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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 178/1992

This the 15th day of April, 1997.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI N. SAHU, MEMBER (A)

J. S. Kaushal,
D-407/47, Bhajanpura,
Delhi. ... Applicant

(By Shri Rajeev Sharma, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Defence, New Delhi.

2. Engineer-in-Chief (Branch),
Army Headquarters,
DHQ PO, New Delhi.

3. Chief Engineer,
Western Command,
Chandigarh.

4. Chief Engineer,
Chandigarh Zone,
Chandigarh.

5. Commandant Works Engineer
(Project), Hissar Cantt,
Hissar. ... Respondents

(By Shri M. L. Verma, Advocate)

O R D E R

Shri N. Sahu, Member (A) -

The applicant is aggrieved against the order dated 20.3.1991 by which the President of India imposed the penalty of dismissal from service. Four out of six charges were found to be proved by the Commissioner for Departmental Inquiries. The proved charges relate to the fact that the applicant issued PBI sheets to the contractor without securing samples and issued material without carrying out inspection in

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contravention of the terms of the contract agreement. Even before issuing the second lot, the contractor neither supplied the sample nor the racks. Though only 25 MT sheets were transported up to Hissar, the applicant was held responsible for payment of transportation of the entire 50 MT sheets from Agra to Hissar and this transportation had been verified by the applicant. One grave charge is proved in that "though there is nothing on record to indicate that Shri Kaushal had himself misappropriated 1000 bags of cement, but his role and at least tacit approval in tampering with the documents cannot be denied." The defence of the applicant that he did not expect an 'A" class contractor to deceive the department to whom the sheets were issued in good faith, was not accepted. The gravest of the charges was refuted by the applicant stating that the sheets were under the procedure to be physically checked and certified by the Stock-taking officer who did not point out any deficiency. This established that the sheets were found on the ground at the time of stock taking during the quarter ending March, 1984. He finally denied any role in tampering with the documents with regard to cement bags. The explanation was disbelieved. The applicant was found guilty. It was held that the payment for transportation of the entire 50 MT sheets from Agra to Hissar had been verified by the applicant and that he had a role in tampering with the documents with regard to cement bags. The President, therefore, imposed the penalty of dismissal from service. The subsequent revision was also rejected by an order dated 20.2.1992 by the President.

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2. The applicant's case is that he had an outstanding service record and he had enjoyed several promotions right from his appointment on 19.5.1953 as a Store Keeper. He was promoted to Grade-II Store Keeper in January, 1956, a Grade-I Stor Keeper in December, 1959, and a Grade-II Supervisor in August, 1962. He was promoted as a Supervisor Grade-I in July, 1964 and as a Barrack Stores Officer (BSO) in 1978. Thereafter, he was promoted as a Senior BSO in March, 1986. The chargesheet was for the period form December, 1982 to March, 1986. The chargesheet was served on 18.12.1987. An inquiry officer was appointed who submitted the report on 26.7.1990. The impugned order dated 20.3.1991 was served on him seven days before his retirement. Thus, his contention is that he was in fact given a promotion even while the inquiry was in progress. The promotion in March, 1986 was the highest in the channel of promotion for which the applicant worked. During 37 years of his service, he had been rewarded with a number of promotions. On the merits of the charges, the contractor was asked to manufacture and supply 320 numbers of steel racks for the total amount of Rs.2,92,480/-. The allegation is that instead of using 16 gauge sheets issued by the department, the contractor utilised inferior quality. It is submitted that the Government suffered no loss because no payment was made to the contractor and the material supplied by the Government was recovered from him. The second point made by him is that the Garrison Engineer (GE) is duty bound to call and accept tenders and the GE was not held responsible.

3. The grounds on which the order is assailed by the applicant are that the punishment of dismissal was draconian and disproportionate to the guilt, particularly, when there is no ascertainment of loss to the government. Dismissing the applicant after 37 years of service, just seven days before his retirement, lacked a sense of proportion and compassion. It is thirdly submitted that he was deprived of pension and gratuity which are retirement benefits and are treated as vested rights. Pension and gratuity are no longer a bounty. It is, therefore, urged that the order of dismissal be set aside.

4. Learned counsel for the applicant had cited a number of decisions. They will be briefly mentioned. The first decision is (1991) 3 SCC 213, Ex-Naik Sardar Singh vs. Union of India & Ors. The Supreme Court held that punishment must be commensurate with the gravity of the misconduct and a disproportionately severe punishment is arbitrary and open to interference by courts. That was a case where the appellant was an Army Jawan carrying more than the permitted quota of wine bottles issued from Army Canteen while proceeding for home town on leave and en route passing through an area under prohibition. It is here that the Supreme Court held that the punishment was excessively severe and violative of Section 72 of the Army Act. It must be mentioned that this provision enables a lower punishment having regard to the nature and degree of the offence.

