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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.2416/90

2nd. Summary 1976

Hon'ble Shri N.V. Krishnan, Acting Chairman

Hon'ble Smt. Lakshmi Swaminatha, Member (J)

Shri H.K. Agarwal,
s/o late Shri Babu Ram,
r/o 67-B, Richpal Puri,
Ghaziabad,
U.P.

... Applicant

By Advocate: Mr S.C. Luthra.

Vs.

Union of India,
through
Secretary,
Govt. of India,
Ministry of Personnel,
Public Grievances and
Pensions,
North Block,
New Delhi.

... Respondents

By Advocate: Shri M.K. Gupta

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ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant is aggrieved by the order dated 20.7.89 passed by the President whereby 20% of his monthly pension otherwise admissible to him has been withheld for a period of 10 years (Annexure A-1). He is also aggrieved that review petition filed by him against this order dated 29.9.89 has not still been replied to (Annexure A-2).

2. Briefly stated the facts are that the applicant was working as Assistant from 1966 with respondents and was to superannuate on 31.12.87. According to him because of the vindictive attitude of some of his superiors who had become inimical towards him, he sought premature retirement, which was agreed to by the Government in its order dated 14.12.82 under FR 56(k) w.e.f. 15.12.82 (Annexure A-3). He states that on 24.1.78 the CBI had carried out search at his residence and office desk while investigating a case against a firm M/s. Kartar Industries, Ghaziabad, U.P. He was put under suspension w.e.f. 1.8.79 on the ground that a case against the applicant in respect of a criminal offence was under trial (Annexure A-3). The suspension was revoked by an order dated 29/31.8.81 (Annexure A-4). On 14.12.82 while the Government conveyed



their decision to accept his request for premature retirement, on the same date he was also served with a memo. initiating disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965. The articles 1 and 2 of the chargesheet are reproduced below-

Article I

Shri H.K. Agarwal, while functioning as an Assistant in the Department of Personnel and AR (MHA) at New Delhi during the year 1972, obtained from the office of the Joint Chief Controller of Exports and Imports, New Delhi, two Letters of Authority in favour of M/s. Chandan Industrial Corporation, Bombay in respect of two import licences issued to M/s. Indian Drilling Parts Manufacturing Works, 14, Industrial Area, Chandigarh.

Shri H.K. Agarwal, by his above act, exhibited conduct unbecoming of a Government Servant and thereby contravened rule 3(1)(iii) of the CCS(Conduct) Rules, 1964.

Article II

Certain documents recovered during the searches conducted at the residence of Shri H.K. Agarwal on 24.1.78 and at his office on 24.1.78, indicated that Shri H.K. Agarwal was engaged in the private business of running the firms himself or he was processing the work for other firms for consideration.

Shri H.K. Agarwal by his above acts, exhibited conduct unbecoming of a Government servant thereby contravening Rule 3(1)(iii) of the CCS(Conduct) Rules, 1964.

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3. The applicant alleges that the charges ~~have been~~¹³ levelled against him are malafide, unfounded and baseless. He states that the Article I pertains to events which occurred more than 10 years back in 1972 and the second article relates to events which took place 5 years back in 1978. One of the grounds taken by the applicant is that these 2 charges ranging over a long period are unconnected and cannot be clubbed together. He relies on Tej Chand Vs. UOI 1994(27)ATC 673.

4. The second objection taken by Shri Luthra, learned counsel for the applicant is that the CBI officer who had conducted the enquiry in 1978 and 1972 was also appointed as Presenting Officer which objection he has taken in the enquiry itself which was in contravention of the Government's instructions on the subject as contained in DGP&T letter No.

6/42/63-DISG dated 28.10.63 which lays down as follows-

"....There is no bar to an SPE officer acting as a departmental witness. The only point to be ensured is that he is not appointed to present the case on behalf of the prosecution."

