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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

RA NO. 84/2005 IN
OA NO. 924/2004

This the 9th day of January, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. N.D.DAYAL, MEMBER (A)

1. Union of India
through its Secretary,
Ministry of Communication & I.T.
Department of Post,
Govt. of India, New Delhi.
2. The Senior Superintendent of Post Offices,
Agra Division,
Agra (U.P.)

(By Advocate: Sh. S.M.Arif)

Versus

Shri R.K.Jain,
Son of late Shri Sunder Lal Jain,
Retired Sub Post Master,
Rakab Ganj, Agra,
Resident of House No.362,
Mohalla Garhi,
Achhnera (Agra).

(By Advocate: Sh. D.P.Sharma)

ORDER (ORAL)

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

The official respondents are seeking a review of the order of this Tribunal dated 1.1.2005 whereby OA No.924/2004 was allowed and the order of the 25% cut in pension under Rule 9 of CCS (Pension) Rules, 1972 dated 24.2.2004 was quashed and the respondents were directed to grant regular pension to the applicant.

2. In the application it is submitted that the order dated 31.1.2005 is on the premises that the enquiry officer should have mentioned in the enquiry report that the applicant in the OA was guilty of grave misconduct or grave negligence which is not legally correct as the function of the enquiry officer is to record finding whether the charges have been proved or not and in case enquiry officer mentions of commission of grave misconduct or

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grade negligence on the part of the charged official the enquiry would be vitiated. After the enquiry is completed the cases are required to be placed before two Members of the Postal Services Board for appropriate decision on behalf of the President under Rule 9 of CCS (Pension) Rules. If it is considered that the charges are grave enough and a penalty under Rule 9 of the Pension Rules was required, the case with tentatively proposed punishment is referred to the UPSC for providing statutory advice to the President, thereafter final penalty order is passed by the President in the impugned order. The Tribunal has relied upon the order passed in M.P.Gupta's case which has not attained finality as yet since a SLP is pending. It is, therefore, requested that the OA may be re-heard for fresh decision.

3. The review application is contested by the respondent. It is stated that there is no error apparent on the face of the record, therefore, review application is not maintainable. It is further submitted that the review application cannot be entertained after a period of 30 days in view of Rule 17 of CAT (Procedure) Rules, 1987 and for this reason also RA is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the record.

5. The preliminary objection of the non-applicant (applicant in the OA) is that the review application has not been filed within 30 days is liable to be dismissed by virtue of Rule 17 of CAT (Procedure) Rules, 1987. The said rule has provided as under:-

"17. Application for review -

(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) A review application shall ordinarily be heard by the same Bench which has passed the order, unless the Chairman may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party.

(4) When an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained in the same manner.

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(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice. The counter affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed."

6. The applicant, the official respondent in the OA, have filed an application for condonation of delay. However, since Rule 17 quoted above has clearly provided limitation of 30 days for filing a review application and it could not be extended by virtue of sub-rule (2) of Rule 21 of AT Act, 1985, the review application is liable to be dismissed for this reason alone.

7. Even on merit it cannot be allowed. The Tribunal in its order has observed that it was necessary for exercise of jurisdiction by the President under Rule 9 of CCS (Pension) Rules, 1972 that there should have been a finding recorded in the inquiry to the effect that the retired Govt. servant has been found guilty of grave misconduct or grave negligence and that the enquiry has not ^{preferred} ~~preferred~~ any grave misconduct in the present case. The Tribunal will not assume the role of an appellate court while hearing a review application. The Tribunal has held that in the disciplinary enquiry it was incumbent that the charged official was to be held guilty of grave misconduct or grave negligence to give jurisdiction to the President to exercise powers under Rule 9 of the Pension Rules. There seems to be some misconception that the word 'enquiry' has been used in a narrow sense and is not wide enough to include in its ambit a departmental enquiry.

8. But the fact remains that the review application has to satisfy pre-requirement conditions similar to the conditions laid down in Rule 1 of Order 47 of the Civil Procedure Code. The rule states:

"(1) Any person considering himself aggrieved –

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

9. In D.V.Kapoor vs. Union of India and others AIR 1990 SC 1923 Hon'ble Supreme Court held as under:-

"Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation, therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. 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/-.

In the instant case, there was no finding that appellant did commit grave misconduct as charged for, therefore, the exercise of power by the President was illegal and in excess of jurisdiction."

The review applicant does not satisfy these conditions.


8. Learned counsel for applicant refer to D.V.Kapoor (supra) has argued that the condition precedent to the exercise of power by the President under Rule 9 of the Pension Rules is that a finding should be recorded either in the departmental enquiry or judicial proceeding that a pensioner had committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge and in the absence of such

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(5)

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 of the employee. Thus according to law the order of this Tribunal does not suffer any legal infirmity and cannot be reviewed.

9. Accordingly, review application is dismissed.



(N.D.DAYAL)
Member (A)



(M.A. KHAN)
Vice Chairman (J)

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