the impugned order cannot be sustained in law, and is, therefore, quashed and set aside.

(24)

7. It will be open to Respondents to pass fresh orders in this regard strictly in accordance with law.

8. The O.A. succeeds and is allowed to the extent as held above. No costs.



(Dr. A. Vedavalli)
Member (J)

karthik


(S.R. Adige)
Vice Chairman (A)