

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2687/93
T.A. No.

199

16

DATE OF DECISION 10th Feb., 1995

<u>Dr. C.V.Sharma</u>	Petitioner
<u>Shri Gyan Prakash</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & Ors.</u>	Respondent
<u>Shri Madhav Panikar</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P.SHARMA, MEMBER (J)

The Hon'ble Mr. B.K.SINGH, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No.2687 of 1993

Dated New Delhi, this 10th day of February, 1995

(X)

Hon'ble Shri J. P. Sharma, Member (J)
Hon'ble Shri B. K. Singh, Member (A)

Dr C. V. Sharma, Retired Scientific
Officer (S.F.), Atomic Minerals
Division, Department of Atomic Energy
Pkt-A-119/A, Sukh Dev Vihar
NEW DELHI-110025

...Applicant

By advocate: Shri Gyan Prakash

Versus

1. Union of India, through
Secretary
Department of Atomic Energy
Chhatrapati Shivaji Marg
BOMBAY-39

2. Director
Atomic Minerals Division
Department of Atomic Energy
AMD Complex, Begumpet
HYDERABAD

3. Regional Director
Northern Region
Atomic Minerals Division
West Block-7
R. K. Puram
NEW DELHI-66

...Respondents

By Advocate: Shri Madhav Panikar

JUDGEMENT

Shri B. K. Singh, M(A)

This O.A. has been filed against orders (1) No.22/10/92-AMD(I&M) 108 dated 25-2-93 from Respondent No.1 to the petitioner - Show Cause Notice proposing to hold Departmental enquiry (Annexure-I).; (2) Order No. AMD-51(43)/91-Pen/3922 dated 22.3.1993 from Respondent No.2 to the applicant fixing Rs.2,850/- as provisional Pension w.e.f. 1.3.1993 only till the conclusion of the

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Departmental proceedings (Annexure-M); (3)

No.AMD-52/14/92-Vig/9802 dated 6.7.1993 from Respondent

No.2 to the applicant communicating the decision of Respondent No.1 not to release the retirement benefits at this stage(Annexure-Q); (4) No.AMD-52/14/92-Vig dated 15.9.93 from Respondent No.2 to the applicant's counsel about their not releasing retirement benefits due to the disciplinary action (Annexure-S) and (5) No.15/10/93/AMD/R&D/1632 dated 8.11.93 from Respondent No.1 to the Applicant's counsel (Annexure-U).

2. The brief facts of the case are that the applicant was employed under Respondents 1&2 as Scientific Officer (S.F.) and was drawing Rs.5,700/- per month along with other allowances. His post was a Group'A'(Senior Class-I) and his appointment to the post of Scientific Officer(S.F.) was approved by the ACC. He retired on 28.2.93 and at the time of retirement, he was working under Respondent No.2 at New Delhi directly under the control of Respondent No.3. It is admitted that he submitted his pension papers on 6.8.92 and the retiral benefits he got are (a) Provident Fund accumulation Rs.17,589.00; (b) C.G.E.G. (S.F.) Rs.16,384.00, but the respondents have withheld his (a) Death-cum-Retirement Gratuity; (b) Leave Encashment and (c) Commutation of the pension. Certain irregularities were committed by the applicant as Honorary President of D.A.E. Employees Co-operative Thrift & Credit Society Ltd., A.M.D. at New Delhi when he was working under

(a)

Respondent No.3. It is alleged that there were irregularities in financial transactions and misappropriation of funds to the tune of Rs.2.13 lakhs approximately. The objects of the Society are to promote the economic interest of the members and more particularly:

(i) The creation of funds to be lent to its members for necessary purposes;

~~for social and cultural purposes~~

(ii) To undertake Thrift and credit business;

(iii) To own lands, buildings, or to take them on lease or rent for the business of the society;

(iv) To undertake welfare activities particularly for the members and employees for the promotion of their moral, educational and physical improvements;

(v) To undertake other measures designed to encourage in the members the spirit and practice of thrift, self help and mutual help; and

(vi) To do all such things as are incidental or conducive to the attainment of all of the above objects.

As an Honorary President, his job are:

(a) to preside over the meeting of the Managing Committee;

(b) Shall hold the Office for 3 years and can seek re-election for two consecutive terms; and

(c) President shall have a Managing Committee consisting of the Honorary President, Vice President, Secretary, Joint Secretary and a Treasurer.

The applicant has said that the matter regarding financial irregularities is under inquiry by the Registrar of Co-operative Societies and as such Respondents have no

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business to start another proceeding under Rule 14 of CCS(CCA) Rules, 1965.

