CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: 12.7.1990.

REGN. NO. OA 1041/87.

Pran Nath Nevile ... Applicant.

Versus

Union of India & Ors. ... Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. M.M. Mathur, Member(A).

For the Applicant. ... Shri D.C. Vohra, Counsel.

For the Respondents. ... Shri P.P. Khurana, Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman)

The applicant, Shri Pran Nath Nevile, was a Director in the Ministry of External Affairs and had certain foreign postings including one at Moscow. He sought voluntary retirement, gave notice and retired from service with effect from 31.8.1979. He was given a Memorandum dated 18.6.1979 indicating that the President proposed to hold an enquiry against him under Rule 14 of the CCS(CCA) Rules, 1965. The charge against him was that-

> "the said Shri Pran Nath Nevile, while functioning as Commercial Adviser (STC) in the Embassy of India, Moscow, incurred, during the period from 22.10.1969 to 25.12.1973 an expenditure of Roubles 30,905.15 in cash which exceeded his known sources of income by an amount of Roubles 14,791.16 (equivalent to Rs.1,29,860.93) which he cannot satisfactorily account for and which he must have acquired through dubious/ illegal means.
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> The said Shri P.N. Nevile has thereby exhibited lack of absolute integrity and conduct unbecoming of a Government servant and violated clauses (i) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964".

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An enquiry was held in which the applicant appeared on certain dates and was absent on others. The applicant received a communication dated 13.12.1979, which reads as follows:-

> "On a careful consideration of the inquiry report aforesaid, the President agrees with the findings of the Inquiry Officer that the Article of Charge is proved. Taking into consideration all facts and circumstances relevant to the case, the President has provisionally come to the conclusion that the penalty of withholding 50% of the normal monthly pension admissible should be imposed on him on permanent basis. He will be entitled to receive full DCR gratuity".

The Disciplinary Authority, the Respondent No. 1, allowed the applicant to make a representation against the penalty provisionally proposed. The applicant made a detailed representation. Thereafter, another communication dated 5.11.1980 was sent to the applicant in which the following order was passed-

> "On further reconsideration, the President has provisionally come to the conclusion that the entire amount of monthly pension otherwise admissible to Shri Nevile should be withheld. Shri Nevile is hereby given an opportunity of making a representation on the proposed penalty of withdrawing of entire pension but only on the basis of evidence adduced during the enquiry. Any representation which he may wish to make on the proposed penalty will be considered by the President...."

Thereafter, a final order dated 6.7.1981 was passed. The relevant part of which reads as under:-

"After taking into consideration all facts relevant to the case, the President in consultation with the UPSC has decided that the penalty of withholding the entire monthly pension otherwise admissible to Shri Nevile should be imposed on him on a permanent basis. Accordingly, the said penalty is imposed on Shri Nevile with immediate effect".

The applicant made representations and ultimately received a communication dated 24.10.1985 indicating that the matter was being re-examined and there would be a communication. There was no further communication and the applicant thereafter filed the present Original Application on 24.7.1987.

The applicant's grievance is that the order of the Respondent No. 1 withholding the entire pension was bad in law as there had never been any grave misconduct and negligence on the part of the applicant. However, the applicant had technically retired when the Respondent No. 1 began its so-called enquiry proceedings under Rule 14 of the CCS(CCA) Rules, 1965 and was on leave preparatory to retirement. The enquiry proceedings were conducted ex-parte without observing the enquiry procedure nor was the applicant given adequate opportunity for being heard. There was no justification to continue with the enquiry under Rule 9(2) of the CCS(Pension) Rules, 1972 when the Government had agreed to let the applicant retire on 31.8.1979. The matter was more than 10 years old when the enquiry began. There was no pecuniary loss to the Government at any stage

and there was no grave misconduct within the meaning of Rule 9 of the CCS(CCA) Rules.

On behalf of the respondents the pleas taken were; firstly, the O.A. was belated and barred by time. The punishment of with-holding total pension was passed on 6.7.1981 and the O.A. was filed in July, 1987. Even if the last communication dated 24.10.1985 was taken into consideration, even then the matter was filed belatedly. On these grounds, it was prayed that the O.A. deserves to be dismissed. Secondly, notice under FR 56(k) was sent on 1.6.1979 for voluntary retirement. Three month's period ended on 31.8.1979 and, therefore, it was wrong to state that the applicant was not in service on 18.6.1979 when the enquiry under Rule 14 of the CCS(CCA) Rules commenced. Thus he was in service till he retired from service on 31.8.1979. Consequently, the plea of the applicant that he had technically retired before the charge sheet was served on him on 20.6.1979 is not tenable and contrary to law. Thirdly, the charge sheet was served on the applicant on 20.6.1979 on an alleged misconduct said to have been committed by him during October, 1969 to December, 1973. Such an enquiry could be done even after 10 years for there is no statutory time limit for initiation of proceedings. The delay in issuing the charge sheet does not invalid the enquiry under Rule 14 of the CCS(CCA) Rules. Fourthly, the disciplinary proceedings were conducted in accordance with the Rules and the applicant had participated in it. On the first date, he was aware of the subsequent

