

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 195/88      Date of decision 27.7.1992

D.R. Bajaj      Applicant

Balraj Dewan      Counsel for the applicant

vs.

Union of India      Respondents

Ms. Moneka Aggarwal      Counsel for the respondents

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

JUDGMENT (ORAL)

In this application, the applicant has sought for issue of a direction that the penalty imposed on him by order dated 21.1.85 should be set aside. The applicant is a superannuated Government employee. Departmental proceedings were instituted against him while he was in service. After his retirement, the proceedings were deemed to have continued under the C.C.S. (Pension) Rules. An inquiry was conducted into 6 articles of charges and the Inquiry Officer found that three charges were fully established and in regard to the remaining three charges, he gave his observations. His observations in regard to the charges which were not fully established are extracted below:

"30. I thus find that during the period from 11.69 to 31.12.73, Shri Bajaj has acquired assets worth Rs. 600/- which cannot be explained by his known sources of income.

33. xxxx Thus, based on the evidence of SW-II, I find that Shri Bajaj has got a telephone connection installed at his residence as a special category through a false claim of being a social worker connected with Arjun Nagar House Owners Association. There is of course no evidence to disbelieve that Shri Bajaj was not a social worker and in this context the certificates given by Metropolitan Councillors have not proved to be wrong.

36. xxxx The fact of the transaction mentioned in the charge are not denied by Mr. Bajaj. As he has not called for papers showing his intimation or his seeking prior permission for the purchases, sale and the mortgaging as mentioned in the article of charge, I am inclined to infer that he has not done the same. The evidence of Investigating Officer (SW-28) shows that during investigation it was found that Mr. Bajaj has not given intimation for the sale of car in August, 1971 and for the purchase of

(13)

his house in September, 1969, for additions and alterations made in his house in 1971 and that he did not inform the department about mortgaging of his house. Nothing has come out in the cross examination to disbelieve that during investigation SW-28 could not have found all these facts. I am, thus, of the opinion that excepting intimation about purchase of his house for which Mr. Bajaj called for the relevant document and which ~~was~~ not been produced, Mr. Bajaj cannot be believed to have intimated about the purchase of TV for Rs. 1950/- about the sale of his car in August, 1971 and his mortgaging the house in 1973 and making alterations and additions in his house."

2. The disciplinary authority considered the inquiry report and was of the opinion that the first three charges were fully proved, notwithstanding the findings of the Inquiry Officer as extracted above in this order.
3. The applicant submitted a revision petition to which he did not get any reply. The UPSC's advice was that a cut of 10% in pension for a period of three years should be made. However, the disciplinary authority imposed the penalty of a cut of 10% of the monthly pension on a permanent basis.
4. The learned counsel for the respondents argued that the disciplinary action could be taken under Rule 9 of the CCS (Pension) Rules. The findings of the Inquiry Officer would show that three charges were proved and in respect of the remaining three charges also, the case was not where the charges stood not proved. The Inquiry Officer had only given some observations but had not come to the conclusion that any of the charges were not proved. The counsel added that the disciplinary authority imposed the penalty after due observance of rules and procedure.

5. On analysis of the arguments and pleadings, we find that-  
(i) the disciplinary authority came to the conclusion even in respect of the first three charges that they were fully proved notwithstanding the observations of the Inquiry Officer and no opportunity was given to the applicant to represent. The law is settled on this point in the SIR 1969 SC 657 case of Narain Mishra vs. State of Orissa/ that where the disciplinary authority differs from the Inquiry Officer, an opportunity must be given to the delinquent official

In this case, there was difference of opinion between the observation of the Inquiry Officer and the opinion of the disciplinary authority, though one can argue about the degree of such a difference.

(ii) Under Rule 9 of the CCS (Pension) Rules, the President can withhold or withdraw pension or a part thereof if the pensioner is found guilty of grave misconduct or negligence. The gravest charge against the applicant was that he had acquired disproportionate assets. The findings of the Inquiry Officer in this regard were that during the period from 1.1.69 to 31.12.73, the applicant had acquired assets worth Rs 600/- which could not be explained by known sources of income. Surely, this cannot be considered a grave misconduct of the nature contemplated under Rule 9 of the CCS (Pension) Rules.

6. In view of the above observations, the order dated 21.1.85 is set aside. It is directed that the applicant should be paid his full pension as admissible to him and the cuts imposed should be refunded back to him within a period of 4 months from the date of receipt of a copy of this order.

7. With above direction and order, the case is disposed of with no order as to costs.

  
(I.P. GUPTA)

MEMBER (A)

  
(RAM PAL SINGH)

VICE-CHAIRMAN (J)