

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

Regn. No. OA-2379/90

Date of decision: 19.2.1993.

Shri K.G. Samnotra

.... Applicant

Versus

Union of India through
Secretary, Ministry of
Health & Family Welfare

.... Respondents

For the Applicant

.... Shri S.C. Gupta, Senior Advocate
with Shri M.K. Gupta, Advocate

For the Respondents

.... Shri P.H. Ramchandani, Sr. Advocate

CORAM:-

HON'BLE SHRI P.K. KARTHA, VICE CHAIRMAN(J)

HON'BLE SHRI B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(of the Bench delivered by Hon'ble Sh. P.K. Kartha

Vice Chairman(J)

The applicant, who retired from the post of Deputy Director in the National Malaria Eradication Programme, Delhi, ('NMEP' for short) on 31.8.1981, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

(i) To quash the impugned order dated 6.12.89

conveyed to him on 12.7.90 whereby his entire monthly pension had been permanently withheld;

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- (ii) to quash the disciplinary proceedings taken against him by issuing a charge-sheet on 25.3.1983 under the provisions of Rule 9 of the C.C.S.(Pension) Rules, 1972;
- (iii) to direct that he is entitled to all his pensionary benefits before the issuance of the impugned orders; and
- (iv) to grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

2. The present application was filed in the Tribunal on 14.11.1990, when the applicant was aged about 67 years. He is presently about 70 years old.

3. On 20.11.1990, when the application came up for admission, notice was issued to the respondents and an interim order passed directing that the respondents shall continue to make payment of pension to the applicant during the pendency of the present application. Thereafter, the interim order has been continued till the case was finally heard and orders reserved on 4.2.93.

4. We have gone through the records of the case ^{including the departmental file on the subject} and have

heard the learned counsel for both the parties. On his retirement on attaining the age of superannuation on 31.5.1981, the applicant was sanctioned full pension, gratuity and other retirement benefits as admissible under the Rules as there

was nothing wrong or irregular in his service record.

However, about two years after his retirement, the impugned charge-sheet was issued to him on 25.3.1983 which reads as follows:-

" Shri K.G. Samnotra, while working as Deputy Director (E) in the National Malaria Eradication Programme, Delhi during the year 1979, committed gross misconduct, in as much as he made the following irregularities in the purchase of huge quantity of Matakelfin tablets from M/s Walter Bushnell Pvt. Ltd., through the Medical Store Depot, Bombay:-

- (i) While he made a proposal to the Ministry of Health & Family Welfare, for purchasing the drug, through the M.S.D. (Bombay), he did not mention that the same was already being procured through the WHO.
- (ii) While indicating the approximate cost to be incurred in the purchase of the medicine he did not make the contents of the firm's letter dated 14.2.79 received by the NMEP available to the Ministry which could clarify the basis of the cost of the drug as quoted by the firm.
- (iii) He showed undue haste in processing the purchase and expediting payments to the firm.
- (iv) He had indicated the exact amount sanctioned by the Government (as per the rate quoted by M/s Walter Bushnell Pvt. Ltd.) to the MSD, (Bombay); this resulted in the purchase of the drug at the rate quoted by the firm itself.
- (v) He failed to bring the fact that the MSD (Bombay) could not observe the codal formalities, to the notice of the Ministry, when he came to know about it.

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Shri K.G. Samnotra by his above acts of omission and commission, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant contravening thereby the provisions of Rule 3.1 (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

5. Rule 9 of the C.C.S.(Pension) Rules, 1972 deals with the right of the President to withhold or withdraw pension. Sub-Rules(1) and (2) (b) (ii) of the said Rules which are relevant in the present context, provide, inter alia, as follows:-

(1) The President reserves to himself the right of withholding or withdrawing the pension or part thereof, whether permanently or for a specific period, and of ordering recovery from 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.

(2)(b) The departmental proceedings if not instituted while the Government servant was in service, whether before his retirement or during his re-employment -

(ii) ~~making himself guilty~~ shall not be in respect of any event which took place more than four years before such institution.

