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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2848/2004

New Delhi, this the 16th day of May, 2005

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

Ishwar Dutt,
B-195, Vivek Vihar,
Delhi-95

....Applicant

(By Advocate: Ms. Sangeeta Tomar)

Versus

1. Union of India through:
The Secretary,
South Block, New Delhi.
2. Ministry of External Affairs,
Central Vigilance Commission,
Vigilance Unit, Through Secretary,
Satarkata Bhawan, Block-A,
General Pool Offices Complex,
INA, New Delhi-23
3. Ministry of External Affairs,
Pension Cell,
Through Senior Accounts Officer,
Akbar Bhawan,
New Delhi.
4. UPSC,
Through Secretary,
Dholpur House, Shahjahan Road,
New Delhi

....Respondents

(By Advocate: Shri N.S. Mehta)

Order(Oral)Justice V.S. Aggarwal, Chairman

The sole controversy raised by the applicant's learned counsel is that the impugned order dated 12.3.2003 whereby 100% cut in pension has been imposed, cannot be sustained. The operative part of the order reads:

"9. The Commission noted that they had held all the five charges, as contained in charge-sheet dated 17.5.1993, as completely proved against the Charged Officer and that they reflect that CO totally ignored all norms and ethics of his duty as a Regional Passport Officer.

10. The Commission advised that for the fraudulent withdrawal of gratuity, it would not be appropriate to impose any penalty on the Charged Officer as this allegation was not a part of the original charge-sheet. They advised that judicial proceedings can be initiated on the alleged withdrawal of gratuity, if so agreed by the Disciplinary Authority.

11. The Commission advised imposition of a penalty of "100% cut in pension otherwise admissible on a permanent basis for the proven grave misconducts committed by the CO while working as RPO Delhi.

12. The Disciplinary Authority has decided to accept the advice of UPSC & imposes the penalty of "100% cut in pension otherwise admissible on a permanent basis" on Shri Ishwer Datt, Section Officer (Retd.), on the proven grave misconducts committed by him while working as RPO Delhi. The Charged Officer has been held guilty of (i) issuing passport on an out of turn basis without recording any speaking orders (ii) exercising extra-jurisdictional powers in granting passports (iii) allowing delivery of passports without making entries in the delivery register and that too to third parties without obtaining authority letters and (iv) granting passports on verification certificates signed by a Commandant who was not a competent authority. Passport is a sovereign document and the irregularities committed by the Charged Officer cannot be viewed lightly. The Disciplinary Authority is of the considered opinion that the misconducts committed by the Charged Officer while working as RPO Delhi warrant imposition of a penalty of "100% cut in pension on a permanent basis".

U.S. Aggarwal

13. The Disciplinary Authority has however decided not to take action through separate judicial proceedings in the matter of fraudulent withdrawal of gratuity as show-cause notice has been issued to the Charged Officer on this aspect also in compliance of directions of Hon'ble Central Administrative Tribunal.

A copy of UPSC's letter dated 10.2.2003 is enclosed.

The order will take effect from the date of its issue.

By order and in the name of President."

This is the only question agitated before us and we are confining ourselves to the same.

2. Some other facts would precipitate the question in controversy.

3. The applicant was working as Assistant Passport Officer-II in the Regional Passport Office, Delhi during the period from 7.12.89 to 20.8.91. He is alleged to have committed serious irregularities in issuing the passports and accordingly was charge-sheeted on 17.5.93. Departmental proceedings were initiated. The same continued. Meanwhile, the applicant superannuated on 31.8.96.

4. The departmental proceedings were continued under rule 9 of C.C.S. (Pension) Rules, 1972. It was tentatively decided by the department to impose a penalty of 10% cut in pension for a period of five years. In this regard, a notice to show cause even was issued to the applicant. The same reads:

MEMORANDUM

Shri Ishwar Dutt, Section Officer (Retd.) may please refer to the memorandum of even number dated 17.5.93 of this Ministry vide which major penalty proceedings were initiated against him.

2. Considering the facts and circumstances of the case, inquiry report and the documentary



evidences available on record, the disciplinary authority has tentatively decided to impose the penalty of withholding of 10% of the admissible pension for a period of five years on Shri Ishwar Dutt.

3. Shri Ishwar Dutt may submit a written representation, if any, to the undersigned, within a period of ten days from the date is receipt of this memorandum. If no reply is received from him within the time stipulated above, it will be presumed that Shri Dutt has no explanation to offer.

Sd/-
(B. Balakrishnan)
Joint Secretary (CNV)"

5. A copy of the enquiry report was also forwarded to the applicant. However, before the records of the disciplinary proceedings could be forwarded to the Union Public Service Commission (UPSC) for their advice, the respondents became aware of the acts of forgery purported to have been committed by the applicant. When the matter was referred to the UPSC, the advice was given and UPSC had recommended 100% cut in pension. The disciplinary authority had imposed the said penalty.