The applicant submits that the disciplinary proceedings stand vitiated on account of the fact that the charge number 1 which pertains to events occurring in 1972 was actually inquired into in 1985-86 without there being any explanation for this inordinate delay. He relies on State of M.P. Vs. Bani Singh and another ATR 1990(1) SC 581. His next allegation is that the

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complete

disciplinary enquiry has been conducted in violation of the provisions of the note below rules 14 and 15 of the CCS(CCA) to which Rules accordingly no new evidence shall be permitted or called for to fill up any gap in the evidence. He submits that in sharp contradiction to this rule, the Enquiry Officer permitted the prosecution to produce additional documents and additional ^{on 13/11/84} witnesses, as many as three different occasions in spite of the strong opposition. The details of these incidents are that, (i) on 30.11.84, two additional files were allowed to be produced vide ordersheet dated 30.11.84, (2) on 14.5.85 two additional witnesses were allowed to be produced and (3) on 2.7.85 two more additional witnesses were allowed to be produced (Annexure A-13, 14 and 15). ^{thus 13/11/84} By changing the ordersheets, it shows that the Enquiry Officer was prejudiced and he did so on the request of the Presenting Officer(Annex.A-16). Similarly, after ordering that one of the prosecution witnesses Shri J.D. Misra would be dropped by his order dated 14.5.85, ^{the IO} latter on by order dated 24.11.85 allowed the same witness to be examined. He also alleges that this was done to fill up the gaps as noticed by the Enquiry Officer as already mentioned above. The applicant also alleges that he was not allowed to cross-examine the prosecution witnesses and that is why on 21.11.85, he, accompanied by his defence assistant, walked out of the

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disciplinary proceedings. The applicant also submits that in the list of documents the first charge was sought to be supported by a letter dated 14.8.72 said to have been written by Shri M.L.Jain to the Joint Chief Controller of Exports and Imports "authorising Shri H.K.Aggarwal"(applicant) to secure the letter of authority. He, however, states that this letter was not produced when demanded by the applicant. He states that although the Enquiry Officer had stated that no reliance will be placed on this letter he had in fact referred to this in the report(Annexure A-19).

5. The applicant submits that no punishment has been awarded to him by the criminal court. Hence the orders dated 29.3.90, passed by the respondents regarding treatment of his period of suspension cannot be connected with the departmental proceedings. He claims that the period of suspension ought to have been considered as period spent on duty.

6. The applicant has also alleged that the disciplinary proceedings are malafide because the order, accepting his voluntary retirement was passed by the President whereas the charge-sheet has been issued by a lower authority, i.e., the Secretary to the Govt. of India, which is contrary to the rules.

7. The respondents have filed a reply in which they have controverted the above allegations. They have stated that the applicant has himself admitted the recovery of certain documents from his house/office by the C.B.I. although he had denied the charge that he was engaged in private business of running the firms himself or that he was engaged in the procuring of other firms for consideration. They have stated that

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the chargesheet issued on 14.12.82 had been inquired into as per the rules. They state that the allegations levelled against the Enquiry Officer are baseless and the same had been considered and rejected. They state that the applicant was allowed to retire voluntary w.e.f. the afternoon of 15.12.82 by order dated 14.12.82 but before this date he had been chargesheeted on 14.12.82. The rule relied upon by the applicant regarding appointment of a CBI officer as a Presenting Officer is not a general Govt. rule and as such there is no illegality in the procedure.

8. Shri M.K. Gupta, learned counsel for the respondents has also pointed out that the additional witnesses as well as the files which had been called in the departmental proceedings were done by the Enquiry Officer after due consideration of the facts and it was not as a matter of filling up gaps. He has referred to the orders passed by the Enquiry Officer dated 14.5.85 and 2.7.85 (Annexure 14, 15 and 16). In the case of calling the witness, Shri J.D. Misra it was first recorded that his address was not available with the Presenting Officer and so it was decided to drop him. Later by order dated 24.11.85 he was examined, and there was no irregularity.

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9. We have carefully considered the arguments of both the learned counsel, pleadings and the records of this case.

