

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.196/88.

Date of Decision: 30.7.93.

D.R. Bajaj

...

Petitioner.

Versus

Union of India
through the Secretary,
Ministry of Communications,
New Delhi.

...

Respondent.

CORAM:

THE HON'BLE MR.JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER (A).

For the Petitioner

--

Shri A.S. Rama Chandra Rao
Sr. Counsel.

For the Respondent

--

Shri N.S. Mehta,
Sr. Standing Counsel.

JUDGEMENT(ORAL)

(By Hon'ble Mr.Justice V.S. Malimath, Chairman).

The petitioner has challenged in this case the order of the President dated 8.4.85 by which 10% of his pension has been with-held in exercise of the powers conferred on the President by Sub-rule(1) of Rule 9 of CCS(Pension) Rules, 1972 (hereinafter referred to as "the Rules").

2. The principal contention of the learned counsel for the petitioner is that the power of withholding of pension under Sub-rule(1) of Rule 9 of the Rules could not have been exercised in their case, on the ground that the essential conditions prescribed by the said provision have not been fulfilled. It is maintained

6

that there is no finding of guilt of grave misconduct and that, therefore, the order of with-holding of 10% of pension is invalid and illegal. In support of his contention he relied upon a decision reported in AIR 1990 SC 1923, D.V. Kappor Vs. Union of India and Ors. The Supreme Court has interpreted Rule 9 as requiring the President before imposing the penalty of withholding pension as a measure of punishment to record a finding that the delinquent official is guilty of grave misconduct or negligence. In the light of the law laid down by the Supreme Court, it is clear that for proper exercise of the power of the President under Rules 9(1) of the Rules a finding has to be recorded that the petitioner is guilty of misconduct or negligence. In the absence of a finding in this case, the President would not be competent to impose the penalty of withholding any part of the pension under Rule 9(1) of the Rules.

3. On a perusal of the impugned order, we do not find any finding of the President in this behalf. We have read the entire order to satisfy ourselves if any finding has been recorded regarding grave misconduct or negligence, but we found nothing. Hence, a condition precedent for exercise of power under Rule 9(1) of the Rules is not established. Therefore the imposition of penalty of withholding of 10% pension cannot be sustained.

(7)

4. Now the question is as to what is the just and proper order we should make.

5. Learned counsel for the petitioner relying upon the judgement in Kapoor's case submitted that just as in that case the Supreme Court quashed the impugned order, we should likewise quash the impugned order in this case. Learned counsel for the respondents, however, maintained that if there is no satisfactory finding by the President of grave misconduct or negligence, the authority should have liberty to examine this aspect of the matter and to take a decision after giving an opportunity of showing cause to the petitioner. It is no doubt true that in the case dealt with by the Supreme Court no liberty has been given to the authorities for further examination of the questions as to whether appropriate finding as required by Rule 9(1) of the Rules should be recorded or not. It does not mean that the Supreme Court has laid down the law that in every case where the President has not recorded finding the only order to be passed is to quash the order. We must bear in mind that the ultimate direction should meet the ends of justice. It means that the guilty must be punished and the innocent must be protected. In the case dealt with by the Supreme Court, the facts were tell tale. That was a case in which the appellant was working as an Assistant Grade IV of the Indian Foreign Service, Branch 'B' in the Indian High Commission at London. He did not report to duty after his transfer to the Ministry of External Affairs, New Delhi

which resulted in initiation of the disciplinary proceedings against him on 23.8.1979. Pending the proceedings, the appellant sought voluntary retirement from service and he was allowed to retire but was put on notice that the disciplinary proceedings initiated against him would be continued under Rule 9 of the Rules. The Inquiry Officer found that the appellant absented himself from duty from 15.12.1978 and despite his being asked to join duty he remained absent from duty which is wilful contravention of Rule 3(i) (ii) and 3(i) (iii) of the Civil Services Conduct Rules 1964. In the concluding portion he said that though the charges have been established, the circumstances in which the appellant violated the rules requires a sympathetic consideration while deciding the case under Rule 9 of the Rules. The President accepted that finding and decided to withhold gratuity and pension in consultation with the Union Public Service Commission. It is obvious that the circumstances were so tell tale as not to justify any further inquiry or liberty being given to the authority to pass an order in accordance with law. But in the present case, the facts are not similar. Serious charges have been levelled against the petitioner which are proved. Notice was issued to the petitioner requiring him to show cause as to why the pension should not be withheld in pursuance of Rule 9 of the Rules. In the circumstances,

9

it would not be just and proper not to reserve liberty to the authority to proceed to take further steps in the matter after giving an opportunity of showing cause to the petitioner.

6. For the reasons stated above, the order imposing penalty of withholding of 10% pension dated 8.4.1985 is hereby quashed. Liberty is, however, reserved to take further steps in the matter after giving an opportunity of showing cause to the petitioner as expeditiously as possible. No Costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN

'SRD'