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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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Reg. No. OA 467 of 1987

Date of decision: 31.7.1990

K.M. Mehrotra

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri E.X. Joseph, counsel for the applicant.

Mrs. Raj Kumari Chopra, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

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

(Judgement of the Bench delivered by Hon'ble Shri
B.C. Mathur, Vice-Chairman.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri K.M. Mehrotra, retired Senior Personal Assistant in the Directorate General of Technical Development under the Ministry of Industry, New Delhi, against impugned order No. 15(8)/82-Vig.(Vol.VI) of the Director (Vigilance), Department of Industrial Development, dated 27th February, 1987 withholding permanently the entire amount of monthly pension under Rule 9 of the CCS (Pension) Rules of 1972 admissible to the applicant.

as stated in the application

2. Brief facts of the case are that the applicant joined Government service as a clerk on 30th January, 1946, was promoted as Stenographer Grade II in December, 1953, to the Selection Grade in 1976 and as Sr. Personal Assistant in January, 1984 respectively. The applicant superannuated on 31st January, 1986 without any stigma as he had been discharging his duties with total devotion and dedication to the utmost satisfaction of his superior officers.

3. On 12th May, 1982 an F.I.R. was registered with the C.B.I. against M.R. Matta and others, but the name of the applicant did not figure any where. On the basis of the said F.I.R. the investigations were made in another case bearing No. RC

(15)

3/82-SIU-III and the residential as well as official premises of M/s. Nirlon Synthetics, Fibres and Chemicals Co. Ltd. were searched on 27.5.1982. On the 28th May, 1982, the officials of the company were called to the CBI office and were interrogated. It was alleged that during the said interrogation it was found that the applicant had passed on a photostat copy of a note dated 18.1.80 to the officials of the Nirlon Synthetic Fibres and Chemicals Co. Ltd. After a lapse of more than two years of the said interrogation of the officials of the said company the applicant was served with a Memorandum dated 10.8.1984 proposed to hold an enquiry on the two counts, namely:

Article of Charge No. 1

That the said Shri Kailash Mohan Mehrotra while being posted as Stenographer, Grade C (Selection Grade) and functioning as PA to Mr. D.K. Agarwal, Development Officer, DGTD, New Delhi, communicated the photostat copy of the note dated 18.1.80 of Shri D.K. Agarwal addressed to Mr. Suri, ADO of the I & M Directorate in the file No. RN/4(28)/79 DGTD (Synthetics Division) regarding the application of M/s. Nirlon Synthetics Fibres & Chem. Ltd. Barakhamba Road, New Delhi for the import of one high speed vertical cop-wider to Mr. T. Mukherjee of M/s. Nirlon Synthetics & Chemicals Ltd. New Delhi. The said communication of the information in the said photostat copy were confidential in nature and meant for official use only. Shri Kailash Mohan Mehrotra by communicating the contents of the note dated 18.1.80 of Mr. D.K. Agarwal, Development Officer in the aforesaid manner, without any general or special orders of the Government authorising such disclosures or otherwise than in the performance in the good faith of the duties assigned to him, contravened the provisions of Rule 11 of the CCS (Conduct) Rules, 1964.

Articles of Charge No.2

That the said Shri Kailash Mohan Mehrotra by abusing his official position as such public servant, communicated the aforesaid confidential information as mentioned in Article of Charge No. 1 to Shri T. Mukherjee of M/s. Nirlon Synthetics Fibres & Chem. Ltd., Barakhamba Road, New Delhi and received an amount of Rs. 50/- otherwise than his legal remunerations from M/s. Nirlon Synthetics Fibres & Chem. Ltd., New Delhi, in lieu of the aforesaid illegal services rendered by him.

That the said Shri Kailash Mohan Mehrotra by his aforesaid acts also exhibited lack of integrity and thereby contravend the provisions of Rule 3 (1)(i) of CCS (Conduct) Rules, 1964. (Annex. B to the application)

4. The applicant submitted his reply on 3.9.84 denying the charges (Annexure 'C' to the application). The Enquiry Officer recorded the statements of some of the witnesses mentioned in

the said Memorandum as the prosecution could not produce all the 21 witnesses and submitted his report on 25.2.1985 (Annexure 'D' to the application) recording his findings as follows:

ARTICLE 1

On the basis of totality of evidence and preponderance of probability the charge stands substantiated. There is no direct evidence that CO had accepted money in consideration of supply of document in question to the firm. However, the possibility of money having been received by the CO cannot be ruled out in the context of overall evidence in this case. The charge that the CO was in the habit of passing confidential official information to various other firms does not stand substantiated. He may have received petty gifts like ball point pens or calendars but no serious cognisance of it can be taken as the articles are of petty nature.

