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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2783/2004

This the 23rd day of August, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

K. K. Agarwal,
Retired Chief Engineer,
Central Water Commission,
R/O 41, Engineers Enclave,
Pitampura, New Delhi-110034.

... Applicant

(By Shri K. L. Bhandula, Advocate)

versus

1. Union of India through
Secretary, Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110001.
2. Chairman,
Central Water Commission,
Sewa Bhawan,
New Delhi-110066.
3. Pay & Accounts Officer,
Ministry of Finance,
Department of Expenditure,
Central Pension Accounting Office,
Trikoot-2, Bhikaji Cama Place,
New Delhi-110066. ... Respondents

(By Shri Amit Anand, Advocate)

O R D E R (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

By virtue of this OA has been assailed respondents' orders dated 14.8.2003 (Annexure-I) whereby the penalty of 20% cut for a period of five years from the monthly pension of applicant has been imposed with immediate effect in disciplinary proceedings initiated against him on 20.9.2000 under rule 14 of the CCS (CCA) Rules, 1965. It has been stated

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in the OA that applicant had made representations against the aforesaid orders on 22.4.2004 and 14.8.2004 which have not been disposed of. Applicant has sought quashing of the impugned orders, or alternatively, reduction in the cut in pension treating 20% cut as a severer penalty. Applicant has also sought that commutation value of pension should be calculated on the basis of the original provisional pension and not after imposition of cut in pension.

2. The following charges had been levelled against applicant:

“ARTICLE-I”

That the said Shri K.K. Agarwal, Chief Engineer, Central Water Commission, while working as Superintending Engineer, Lower Ganga Circle, CWC, Maithon during the year 1993 committed serious irregularities in the process of recruitment of Seasonal Khalasis and ordered drawal of wages of three Seasonal Khalasis who weretaken on duty without any order of appointment, in an irregular manner.

By his above said acts, Shri K.K. Agarwal exhibited lack of integrity, devotion to duty and behaved in a manner unbecoming of a Government Servant in contravention of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That while functioning as chief Engineer, Lower Ganga Basin, Central Water Commission, Patna during the year 1998, the said Shri K.K. Agarwal committed serious irregularity by way of recommending five ineligible candidates for appointment as Seasonal Khalasis during the flood season of 1998.”

It was alleged that by the acts stated above, applicant had exhibited lack of integrity, devotion to duty and behaviour unbecoming of a Government servant in contravention of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

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3. The learned counsel of applicant questioned respondents' action and impugned orders on the basis of the following contentions:

- (1) The alleged irregularities in the process of recruitment of Seasonal Khalasis and appointment of ineligible candidates as Seasonal Khalasis during 1993 and 1998 were committed by applicant's juniors while applicant was a senior officer functioning as Superintending Engineer and as such he had no role in the process of recruitment of Seasonal Khalasis.
- (2) The disciplinary authority has followed the advice of UPSC without application of mind and imposed a severer penalty than what was originally contemplated.
- (3) While the impugned orders state that the penalty should be put into effect with immediate effect, i.e., from the date of the impugned orders (14.8.2003), respondents have made it effective retrospectively from 1.5.2002, i.e., from the date of retirement of applicant whereby he has been caused a great financial loss inasmuch as the commutation of pension has been calculated by respondents after imposition of cut in pension instead of on the basis of the original pension. The commutation value should have been computed on the basis of commutation value of Rs.4110/- instead of Rs.3288/-.

4. The learned counsel of respondents, at the outset, took exception to non-availment of all the remedies available to applicant. The learned counsel pointed out that applicant did not file any revision/review against the impugned orders dated 14.8.2003. Thus in terms of Section 20



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of the Administrative Tribunals Act, 1985, the present application could not be admitted. He further pointed out that applicant has not filed even an application for condonation of delay in filing the OA. These objections have not been responded to by applicant in the rejoinder except that the learned counsel of applicant stated that as the penalty orders were passed by the President, no appeal/revision lies against such orders. It is true that rule 22 of the CCS (CCA) Rules provides that no appeal shall lie against an order made by the President, however, rule 29-A has been introduced in the said Rules specifying the powers of the President to make a review of any orders passed including an order passed in revision under rule 29. Applicant has not stated to have made any request to the President for reviewing the impugned orders. However, he had made a few representations to the authorities. Applicant has also not made any application for condonation of delay in filing the OA. While the impugned orders were passed on 14.8.2003, the OA has been filed on 17.11.2004, i.e., beyond the limitation of one year prescribed under Section 21 of the Administrative Tribunals Act, 1985. However, we proceed to examine whether there is substantial merit in the OA.

5. As to contention made on behalf of applicant that irregularities in recruitment and appointment of seasonal Khalasis were committed by his subordinate officers and not him, learned counsel of respondents submitted that although applicant's junior officers were competent to make such appointment, applicant himself requisitioned names from Employment Exchange and formulated panels and directed subordinate officers to issue appointment orders. Thus applicant's stand is absolutely baseless.

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6. The learned counsel of respondents contended that the President had considered the enquiry report, advice of the UPSC and the relevant records of the case. Looking to the gravity of the misconduct of applicant, the present penalty, which is commensurate with the misconduct of applicant, has been imposed. Therefore, the contention made on behalf of applicant that there was no application of mind by the President while passing the impugned orders is not correct.

7. Learned counsel of respondents then stated that as per relevant rules commutation of pension has to be related to reduced pension and not original pension, thus respondents have not committed any illegality in doing so.

