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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2582/2000

New Delhi this the 2nd day of ~~August~~, 2001.

HON'BLE MR. GOVINDAN S.TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri R.K. Mishra,
S/o late Sh. A.M. Mishra,
R/o C-4H/52, Janakpuri,
New Delhi.

...Applicant

(By Advocate Shri S.C. Luthra)

-Versus-

Union of India through

1. The Secretary,
Ministry of Communication,
Department of Telecom,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
2. The Member (Services),
Telecom Commission,
Department of Telecom,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
3. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

...Respondents

(By Advocate Shri Harvir Singh, proxy for Mrs. P.K. Gupta)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, a Group "A" officer working as Assistant Director General (XC) in the Department of Telecommunication has assailed an order dated 24.8.2000 whereby after retirement on the basis of a minor penalty chargesheet and on the advice of the UPSC the President has imposed 10% cut in the pension of the applicant for a period of two years. The applicant in this OA has prayed quashing of this order and refund of the deducted amount of pension by an order dated 12.12.2000. As an interim order

the respondents have been directed not to commence any cut in pension.

2. Briefly stated the applicant vide memorandum dated 9.9.94 has been issued a minor penalty chargesheet under Rule 16 of the CCS (CCA) Rules, 1965 on the allegation that he committed a misconduct and failed to maintain devotion to duty, as while functioning as DE (Maintenance) during the period 1987-88 over-payments have been made to the Contractor on account of the negligence of the applicant and subsequently recoveries were made from his pension. The applicant furnished his reply to the chargesheet. Meanwhile the applicant retired from service. By a show cause notice dated 9.9.94 issued by the respondents a punishment of 10% reduction in the pension for a period of two years has been proposed against the applicant and thereafter the same was confirmed by an order dated 24.8.2000 alongwith which the advice of the UPSC was also furnished to the applicant. The respondents conveyed to the UPSC regarding the provisional conclusion of the disciplinary authority for imposition of a minor penalty. The UPSC was of the opinion that the proceedings under Rule 14 of the CCS (CCA) Rules for a major penalty should be drawn against the applicant. The disciplinary authority requested the Commission to review their advice as the President was of the opinion that from the evidence on record the allegation warranting initiation of major penalty proceedings was not substantiated. It was also decided that as the incident pertained to 1986-88 it would not be possible to convert or initiate disciplinary proceedings under Rule 49 of the CCS (Pension) Rules. The UPSC

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observed that there is no difficulty to proceed under Rule 49 of the CCS (Pension) Rules which would be continuation of the proceedings already drawn and chargesheet can be amended.

3. The learned counsel of the applicant has contended that the refusal of UPSC to modify their advice to convert the minor penalty chargesheet into a major charge-sheet the impugned order was issued, as there was no evidence to justify initiation of major penalty as observed by the disciplinary authority the UPSC stuck to their advice. The learned counsel of the applicant has placed reliance on the decision of Nagaraj Shivarao Kariaqi v. Syndicate Bank, Head Office, Manipal and Anr, 1991 (2) SLR 784. The applicant has also placed reliance on Government of India's instructions dated 28.2.81 to contend that minor penalty proceedings conducted under Rule 9 of the Pension Rules 1972 cannot be validly exercised to withhold the pension or part thereof either permanently or for a specified period. It is also the grievance of the applicant that though the disciplinary authority has recommended for a minor penalty chargesheet but the UPSC disagreed and recommended for a major penalty chargesheet and continuation of proceedings and ultimately which resulted in imposition of pension cut on an alleged charge of grave misconduct which has never been levelled against the applicant and against which he has been deprived of a reasonable opportunity to defend himself by following the laid down procedure under Rule 14 of the CCS (CCA) Rules, 1965, which is meant for a major penalty chargesheet. It is also contended that the advice of the UPSC where the disagreement has been arrived at has not been served upon