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6. The basic contention of the applicant is that the issue of the charge-sheet to him was wholly vexatious and frivolous. According to him, the event took place more than four years before the charge-sheet was issued to him on 25.3.1983. He has also contended that according to Rule 9, a pensioner cannot be penalised for any or every act of negligence/misconduct. He must be allowed to enjoy Rule 8 his retirement in peace and, therefore, the allows disciplinary proceedings to be taken against him only for misconduct or negligence which is grave. Unless the misconduct or negligence alleged can be held to be grave, no action under Rule 9 is permissible. The nature of the alleged misconduct and negligence is, therefore, justiciable in a Court of Law with a view to ascertaining as to whether it was really grave or not. According to him, there was no misconduct or negligence on his part as has been alleged in the charge-sheet. According to the respondents, the event referred to in the charge-sheet took place within four years before the institution of the charge-sheet. They have also contended that the applicant is guilty of gross misconduct.

7. During the hearing of the case, the learned counsel for the respondents produced a copy of the advice of the U.P.S.C. which had been consulted in the matter. Taking into account all the aspects relevant to the case, the

U.P.S.C. considered that the ends of justice in this case would be met if the entire monthly pension otherwise admissible to the applicant is withheld on a permanent basis and that the retirement gratuity admissible to him was also withheld.

8. In Nand Kishore Prasad Vs. the State of Bihar and Others, 1978 (2) SLR 46, the Supreme Court has held that there are two basic principles applicable to the disciplinary proceedings. The first principle is that such proceedings before a domestic Tribunal are of a quasi-judicial character. The minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence, i.e., evidential ~~xxxxx~~ material which ^{with} some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic enquiries. The second principle is that if the disciplinary enquiry has been conducted fairly without bias or predilection in accordance with the relevant disciplinary rules and the constitutional provisions, the order passed by such authority, cannot be interfered with in proceedings under Article 226 of the Constitution merely on the ground that it was based on evidence which would be insufficient for conviction of

the delinquent on the same charge at a criminal trial.

9. Relying upon the aforesaid decisions, the learned counsel for the respondents submitted that the Tribunal should not embark upon an appraisal of the evidence in the instant case.

10. Normally, a Court or Tribunal should not go into the evidence adduced in a departmental enquiry. In the instant case, however, we are of the opinion that the question whether the event which took place was within four years before the institution of the charge-sheet or not and whether the applicant was guilty of misconduct or grave misconduct, can be gone into by the Tribunal. In D.V. Kapoor Vs. Union of India and Others, AIR 1990, ²SC 1923, the Supreme Court has interpreted the provisions of Rule 9 of the C.C.S.(Pension) Rules, 1972. It has been held that the condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, and that "there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office.....Myriad situation may arise, depending on the ingenuity with which misconduct or irregularity was committed. It was not necessary to further probe into the scope and meaning

of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved". It was further observed that "the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in his office, subject of the charge. In the absence of such a finding, the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/-".

11. In *Union of India Vs. J. Ahmed*, 1979 (2) SCC 286, the Supreme Court has considered the ambit and scope of the expression 'misconduct'. It was observed that the conduct which is blameworthy for the Government servant in the context of Conduct Rules, would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. A disregard of an essential condition of the contract of service, may constitute misconduct. In *Streud's Judicial Dictionary*, the expression 'misconduct' has been defined as under:-

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgement, or innocent mistake, do not constitute such misconduct."

12. In Shri V.K. Gupta Vs. Union of India & Others, 1987 (4) A.T.C. 185 at 195-196, this Tribunal has observed that "Where there is a hierarchy of officers whose duties are defined, it is necessary to determine the extent of the responsibility of each and determine whether there was any failure to discharge the duties and responsibilities promptly and whether the failure amounted to misconduct or negligence. But because of the statutory embargo laid down by Rule 9 of the C.C.S.(Pension) Rules, no disciplinary proceedings can be initiated against a pensioner in respect of any event which took place more than four years prior to the initiation of such proceedings. The rule of limitation knows no equity." The rule-making authority has advisedly prohibited initiation of any proceedings against pensioners under Rule 9 in respect of any event which may have occurred more than four years prior to the initiation of the disciplinary proceedings so that they may live in peace after retirement. It was further observed that "Time, once it begins to run, runs remorselessly and inexorably both for the good, bad and the ugly and like death makes no distinction. While the public policy also dictates that public servants guilty of misconduct or negligence should be brought to book even after the retirement, the very same policy dictates that any such proceedings should be instituted within a period of four years. A Damocles' sword should not be hanging over them for an indefinite period."

