

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.22/93 & OA No.3310/92

New Delhi this the 27th day of May, 1999. 21

HON'BLE MR. S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

OA No.22/93

Shri R.K. Garg,
S/o late Shri Kulwant Rai,
R/o A-25, Mohan Park,
Naveen Shahdara,
Delhi-110032.

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

Union of India through:

1. The Secretary to the
Government of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Shri S.M. Arif)

OA-3310/92

Shri R.K. Garg,
S/o late Shri Kulwant Rai,
R/o A-25, Mohan Park,
Naveen Shahdara,
Delhi-110032.

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

Union of India through:

1. The Secretary to the
Government of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Shri S.M. Arif)

8/

22
ORDER

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J):

The applicant has filed these applications under Section 19 of the Administrative Tribunals Act, 1965 challenging the initiation of chargesheet against him under Rule 14 of the CCS (Classification Control & Appeal), Rules, 1965, the procedure adopted in the departmental proceedings and the penalty order passed by the President dated 29.1.92, enclosing a copy of the UPSC recommendations dated 10.7.91, by which 50% of his monthly pension as otherwise admissible to him was withheld for a period of 15 years. This order has been passed in respect of articles of charges issued against the applicant in the aforesaid two cases, namely, (i) on chargesheets issued on 5.6.87 (OA-22/93) and (ii) on 7.1.85 (OA-3310/92).

2. For the sake of convenience, the facts and submissions made by the learned counsel in OA-22/93 have been referred to here. One of the main grounds taken by Shri G.D. Gupta, learned counsel is that under the proviso to Rule 9 (2) (a) of the CCS (Pension) Rules, 1972 (hereinafter referred to as the Pension Rules), when the departmental proceedings, as in the present case, have been instituted by an authority subordinate to the President, that authority has to submit a report regarding his findings to the President but a copy of this report was not supplied to the applicant. He has submitted that just as the enquiry officer's report is required to be submitted to the applicant for his comments, before the disciplinary authority passes a penalty order under the provisions of the CCS (CCA) Rules, 1965, in the present case, where the departmental enquiry which was pending against

him has not been completed before the date of superannuation of the applicant on 31.3.88 and was deemed to have continued under the provisions of Rule 9 of the Pension Rules, there is no reason why the copy of the findings of the disciplinary authority who had initiated the departmental proceedings which has to be sent to the President, before passing the final order should not be given to the applicant. He has submitted that this is the requirement of the principles of natural justice on analogy of the enquiry officer's report. Secondly, he has ~~also~~ submitted that the recommendations of the UPSC who had to be consulted before the President passed the final impugned penalty order under Rule 9 of the Pension Rule ~~was~~ also not supplied to him before the final order was given to him, although the same was given to him along with the penalty order. He has submitted that thus the applicant has been deprived of a reasonable opportunity to submit his comments on the proposed penalty which was finally imposed on him, as the President has relied on a certain document behind his back. He has relied on the judgement of the Supreme Court in Institute of Chartered Accountants of India vs. L.K. Ratna & Ors. (1986 (4) SCC 537) in which it has been held that the fact that an opportunity of hearing had already been afforded to the concerned person by a subordinate body whose conclusion was not a "finding" but is subject to the decision of the parent body was not sufficient to deny him an opportunity of hearing before the parent body or Tribunal before taking the decision. Thirdly, the learned counsel has submitted that the impugned penalty order passed by the President is a non-speaking order. The fourth ground is that there were two other persons, namely the Junior Engineer and the Executive Engineer who were also proceeded against by the Department on charges which were similar and connected to the charges

against the applicant separately. As these two officers were still in service till the finalisation of the departmental proceedings, the disciplinary authority who was the Chief Engineer had imposed far lesser penalties because he was in a much better position to appreciate the relevant facts. On the other hand, his contention is that in the case of the applicant, as he had retired on superannuation w.e.f. 31.3.88, the departmental proceedings were continued under the provisions of Rule 9 of the Pension Rules when the President i.e., the Minister - In - charge became the disciplinary authority. According to him, the President had imposed a very harsh punishment, as compared to the other two officers because he did not and could not appreciate the facts and circumstances of the charges which were of a technical nature. Another ground of challenge is that this was a case where there was insufficient evidence on record which could support the charges on which the President could have legally imposed the penalty of withholding 50% of the monthly pension for a period of 15 years. The learned counsel has also mentioned that he was not pressing ground 5 (V) and (P) in the OA, namely, that the departmental proceedings against the applicant could not be continued beyond his date of superannuation under Rule 9 of the Pension Rules, but has submitted that the penalty order passed under this Rule is otherwise liable to be quashed and set aside for the various grounds referred to above. The learned counsel has submitted a list of cases on which he relies upon (copy placed on record).