dates but did not appear. Consequently, the proceedings were continued ex-parte on those days. In this context, reference was made to a letter dated 17.8.1979 by the applicant which indicated his inability to be present on 24th and 25th September, 1979 and further indicated that he had already supplied all necessary information and the case may be decided on the basis of the same. No adjournment had been asked by the applicant for the above dates. The applicant was also allowed to inspect the documents relied upon by the prosecution. The notice proposing to withhold his pension to the extent of 50% as well as notice for enhancement of penalty proposing to withhold of entire pension were also in accordance with the law and were duly served. The findings arrived at were up-held by the Disciplinary Authority and were also approved by the President in consultation with the UPSC. Lastly, it was urged that the UPSC itself had suggested with-holding of 100% pension in the present case, as the charge against the applicant was of a serious nature. It was further submitted that the charge clearly indicated that the nature of offence committed by the applicant came within the purview of grave "Misconduct". During the period of four years i.e. from 1969 to 1973, he had with him funds far in excess of his known sources of income during that period.

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We have heard learned counsel for the parties and perused the records and also the written arguments submitted before us.

The first question for consideration is whether the proceedings had been initiated during the period when the applicant was in service or not. The applicant had served a notice seeking premature retirement under FR 56(k). It was dated 1.6.1979. It was allowed by the Government and he was allowed to retire with effect from 31.8.1979. It was admitted by the applicant that he retired on 31.8.1979. Consequently, he had not retired from service when the Memorandum of initiating proceedings under Rule 14 of the CCS(CCA) Rules was given to him on 20.6.1979. This was not bad in law. Consequently, we come to the conclusion that the proceedings were initiated during the period of the service of the applicant.

The second question is whether the proceedings so initiated may be continued even after the retirement i.e. 31.8.1979. We have not been shown any provision under which the proceedings once started during the period of the service of the applicant cannot be continued after the retirement. We, therefore, hold that the proceedings so initiated can be continued even after the retirement of the applicant from service

Another question that was raised by the learned counsel for the applicant was that there was no justification for taking up the matter or incident which took place for more than 10 years. Rule 9 of the CCS(Pension) Rules recognises the right of President to withhold or withdraw the pension or

a part thereof, either permanently or for specified period. In sub-rule 2(b) there is a bar to conduct departmental proceedings in respect of any event which took place more than four years before such institution where the departmental proceedings are instituted while the Government servant was not in service. If he was in service on that date, sub-rule 2(b) of Rule 9 would not be attracted. The matter regarding charge may be 10 years or less old but that does not disentitle the Government from initiating proceedings under Rule 14 of the CCS(CCA)Rules. We hold accordingly.

Learned counsel laid great emphasis that the proceedings before the Enquiry Officer were not conducted in accordance with the CCS(CCA) Rules and the applicant was not afforded full opportunity to participate and contest his case. The allegations have been squarely denied by the respondents who stated that the applicant had participated in the proceedings on 8.8.1979 and the signature of the applicant was there. The next date for the enquiry was fixed on 24.9.1979 as date for regular hearing. He had not made any request for fixing the date for preliminary hearing. On the contrary, the Enquiry Officer had also indicated that no deviation from the programme would be allowed. The applicant was aware of the date of hearing i.e. 24.9.1979. He had written a letter on 2.9.1979 (Annexure-G-1 to the O.A.). The last two sentences of this letter are as follows:-

> "However, the next hearing has been fixed on 24th/25th September when it would not be possible for me to be present on account of certain other obligations. As I have submitted this additional explanation and there is nothing more I could add to it, I would request that the case may kindly be decided on the basis of facts already submitted by me."

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A perusal of the letter makes it clear that the applicant was aware of the dates fixed and he had also indicated that he would not be available on those dates. He had further indicated that he had nothing more to add and the case may be decided on the basis of the facts already submitted by the applicant. In these circumstances, there is no question of not having afforded an opportunity to the applicant. The opportunity was there but it was not availed by the applicant. The other contention of the applicant that he was not allowed to inspect the documents relied upon by the prosecution is also false. The order sheet dated 8.8.1979 clearly shows that the Enquiry Officer asked the applicant to inspect the listed documents within five days and to give notice for additional documents, if any by 20.8.1979. We, therefore, do not find any thing to hold that the Enquiry Proceedings were vitiated on the above grounds.

