

7
5

Central Administrative Tribunal
Principal Bench: New Delhi

1. O.A. No. 2111/89

2. O.A. No. 2108/89

New Delhi this the 11th Day of May, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

R.S. Bhalla,
R/o 3/69, Raj Nagar,
Ghaziabad (U.P.) ...Applicant

(By Advocate Shri Jog Singh)

Versus

1. The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.

2. Director General (Works),
C.P.W.D. Nirman Bhavan,
New Delhi. ...Respondents

(By Sh. M.K. Gupta, Additional Central Government Standing
Counsel.)

ORDER(ORAL)

Mr. N.V. Krishnan:

OA-2111/89 and OA-2108/89 were heard together with the consent of the parties as the issues involved are identical and hence they are being disposed of by this common order. For the purpose of discussion OA-2111/89 is being considered.

2. The applicant was an Executive Engineer to which rank he was promoted on 26.3.62. Thereafter he was promoted on ad hoc basis as Superintending Engineer. The applicant was due to retire on superannuation on 31.10.84. The respondents issued a chargesheet under the cover of memorandum dated 30.10.84 (Annexure-II) proposing to hold an enquiry under Rule-14 of the C.C.S. (C.C.A) Rules, 1965 on the following article of charges relating to the period from 27.4.84 to 1.7.84:-

"ARTICLE I

During this period Shri R.S. Bhalla placed seven numbers of supply orders for a total

of Rs.42915-20 in contravention of para 29
Section 38 CPWD Manual Vol.II and para 103 of
General Financial Rules.

ARTICLE II

Seven Nos. supply orders were placed for a value of Rs.42,915/- at rates which were much higher than the prevailing market rates and which involved overpayment to the tune of Rs.12031-20. This action of Shri Bhalla was in contravention of para 29 Section 38 CPWD Manual Vol.II and para 103 of General Financial Rules. The supply orders except one were also not got scrutinised by the Drawing Branch.

ARTICLE III

Materials purchased like Indian water closet pans and EWC seat covers were not of superior quality as required under the tems of the supply order.

ARTICLE IV

Certificate of non-availability of materials was not obtained from Executive Engineer, Central Stores Division as required under para 33 Section 38 of CPWD Manual Vol.II. In respect of EWC seat cover, even though the material was available in the Central Stores but still the purchase was made. This is also in contravention of para 29 Section 38 of CPWD Manual Vol.II."

3. An enquiry officer was appointed who came to the conclusion that the charges I & IV have been proved and charge-III was not proved. In regard to charge-II it was held that it was not proved except the ingredient pertaining to non-scrutiny of the supply orders by the Drawing Branch.

4. After agreeing with the findings of the enquiry officer the first respondent referred the disciplinary case to the U.P.S.C. for its advice which was furnished by the letter dated 12.1.88 (Annexure-V). The U.P.S.C. held that charge-I and charge-IV are fully proved against the applicant. In regard to charge-II it was held that the charge was partly proved to the extent that these supply orders were not subjected to the scrutiny by the Drawing Branch whereas the allegations relating to payment of exorbitant rates do not stand substantiated against the applicant. Article-III of the charges was also held to be not conclusively proved against the applicant.

5. The Commission ended up its letter with the following findings:-

"3.5 To sum up the Commission's findings, while Articles I and IV of the charge are held fully proved against Shri R.S. Bhalla Article II of the charge is held partly proved to the extent indicated in para 3.2 above and Article III of the charge is not held proved against Shri Bhalla.

4. In the light of their findings as above and taking into account all other aspects relevant to the case, the Commission consider that the ends of justice will be met in this case if 25% (twenty five per cent) of the monthly pension otherwise admissible to Shri Bhalla is withheld for a period of five years. They advise accordingly."

6. Thereupon the first respondent issued the impugned order dated 13.6.89, wherein the applicant was informed that the President agreeing with the findings of the enquiry officer and the recommendations of the UPSC has come to the conclusion that the end of justice should be met if 25% of the monthly pension otherwise admissible to the applicant is withheld for a period of five years. Accordingly, it was so ordered.

7. Being aggrieved, this O.A. has been filed in which a number of grounds have been raised.

8. The respondents have filed a reply contending that the impugned order has been passed after full compliance of the established procedure and that, therefore, the applicant is not entitled to any relief.

9. When the matter came up for final hearing arguments were addressed by the learned counsel for the applicant contending that, in essence, what has been established against the applicant is a minor infraction of certain departmental rules regarding purchase and that this penalty was too severe. In the course of arguments he has drawn our attention to a judgement of the Tribunal in K.M. Sharma v. Union of India -

1987 (3) SLJ 207 (CAT) wherein it was found that in a proceeding under Rule-9 (1) of the C.C.S. Pension Rules, 1972 - which also governs the present case - the exercise of power by Government is conditioned by its finding that a misconduct or negligence was a grave one and not otherwise. Para-9 of that judgement is reproduced below:-

"9. Rule 9(1) of the Pension Rules which empowers Government to withhold or withdraw pension reads thus:

9.(1) The President reserves to himself the right, of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

This rule empowers Government to withhold, withdraw or reduce pension if it finds that the misconduct committed was a grave misconduct or negligence while the pensioner was in service. The power to withhold or withdraw or reduce pension can be exercised only in cases of grave misconduct or negligence of duty and not in all cases of misconduct. The power to withhold or reduce pension, which undoubtedly results in serious consequence to a pensioner can be exercised only in the circumstances enumerated in Rule 9(1) of the Pension Rules and not in all cases. The exercise of power by Government is conditioned by its finding that the misconduct or negligence was a grave one and not otherwise. The order itself must disclose that Government had applied its mind to the nature of misconduct and that misconduct or negligence in duty was a grave one. A fortiori Government must also so record that in its order itself. From this it follows that the order made by Government does not conform with the requirements of Rule 9 of the Pension Rules and is manifestly illegal."

