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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 2758/92
T.A. No.

199

DATE OF DECISION 26.2.98

Shri Amrik Singh

Petitioner

Shri R.S. Dass

Advocate for the Petitioner(s)

VERSUS

UOI & Ors.

Respondent

Sh.V.S.R.Krishna for R-1

Advocate for the Respondent

Sh.S.K.Gupta for R-2

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The Hon'ble Shri S.R. Adige, Vice Chairman(A)

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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OA 2758/92

New Delhi this the 26th day of February, 1998

Hon'ble Shri S.R. Adige, Vice Chairman(A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri Amrik Singh
S/O Late Shri Pritam Singh,
(Retired as Addl. Secretary (IAS),
R/O 143/Sector-4, Pocket B-5,
Rohini, Delhi.

..Applicant

(By Advocate Shri R.S. Dass)

Vs

1. Union of India through
Secretary,
Department of Personnel and Training,
North Block, New Delhi.

2. State Government of Punjab,
Through the Chief Secretary, Punjab
Civil Secretariat, Chandigarh.

..Respondents

(By Advocate Sh. V.S.R. Krishna for R-1)
(By Advocate Shri S.K. Gupta for R-2)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant is aggrieved by the Memorandum dated 10.10.90 passed by the respondents after holding the disciplinary proceedings under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as 'the AIS Rules'), and the order dated 31.5.1991 clarifying the Memorandum (Annexure A-V and A-VI).

2. The brief facts of the case are that the applicant who is a member of the Indian Administrative Service (IAS) (Punjab Cadre), while on deputation to the Centre w.e.f. 15.6.79 to 30.9.83 was charge-sheeted under Rule 8 of the AIS Rules, on the charges that he had preferred false Travelling Allowance

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claims when he was functioning as Controller of Publication. However, the applicant had denied these charges. Learned counsel for the applicant has submitted that the impugned penalty order dated 10.10.90 was sent to him by the Govt. of Punjab by their letter dated 30.10.90, i.e. one day before he retired from service on 31.10.90. In the impugned order dated 10.10.90, the President had, after taking into account the findings of the Inquiry Officer's report, advice of the UPSC and all the relevant factors imposed on the applicant the following punishment:

- (a)the penalty of reduction to the minimum of the Senior Time Scale of the IAS(Rs.1200-2000) for a period of two years on Sh.Amrik Singh.
- (b) The Government of Punjab, withholding the service of the said order upon Sh.Amrik Singh, indicated that not only the Senior Time Scale of IAS was revised to Rs.3200-4700 w.e.f. 1.1.86 but also that Sh.Amrik Singh had been placed in the Junior Administrative Grade of Rs.3900-5000 of IAS w.e.f. 1.1.1986.
- (c) The President, having carefully considered these facts as well as the advice of the Union Public Service Commission vide their letter No.F.3/165/86-S.1 dated the 13th March, 1990 has come to a conclusion that the penalty of reduction to the minimum of the time scale of Junior Administrative Grade of IAS namely Rs.3950-5000 till the date of retirement of the officer may be imposed upon Shri Amrik Singh and orders accordingly.

3. By the impugned letter dated 31.5.91, a clarification has been issued on the query made by the State Government in their letter dated 26.2.1991 that as the applicant had already been promoted to the Junior Administrative Grade, UPSC had

given advice to the effect that his pay may be reduced to the minimum of the JAG instead of reduction of the pay to the minimum of the Senior Time Scale (STS). In view of the advice given by the UPSC it was clarified that the reduction of pay of the applicant to the minimum of the JAG i.e. Rs.3950/- less than his initial pay fixed at the time of his promotion, namely, Rs.4550/- is in compliance with the advice of the UPSC and as he had already superannuated on 31.10.90, the penalty of reduction of his pay to the minimum of the JAG would effect his pay only for a period of 21 days in Oct.,1990.