3. The respondents in their reply have controverted the above averments made by the applicant that there has been any lacunae in the procedure adopted in the departmental

proceedings. Admittedly, the report of the enquiry officer was sent to the applicant on which he has made representations. They have submitted that after due consideration of the EO's report, applicant's representation and advice of the UPSC, the President acting under the provisions of Rule 9 of the Pension Rules as the disciplinary authority had imposed the penalty of withholding 50% of monthly pension otherwise admissible to him for a period of 15 years, by the impugned order dated 29.1.92. This penalty has been imposed in respect of ^{the 13} two disciplinary cases which were instituted against the applicant in respect of certain lapses committed by the applicant while he was working as Assistant Engineer with the department. Shri S.M. Arif, learned counsel, has submitted that as the enquiry held against the applicant has been done strictly in accordance with the Rules and there was no requirement under Rule 9 of the Pension Rules to supply a copy of the earlier disciplinary authority's findings, who is subordinate to the President, to the applicant, as in the present case the President himself was the disciplinary authority, there was no infirmity in the departmental proceedings. He has submitted that under this Rule, the President is required to consult the UPSC before passing the final order which has also been done and the applicant has been furnished a copy of the Commission's advice. Regarding the punishment order, learned counsel has submitted that this has also been done in accordance with the Rules and the Tribunal, under the settled law of Judicial Review of such proceedings, can neither reappraise evidence or ^{the 13} quantum of the penalty imposed unless it is totally shocking. He has submitted that considering the seriousness of the charges against the applicant which are of ^a grave nature, the penalty order is justified which is based on the evidence on

JG

record. He has, therefore, submitted that the penalty order cannot be held to be either arbitrary or malafide or against the relevant rules or constitutional provisions which calls for the setting aside of the penalty order. He has, therefore, prayed that the application may be dismissed.

4. We have carefully considered the pleadings, submissions of the learned counsel for the parties and documents on record.

5. We may take the first and second issues raised by Shri G.D. Gupta, learned counsel together. The proviso to Rule 9 (1) of the Pension Rules provides that before the President passes the final penalty order in a departmental proceeding which has been instituted while the Government servant was in service and continued and concluded by the authority after his retirement, then he shall consult the UPSC before passing the final order. The proviso to clause (a) of sub rule (2) of this Rule provides that where the departmental proceedings are instituted by an authority subordinate to the President, as in the present case, that authority shall submit a report recording his findings to the President. The contention of the learned counsel for the applicant that the respondents ought to have given him a copy of the advice of the UPSC as well as the findings of the authority, who had commenced and concluded the disciplinary proceedings under Rule 9 (2) before the final penalty order was passed by the President so that it will give him an opportunity to offer his comments, would amount to giving him a second show cause notice against the proposed penalty to which he is not entitled under the law. In a recent Full Bench decision of the Tribunal dated 22.4.99 in Chiranjit Lal Vs. Union of India & Ors.

(OA-1744/97) this issue was raised i.e. whether in proceedings under Rule 9 of the Pension Rules, a further show cause notice needs to be given to the charged officer together with the copy of the advice received from the UPSC under Article 311 (2) of the Constitution and principles of natural justice. This has been answered by the Full Bench in the negative. The Tribunal held:

"The Supreme Court in Managing Director, ECIL, Hyderabad Vs. B. Karunakar, JT 1993 (6) SC 1, noted that in cases where the enquiry officer is other than the disciplinary authority the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence and enquiry officer's report and the delinquent employee's reply to it; the second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It was concluded by the Supreme Court that the employees' right to receive the report is a part of the reasonable opportunity of defending himself in the first stage of the enquiry and the failure to do so would deny the right to defend himself and to prove his innocence in the disciplinary proceedings. In other words, according to the Supreme Court, what was dispensed with by the 42nd amendment was the opportunity of making representations on the penalty proposed and not the opportunity of making representation on the report of the enquiry officer."

(emphasis added)

".... We may also take a look at the Constitutional provisions in regard to the consultation with the UPSC...."

".... Rule 9(1) of the CCS (Pension) Rules, 1972 requires that UPSC shall be consulted before any final orders are passed by the President in respect of any departmental or judicial proceedings continued after the retirement of the official."

"....We may note that the UPSC does not thereafter proceed to conduct a fresh enquiry but only gives its opinion on the basis of the material sent by the disciplinary authority including the reply of the charged officer in respect of the report of the enquiry officer."

.....It is in his interest that the President is required to consult the UPSC under Article 320(3)(c) of the Constitution and Rule 9(1) of the said Pension Rules. This is done after the disciplinary authority has already come to a provisional conclusion on the basis of the material before it. Seen in this perspective we find no good reason for a record show cause on the advice of the U.P.S.C."

"The consultation with the UPSC does not take away the duty of the disciplinary authority to apply its own mind before giving his final orders. There is also no additional material before the UPSC excepting that which is also with the disciplinary authority. A second stage show cause notice forwarding to him on the advise of the UPSC will necessarily involves the supply of the provisional conclusion of the disciplinary authority. It will in effect set the 42nd amendment of the Constitution at nought."