Reference was also made to the two show cause notices, one proposing to with-hold 50% of pension and the other for enhancement tc 100%. Learned counsel for the applicant has not been able to show any defect in these notices or any such illegality which would vitiate the proceedings.

Learned counsel then argued that no proceedings could be initiated against the applicant for his case does not come within the purview of "grave misconduct" defined in the CCS(Pension)Rules. The word "grave misconduct" is defined

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under the Explanation to Rule 8 of the aforesaid Rules. It reads as follows:-

"Rule 8.

EXPLANATION.- In this rule,-

(a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression 'grave misconduct' includes the communication of disclosure of any secret official code or 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."

Learned counsel contended that there was no grave misconduct by the applicant for he had not disclosed any secret official code or password or any sketch, plan, model, article, note, document or information as mentioned in Section 5 of the Official Secrets Act, 1923 so as to prejudicially affect the interests of the general public or the security of the State. Learned counsel relied upon this definition to urge that none of the ingredients of this definition had been established against the applicant to hold that he had committed "grave misconduct". Factually, the applicant has not been charged for violating any provision of the Official Secrets Act, 1923 so as to prejudicially affect the interests of the general public or the security of the State. But the definition clearly sets out that it is an inclusive definition. In other words, this definition has only a limited ambit and application. A further perusal of the Rule would show that this definition is applicable only for the purpose of the Rule 8. The word used in Rule 14 of the CCS(CCA)

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Rules is 'misconduct' and not 'grave misconduct'. Rule 9, however, mentions 'grave misconduct' which would only mean the degree of misconduct. Rule 14 empowers the disciplinary authority to hold an inquiry to see if the substance of the imputations of misconduct or misbehaviour against the Government servant is established or not.

It is not that in every case there must be some monetary loss caused to the Government to bring home the charge against an officer. There can be instances where even without any defalcation or negligence or loss of any money, the conduct of the Government servant may be so reprehensible and an enquiry can be instituted against him under the provision of Rule 14 of the CCS(CCA) Rules.

Lastly, learned counsel for the applicant argued that the imposition of penalty of 100% and that too permanently was far in excess to the offence said to have been committed by the applicant. We cannot interfere with the quantum of the punishment awarded by the disciplinary authority. The Supreme Court in the case of Union of India Vs. Perma Nanda, 1989(2)SCC 177,has clearly laid down that the Tribunal has ordinarily no power to interfere with punishment awarded by competent authority in departmental proceedings on ground of the penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, mala fide or perverse. If the procedure was found to suffer from any illegality

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or invalidity, then the order imposing the punishment itself be set aside. However, since no such case is made out, there is no justification for the Tribunal to interfere with the punishment awarded.

In the present case, the charge against the applicant was that during the period from 22.10.1969 to 25.12.1973, he had incurred an expenditure of Roubles 30,905.15 in cash which exceeded his known sources of income by an amount of Roubles 14,791.16 (equivalent to Rs.1,29,860.93) which he could not satisfactorily account for and which he must have acquired through dubious/illegal means. This charge was established. The question which arises is how the applicant, who has his posting in a foreign country, incurred an expenditure far in excess of his known sources of income. If he could not explain it satisfactorily, then the charge against him would stick. This charge comes within the ambit of 'misconduct' within the purview of Rule 14 of the CCS(CCA)Rules. It is not for us in this Tribunal to appreciate the evidence that was before the Enquiry Officer to assess its evidentiary value. Similarly, the finding that the applicant was guilty of grave misconduct is also not open to challenge. This Tribunal will go into matter only when there is an error apparent on the face of the record or when there is an error in the procedure. We cannot substitute our views on the finding about the establishment of the charge of misconduct on the part of the applicant. The finding arrived at on this point has to be accepted.

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On the question of belated filing of this O.A., we do not think that it will serve the interest of justice to deny a hearing to the applicant. We have, therefore, heard the O.A. on the merits.

In view of the above, we find no merits in the contentions raised by the learned counsel for the applicant and the O.A. is accordingly dismissed.

There is no order as to costs.

(M.M. MATHUR) 12/7/90
MEMBER(A)

(AMITAV BANERJI)
CHAIRMAN

"SRD"

Pronounced by me in open Court today.

12/7/90