the applicant and to substantiate his contention the learned counsel of the applicant has placed reliance on a decision of this Tribunal in Raj Kamal v. Union of India, OA-1103/88 dated 12.1.2000 wherein on the ratio of the Apex Court in D.C. Aggarwal v. Union of India, 1993 (1) SCC 13, it was held that the advice of the DOPT which was unfavourable to the applicant was relied upon by the disciplinary authority without affording a reasonable opportunity before passing an order of punishment. The aforesaid judgment has been affirmed by the Delhi High Court by their order dated 22.5.2000 in CW No.2372/2000. The learned counsel for the applicant has lastly placed reliance on a Full Bench decision of this Tribunal dated 22.4.99 in OA-1744/99 wherein while dealing with Sub Rule (2) of Rule 9 of CCS (Pension) Rules, it has been held that once the disciplinary authority decides to proceed under Rule 16 it means that it does not consider the misconduct as serious or grave and continuation of proceedings under Rule 16 after retirement would not be legal.

4. On the other hand, strongly rebutting the contentions of the applicant it is stated that the disciplinary authority formed a view of imposition of a minor penalty at the initial stage of examination of the case and referred the case to UPSC for advice. The UPSC advised for initiating major penalty proceedings under Rule 14 of CCS (CCA) Rules, the disciplinary authority referred the case back to the UPSC on 16.10.96 for reconsideration of their advice. As the applicant retired from service on 31.10.96 the disciplinary authority considered the reiterated advice of UPSC for imposing a major penalty and thus taking into account the reconsidered advice of the

UPSC came to tentative conclusion that the misconduct involved on the part of the applicant was grave and accordingly a show cause notice proposing a penalty of 10 per cent cut in pension was issued to him vide memo dated 4.2.99. The advice of the UPSC has been sought under Article 320 (3) (c) of the Constitution read with Regulation (5) (a) of the UPSC (Exemption from Consultation) Regulations, 1958, to which the President has agreed to and held the applicant guilty of the grave misconduct. Though the advice of the UPS is not binding but on an analytical examination of evidence the misconduct was found grave enough to warrant a major penalty. The applicant has not at all been prejudiced, as he has been accorded an opportunity. As regards the DOPT's instructions of 1981 the learned counsel of the respondents has placed reliance on the DOPT OM dated 31.7.87 wherein it has been held that the Central Government has power to withhold or withdraw pension even as a result of minor penalty proceedings which was instituted while the charged officer was in service after according a reasonable opportunity to show cause. It is also stated that though Rule 16 of the CCS (CCA) Rules prescribes a summary procedure, the Apex Court in FCI, Hyderabad v. A. Prahlada Rao and Anr., JT 2000 (Suppl.2) SC 266, the Supreme Court has held that it is not necessary to follow the procedure prescribed for imposing major penalties in all cases where employee disputes his liability and as the applicant was given due opportunity by issuing a show cause notice and by inviting and considering his representation was valid compliance of the principles of natural justice.

5. The applicant has re-iterated his plea taken in the OA by filing his rejoinder.

6. We have carefully considered the rival contentions of the parties and perused the material on record. No doubt, it is admitted position that the applicant has been while in service was served with a minor penalty under Rule 16 for a misconduct without levelling any grave misconduct to which he replied. The disciplinary authority too was of the opinion that while seeking advice of the UPSC to impose a minor punishment upon the applicant from the assessment of the evidence on record. It is the advice of the UPSC which made the difference wherein the conclusion arrived at by the disciplinary authority was disagreed and it has been pressed to convert the chargesheet into a major penalty chargesheet under Rule 14 ibid. During this interregnum the applicant retired on 31.10.96 and as such the conversion of the minor penalty proceedings into the major penalty proceedings was of no avail. The UPSC was again approached by the disciplinary authority to review their decision but the same was not agreed upon and the previous decision of grave misconduct made out against the applicant has been re-iterated. Admittedly, this disagreement of the UPSC has not been served upon the applicant along with the show cause notice issued to him proposing a cut in the pension. Our attention has been drawn to the decision of this Court in Rai Kamal's case wherein the UPSC has come to the conclusion that the charge did not stand prove and applicant should be exonerated, but the disciplinary authority disagreed with the advice and the punishment was imposed. In this background therein it has been held that