10. Regarding the first objection that the Articles of Charge range over a long period, we are of the view that this, by itself, does not vitiate the memorandum of charges. It is admitted that a number of documents were recovered during the search conducted at his residence and office on 24.1.1978 which related to the charges in Article 2. The respondents have stated that the records recovered from the custody of the applicant pertained to various firms and were connected with the matters relating to export and import. Article I of the Charge also deals with certain letters obtained by the applicant from the Office of the Joint Chief Controller of Exports and Imports in respect of import licences issued to another Company. We accordingly do not find any illegality in clubbing these two charges together as they are somewhat connected and this ground is rejected.

11. The second ground is based on the instructions contained in the DGP&T letter dated 28.10.1963 that the C.B.I. Officer should ~~not~~ also be appointed as the Presenting Officer. This instruction being an instruction of the DGP&T cannot be considered to be a general instruction of the Govt. of India applicable to the respondents in this case. Hence this objection is/ also rejected.

12. Regarding the delay in instituting the charge under Article 1, the question of delay has to be seen in the particular facts and circumstances

of each case (see State of M.P. Vs. Bani Singh (1990(Supp) SCC 738). The applicant has himself stated that the charge No.1 pertained to the events occurring in 1972 and was inquired into in '1985-86' which is factually incorrect. In this case, the applicant had admitted the seizure of various records, which were mentioned in the imputation of charges. The C.B.I raid on his office/house was conducted in 1978 and the chargesheet has been filed on 14.12.1982. Considering the fact that the disciplinary proceedings had been initiated in 1982, that is, within four years and the nature of the charge, we are of the view that this cannot be considered as inordinate delay or a sufficient ground justifying the quashing of the chargesheet or the Enquiry Officer's report dated 30.9.86.

13. The applicant has alleged that while the impugned order dated 20.7.89 is passed by the President imposing on him the penalty of withholding of 20% of his pension for 10 years under Rule 9(2) of the CCS(Pension) Rules, 1972, the impugned order dated 14.12.82, that is the memorandum of charges in the disciplinary proceedings has been given only by the Secretary to the Govt. of India and not by the President and hence invalid. We find no basis for the allegations because under Rule 9 of the CCS(Pension) Rules, the order has been correctly passed by the President who is the competent authority. Similarly, under Rule 12 of the said Rules, which prescribes the disciplinary authorities, the chargesheet issued to the applicant has also been correctly initiated by the competent disciplinary authority. Therefore, this ground urged by the applicant is also without merit and is rejected.

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14. The other major argument of the learned counsel for the applicant is that the Inquiry Officer has not conducted the proceedings in accordance with the Rules and that he was biased. He pointed out that in the list of witnesses, one Shri Inder Singh, who had been cited as witness in respect of Charge No.2 was examined in connection with Charge No.1. He alleges that Shri Om Parkash, who was not given in the list of witnesses was later added by the Inquiry Officer. Similarly, one Sitaraman, who was also not cited as a witness was also called and examined. He further submits that two files, not mentioned in the list of documents, were brought on record. Another infirmity, according to the learned counsel for the applicant is that the letter dated 14.8.72 which is listed in the list of documents attached was not produced but the Inquiry Officer relied upon this document, which is not permissible. He also draws attention to the Inquiry Officer order (Annexure A-14) in which the Inquiry Officer had recorded that he has decided to drop one witness, namely, Shri J.D. Mishra but later on this witness was examined. He also refers to the evidence of SW-8 Shri Om Parkash Dy. Chief Controller, Exports & Imports. The contention of the learned counsel is that while this witness had seen the applicant only on one occasion that is on 14.8.1972, he was able to identify the applicant whereas he has been unable to do so regarding others who visited him on that day.