According to the applicant, the Enquiry Officer has placed reliance to come to the conclusion of guilt on the alleged statements made by the witnesses during the interrogation by the CBI. By order dated 13th May, 1986 the applicant was called upon to show cause as to why his pension may not be withheld (Annexure 'E') to which the applicant submitted his representation on 11.6.86 (Annexure 'F'). The respondents vide their letter dated 2.7.86 sought the opinion of the UPSC who vide their communication dated 6.2.87 opined that the entire monthly pension in the circumstances can be withheld permanently. Accordingly, Director Vigilance, Department of Industrial Development (Respondent No.2) issued the impugned order withholding permanently the entire monthly pension of the applicant. According to the applicant, the respondents have not also revised his pay which they were duty bound to do with effect from 1.1.1986. The applicant contends that no fair, objective and legal procedure was adopted during the departmental enquiry conducted against the applicant and the statements relied on by the Enquiry Officer were recorded behind the back of the applicant. The Enquiry Officer erred in totally and solely relying on the impugned statements and no independent witness was examined or produced by the respondents during the enquiry. It was not open to the Enquiry Officer even to look into the statements recorded by the CBI in a criminal investigation. The Enquiry Officer has given the benefit of doubt to the respondents by holding that on the basis of totality of evidence

17

and preponderance of probability the charge stands substantiated. As the finding on the second charge was inter-related with the first charge, the Enquiry Officer having held that the respondents could not substantiate the acceptance of consideration by the applicant, erred in holding that the applicant was guilty of the first charge only on the basis of probability. As there is no evidence whatsoever that the applicant had passed on the document dated 18.1.80, as alleged, therefore, in the absence of there being any finding that the applicant has passed the said document, the order withholding the entire pension permanently is fit to be set aside. The Enquiry Officer does not say that even a single charge has been proved conclusively and without an iota of doubt. Pension rights are fundamental rights in a welfare State which cannot be denied entirely and forever on the basis of mere suspicion and conjectures against the norms of social justice.

5. The respondents in their reply have stated that the FIR was against Shri M.R. Matta and others, but during the course of investigation, the CBI came to know that the applicant was also involved. As such, two different cases were registered by the CBI against the applicant on certain definite conclusions. For filing criminal case in the court of law, the CBI has already called for the relevant records relating to the case of the applicant from the respondents and the Department has already handed over the relevant files/records to the CBI pertaining to the charges against the applicant and others (Annexure R-7). As for the search in the premises of M/s. Nirlon Synthetics Fibres and Chemicals Ltd., it has no relevance to the relief prayed for in the application by the applicant. The Tribunal has no jurisdiction as far the case of the applicant with the CBI is concerned. In fact, the CBI recommended major penalty proceedings against the applicant on the basis of investigations conducted by it. It was decided to initiate major penalty proceedings against the applicant, after obtaining the advice of the Central Vigilance Commission, and it was in this process that the applicant was served with a Memo dated 10.8.84 to reply to the charges made against him. The Enquiry Officer gave his decision