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13. In the light of the aforesaid judicial pronouncements, we may consider whether the event in the instant case took place within four years before the institution of the disciplinary proceedings by issuing the charge-sheet on 25.3.1983 or whether it falls outside that limit.

14. In this context, the learned counsel for the respondents forcefully argued that all the events put together, should be looked into in order to see whether the bar of limitation would apply to the instant case. The learned counsel for the applicant submitted that this cannot be done.

15. M/s Walter Bushnel Private Ltd. wrote to the Director, NMEP, New Delhi, on 14.2.1979 soliciting the purchase of metakelfin for NMEP. It was stated that clinical trials were done in India by NMEP and the drug had been cleared. Metakelfin is a proprietary drug manufactured by the aforesaid firm. The letter of the firm was received in the office of the Director and was dealt with by the Deputy Director (Medical). After discussing the matter with the Deputy Director (Medical), the Director called the applicant for a discussion and instructed him to prepare a note for the Ministry of Health & Family Welfare for the procurement of 1 lakh doses of the metakelfin tablets. The applicant has stated that the Director had also specifically desired that the purchase should be finalised within the financial year which was to end on 31.3.1979.

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16. Accordingly, the applicant prepared a note and put it up for the approval of the Director on 13.3.1979. The Director returned the note to him with the following remarks:-

"Please discuss with Dr. A.P. Ray and put up".

17. Dr. A.P. Ray was the W.H.O. Coordinator specially posted in the NMEP. When the applicant gave his note on 13.3.1979 to Dr. Ray, he kept it with him and said that he would, [✓] ~~was~~ in turn, consult Dr. R.G. Roy, Officer on Special Duty in NMEP.

18. Both the W.H.O. Coordinator, Dr. A.P. Ray, and the O.S.D., Dr. R.G. Roy, were officers superior in rank to the applicant. They held mutual discussion after which the W.H.O. Coordinator, Dr. A.P. Ray, prepared his own note recommending a buffer stock of 1 lakh tablets for the North-Eastern zone. He handed over the said note to Dr. R.G. Roy, O.S.D., on 21.3.1979 and Dr. Roy submitted the same to the Director for approval. The Director approved the same on 22.3.1979. In the note of Dr. A.P. Ray, there is an endorsement by Dr. R.G. Roy, O.S.D. dated 21.3.1979 which reads as under:-

"I fully agree with the above note given by Dr. A.P. Ray. If Director approves, D.O.(E) may send the proposal to Shri Atri (if at all necessary). The other note is not necessary."

19. The other note referred to is the note dated 13.3.79 submitted by the applicant who was working as D.O.(E).

20. After the Director approved the proposal on the note, put up to him by Dr. A.P. Ray and Dr. R.G. Roy, the Director marked the file to the applicant for sending the necessary reference to the Ministry of Health & Family Welfare. Accordingly, the applicant prepared a note on 23.3.1979 on behalf of the Director and sent the same to the Malaria Cell of the Ministry. It has been stated in the note that it has the approval of the Director, NMEP.

21. The learned counsel for the respondents stated that in the aforesaid note dated 23.3.1979 sent to the Ministry of Health & Family Welfare, it has been stated that "We may, as an emergency measure, procure at least 1 lakh dosages of metakelfin. The estimated cost of this drug will be Rs.3.45 lakh plus taxes." It was also added that necessary funds existed in the current budget for 1978-79.

22. Subsequently, on 28.3.1979, Dr. R.G. Roy, O.S.D., wrote on the firm's original letter as follows:-

"In consultation with Dr. Ray, a draft note was given to D.D.(E) for the procurement of 1 lakh metakelfin. Permission of Ministry of Health, etc., might have been sought by now".

23. Dr. Ray had submitted the afore-mentioned note directly to the Director.

24. Thereafter, the Director called the applicant and marked to him Dr. Ray's note instructing him to follow up with the Ministry of Health.

25. The Malaria Cell of the Ministry of Health and Family Welfare desired to be informed of the following:-

"Is this drug cleared by the DC(I) and will it be possible to procure the drug within three days of the financial year?"