15. While It is true that the Inquiry Officer in

his order-sheet dated 14.5.85 has stated that he has been informed by the Assistant Collector of Central Excise Ghaziabad that Shri J.D.Mishra, Inspector is not posted in his division and no other address is available, ^{and} he has decided to drop him from the list of witnesses. However, later by order-sheet dated 26.11.1985(Ann:A-17), he has referred that 10 witnesses, including Shri J.D.Mishra who were summoned for evidence have turned up on that date. He has also recorded that the evidence of Shri Om Parkash, Joint Chief Controller of Imports and Exports was also examined by the Presenting Officer but his cross-examination by the Defence Assistant could not be completed as the delinquent as well as the Defence Assistant left the room of the Inquiry Officer without his permission.

16. From the records of the Inquiry Officer, it is, therefore, seen that not only Shri J.D.Mishra and Shri Om Parkash were examined, ^{but} the applicant has also cross-examined them, except Shri Om Parkash, as stated above. ^{On the earlier date, the} Inquiry Officer had recorded/decided to drop Shri Mishra because his address was not available with him, ^{but that} does not preclude the witnesses being examined, when he actually presents himself before the Inquiry Officer. The applicant has also been given a reasonable opportunity to cross-examine the witness. Having been given a reasonable opportunity to ^{be} present and examine this witness, therefore, we see no illegality ~~or~~ infirmity in the procedure adopted by the Inquiry Officer in examining either Mr J.D.Mishra or Mr Om Parkash.

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17. The Inquiry Officer in his order dated 30.11.1994 has recorded that the Presenting Officer had argued that two licencing files are very material for proving the charges under Article 1 and he, therefore, requested that they may be included. The Defence Assistant had submitted that this request should not be accepted because he is trying to fill up the gap in the prosecution as from the list dated 14.8.72 mentioned in Annexure-2, these two files are non-existent. Filling up the gap is not permitted in view of the note below Rule 14(15) of the CCS(CCA)Rules. The Inquiry Officer has recorded that after considering ^{the} arguments of both the parties and in the interest of justice there should be no objection to the production of the two licencing files and this does not amount to the filling up of the gap in the evidence as pointed out by the disciplinary authority. Thereafter, the two files were produced.

18. Rule 14(15) of the CCS(CCA) Rules provides as under:

"14(15). If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further

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evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiry authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interest of justice.

NOTE:- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally. * (Emphasis added)

The above rule permits the Inquiry Officer

(i) to allow the Presenting Officer to produce evidence, not included in the original list given to the government servant or (ii) ~~or~~ ^{him} self call for new evidence or re-call and re-examine any witness after giving an adjournment for three clear days and giving an opportunity to the government servant to inspect the documents before they are taken on record or

(3) allow the Government servant to produce new evidence. The objection taken by Shri Luthra is only that by calling these two licencing files, which were admittedly not included in the list furnished to the Government servant, ^{it was} to fill up the gap in the evidence. After perusing the records and the order of the Inquiry Officer, we find no justification in the stand taken by the learned counsel as Rule

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14(15) itself permits the Inquiry Officer to call for new evidence, which in this case has been stated to be in the interest of justice. We, therefore, do not find this action of the Inquiry Officer is open to challenge on this ground, as his action is covered under the Rules. Similarly for the above reasons, there is no basis for the allegation that the E.O. was biased.

19. Certain other objections had also been taken by the applicant regarding the nature of evidence given by S/Shri Om Parkash and Sitaraman on the ground that how it is possible for the first witness to remember the applicant after seeing him only once in 1972 and in the case of the second witness who says that he was unable to identify his signatures. These allegations are purely in the realm of appreciation of evidence by the competent authority and it is not for this Tribunal to re-assess the evidence and come to a different conclusion or substitute its own conclusion for that of the competent authority unless it is arbitrary or perverse in very exceptional cases.

20. The other objection taken by the applicant is that the President, before passing the impugned order dated 20.7.1989 has not recorded that the retired government servant is guilty of grave mis-conduct.

