

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(6)

Date of Decision : 23.10.92

CA 431/87

Shri N.P. Nayyar

...Applicant

VS.

Union of India & Ors.

...Respondents

CORAM :

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B.K. Aggarwal

For the Respondents

...None

1. Whether Reporters of local papers may be allowed to see the Judgement? yf

2. To be referred to the Reporter or not? yf

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, in this application, has assailed the imposing of penalty of withholding of 25% of the pension on permanent basis under Rule 9 of the CCS (Pension) Rules, 1972 by the order dt. 20/27.5.1985 (Annexure A17). The applicant has also assailed the order dt. 5.4.1983 (Annexures A4 and A5) by which an order was passed for commencing common proceedings under Rule 13 of the CCS (CCA) Rules, 1965 against the applicant and one another Shri Jasvinder Singh, DDC and appointing Shri Laxman Singh as Enquiry Officer.

The applicant has claimed the relief that the impugned

order dt. 27.5.1983 be quashed; the order dt. 5.4.1983 (Annexures A4 and A5) be also quashed and the respondents be issued a direction to make the payment of the arrears of pension/gratuity/commutation etc. due to the applicant along with 12% p.a. interest w.e.f. 1.11.1984.

The facts of the case are that the applicant was working as Section Officer, OR Section in the Department of Petroleum, Ministry of Energy on 14.9.1982. One Shri Jasvinder Singh, LDC was working in the Ministry of Chemicals and Fertilisers on the relevant date. The said LDC was dealing with the FERA application of M/s John Wyeth and Brothers, a private sector drug company. The son-in-law of the applicant was also working as an employee in the said drug company. The applicant was placed under suspension on 23.9.1982 (Annexure A1) by the order issued by the Department of Petroleum and he was served with a chargesheet dt. 18.11.1982 (Annexure A2). The articles of charges alleged that by acts mentioned therein, the applicant exhibited unauthorised communication of information and thereby violated Rule 11 of the CCS (Conduct) Rules, 1964. The applicant, therefore, made misuse of his official position as Section Officer in the Department of Petroleum by inspiring Shri Jasvinder Singh, LDC of Ministry of Chemicals and Fertilisers to pass over certain information to him unauthorisedly. The applicant replied to the above charges by representation dt. 24.12.1982 (Annexure A3) in which the applicant denied the

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violation of Rule 11 of the CCS (Conduct) Rules, 1954, but confessed the two article of charges framed in the chargesheet against the applicant. Since Shri Jasvinder Singh, LDC, Ministry of Chemicals and Fertilisers was also involved in the same incident, so an order of joint enquiry under Rule 18 of the CCS (CCA) Rules, 1955 was passed on 5.4.1983. The Deputy Secretary, Ministry of Chemicals and Fertilisers in the name of the President appointed Shri Laxman Singh, Commissioner of Departmental Enquiries as the Enquiry Authority to enquire into the charges framed against the applicant. Shri J.D. Gupta acted as a presenting officer on behalf of the department. The applicant participated in the proceedings, but before the Disciplinary Authority could pass any order, the applicant superannuated on 31.10.1984 as Section Officer in the Ministry of Energy, Department of Petroleum. So the impugned order of punishment was passed under Rule 9 of the CCS (Pension) Rules, 1972. It is by this order that the applicant is aggrieved and challenged the holding of the joint departmental enquiry against the applicant as well as the appointment of the Enquiry Officer.

The respondents contested the application and filed the reply stating therein that the applicant, in his letter dt.24.12.1982, has accepted both the article of charges, but pleaded that he did not pass any official information to any body. The applicant obtained the information by adopting unfair means and for the benefit of his son-in-law, who was

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appointed in the company of drugs to which the particular information pertained. Shri Jasvinder Singh, IAC had the information officially in his custody and the applicant in the letter dt. 24.12.1982 had admitted that he obtained the information from Shri Jasvinder Singh as well as from the relevant file unauthorisedly. He has also stated that he has picked up the file from the section. He has also admitted that the relevant note portion of the file was in his possession from the night of 14.9.1982. He has also retained the said note portion of the file for two days. He has returned that note to the Deputy Secretary. Thus according to the respondents, the applicant has admitted the whole of the article of charges and the acquisitions levelled against him in the said charge.