6. The applicant preferred O.A.No.3145/2001. It was decided on 1.5.2002 by this Tribunal. The order was quashed holding:

"11. The notice issued under Rule 8 aforesaid would still have to specify the penalty of 100% cut in pension permanently, if both the charges are taken into account. The memorandums dated 30.10.2000 and 29.1.2001 no doubt took both the charges into account but these fell short of the requirement going strictly by the provisions made in rule 8(3) (a) of the CCS (Pension) Rules, 1972. The said rule clearly requires that such notices should be issued with the action proposed to be taken specified therein. In the aforesaid memorandums of 30.10.2000 and 29.1.2001, the proposal to

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impose the penalty of 100% cut in pension on permanent basis has not at all been indicated and this is where the principle of natural justice appears to have been violated, and, to this extent, the provisions made in rule 8 (3) (a) also cannot be said to have been complied with. Despite strenuous arguments made on behalf of the respondents, they have failed to convince us that the opportunity as above to show cause against the punishment of 100% cut in pension on a permanent basis was actually given to the applicant. The action taken against the applicant, in the circumstances, fails and we are constrained to quash and set aside the impugned order dated 1.8.2000 as well as the corrigendum dated 28.9.2001. The respondents will be at liberty to issue a fresh show cause to the applicant in literal compliance of the provisions of rule 8 of the CCS (Pension) Rules, 1972, if so advised, by indicating the penalty proposed to be imposed and by keeping in view the charges of irregularities committed in issuing passports as well as the charge of forgery. The applicant will be given sufficient opportunity to state his defence in accordance with the same rule, namely, rule 8 of the CCS (Pension) Rules, 1972 and it is only thereafter that appropriate orders will be passed as deemed fit by the respondent-authority on the merits of the case. If the respondents do decide to issue a fresh notice as above, the exercise contemplated in the above direction will be completed in three months' time from the date of receipt of a copy of this order."

7. After the said order was passed by this Tribunal, a memorandum was issued to the applicant dated 30.9.2002. The applicant replied and after consideration of the same, the impugned order operative portion of which we have reproduced above, was passed.

8. Learned counsel for the applicant contends that earlier when it was noticed that the applicant has committed some forgery, 100% cut in pension was imposed and even this finds a mention in the memorandum of 30.9.2002. According to the learned counsel,



that was bereft of the said allegations of forgery. The decision of the disciplinary authority was that they intended to impose 10% cut in pension. It was resultantly urged that 100% cut in pension has been imposed basically because of the allegations of forgery which have not been substantiated nor any enquiry has been held in this regard.

9. The petition is being defended.

10. We have heard the parties counsel and seen the relevant record pertaining to the abovesaid controversy.

11. At the outset, we do not dispute the right of the disciplinary authority to impose the penalty and ordinarily this Tribunal will not interfere in the quantum of penalty unless the order is totally unconscionable (See B.C. Chaturvedi v. Union of India, JT 1995 (8) SC 65).

12. In the facts of the present case, as is apparent, on 4.8.99 the applicant was served with a memorandum that the disciplinary authority keeping in view the charges that were framed against him, intended to impose a penalty of 10% cut in pension. It is obvious from the sequence of events that it was on charges of forgery purported to have been noticed by the respondents that 100% cut in pension was imposed.

13. We do not dispute that UPSC had advised that so far as charge of forgery is concerned, since it was not a part of the original chargesheet, this cannot be taken note of but still insisted 100% cut in the pension.

14. The UPSC is an advisory body. This Tribunal, when such like events take place, would necessarily lift the veil and see the real face of the transaction.

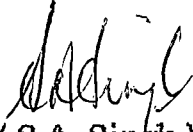
15. In the facts of the present case, originally 10% cut in the pension was suggested and intended to be imposed. A show cause notice in this regard was given.


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Thereafter when the act of forgery was detected, the penalty was enhanced to 100% cut in pension. The same was quashed by this Tribunal. Even in the subsequent memorandum that was issued on 30.9.2002, there was reference of fraudulent withdrawal of gratuity which was not a part of the charge. This sequence of events would show that 100% cut in pension was imposed basically in view of the grave charge of forgery which was not a part of the charge.

16. Resultantly, we are of the considered opinion that in the facts of the present case, the disciplinary authority had not applied its mind while 100% cut in pension was imposed.

17. For these reasons, we allow the present application and quash the impugned orders. The disciplinary authority may pick up the loose threads and pass a fresh order in accordance with law.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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