4. Shri R.S. Dass, learned counsel for the applicant has challenged the above penalty orders on the grounds, mainly, that (i) the respondents have imposed the penalty of reducing his pay by order dated 10.10.90 from a back date, as this order had only been served on him by the State Government on 30.10.90, (ii) that the impugned penalty orders have been passed without proper application of mind ; and (iii) that the principles of natural justice have not been complied with since the Inquiry Officer's report was not given to him till the final order was passed which was in contravention of the respondents' own instructions dated 20.9.1989. Learned counsel has laid much stress on the fact that the UPSC in their advice dated 13.3.90 had referred to their earlier advice dated 22.10.1986 that the penalty of reduction to the minimum of the STS of IAS for a period of two years be imposed on the applicant after examining his case records but had not considered the fact that in the

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meantime the applicant had been promoted to the JAG w.e.f. 1.1.1986, and the proposal of the respondents that the penalty, therefore, should be reduced to the lowest stage of the JAG for a period of two years. The UPSC had, however, modified their advice to the effect that the applicant's scale of JAG be reduced till the date of his retirement. He has, therefore, contended that the respondents being well aware of the fact that the applicant had already stood promoted to the JAG w.e.f. 1.1.1986, the advice tendered by the UPSC on 22.10.1986 to reduce his penalty to the minimum of the STS for a period of two years shows non-application of mind on the part of the respondents. He has also submitted that the respondents have not applied their mind seriously with regard to the facts and circumstances of the case, taking into account wrong facts and thereby penalising the applicant to an extent that was not intended. He has submitted that even the pay of the applicant has not been correctly taken into account, which later has been clarified by the Deputy Secretary to the Govt. of India by the impugned letter dated 31.5.91 which also shows that the respondents have acted in a very careless way towards the applicant in passing the impugned penalty order. He has submitted that the Department of Personnel had also misstated the fact of his promotion and fixation of pay at the maximum of Rs.5000/- in JAG w.e.f. 1.1.1986 and they had got the advice revised from the UPSC in March, 1990. He has also submitted that since the impugned order dated 10.10.90 had

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been actually served on the applicant on the last date of his retirement, at the most, the respondents could have reduced his pay for one day and not for 21 days as contended by them, and that too by wrong fixation of pay. He has submitted that as a result of the implementation of the impugned penalty order, the applicant has suffered financial loss to an extent not covered by the impugned order dated 10.10.90 which, therefore is illegal and vindictive. Learned counsel has also submitted that even the charge-sheet was baseless as he claims that on his submission of wrong TA bill, he had already written to the concerned authority to withdraw the same when he discovered the mistake. He has submitted that since the impugned order dated 10.10.90 has only been served on 30.10.90, the same cannot be applied with retrospective effect in a manner to affect his rights which have accrued to him. (See Haribans Misra and others Vs. Railway Board and others (1989)(2)SLJ 153) ; State of Uttar Pradesh Vs. Chandra Mohan Nigam (1978)(1)SLR 12 and State of Punjab and others Vs. Balbir Singh etc.etc. (1976(1) Vol.14 SLR 36. For these reasons, the learned counsel for the applicant has submitted that the impugned order may be quashed with consequential benefits.

5. The respondents have filed their reply and we have heard the learned counsel for them. They have contended that the disciplinary proceedings were held against the applicant in accordance with the Rules and the charge against him was also held proved for which the impugned order had been passed by

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the President, being the competent authority. Shri V.S.R. Krishna, learned counsel has submitted that the very fact that the respondents had obtained advice for the second time in view of the changed circumstances, it shows that they had all along dealt with the matter in a proper way with application of mind and the allegation of the applicant's counsel to the contrary ~~was~~ vehemently denied. It is however, not denied by the respondents that they had not furnished a copy of the Inquiry Officer's report dated 16.5.86 before passing the final order. According to them, at that time there was no provision to furnish a copy of the same to the applicant and provision to this effect was inserted in the rules only by the respondent's letter dated 20.9.1989. In the circumstances, the respondents have submitted that the application may be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. From the impugned order dated 10.10.90 it is seen that the penalty of reduction to the minimum of the time scale of JAG of IAS in the scale of Rs.3950-5000 had been imposed on the applicant till his retirement. According to this order, the earlier order passed by the President had ordered imposition of the penalty of reduction to the minimum of STS of the IAS (Rs.1200-2000/-) for a period of two years on the applicant which was in accordance with the earlier advice of the UPSC dated 22.10.1986. A perusal of the impugned order shows that since the applicant had already been promoted to JAG w.e.f.1.1.86

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the advice of the UPSC which was accepted by the President by his earlier order dated 17.3.89 to reduce the pay of the applicant to the minimum of STS of the IAS for a period of two years does indeed show negligence and non-application of mind to the facts of the case, by the respondents. When a major penalty is proposed against any Govt. servant, needless to say, the respondents have to show that they have acted in accordance with the rules, legally, and in a bonafide manner after application of the law/rules to the facts and circumstances of the case and not in a manner which leaves a doubt in the mind that the respondents have acted in a careless way so as to penalise him. In this case the respondents have failed to discharge this duty in a satisfactory manner.