The respondents have further stated that Rule 11 of the CCS (Conduct) Rules, 1964 applies in the case of the applicant. The applicant in no way was officially connected with the case and he had even no authority to look at the file. The applicant has unauthorisedly acquired the information, from the official papers in contravention of the provisions of the Official Secrets Act, which is totally unbecoming of a Government servant.

We have heard the learned counsel for the parties at length and have gone through the record of the case. The article of charges framed against the applicant are as

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follows:-

"That the said Shri N.P. Nayyar, while officiating as Section Officer in OR-II Section of the Department of Petroleum, Ministry of Energy on the evening of 14th September, 1982 made misuse, of his official position by inspiring Shri Jaswinder Singh, IAC of the Ministry of Chemicals and Fertilizers to pass over certain information to him from the file dealing with the FRRA application of M/s John Wyeth & Bros., a private sector drug company.

ARTICLE II

That on the evening of the same day and while functioning in the aforesaid office, the said Shri N.P. Nayyar typed out the relevant information from the notes of the said file in the presence of Shri Jaswinder Singh and thereafter in the absence of the staff working in Drugs VI Section of the Ministry of Chemicals & Fertilizers removed the relevant note portion from the said file.

Shri N.P. Nayyar by his above acts exhibited unauthorised communication of information thereby violating Rule 11 of the CCS (Conduct) Rules, 1964."

The contention of the learned counsel for the applicant is that the misconduct does not fall under Rule 11 of the CCS (Conduct) Rules, 1964. Said Rule is quoted below :-

"11. UNAUTHORISED COMMUNICATION OF INFORMATION

No Government servant shall, except in accordance with any general or special order of the Government or in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such documents or information.

EXPLANATION - Quotation by a Government servant (in his representation to the Head of Office, or Head of Department or President" of or from any letter, circular or office memorandum or from the notes on any file, to which he is not authorised to have access, or which he is not authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication of information within the meaning of this rule."

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From the above, the learned counsel for the applicant argued that obtaining information and stealing the note portion of the file of another department is not a misconduct covered by Rule 11 of the CCS (Conduct) Rules, 1964. The information which was obtained by the applicant was not secret. Any information obtained unauthorisedly cannot be termed in violation of Rule 11 of the said rules unless the same is either passed on to someone or quoted in a representation anywhere. This fact has not at all been proved. The literal meaning of the word used in Rule 11 of the CCS (Conduct) Rules, 1964 read with explanation do show that a person must be in custody of an information which he has unauthorisedly leaked out to some other person. In any case giving full weight to the arguments of the learned counsel for the applicant, the applicant has admitted both the article of charges in his letter to CVO dt. 24.9.1982 (Annexure 4 to the counter). The article No.1 is that the applicant while officiating as Section Officer in OR-II Section of the Department of Petroleum in the evening of 14.9.1982 made misuse of his official position by inspiring Shri Jasvinder Singh, IOC of Ministry of Chemicals and Fertilisers to pass over certain information to him from the file dealing with PERA application of M/s. John Wyeth and Brothers. Article No.2 is that on the same day in the evening, the applicant typed out the relevant information from the notes of the said file and removed the relevant note portion from the said file. According to the applicant himself, as stated at page-4 of the rejoinder, misconduct is actually covered under Rule 3(1)(iii) of the CCS (Conduct)

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Rules, 1964. Now going through the letter written by the applicant on 24.12.1987 to CVC alongwith the admission made in the rejoinder, it leaves no scope that the act of the applicant amounted to misconduct and it is irrelevant in the present circumstances to specifically classify that misconduct under particular rule. This quoting of a rule will not by itself undo the misconduct which is otherwise established by admission of the accusations leading to a misconduct by a Government servant. Thus this contention of the learned counsel that the applicant has not committed misconduct holds no ground.

The learned counsel for the applicant also took the stand that the orders were issued for holding an enquiry in the name of the President by the then Minister of Chemicals and Fertilisers while in the case of the applicant, only the President in the Ministry of Energy, Department of Petroleum was the competent authority to issue directions for common proceedings. This argument, of course, cannot have any weight in view of the fact that President of India, the Disciplinary Authority is competent to issue directions in the case of the applicant. There cannot be any distinction or separate identity of the President for each Ministry/Department of the Union of India. In the case of the applicant before issue of the chargesheet under Rule 14 of the CCS (CIA) Rules, 1965, the Ministry of Energy, Department of Petroleum duly approved the same by obtaining the approval of the Minister In-Charge.