26. The Director (PH) of the Ministry marked this note to the Malaria Cell and the applicant gave the necessary clarifications on both the points, viz., that the drug had been cleared by the Drug Controller (India), and that it was possible to procure the material before the close of the financial year if the expenditure sanction was accorded the same day. This note was put up by the Malaria Cell to the said Director on 29.3.1979 and he accorded his sanction on the same date. The Director (PH) himself marked the note directly to the Under Secretary (Finance), who endorsed the proposal on 30.3.1979, subject to the availability of funds in the revised estimates of 1978-79 and, in turn, marked the note to the Deputy Secretary (Finance), who too accorded his approval on the same date and sent the note back to the Director (PH). Sanction order was issued on 30.3.1979 conveying the sanction of the President to the incurring of an expenditure not exceeding Rs.3,45,000/- for the procurement of 1 lakh dosages of Pyremethamine and Sulfalone tablets (metakelfin) through Medical Stores Depot, Bombay, during 1978-79, subject to the observance of the usual codal formalities for use in the

National Malaria Eradication Programme. A copy of the sanction letter was also endorsed to the Deputy Assistant Director General (MS), Government Medical Stores Depot, Bombay, which was to make the purchase in question on Government's behalf.

27. Thus, it will be seen that the Ministry of Health and Family Welfare granted sanction for the purchase. The Director (PH), Ministry of Health & Family Welfare wanted to ensure that the purchase was made before the financial year expired, i.e., 31.3.1979, which meant, within 24 hours of the sanction. The note prepared by the applicant was dealt with by Dr. A.P. Ray, W.H.O. Coordinator, at the NMEP and he had done so after consulting Dr. R.G. Roy, O.S.D. in NMEP. Dr. Ray had, in his note, commanded a buffer store of 1 lakh tablets for the North-Eastern region. The M.S.D., Bombay, made the necessary purchase, forwarded the bill duly certified by them and payment was also made during the financial year. The applicant has stated that the proposal for the purchase of the medicine in question was examined in all quarters and at all levels in the NMEP, Ministry of Health & Family Welfare, including the Finance Division, by the O.S.D., N.M.E.P. as also by the W.H.O. Coordinator posted there.

28. The learned counsel for the applicant submitted that a hierarchy of officers was involved in the purchase of medicine in question. The note submitted by the applicant on 13.3.79 was not sent to the Ministry of Health & F.W. and instead, a

separate note was sent to the Ministry under the signature of the applicant on 23.3.1979 with the approval of the Director, NMEP. If 13.3.1979 and 23.3.1979 are the crucial dates, the event had taken place more than four years before the issue of the charge-sheet on 25.3.1983. As against this, the learned counsel for the respondents submitted that the applicant had answered the queries raised by the Ministry of Health & F.W. on 29.3.1979 and it was only thereafter that the sanction letter was issued on 13.3.1979. If 29.3.1979 and 30.3.1979 are the crucial dates, the event can be treated to have taken place within four years before the issue of the charge-sheet on 25.3.1983. In our considered opinion, as far as the applicant was concerned, the event took place more than four years before the issue of the charge-sheet as he had submitted ^{his} ~~a~~ note on 13.3.1979, which was replaced by another note prepared by other officers. On 23.3.1979, the applicant had only forwarded the note to the Ministry of Health & F.W. with the approval of the Director.

29. We are also of the opinion that there is no finding of grave misconduct or negligence on the part of the applicant. It was not a one-man show and it is hard to believe that the applicant has misled his superior officers ^a ~~and~~ in the matter of purchasing the medicine in question. When there was a hierarchy of officers who were involved in processing the case of purchase of the medicine in question, it would be unfair and ^{or}

unjust to fix the responsibility solely on the applicant, assuming that the purchase ought not to have been made at that relevant point of time. Assuming that there was an error of judgement on the part of the applicant, he cannot be held guilty of gross or grave misconduct or negligence.

30. In the conspectus of the facts and circumstances of the case, we are of the opinion that the impugned order dated 6.12.1989 passed by the President imposing on the applicant the penalty of withdrawing of the entire pension permanently, is not legally sustainable. We, therefore, set aside and quash the same. The applicant would be entitled to full ~~and all other retirement benefits~~ pension as if the impugned order had not been passed. The interim order passed on 20.11.1990 and continued thereafter, is hereby made absolute. There will be no order as to costs.

B.N. Dhondiyal
(B.N. Dhondiyal) 19/2/93
Administrative Member

19/2/93
(P.K. Kartha)
Vice-Chairman(Judl.)