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5. The learned counsel for the respondents cited the case of B. C. Chaturvedi vs. Union of India & Ors., (1996) 32 ATC 44. The Supreme Court was dealing with a case of possession of assets disproportionate to the known sources of income of an income tax officer. The Supreme Court said that no court or tribunal has any power to interfere with the findings of the disciplinary authority by re-appreciating the evidence. The court or tribunal cannot sit as an appellate authority and substitute its own independent findings or interfere with the findings of fact based on evidence. It is laid down that judicial review is only to ensure that the decision making process is in accordance with the procedure established in law. As long as the findings are based on some evidence, the court cannot substitute its own findings. It is laid down that the High Court or tribunal in exercise of its review power cannot normally interfere with the punishment imposed by a disciplinary or appellate authority. The Supreme Court allowed only one exception. If in a case, the punishment imposed is such that "it shocks the judicial conscience in which case it can mould relief either by directing the authorities to re-consider the punishment/penalty imposed or in exceptional cases by itself imposing an appropriate punishment recording cogent reasons." It is very necessary to extract a portion of para 19 of the Supreme Court's order because of similarity of certain facts in this case :

> "The Tribunal in this case held that the appellant had put in 30 years of service. He had a brilliant academic record; he was successful in the competitive examination and was selected as a Class I

> Officer; he earned promotion after the disciplinary proceeding was initiated. It would be difficult to get a new job or to take a new profession after 50 years and he is "no longer fit to continue in government service". Accordingly, it substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. The reasonng is wholly unsupportable. The reasons are not relevant or germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to known sources of his income, the interference with the imposition of punishment was wholly unwarranted."

6. The Supreme Court also held that promotion pending disciplinary proceedings would be no impediment to awarding appropriate punishment. With regard to delay, it held that in case of charge of possession of assets much time is required to collect the necessary material and hence held that delay in such cases would not be violative of Articles 14 and 21 of the Constitution.

7. The next case is (1995) 29 ATC 89, Government of T. N. and Another vs. A. Rajapandian. The Supreme Court held in this case that it had no jurisdiction to re-appreciate the evidence and set aside the order of dismissal on the ground of insufficiency of evidence to prove the charges. When the Tribunal had not found any fault with the proceedings conducted by the inquiring authorities, the Tribunal cannot quash or modify the dismissal order by re-appreciating the evidence and reaching a finding different from that of the inquiring authority.

8. In (1995) 29 ATC 113, Transport Commissioner, Madras-5 vs. A. Radhakrishna Moorthy, the Supreme Court held that the correctness of charges in a chargesheet is not subject to judicial review prior to the conclusion of the departmental inquiry. Even after the conclusion of the departmental inquiry the scope of judicial review is restricted to charges based on no evidence.

9. The second line of attack of the applicant is that the order of dismissal had denuded him of the right to pension and gratuity. He cited the celebrated case of D. V. Kapoor vs. Union of India & Ors., (1990) 4 SCC 314, which again laid down that the punishment should be commensurate with the gravity of misconduct. As this is an important defence of the applicant, we shall deal with this case in some detail. The appellant in that case worked as an Assistant Grade-IV in the Indian High Commission at London. He was transferred to New Delhi. He did not join as commanded,inviting disciplinary proceedings. Pending the proceedings, the appellant sought voluntary retirement from service. He was allowed to retire but he was on notice that the disciplinary proceedings initiated against him would be continued under Rule 9 of the Central Civil Services (Pension) Rules, 1972. His defence was that he initially took a short leave on account of his wife's illness but when the illness prolonged he asked for more leave which was refused. He thereafter sought for voluntary retirement. The Supreme Court had to deal with a case where the appellant absented himself from duty without any authorisation. The inquiry officer found that his

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absenting from duty cannot be said to be wilful. It is on these facts that the President in consultation with the Union Public Service Commission decided that the entire gratuity and pension otherwise admissible be withheld on a permanent basis as a measure of punishment. The High Court dismissed his writ petition but the Supreme Court laid down some important principles of law. An extract of paragraph 10 which is the essence of the judgment of the Hon'ble Apex Court is hereunder :-

> "The employee's right to pension is a statutory right. Therefore, deprivation of such right must be in accordance with law. The measure of deprivation 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."