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non-supply of the advice of the UPSC which was favourable to the applicant is violative of principles of natural justice as it has denied him an opportunity of pre-decisional hearing to highlight the UPSC advice. The aforesaid decision was carried in CWP 2372/2000 and by an order dated 25.2.2000 it has been observed that the advice given by the UPSC should have been supplied to the petitioner therein and thereafter a decision is to be taken. In a nut shell the ratio arrived at by this Court has been affirmed by the High Court. The decision of the Full Bench of this Tribunal in Chiranjit Lal's case has been brought to our notice wherein the issue was whether the proceedings under Rule 9 of the CCS (Pension) Rules a further show cause notice is to be given with a copy of the advice of the UPSC and in this context it has been held that non-supply of the advice at a pre-decisional stage is not a denial of fair hearing on the ground that the occasion for a second show cause notice on the second penalty has been done away by the 42nd Constitutional amendment and in view of the ratio of the Apex Court in Union of India v. Tulsiram Patel, AIR 1985 SC 1416. In this Full Bench decision is observed that when the UPSC recommends enhancement of penalty proposed by the disciplinary authority the situation becomes different as then the difference in the advice of the UPSC could be construed as an additional material before the disciplinary authority on which it might also be said that a charged officer has no opportunity to put his case. A second show cause notice forwarding the petitioner the advice of UPSC will necessarily involve the conclusion of the disciplinary authority and it will set the 42nd amendment of the Constitution ^{redundant.} ~~added now.~~ Even if the UPSC disagreed with the provisional conclusion

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of the disciplinary authority it has to give its reasons. We have also applied our mind to the decision of the Constitutional Bench in Managing Director, ECIL v. B. Karunakar, JT 1993 (6) SC 1 where the report of the enquiry officer is to be accorded which forms an additional material before the disciplinary authority. From the perusal of the ratio of the Full Bench decision we find that a further show cause notice along with the copy of the advice received from the UPSC would not be served upon the charged officer but in the decision of the Tribunal in Raj Kamal's case (supra) which has been affirmed by the High Court the ratio laid down is that once there has been a disagreement by the disciplinary authority and the finding of the UPSC is favourable then it is incumbent upon the Government to serve the charged officer with a copy of the advice of the Commission before taking a final decision. Rule 32 of the CCS (CCA) Rules provides furnishing of a copy of the advice of the Commission by the disciplinary authority along with the final order passed. In our considered view the ratio of Full Bench would have no application in the present case in view of the fact that the decision of the Tribunal in Raj Kamal's case (supra) has been affirmed by the High Court and the same would be a binding precedent. In the case of Raj Kamal the petitioner has been advised by the UPSC to be exonerated but the same was disagreed by the disciplinary authority and without supplying the advice of the UPSC which was available to the applicant imposed the punishment, which, on the basis of the ratio of the D.C. Aggarwal's case (supra) has been held in violation of the principles of natural justice. Applying the same corollary to the facts and circumstances of the present case we find that the applicant who has

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never been alleged in the minor penalty proceedings for a grave misconduct has been recommended to be ^hpenalised for a minor penalty proceedings and taking further action on the basis that a grave misconduct is made out against the applicant from the evidence. The disciplinary authority in compliance has issued a show cause notice to the applicant but the copy of the advice of the Commission has not been attached therein. Admittedly the advice of the UPSC was furnished to the applicant along with the final order and having regard to the Constitutional Bench of the Apex Court in ECIL's case (supra) the enquiry report forms an additional material to which a Government servant is to be accorded an opportunity to controvert. The applicant in this case has been greatly prejudiced as he has not been afforded a reasonable opportunity to controvert the opinion of the UPSC though recommendatory and not binding on the disciplinary authority but yet heavily placed reliance by the disciplinary authority while imposing a cut in the pension of the applicant. The ratio of the High Court of Delhi would be mutatis mutandis applicable to the facts and circumstances of the case as what is affirmed and held by the Tribunal is that in case of any disagreement the copy of the advice should be served upon the government servant. Any material which is adverse to the applicant and placed reliance by the disciplinary authority in compliance of the principles of natural justice should be furnished to him and more particularly when they themselves issued a second show cause notice proposing the aforesaid punishment to the applicant. The ratio of the Full Bench also substantiate this conclusion and therein also an observation has been made as to the furnishing of the advice in the case of disagreement. We, therefore, find that the action of the

respondents by not furnishing a copy of the advice of the UPSC to the applicant has been a denial of a reasonable opportunity.