(emphasis added)

6. We are bound by the aforesaid judgement of the Full Bench which is fully applicable to the facts of this case. In this view of the matter, the contention of the learned counsel for the applicant that the departmental

proceeding is vitiated because of the non-supply of the advice of the UPSC to the charged officer before the final order was passed by the President is untenable. This cannot be taken as a denial of fair opportunity to the applicant to defend his case as provided under Article 311 (2) of the Constitution and the relevant Rules. Applicant has already been afforded a reasonable opportunity of hearing ^{in B} the departmental proceedings and given a copy of the EO's report on which he had made a representation and it cannot, therefore, be held that either the Rules or the principles of natural justice have not been complied with. The same reasoning will apply to the other contention of Shri G.D. Gupta, learned counsel, regarding non supply of the findings of the subordinate authority, who was earlier the disciplinary authority, on conclusion of the

departmental proceedings, which he has to submit to the President as the disciplinary authority under the proviso to Rule 9 (2) of the Pension Rules. As the applicant had already retired during pendency of the disciplinary proceedings, the President has passed the penalty order as the disciplinary authority in the case. As the disciplinary authority, the rules do not require him to give his findings separately for applicant's comments in case the proceedings had ~~not~~ been continued under Rule 9 (2) of the Pension Rules. In the circumstances, we do not find any merit in the contention of the learned counsel for the applicant that the findings of the subordinate authority, which he has to submit to the President, as disciplinary authority should have been furnished to the applicant as a second show cause notice. In other words, since the President is merely acting as the disciplinary authority in the present case and has passed a speaking order enclosing a copy of the UPSC's advice received by him, we find no legal infirmity in the penalty order. Therefore, on both these two grounds, the contentions fail and are rejected.

7. On perusal of the impugned penalty order we are unable to agree with the learned counsel for the applicant that it is not a ~~not~~ speaking order and this ground also fails. Regarding the contention that the penalty order passed by the President is unduly harsh as compared to the penalty orders passed in the case of the other two delinquent officers, namely the Junior Engineer and the Executive Engineer who were also similarly chargesheeted, admittedly, this was not a common proceeding and they were separately chargesheeted and dealt with. Therefore, each case has to be dealt with on its own facts and merit. We are unable to accept the contention of the learned counsel for the applicant

192

that while the Chief Engineer, as disciplinary authority, has imposed lesser punishment on the other officers as he was in a better position to appreciate the facts which were of a technical nature, the President was unable to do so, as the respondents have acted in accordance with the Rules and this ^{ground} is accordingly rejected. The punishment awarded is not such as to warrant any interference on this account or on the ground that it is too harsh, taking into account the nature of the charges against him.

8. In the facts of this case having regard to the provisions of Rule 9 of the Pension Rules, the judgement of the Supreme Court in L.K. Ratna's case (supra) will also not assist the applicant. In the light of the Full Bench judgement in Chiranji Lal's case (supra), the Tribunal's judgement relied upon by the applicant, Charanjit Singh Khurana vs. Union of India (1994 (2) SCR 519) and R.R. Prasad vs. Union of India & Ors. (OA No.814/92) dated 9.2.93 have been taken as overruled and will not assist the applicant. The judgement of the Supreme Court in State Bank of India Vs. D.C. Aggarwal (1983 (1) SCC 13, relied upon by the applicant deals with non-supply of the recommendations of the Central Vigilance Commission to the charged official which was held to be contrary to principles of natural justice. In this case the Supreme Court has held that the CVS's recommendations should have been supplied to the respondents as the disciplinary authority had taken action against him on the confidential documents which is the foundation of the penalty order. On the other hand, in the present case, as held by the Full Bench order dated 22.4.99, the disciplinary authority while making a reference to UPSC has to give his own provisional conclusion regarding the penalty to be imposed and

the UPSC does not thereafter proceed to conduct any fresh inquiry but only gives the opinion on the basis of the material sent by the disciplinary authority, including the reply of the charged officer in respect of enquiry officer's report. Therefore, in the circumstances of the case and following the observations of the Full Bench judgements, that case is distinguishable from the present case and a second show cause notice based on the advice of the UPSC, where their advice is also not required to be sent to the applicant having regard to the provisions of Article 311 (2) as amended by the 42nd amendment and Rule 9 of the Pension Rules, will not vitiate the proceedings. We have also seen the other judgements referred to by the learned counsel for the applicant, but for the reasons given above we do not think that they will assist the applicant in the present case. We have also considered the other submissions made by the learned counsel for the applicant but do not find any merit or justification for interfering with the penalty imposed by the President.

9. In the result, for the reasons given above, these two applications fail and are accordingly dismissed. No order as to costs.

10. Let a copy of this order be placed in

QA-3310/92.

(Smt. Lakshmi Swaminathan)
Member (J)

'San.'

Attested
Bimal
Court Officer
Central Administrative Tribunal
Punjab Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi 110001

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