10. (1991) 2 SCC 371, Major G. S. Sodhi vs. Union of India, is again a case of an Army Officer dismissed from service by court martial. The Supreme Court held that a dismissed officer is entitled to entire pension, gratuity and provident fund under the rules because no other penalty forfeiting the pensionary benefits was passed. The claim of the appellant is that even if he is dismissed he could not be denied his pension and gratuity.

11. In 1991 Supp (1) SCC 267, V. R. Katarki vs. State of Karnataka and Others, the Supreme Court had to deal with the charge of fixing higher valuation of land than was legitimate under Section 18 of the Land Acquisition Act. That was a case where dismissal was

held to be out of proportion and the Supreme Court reduced it to compulsory retirement. But in that case the Supreme Court went into all aspects of the case and came to this conclusion on the facts of that case.

12. (1993) 2 SCC 29, Union of India & Anr. vs. R. K. Desai, was quoted to prove that no disciplinary action would lie if the decision was taken not with a corrupt or improper motive.

13. We have carefully considered the pleadings and the arguments. In AIR 1996 SC 1232, State of Tamil Nadu and another vs. S. Subramaniam, the Supreme Court held that it is in the exclusive domain of the disciplinary authority to consider the evidence on record and record findings whether the charge has been proved or not. In judicial review the Tribunal has no power to re-appreciate the evidence. "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made." This is a case where the conclusion reached by the authorities is based on evidence. Secondly, the applicant received fair treatment and the due process of law was observed at every stage. It is a case where the applicant's guilt has been established beyond reasonable doubt. His promotions during the period of his misconduct is no bar for initiation and conclusion of disciplinary proceedings. His past record cannot weigh down the misdemeanour committed. On the facts, it is established that four out of six charges have been proved. He issued PBI sheets to the contractor even though the latter failed to produce samples within 15 days. The second lot of material was issued without

carrying out inspection. He had not carried out any inspection of the racks after issuing the first lot. Though only 25 MT sheets were transported up to Hissar, payment for transportation of the entire 50 MT sheets had been verified by the applicant. There is a definite finding that he had a role in tampering with the documents to prove that 1300 bags of cement were utilised whereas actually 300 bags were utilised. With the above evidence, it cannot be said that the finding reached is a finding of no evidence.

14. As discussed above when proper inquiry had been held providing reasonable opportunitu to defend, a punishment awarded and confirmed in appeal cannot be interfered with. Similarly, when principles of natural justice have been followed, adequacy or reliability of evidence produced cannot be interfered with. If the findings of inquiry officer are not perverse and there is no manifest error of law, a punishment also cannot be interfered with. It is not the case of the applicant that there were infirmities in inquiry or that principles of natural justice have not been followed.

15. The delay in the conclusion of proceedings was long and a lot of time was taken for gathering material and processing the material.

16. The applicant's reliance on D. V. Kapoor's case (supra) cannot come to his assistance because that case dealt with withholding pension or a part of pension under Rule 9 when disciplinary proceedings commenced before retirement and continued thereafter.

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That case does not assist the applicant. The disciplinary proceedings were concluded while he was in service and the penalty of dismissal was imposed on him. This is not a case of pension or gratuity. However, the question of deprivation of pension and gratuity is governed by Rule 41 of the C.C.S. (Pension) Rules, 1972. We will extract the said rule hereunder :-

> "41. **Compassionate allowance**
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> (1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:
>
> Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.
>
> (2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three hundred and seventy-five per mensem."

17. The instructions of the Government are "In considering this question it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered." (G.I., F.D., Office Memo No. 3(2)-R-II/40, dated 22.4.1940). We are of the view that the rule requires the competent authority to consider if it is a case deserving of special consideration and if so, to sanction a compassionate allowance not exceeding two-thirds of pension or gratuity. Although in the procedure, the head of the office can suo motu recommend the grant, in this case

we would direct the applicant to submit a representation in this regard for consideration of the head of office which in this case is respondent No.2, Engineer-in-Chief, Army Headquarters. He shall mention his personal and family liabilities and also bring to the notice of the authorities his bright service record. On such representation, the authorities shall hear the applicant if it is considered necessary and dispose of the applicant's case for compassionate allowance within a period of three months from the date of receipt of the applicant's representation. The authorities will go through the entire service record, earlier cases of misconduct or misdemeanour, if any, and take a humane approach whether it would be appropriate to deprive the applicant who rendered 37 years of service, of entire pension and gratuity in the evening of his life.

18. With these observations, the O.A. is disposed of. No costs.

(K. M. Agarwal)
Chairman

(N. Sahu)
Member(A)

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