only after having full analysis of the facts and records adduced by the applicant as well as prosecution during the inquiry. It was on the basis of the records and facts adduced during the inquiry that the Enquiry Officer gave his findings. Since the charges against the applicant were substantiated, the President provisionally decided to withdraw permanently the entire monthly pension otherwise admissible to him and he was given an opportunity on 13.5.86 to represent against this, as required under the Pension Rules. The applicant submitted his representation dated 11.6.86 against the proposed penalty. The President of India, after examining this representation, decided to seek the statutory advice of the U.P.S.C. before imposing the penalty and the final orders were passed on 27.2.87 after taking into consideration the advice of the U.P.S.C. The departmental enquiry against the applicant was initiated while he was in service. While the departmental proceedings were going on, the applicant retired from service on attaining the age of superannuation. The departmental proceedings were accordingly conducted under the Provisions of Rule 9 of the Pension Rules. It was, therefore, not necessary for the respondents to initiate criminal proceedings against the applicant, although the CBI has already requisitioned the relevant records/documents relating to the case of the applicant. The Inquiry was conducted by an independent officer nominated by the Central Vigilance Commissioner. In fact, it is very unfair on the part of the applicant to raise aspersions against the Inquiry Officer and to question his bonafides in conducting the inquiry against the applicant, just to mislead the Court. The applicant was given full opportunity to represent his case. There has not been any violation of basic rules of natural justice and fair play in conducting the inquiry proceedings. It is wrong to allege that the pension has become a right like the right to property to the applicant because he has been in service for 40 years. In fact, Rule 8 of CCS (Pension Rules) lays down that the pension is even subject to future good conduct and in this case, the charge having been substantiated against the applicant, the President decided to withhold permanently

the entire monthly pension otherwise admissible to the applicant. The President, who is the Disciplinary Authority in the case of the applicant, has absolute right to withhold or withdraw pension in full granted to a Government servant after retirement. The decision of the President was based on the seriousness of the charges fully established and substantiated against the applicant. By raising the issue of fundamental right, the applicant is trying to mislead the Tribunal. The provisions of Rule 9(1) of CCS (Pension) Rules is a statutory rule framed under the provisions of Article 309 of Constitution of India and does not violate Articles 14, 16, 21 and 41 of the Constitution of India, as alleged by the applicant. The question of payment of pension or restoring the provisional pension to the applicant does not deserve any consideration at all. The President has passed the order for withholding permanently the monthly pension otherwise admissible to the applicant after taking ^{into} account the misconduct on the part of the applicant and other relevant facts and evidences adduced during the inquiry. The applicant was given full opportunity to represent against the proposed decision and the President after considering his representation as well as the statutory advice of the UPSC has rightly acted in passing the order. Therefore, his request does not warrant any consideration and merits rejection/dismissal forthwith.

5. The counsel for the applicant contended that the present case is on all fours with the case of **Shri D.P. Khosla Vs. Union of India (OA 215/87)** decided by this Tribunal on 31.1.1990. Shri Khosla was the other Private Secretary who was charged along with the applicant and a common enquiry was done. In that case the application was allowed to the extent of setting aside the disciplinary proceedings and the impugned order and the chargesheet and directed the respondents to restore and pay the full pension and other retirement benefits to the applicant in accordance with the rules as if the impugned order had not been passed.

6. Shri Joseph stated that Shri D.P. Khosla and the present applicant had retired before any final decision was taken in the disciplinary proceedings. He said that under the CCA (Pension) Rules, 1972, the appointing authority can withhold the pension only if the pensioner is found guilty of 'grave misconduct' and as there is no such finding, the punishment cannot be sustained. He said that the statement of charges does not charge the applicant with grave misconduct. The findings of the Enquiry Officer, the show cause notice dated 13.5.1986, the opinion of the UPSC dated 6.2.1987 and the final order dated 27.2.1987 do not make any reference or indicate any finding of 'grave misconduct'. Shri Joseph cited the case of Shri K.M. Sharma Vs. Union of India (ATR 1987(1) CAT 307) where the Principal Bench of this Tribunal struck down the order under Rule 9 of the CCS (Pension) Rules reducing the pension by 25% on the ground that Rule 9 requires that there must be a specific finding ^{that} ~~there~~ was 'grave misconduct' on the part of the employee and that this must be recorded in the order itself. He said that the entire disciplinary enquiry was against the rule of natural justice as the applicant was not afforded a reasonable opportunity and the decision is based on evidence not produced before the Enquiry Officer. Similarly, the findings of the Enquiry Officer which have been accepted by the President in toto are without any examination and are based on no evidence and are, therefore, perverse. He said that the impugned order states that "The President: having regard to the findings of the inquiry, all other relevant evidences and circumstances of the casehas come to the conclusion to withhold permanently the entire monthly pension otherwise admissible to Shri K.M. Mehrotra." He said, what has been called "other relevant evidences" has not been made known to the applicant and they were not placed before the Enquiry

