

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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R.A.No.173/94
in OA No.1339/93.

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New Delhi, this the 5th day of September, 1994.

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri J.R.Anand s/o
Shri Latha Ram
A-21, Malka Ganj,
Single Storey, Delhi. ..Applicant
(By Advocate Shri KBS Rajan)

Vs.

Union of India, through:

1. Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
2. Under Secretary,
Vigilance II, Ministry of Defence,
Govt. of India, New Delhi.
3. Chief Administrative Officer,
Ministry of Defence, Govt. of India
New Delhi. ...Respondents
(By Shri MS Ramalingam, Presenting
Officer).

ORDER

This Review Application has been filed for review of the orders passed in OA No.1339/93 on 23-3-1994.

2. The main contention prayed in this Review is that the UPSC had not been consulted before ordering the permanent withdrawal of full pension. The other ground raised has already been considered at the time of disposal of the O.A. The ld. counsel for the applicant has pressed only for the issue regarding consultation with the UPSC. Strictly speaking even this aspect does not merit consideration at the stage of review since the ground regarding consultation with the UPSC was not taken at the time of filing the O.A. nor even at the time of filing the rejoinder. However, this issue was raised

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the time of oral arguments and has argued that at the latest of justice this issue is being gone into after giving notice to both sides.

3. At the time of arguments Shri MS Ramalingam departmental Presenting Officer argued that non-consultation with UPSC under provisions of the article 320(3)(c) of the Constitution will not have the effect of nullifying the final order passed by the government. Further as per Hon'ble Supreme Court the provisions of article 320(3)(c) do not confer any right on the government servant and the consultation has been prescribed only as a matter of assistance to the government. The following cases were referred:-

- a) State of UP Vs. ML Srivastava-(AIR 1957 SC 912)
- b) Ram Gopal Chaturvedi Vs. State of MP (AIR 1970 SC 158).

He had thus argued that the provision for consultation even as per Constitution is only directory and not mandatory. It was added that as per Hon'ble Supreme Court in A N D'Silva Vs. UOI (AIR 1962 SC 1130) the omission of or irregularity in consultation with the UPSC cannot provide the aggrieved government servant any remedy in a court of law nor any relief under the extraordinary powers conferred by articles 32 and 226 of the Constitution.

4. To further strengthen his arguments the departmental Presenting Officer produced a copy of the notification No.18/4/51-Estt(B) issued by the Ministry of Home Affairs dated 1-9-1958. Item 5(2) and 5(3)(a) of the CM read as under:-

"Item 5(2):- It shall not be necessary to consult the Commission in regard to any disciplinary matter affecting a person

Item 5(3)(a):- It shall not be necessary for the President to consult the Commission-

- (a) in any case where the President proposes to make an order of dismissal, removal or reduction in rank after being satisfied that such action is necessary in the interest of the security of the State."

He then argued that proceedings under rule 9 of the Pension Rules stipulate the following of the procedure as if the government servant had continued in service. Thus any consequential follow up after the enquiry proceedings etc., should follow the same pattern and consultation with the UPSC is not obligatory. It is further argued that for those 12 employees who were in service and who had been dismissed on the same charges, consultation with the UPSC was not necessary.

5. The ld. counsel for the applicant relied on rule 9 of the Pension Rules where there is a proviso that the UPSC shall be consulted before any final orders are passed. The stand taken was that this is a statutory provision and non-observance of this requirement should result in the impugned order of withdrawal of pension becoming illegal. Much stress was laid on the permission to be given to the pensioners who have a claim different from those in service.

6. I have heard both the counsels and after hearing the oral submission that UPSC had not been consulted, I still do not consider that this is a case warranting any interference. The respondents in this Review Petition have quoted the correct authorities to bring out that the consultation with the UPSC is only directory and not mandatory and any omission in a particular case will not render the related order illegal.

I also note that 12 other employees who were charged with the same charges of indulging in activities prejudicial to the security of the State by passing on classified information to the officials of an alien country have been dismissed from service. A dismissal results in forfeiture of pension. For these employees consultation with UPSC has been specifically exempted by the Home Ministry's notification referred supra. The applicant by virtue of his superannuation cannot claim any special privileges particularly when consultation with UPSC is ^{not} held to be mandatory and any specific omission cannot result in a right before a court. Constitution Bench of the Hon'ble Supreme Court in Managing Director ECIL Vs. B.Karunakaram 1993 (6) SC 1 have held that the courts of Tribunals should not mechanically set aside the order of punishment on the ground that the inquiry report was not furnished ~~and~~ what is important is to see whether any prejudice has been caused. By applying the same ratio and keeping in mind the grave circumstances in this case I do not find any ground for entertaining the Review Application.

7. In the circumstances the Review Application is dismissed. No costs.

P.T. Thiruvengadam
(P.T. THIRUVENGADAM)
Member (A)

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