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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 138/2004

New Delhi this the 23rd day of September, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.
Hon'ble Mr. S.K. Naik, Member (A)

Shri S.K. Babbar,
G-14/4, Malviya Nagar,
New Delhi-110017.

... Applicant.

(By Advocate: Shri O.P. Gehlaut)

Versus

1. The Union of India through
the Secretary,
Ministry of Home Affairs,
Govt. of India, Central Secretariat,
New Delhi.

2. Govt. of NCT of Delhi through
The Chief Secretary, Govt. of NCT of Delhi,
Delhi Govt. Secretariat,
Player's Building, I.P. Estate,
New Delhi-110022.

... Respondents.

(By Advocates : Shri B.K. Berera for Respondent No. 1 and Rishi Prakash
for Respondent No.2)

ORDER

Justice V.S. Aggarwal:

The applicant, Shri S.K. Babbar, by virtue of the present application seeks to quash the penalty order dated 8.9.2003 besides the inquiry report of 7.2.2000. Needless to say that vide the impugned order passed, 10% cut in the pension payable to the applicant was imposed for a period of five years.

2. Some of the relevant facts are that the applicant was working as Assistant Sales-Tax Officer in Ward No. 31. He had been served with the following charges:



"That the said Shri S.K. Babbar while functioning as ASTO in Ward-31 committed misconduct in as much as he has granted registration to M/s Krishan Kumar & Company, 140/1, East Moti Bagh, Sarai Rohilla, Delhi without noticing the malafide intention of the said dealer and also without obtaining the complete registration enquiry report from his lower functionaries. He has also failed to verify the authenticity of the copies of the documents from the original ones during the course of registration proceedings. Since the dealer was engaged in nefarious activities right from the beginning, he had caused a revenue loss of about Rs.8.00 lacs which was noticed on the basis of the up-to-date assessments of the dealer.

Thus, Shri S.K. Babbar had shown negligence and dereliction of duty in the disposal of the applications of the dealer for grant of registration and had also failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964".

3. The Inquiry Officer had been appointed and he gave the finding that the applicant gave registration to M/s Krishan Kumar & Co. without noticing the mala fide intentions and without obtaining complete registration report from his subordinate functionaries to establish the genuineness of the dealer. He had accepted the surety of M/s Dinesh Metal Industries without tallying the signatures of the surety. Before granting the registration to M/s Krishan Kumar & Co., he did not verify the authenticity of the documents and in this process because of his lapse, a loss of more than Rs.5 lacs was caused to the Government revenue.

4. The Union Public Service Commission was also consulted and thereupon the disciplinary authority imposed the penalty of cut of 10% in the pension of the applicant for a period of five years.

5. At this stage, it is relevant to mention that the inquiry had started while the applicant was in service but had continued after his superannuation.

6. The applicant assailed the said order on various pleas, including (a) the condition precedent that there has to be a grave misconduct is not satisfied; (b) the Inquiry Officer did not ask the applicant if he would like to



examine himself; (c) there is inordinate delay in initiation of the inquiry and completion of the same; (d) the findings were contradictory and, therefore, cannot be sustained; and (e) it could be an error of judgment and there cannot be a grave misconduct attributed to the applicant.

7. The application has been contested.

8. It becomes unnecessary for us to go into the other relevant factors because on the first argument, the application is liable to succeed. This is a procedural lapse and, therefore, we are confining ourselves to the said controversy.

9. The plea raised is that in terms of sub-rule (1) of Rule 9 of CCS (Pension) Rules, 1972, there is no finding recorded that there was a grave misconduct on the part of the applicant and in the absence of the same, cut in the pension could not have been imposed. In reply thereto, the learned counsel for the respondents urged that the Union Public Service Commission had been consulted. It had opined that the charges against the applicant constitute grave misconduct and once such a finding has been recorded by the Union Public Service Commission, it should follow from the aforesaid that the necessary conditions in this regard of sub-rule (1) of Rule 9 of the CCS (Pension) Rules, 1972 unfold themselves in the following words:

“9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity 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 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 pensions shall not be reduced

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below the amount of rupees three hundred and seventy-five (Rupees one thousand two hundred and seventy-five from 1-1-1996 – see GID below Rule 49) per mensem”.

Perusal of the quoted portion of sub-rule (1) of Rule 9 of the CCS (Pension) Rules, 1972 leaves no doubt that the right to withhold the pension or impose a cut in the pension in full or in part vests in the President. Besides other conditions, it has to be satisfied that the pensioner has been found guilty of grave misconduct or negligence during the period of service. This finding has to be recorded by the President. Therefore, it is not gainsaid to assert that the Union Public Service Commission had opined in this regard.

10. The Union Public Service Commission, though a constitutional body, is only an advisory recommendatory body. The findings are not binding. It is unnecessary, therefore, for the Government to examine the nature of misconduct and negligence and record a finding that it is a grave misconduct or negligence before a cut in the pension in this regard can be imposed. The opinion of the Union Public Service Commission is not a substitute for the findings by the disciplinary authority.

11. We are fortified by the decision of the Supreme Court in the case of D.V. Kapoor Vs. Union of India & Ors. (AIR 1990 SC 1923). In the said case, pending disciplinary proceedings, Shri D.V. Kapoor had sought voluntary retirement. He was allowed to retire with a rider that the disciplinary proceedings would continue under Rule 9 of the CCS (Pension) Rules, 1972. One of the questions that came up for consideration before the Supreme Court was whether it is necessary that there could be a finding to the effect that the applicant is guilty of grave misconduct or negligence? The answer was in the affirmative. We take liberty in reproducing the said finding:

“5.....The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined


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in rule 8 (5), explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situation may arise depending on the ingenuity with which misconduct or irregularity was committed. It is 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 is suffice that charges in the case are that the appellant was guilty of willful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the Office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it is not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.


6. As seen 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 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/-“.

This makes the position clear as there is no over-emphasis and the aforesaid decision binds this Tribunal. In the present case, there is no finding recorded by the disciplinary authority that the applicant was guilty of grave misconduct or negligence. In the absence of such a finding, the impugned order cannot be sustained.

12. Resultantly, we allow the application and quash the impugned order imposing the penalty with a liberty to pass a fresh order, if deemed appropriate, in accordance with law.


(S.K. Naik)
Member (A)

'SRD'


(V.S. Aggarwal)
Chairman