Officer. In the show cause notice dated 13.5.1986, the applicant was given an opportunity of making a representation on the proposal before withholding the pension "only on the basis of evidence adduced during the inquiry." Thus, the applicant had no opportunity of knowing what the other relevant evidences were and as ^{such} the applicant was denied reasonable opportunity to show cause why the pension should not be withdrawn. He said that the findings against the applicant are based on suspicion and conjecture and are, therefore, not sustainable in law. He cited many cases that findings based on suspicion and conjecture would be invalid. In this connection the case of Union of India Vs. H.C. Goel (AIR 1964 SC 364) was cited. He also cited the case of State of Madras Vs. Shrinivasan (AIR 1966 SC 1827) where it has been held that the extreme order withdrawing permanently the full pension can be passed only where the standard of proof for holding the applicant guilty must be strict. He also raised the point that the impugned order is not a speaking order.

7. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, said that the case of D.P. Khosla cited by the learned counsel for the applicant is not ^{on} all fours with the present case even though the allegations are basically the same and a common inquiry was held as Shri Khosla had retired on superannuation on 31.10.1984 and had been allowed full pension with effect from 1.11.1984. The departmental proceedings were initiated against him on 10.8.1984 and on 5.5.1986 the President had provisionally come to the conclusion that the Articles of Charge have been proved against him, whereas in the present case, no pension was allowed to the applicant.

8. We have gone through the pleadings and have given careful consideration to the arguments advanced by the learned counsel. We have also perused the order in the case of D.P. Khosla (OA 215/87) of the Principal Bench decided on 31.1.1990, where

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22

Shri Khosla was also given similar charges as in the case of the present applicant and the findings of the Inquiry Officer were also similar on both the articles. In that case also the Enquiry Officer came to the following findings:-

"Article I:

On the basis of totality of evidence and preponderance of probability, the charge stands substantiated.

"Article II:

There is no direct evidence that CO had accepted money in consideration of supply of documents to the firm. However, the possibility of money having been received by the CO cannot be ruled out in the context of overall evidence in this case. The charge that CO was in the habit of passing on confidential official information to various other firms does not stand substantiated. He may have received petty gifts like ball point pens or calendars but no serious cognisance of it can be taken as the articles are of petty nature."

9. It is not necessary for us to go into the details of the evidence produced before the Inquiry Officer as this has been fully discussed by a Division Bench of this Tribunal in the case of D.P. Khosla cited above. The Bench came to the conclusion that the view of the overwhelming judicial pronouncements at the highest level against the manner in which the Inquiry Officer, the Disciplinary Authority and the UPSC have accepted against the charged officer unsigned, disowned and un-cross-examined statements made by certain witnesses behind his back to implicate the applicant and based their finding of guilt on suspicion and conjecture without positive proof or admissible evidence and without reference to "grave misconduct" as contemplated in rules 8 and 9 of the CCS (Pension) Rules, we have no hesitation in rejecting the disciplinary proceedings in their entirety."

10. We are in full agreement with these findings which are made applicable in the present application. We feel that where the entire monthly pension of an officer is being withheld, he must

be found guilty of "grave misconduct" and such a punishment cannot be ordered on indirect evidence even though there might be a strong suspicion against the officer. The power to withhold or withdraw or reduce pension should be exercised only in the circumstances enumerated in Rule 9(1) of the Pension Rules and not in all cases. The order itself must clearly indicate that the authority had applied its mind to the nature of misconduct and that misconduct and negligence are a grave one. We cannot make good the deficiency in the order of Government and reconstruct the order and sustain it as if it was a grave misconduct.

12. As far as the question of the revision of the pay of the applicant is concerned, the same is under consideration of the Government and it is not necessary to pass any orders on this matter at this stage.

13. In the circumstances, we allow the application setting aside the disciplinary proceedings and the impugned order dated 27.2.1987 withholding the entire amount of monthly pension admissible to the applicant and direct the respondents that full pension and other retirement benefits as admissible to the applicant according to rules should be paid to him. The arrears of pension and other retirement benefits should be paid to the applicant within a period of three months from the date of receipt of this order. No interest on delayed payment of pensionary benefits will be allowed in this case, if paid within three months as indicated by us. There will be no order as to costs.

J.P. Sharma
(J.P. SHARMA)
Member (J)

B.C. Mathur
(B.C. MATHUR) 31.7.90
Vice-Chairman

Proclaimed by me in open Court

B.C. Mathur
31.7.90