7. Another contention of the applicant that placing reliance on the Full Bench decision in Charanjeet Kaur's case that a minor penalty chargesheet cannot entail a pension cut as the proceedings drawn under Rule 16 ibid for a minor penalty would be meaningless after retirement as a minor penalty chargesheet is issued viewing the misconduct neither as serious nor grave and this would only result in delaying the disbursement of the retiral benefits. The OM placed reliance upon by the respondents would be of no avail to them as the decision of the Full Bench is explicit. Applying the aforesaid ration in the facts and circumstances of the present case we find that in the minor penalty chargesheet issued to the applicant he has not been charged for a grave misconduct and even according the conclusion of the disciplinary authority which has been later on disagreed by the UPSC there was occasion only for imposing a minor penalty as the charges or evidence do not indicate a grave misconduct. This has also been admitted by the respondents. In such circumstances, the minor penalty chargesheet issued to the applicant is certainly not of grave misconduct and this has been the view of the disciplinary authority. As such the enquiry should not have been continued after retirement and there is no question of imposition of any punishment as envisaged under Rule 9 of the Pension Rules, but for the disagreement arrived at by the UPSC the disciplinary authority has already taken a firm~~ed~~ decision regarding the minor penalty. It is only the advice of the UPSC which

promoted the disciplinary authority to take a different view from what he had earlier formed and this would have certainly necessitated supply of the advice of the Commission to the applicant before a final decision is taken by the disciplinary authority. Placing reliance on the decision of the Full Bench which is binding on us as the fact that the same has neither been modified or over-ruled by the higher Courts the proceeding drawn up against the applicant for a minor penalty and discontinuance after his retirement is not legally tenable.

8. We also find from the record that the UPSC has advised to convert the proceedings into a major penalty chargesheet but due to the retirement of the applicant during this interregnum the same could not have been done but taking the same stand the charges have been proved to be grave and on that basis Rule 9 of the Pension Rules was resorted to. The applicant has been deprived of a reasonable opportunity to defend and the action was not in accordance with the substantive procedure. For a major penalty the proceedings are to be drawn under Rule 14 of the CCS (CCA) Rules where a detailed oral enquiry is mandated and can be dispensed with only under rule 19 (2) of the Rules or under Articles 310 and 311 of the Constitution. No such exceptions have been found in the present case as such it was incumbent upon the respondents to have held the regular proceedings before coming to the conclusion of the grave charge against the applicant after according him a reasonable opportunity to defend in a summary procedure charges cannot be proved by converting into an irregular proceedings for a major penalty. Apart from it Rule 16 also envisages holding of enquiry in the

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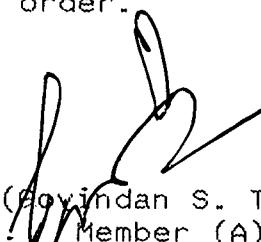
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manner of summary procedure laid down in Rule 14 (2) ^hibid but the same has not been followed in the present case. The ratio relied upon by the respondents would not have any application and this is not a case where the minor penalty has been imposed upon the applicant but it is a situation where, admittedly, the minor penalty has been converted into a major penalty on the advice of the Commission without following the laid down procedure. The action of the respondents does not conform to the laid down procedure and is against the law.

9. Having regard to the discussion made above and the reasons recorded the OA is allowed. The impugned order at Annexure A-1 is set aside. The respondents are directed to refund the amount deducted from the pension of the applicant, if any, within a period of two months from the date of receipt of a copy of this order.

S. Raju

(Shanker Raju)
Member (J)


(Govindan S. Tampi)
Member (A)