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The orders regarding common proceedings in terms of Rule 18 of the CCS (CCA) Rules, 1985 were issued after obtaining the approval of the Minister In-Charge of the then Ministry of Chemicals and Fertilisers. Thus the argument of the learned counsel that in fact the disciplinary proceedings were instituted not by the competent authority cannot be accepted. If the authority competent to impose the penalty of dismissal or such Government servant are different, then an order for taking disciplinary action in common proceedings may be made by the highest of such authorities with the consent of the others. In the present case, the President was the authority competent to impose the penalty of dismissal on the applicant and not the authority competent to impose penalty of dismissal on Shri Jasvinder Singh, IIC as the same was the Deputy Secretary in the Ministry of Chemicals and Fertilisers. Thus there is no irregularity or illegality in holding a joint departmental enquiry against him and the order of holding joint enquiry under Rule 18 of the CCS (CCA) Rules and the order for appointment of the Enquiry Officer is also not illegal.

The learned counsel for the applicant has also referred to the brief submitted by the prosecution at the conclusion of the enquiry on behalf of the department and as regards Shri Jasvinder Singh, IIC, it has been stated in the same (Annexure A7) in para 2.2 at p-4 that, "Shri Mayyer in no way is concerned with the information contained in the notes." This

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does not help the learned counsel for the applicant at all because the contents of both the article of charges have been unconditionally admitted by the applicant in the letter dt. 24.12.1982. The statement of brief submitted by the prosecution against Shri Jasvinder Singh is only a narration of fact. This does not help to exonerate the applicant from the gravity of charges levelled against him.

The learned counsel for the applicant has also referred to the show cause notice dt. 16.3.1985 (Annexure A9) whereby an opportunity was given to the applicant to make the representation against the penalty proposed. The penalty provisionally contemplated against the applicant was a cut of 25% in the pension during the period the officer draws the pension. The impugned order has been passed on 27.5.1986 after considering the representation made against the show cause notice dt. 28.3.1985. Thus the applicant has been given due opportunity before passing any final order in his case and the applicant can have no grudge on the account that the principles of natural justice have not been followed. A copy of the Enquiry Officer's report has also been supplied to the applicant. After receipt of the report of the Enquiry Officer, the applicant has made another representation dt. 19.4.1985 and further representation on 3.5.1985. The applicant made another representation on 5.8.1985 and all these representations have been duly considered and reasons for rejection thereof have been given by a speaking and reasonable order, as is evident by a perusal of the impugned order.

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The learned counsel has also referred to the fact that minor penalty has been imposed on Shri Jasvinder Singh, while the applicant has been given the maximum penalty of 25% cut in the pension permanently. That matter cannot be interfered with in these proceedings. After the superannuation of the applicant, the only punishment that could be imposed can be under Rule 9 of the CCS (Pension) Rules, 1972. The learned counsel for the applicant argued that there is no mention in the order that the applicant has committed a serious and grave misconduct. Rule 9(1) of the CCS (Pension) Rules which empowers the Government to withhold the whole or a part of pension reads as follows :-

"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 month."

Further in Rule 9(5), explanation (b) the term 'grave misconduct or negligence' has been defined to include "The communication or disclosure of any secret official code or

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password or any sketch plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government.) so as to prejudicially affect the interests of the general public or the security of the state."