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He further submits that his reply dated 6.5.1987 was also not considered before passing the severe punishment. In this regard, the respondents on the contrary submitted that the disciplinary authority had in fact taken a very lenient view to impose only a cut of 25% of pension for a period of 10 years though the U.P.S.C. held the view that the charges against the applicant were duly proved and were of serious nature and recommended that he should be issued a fresh notice directing him to explain as to why the entire amount of his pension and gratuity otherwise admissible should not be ordered to be withheld on permanent basis. This advice of the UPSC was, however, not accepted, taking a lenient view as mentioned above. In the impugned order it is stated, inter alia, that the President had considered the report submitted by the Inquiry Officer and after taking into consideration the facts and circumstances of the case he came to the conclusion that the articles of charge framed against the applicant were fully proved and that he is guilty of grave misconduct.

21. The applicant's counsel had also urged during the hearing that he should not have been punished further after the court had let him off under the Probation of Offenders Act. The counsel fairly admitted that in the

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criminal case, which was instituted against him, for which he was placed under suspension by order dated 1.8.79, which was later revoked on 31.8.81 (Annexures 4-5),

Although the court had found him guilty, he had let him off under the ^{Probation of} Offenders Act, being his first offence.

The fact of being let off under the Probation of Offenders Act does not prevent action being taken against him under Rule 9.

22. The last ground was that by the order dated 14.12.1982 (Annexure 3), the applicant's request for voluntary retirement (Annexure A-6) had been accepted and he was permitted to retire from government service under F.R. 56(k) w.e.f. the afternoon of 15.12.1992.

The applicant's contention is that having accepted his retirement by the order of 14.12.1992 the respondents could not then issue the chargesheet by order of even date when he was no longer in service. He submits that this is malafide exercise of power as the respondents need not have accepted his notice for voluntary

retirement made Rule 48-A of the CCS(Pension) Rules but having done so, they could not legally issue the memorandum of charges on that very day i.e. on 14.12.92 for events occurring more than four years earlier. This argument again cannot be accepted when the chronology of events are seen. The order permitting the applicant to retire from the government service under FR 56(k)

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Was to take effect from the afternoon of 15.12.82.

Therefore, he was still in service on 14.12.1982 when the chargesheet was issued to him. We are unable to construe that Rule 9 cannot be ~~invoked~~ ¹³ in a case where a person has been permitted to retire voluntarily.

Under Rule 9 of the CCS(Pension) Rules 1972, the disciplinary proceedings which were pending can, therefore, be continued even after the date of his retirement. Having regard to the facts and the provisions of Rule 9, therefore, there is also no bar to the departmental proceedings being continued against the petitioner for events which took place more than four years prior to the institution of the departmental proceedings which have actually been instituted prior to his date of retirement. Thus the order has been validly passed by the President under Rule 9.

23. It is well settled law that the jurisdiction of the Tribunal to interfere with the disciplinary matters cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or the competent authority where they are not against the Rules or arbitrary or utterly perverse (see Union of India v. Permanent AIR 1989 SC 1185, Govt. of Tamil Nadu v. Raja Pandian AIR 1995 SC 561)

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24. The President has passed the impugned order dated 20.7.89 after due consideration of the facts and coming to the conclusion that the applicant is guilty of grave misconduct and after consultation with the UPSC. While the UPSC had opined that the entire monthly pension and gratuity should be withheld on a permanent basis due to the gravity of the charges proved, the President had only passed the order of withholding 20% of the pension for 10 years. The order can in no way be faulted because the rules/principles of natural justice have been fully complied with in holding the disciplinary proceedings and the conclusions are reasonable and within the competence of the disciplinary authority.

25. For the reasons given above, we find no merit in the applicant's claim or any justification warranting interference with the conclusions arrived at by the competent authority in the disciplinary proceedings. The impugned order passed by the President under Rule 9 of the CCS(Pension) Rules is legal and valid.

26. In the result, the application fails and is dismissed, leaving the parties to bear their own costs.

Lakshmi Swaminathan (Smt. Lakshmi Swaminathan) *N.V.Krishnan* (N.V.Krishnan)

Member (J)

Acting Chairman

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