8. We have considered all the contentions made on behalf of the parties and the entire material available on record.

9. The contention made on behalf of applicant that irregularities in the process of recruitment of Seasonal Khalasis had been committed by applicant's juniors and not the applicant himself as Superintending Engineer, is not borne out from the records of the case. The power of appointment of Seasonal Khalasis vested with the Executive Engineer. The records of the enquiry reveal that applicant himself in 1993 had invited names of eligible candidates for filling up one post of work charged Seasonal Khalasi each in Lower Ganga Division, Berhampore and Damodar Division, CWC, Asansol from the Employment Exchange, Berhampore, Sindri (Dhanbad) and Dhumka vide requisitions dated 30.6.1993 and 13.8.1993 respectively. These requisitions were made by applicant on behalf of the concerned Executive Engineers. It has not been denied that applicant had not received any proposals from the concerned

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Executive engineers for filling up these posts. While no response was received from Employment Exchanges, Sindri and Berhampore, the Dhumka Employment Exchange sponsored the names of five candidates. These candidates were interviewed on 1.9.1993 without having issued any call letters. Though these five candidates were sponsored by Employment Exchange for filling up one post of Seasonal work charged Khalasi in the Damodar Division, yet all these candidates were included in the panel which was forwarded at the behest of applicant to the Executive Engineer, Berhampore Division with the request to issue of offer of appointments to these candidates. These candidates were appointed. However, on a protest of the employees' union these appointments were cancelled later on. These very five candidates were later on appointed on recommendation of applicant in June, 1998. There is no doubt that applicant had recommended appointment of certain candidates as Seasonal Khalasis beyond his powers. He was not competent to appoint or recommend these candidates as Seasonal Khalasis. He had usurped the powers of Executive Engineers in this regard. Contention made on behalf of applicant that the irregularities were committed by his juniors has, therefore, to be rejected straightway.

10. While it has been stated on behalf of applicant that the disciplinary authority had followed the advice of UPSC without any application of mind in imposing 20% cut in the monthly pension of applicant, perusal of the impugned orders indicates that the disciplinary authority had considered the entire enquiry report, advice of the UPSC as also the relevant records of the case. These orders were not based on the UPSC's advice alone. UPSC had also given its observations that applicant had committed serious irregularities and made the alleged appointments in a very irresponsible manner and with *mala fide* intention. The misconduct

of applicant as borne out from the impugned orders is very serious and the observations of the UPSC as stated above are fully established out from the records. In our view, the punishment imposed upon applicant is also commensurate with the gravity of the misconduct. A senior officer of the level of Superintending Engineer cannot be let off with a penalty less severe than that imposed upon applicant in view of the gravity of the misconduct committed by him.

11. It has been stated on behalf of applicant that the penalty has been put into effect retrospectively instead of with effect from 14.8.2003 when the penalty orders were passed. Indeed, the penalty of 20% cut for a period of five years from the monthly pension of applicant has been imposed with immediate effect, i.e., from 14.8.2003. Admittedly, respondents have paid to applicant commutation of Rs.3228/- (40% of Rs.8220/-) instead of Rs.4110/- (40% of Rs.10275/-). Certainly, applicant's commutation value has also been reduced on the basis of cut in pension. This is borne out from Annexure-IX (revised PPO) read with Annexure-X. The question for consideration is whether cut in pension imposed on 14.8.2003 for a period of five years much after the date of retirement of applicant, i.e., 1.5.2002, can be made use of in computing and reducing applicant's commutation of pension, i.e., can the revised pension instead of original pension form basis for calculating the commutation of pension. This point has to be adjudicated in the light of the provisions of CCS (Commutation of Pension) Rules, 1981, hereinafter called the Rules. Rule 4 of the Rules states:

"No Government servant against whom departmental or judicial proceedings as referred to in rule 9 of the Pension rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings

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are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.”

Government of India’s decision dated 9.8.1960 in file No. F.12(10)E.V/6 under rule 5 of the Rules reads as follows:

“(1) Permissible limit of commutation when part of pension is withheld. – Under the Commutation Rules, a pensioner can commute one-third of the pension that has been granted under the rules. When a part of pension is withheld or withdrawn under Article 351, CSR [Rule 8, CCS (Pension) Rules, 1972], the residual amount is the amount that has been granted under the rules from the date of withholding or withdrawal of a part of the pension. As such, if commutation is applied for after this date, the admissible amount that can be commuted will have to be calculated with reference to the pension payable to the person after that date. Commutation rules do not state that the commutable amount is to be calculated with reference to the pension originally granted to the person.”

12. In the present case penalty of cut in pension has been imposed with immediate effect from 14.8.2003, i.e., date of penalty orders. It is observed that respondents had not even issued a show cause notice before calculating commutation of pension of applicant at reduced rate of pension on imposition of cut in pension. There are no orders that applicant’s pension has been withheld or withdrawn. Actually, provisional pension had been sanctioned to applicant from the date of his retirement on superannuation. It appears application for commutation of pension had also been made before imposition of penalty of cut in pension and during pendency of departmental proceedings against him. In the facts and circumstances of the case as also in terms of Rules 4 and 5 of the Rules, the penalty has to be related to the original pension and not on reduced pension as fixation of pension was an event occurred much prior to the imposition

of penalty. Calculation of commutation of pension at the reduced rate of pension would make the intended prospective penalty much harsher than what was contemplated in the impugned orders.

13. Taking stock of the facts and circumstances of the case as discussed above, the OA is dismissed maintaining penalty, however, with a direction to respondents that applicant would be entitled to commutation of pension at the original rate of pension. Respondents are directed to grant consequential benefits in this behalf to applicant within a period of two months from the date of communication of these orders.


(Mukesh Kumar Gupta)

Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)
23.8.06