The learned counsel for the applicant has also referred to the authority of K.M. Sharma Vs. Union of India, reported in 1987 (1) ATR 307. The argument advanced in that case was that the order itself did not disclose that the Government had applied its mind to the nature of the accusations and that the misconduct and negligence of duty was a grave one. If that fact is not mentioned in the order, then such an order does not conform with the requirements of Rule 9 of the Pension Rules and is manifestly, illegal. The Principal Bench has accepted this contention and argument that the Government has not examined this aspect to hold that the nature of misconduct is of a grave nature. The facts of that reported case are totally different. The applicant of that case, Shri K.M.Sharma was working as Under Secretary to the Government in the Department of Company Affairs. On 28.12.1977, the applicant gave notice under Rule 56(k) of the Fundamental Rules seeking voluntary retirement from 1.4.1978, which was allowed by the Government from that very date. After this notice was given by the applicant of that case, the Government commenced certain disciplinary proceedings against

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him under CCS (CCA) Rules, 1965. The Enquiry Officer completed the report and the advice of UPSC was also sought. UPSC concurred with the finding of the Enquiry Officer that two of the charges were not proved against the applicant and charge number 3 was only of technical irregularity. In the present case, the charges against the applicant, as given out in Articles I and II related to getting certain information from the file dealing with FERA application of M/s John Wythe and Brothers, a private sector drug company and further that the applicant took out the notes of this said file in the absence of the staff working in the drug section of the Ministry of Chemicals and Fertilisers and removed the relevant note portion from the said file. The applicant has also admitted without any reservation both the articles of charges. The charges, therefore, were held to have been proved. Though there is no direct mention in the impugned order dt. 20/22.5.1986 that the charges are of grave and serious nature, but when taken in context with the definition of grave misconduct given in explanation under Rule 8 of CCS (Pension) Rules, 1972 (quoted above), reading of the charges levelled against the applicant and the confession of the applicant of the accusations levelled against him leave no doubt that misconduct of the applicant was of grave and serious nature. Moreover, the applicant has since retired on superannuation and the enquiry had commenced much earlier when he was in service and concluded after he reached the age of superannuation. The punishment, therefore, that can be

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imposed can be only under Rule 9 of CUS (Pension) Rules, 1972. This the case of K.M. Sharma relied upon by the learned counsel for the applicant cannot be relied on the facts and in the circumstances of this present case. A perusal of the order dt. 27.8.1986 itself goes to show that the President as the Disciplinary Authority applied his mind to the nature of misconduct. In the detailed reasoning, the Disciplinary Authority has discussed the various representations made by the applicant time and again and have considered every aspect of the matter. The Disciplinary Authority has also considered the fact that one of the delinquent who was also tried along with the applicant in the joint enquiry and dealt with leniently and also considered the accusations against Shri Jasvinder Singh, co-accused. Obtaining an information for a foreign company on a PERA application and inspiring another official to disclose that information and taking out note from the concerned file in itself goes to show that the matter of misconduct cannot be said to be not of grave and serious nature. The applicant has also kept with him the original note portion of the relevant file earlier removed by him in the absence of the staff working in the section concerned and that goes to show that he had an ulterior motive in passing the information he has obtained.

Having given a careful consideration of all these aspects of the case, the impugned order, therefore, does not need any interference. The Disciplinary Authority has fully

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applied its mind and also gave the fullest opportunity to the applicant to put up his case. The applicant has also been supplied with a copy of the Enquiry Officer's report and he has also been given an opportunity to show cause against the proposed punishment after he has reached superannuation. There is a clear mention in the impugned order that the President has decided to take action against the applicant under Rule 9 of the CCS (Pension) Rules, 1972. However, the learned counsel has also stressed to a greater extent that the applicant has since retired and a lesser strict view should have been taken in his case since he has admitted the accusations levelled against him. The Tribunal has no power normally to interfere with the quantum of punishment imposed by the Disciplinary Authority. However, it shall still be open to the applicant to make a representation, if so advised, to the respondents to take a lenient view in the matter. The penalty imposed on the applicant of 25% cut in the pension permanently, on the whole seeing to the conduct of the applicant during the course of the enquiry proceedings, may appear to be excessive. The respondents may consider such representation preferred by the applicant and if considered proper, may like to limit the period of the cut imposed in the pension irrespective of the decision to which we are arriving at in the present case. This is only on the point of magnanimity and mercy which has been conveyed during the course of the arguments and without issuing any direction in that regard, it shall be open to the respondents to consider

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the same in that light, but any decision on that will not give any cause of action to the applicant to agitate the same matter over again.

In the above circumstances, the present application is dismissed as devoid of merit leaving the parties to bear their own costs.

(J.P. SHARMA)
MEMBER (J)

23.10.92

(P.C. JAIN)
MEMBER (A)

Cec 23/10/92