8. In the facts and circumstances of the case, it is also clear that the impugned order passed by the President dated 10.10.90 has been communicated to the applicant only on or after 30.10.90 by the State Government, but the penalty has been given effect to from a prior date for 21 days. In the State of Punjab and others Vs. Balbir Singh etc.etc. (1976)(1) Vol.1) SLR 36, the Supreme Court has quoted with approval the earlier decision of the Court in State of Punjab Vs. Amar Singh Harika where it was held that, the order of dismissal passed on 3rd June, 1949 was actually communicated to the officer concerned on 2/3rd January, 1953. But before the said date the officer had come to know on 28th May, 1951 about the dismissal order. This date was taken to be the date of communication. Shelat J. after considering the earlier cases, has held as follows:

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" It will be seen that in all the decisions cited before^{us} was the communication of the impugned order, which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and, therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it."

(emphasis added)

Applying the above principles of law to the facts and circumstances of the case, therefore, it can be stated that the impugned penalty order went out of the control of the authority which had passed that order only on 30.10.90 when the State Government sent it to the applicant. This has also to be viewed in the context of an earlier order passed by the President on 17.3.93 which had been further reconsidered by the UOI and UPSC. Therefore, the contention of the learned counsel for the applicant that the penalty order has been communicated to the applicant by letter dated 30.10.90 and not earlier, is correct. Having regard to these facts, the impugned letter dated 31.5.91, further clarifying the position regarding fixation of the applicant's pay for the purpose of reducing it to the minimum of the JAG retrospectively for a period of 21 days in Oct., 1990 cannot be sustained.

9. There is also another ground on which this application has to be allowed, namely, that the disciplinary authority

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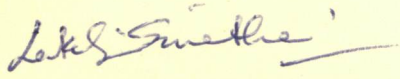
has failed to forward a copy of the Inquiry Officer's report to the applicant before passing the final order. The only explanation the respondents have given in their counter affidavit is that ^{the} Inquiry Officer has submitted his report on 16.5.1986, and at that time there was no provision in the rules that copy of the same should be furnished to the applicant. Hence this has been omitted. However, having regard to the Instructions dated 20.9.1989 and the principles of natural justice, non-furnishing of the Inquiry Officer's report to the applicant before passing the final order on 10.10.90 is clearly in violation of these provisions. In this case the applicant has also alleged that the Inquiry Officer has himself not come to the conclusion that the applicant was guilty nor had he recommended the imposition of any penalty. Therefore, in the circumstances of the case, we are of the view that non-furnishing of the report to the applicant at the right time has caused prejudice to the applicant. On this ground also the penalty order is liable to be set aside. Normally, the case would have been remitted to the competent authority to hold the enquiry in accordance with the rules, but in view of the fact that the applicant has retired from service on superannuation w.e.f. 31.10.90 and the reasons given above, this will not ~~arise~~ ^{be} *appropriate*.


10. The contention of the learned counsel for the applicant that after the President who is the competent authority had passed the impugned order dated 10.10.90, an officer of the level of the Deputy Secretary has further issued clarifications regarding interpretation/implementation of the penalty order

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which is illegal has also to be sustained. On the face of the letter it is clear that the clarification has been issued because of the ambiguity in the impugned order and considering that it is a major penalty order it should have been clear and self sufficient and ^{also} shows that the penalty order has been passed without proper application of mind.

11. For the reasons given above, the impugned orders dated 10.10.90 which has been clarified by the letter dated 31.5.91 are not in accordance with law and relevant rules and hence these orders are quashed and set aside. The applicant shall be entitled to the consequential benefits in accordance with law within three months from the date of receipt of a copy of this order. ^{O.A. is allowed.} No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


(S.R. Adige)
Vice Chairman (A)

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