(emphasis ours).

The Bench found that neither the U.P.S.C. nor the Government have come to the conclusion in that case that there was a grave misconduct or dereliction of duty. Therefore, the order of withholding pension was quashed further also and the following observations were made:-

"12. When Government had not examined and found on the nature of misconduct or negligence, we cannot examine them for the first time as if we are a court of appeal and held that the misconduct or negligence if any, committed by the applicant as a grave one. We cannot make good the deficiency in the order of Government and reconstruct the order and sustain it as if we are Government. For these reasons, we see no merit in this contention of Sri Verma and we reject the same."

10. We wanted to know from the learned counsel for the respondents whether, in this case, there is any finding by any body as to the gravity or otherwise of the delinquency of the applicant, for which the punishment under Rule 9(1) of the C.C.S. Pension Rules was being imposed on the applicant. We have taken through the record of the case. We have already extracted above the opinion of the U.P.S.C. in para-5 above and we find that there is no expression of opinion by the U.P.S.C. in their letter. The U.P.S.C. was obviously, conscious of the fact that the matter involves action under Rule 9(1) of the C.C.S. Pension Rules, as would be evident from para 2.1 of their letter, which refers to the retirement on superannuation of the applicant during the pendency of the enquiry and the continuance of the disciplinary proceedings under Rule-9. The U.P.S.C., even so, has failed to indicate its opinion about the gravity of the misconduct or negligence. As a matter of fact, the U.P.S.C. has not even stated whether the charges that have been proved amount to misconduct or otherwise. In other words, it appears to us that the U.P.S.C. had not applied its mind to this aspect of the matter, which, in our view, was man-

datory on its part, considering that it was required to make a recommendation about the punishment to be imposed on the applicant which could be done only keeping in view the provisions of Rule-9.

11. The learned counsel for the respondents, however, submitted that in para-4 of their letter extracted in para 5 supra above, the UPSC makes it clear that the recommendations about the punishment has been made "taking into account all other aspects relevant to the case". He, therefore, contends that the Commission should be presumed to have considered the punishment in the light of Rule-9.

12. We are unable to agree. The substantive mandate contained in Rule-9 cannot be relegated to a decision of some/misellaneous factors which the U.P.S.C. states it took into consideration. In our view, there was a need for positive declaration by the U.P.S.C. in terms of Rule-9 as to what it felt about the delinquency/whether it was a grave misconduct, negligence or otherwise. For, no punishment of the nature imposed on the applicant could be imposed unless there is a finding that it is grave misconduct or grave negligence. The impugned order of the first respondent suffers from the same infirmities. It merely endorses the opinion given to it by the U.P.S.C. An opportunity was available even at this stage, to the first respondent to record a further finding about the nature of the delinquency and the gravity or otherwise thereof. This has not been done, even though in decisions rendered by this Tribunal, the need for this has been emphasized.

13. The learned counsel for the respondents, however, submitted that a somewhat different view has been taken in K.G. Samnotra vs. Union of India - 1993 (2) SLJ 585 (CAT). He draws our attention to para-10 of that judgement. We have carefully considered that judgement. In that judgement also in para-29 it is stated as their opinion that there was no finding of grave misconduct or negligence on the part of the applicant which vitiated the order of punishment. In para-10 what is observed is that when the competent authority has recorded a finding that a delinquent was guilty of grave misconduct or negligence in the discharge of public duties in office, it was not for the Tribunal to go behind the evidence and facts to find out whether such a finding was justified.

14. For these reasons, we are of the view that without going into the other merits of the case, we find that the impugned orders are liable to be quashed on the only ground that the competent authority has not given a finding as required under Rule-9 as to whether the delinquency was a misconduct or negligence or whether it was a grave one. In the absence of such a finding the punishment cannot be sustained and accordingly the impugned order is quashed.

15. The learned counsel for the respondents submitted that it would be in the interest of justice if an opportunity is given to the respondents to consider this matter in the light of these observations. We are unable to accede to this request. We agree with the observations of the Bench in para-12 of their judgement in K.M. Sharma's case, reproduced above.

16. In the circumstances, the impugned Annexure A-1 order dated 13.6.89 withholding for a period of five years 25% of the pension of the applicant is quashed.

17. OA-2108/89 has also been filed by the same applicant but in respect of charges issued on ~~20~~¹⁶ 10.84 (Annexure-II) relating to the period from 5.6.82 to 26.6.82. But for this difference, the other circumstances are almost similar. In particular, neither the U.P.S.C. nor the Government has rendered a finding that the applicant was guilty of either grave misconduct or grave negligence of duties. Therefore, for the reasons already mentioned in respect of OA-2111/89 the impugned order dated 13.6.89 (Annexure-I) withholding for a period of 5 years 25% of the monthly pension of the applicant is quashed.

18. Both the OAs are allowed, as above, with consequential benefits, which shall be given to the applicant within a period of three months from the date of receipt of this order.

19. A copy of this order be placed in both the files.

Left
(C.J. Roy)
Member(J)

Sanju.

Un
11.5.84
(N.V. Krishnan)
Vice-Chairman