3. The applicant has sought the following reliefs:

"(i) to quash and set aside Memo dated 25.2.93(Annexure-I) which is a show cause notice proposing to hold departmental enquiry against the applicant and order dated 22.3.93(Annexure-M) fixing provisional pension till the conclusion of the departmental proceedings and order dated 6.7.1993 (Annexure-Q) from Respondent No.2 communicating the decision of the Respondent No.1 not to release the retirement benefits at this stage.

(ii) to direct the respondents to release to the applicant the dues in respect of his retirement benefits of death-cum-retirement gratuity, leave encashment and pension commutation forthwith.

(iii) to grant interest @24% per annum after two months of the retirement of the applicant i.e. since 1st of May, 1993 till the date of actual payment.

(iv) to award cost of the application.

(v) to award exemplary cost for unnecessary harassment caused to the applicant and pass such other and further orders deemed fit and proper in the circumstances of the case to meet the ends of justice."

4. A notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for. We heard the learned counsel Shri Gyan Prakash for the applicant and Shri Madhav Panikar for the respondents and perused the record of the case and certain additional submissions filed by the learned counsel for the applicant on 2.2.95.

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5. The main thrust of the argument of the learned counsel for the applicant was that there cannot be two simultaneous proceedings, one under Rule 14 of CCS(CCA)Rules,1965 and another under Co-oprative Societies Act. It was argued that the Registrar has to fix responsibility on the office bearers and the Managing Committee including the applicant before any departmental proceeding can be initiated by the respondents.

6. It is true that the Hon'ble Supreme Court in case of criminal proceedings and disciplinary proceedings has held in the case of Kusheswar Dubey Vs Bharat Coking Coal Ltd. & Ors reported in AIR 1988 SC 2118 that no strait-jacket formula can be applied but where the foundation of the misconduct alleged is the same as that of the criminal proceeding, the disciplinary proceeding may be allowed to pend till the disposal of the criminal case. The learned counsel for the applicant argued that where the Registrar has the legal jurisdiction to fix up the responsibility for irregularities in financial transactions, disciplinary proceedings launched by the respondents should be stayed. The learned counsel for the respondents argued that Registrar is not the disciplinary authority nor is he competent to launch disciplinary proceedings against the applicant since he is not an employee of the Registrar of Co-operative Societies. He has been appointed by ACC on behalf of the

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President of India and he is an employee of Central Government category 'A' and as such the disciplinary action against him for any misconduct will fall within the domain of the competent authority of the Government and not that of the Registrar. The analogy of the criminal case and the disciplinary proceedings does not hold good in this case. The learned counsel for the respondents relied on various decisions of the Hon'ble Supreme Court where it has been categorically held that Tribunal ought not to interfere at an interlocutory stage. The Tribunal has no jurisdiction to go into the correctness or truth of the charges and he quoted the observations of the Hon'ble Supreme Court and the ratio of the judgement in the case of UOI Vs Upender Singh (JT 1994(1) SC 658).

7. After hearing the rival contentions, it is necessary to bear in mind that the objective of the Co-operative Society's bye-laws is to ensure flow of funds from financial institutions and other lending institutions with a view to help the members for fulfilment of the objectives with which the Society is formed. The Co-operative Societies/Central Co-operative Banks/Apex Co-operative Bodies and other Apex Co-operative Bodies in the various sectors of the Government are instrumentalities for providing loans to farmers and to and others ensure the flow of funds from Reserve Bank to these institutions. Urban Co-operative Societies are formed to provide loans for industrial purposes. Housing Co-operative Societies are registered for getting land

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from Government or for purchase of land from individuals and to develop the same and enlist the members who pay membership fee along with original deposit so that loans could be taken on the basis of the contribution of the members and by mortgaging the land. The objectives of the Co-operative Societies differ and the bye-laws also differ and are framed keeping in view those objectives. It is true that all such Co-operative institutions are registered under the Co-operative Societies Act. Registrar is the watch-dog to ensure that these societies in various sectors even societies formed by Government servants function as viable units for fulfilment of the objectives for which these have been formed. There is annual audit and inspection of the financial transactions and malpractices if any, are detected during the course of these audits. These audits are provided for all types of co-operative societies on an annual basis. The subject matter of the audit and inspection is to detect malpractices or irregularities, involving the management of funds including loans given by financial institutions and subsidies given by Government. The Registrar of Co-operative Societies is not vested with any disciplinary powers except in case of those employees who are appointed by him and for whom he is the disciplinary authority. The Registrar is vested only with the powers of raising surcharge against individuals or giving awards against societies and also to initiate recovery proceedings under Public Demands Recovery

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Act. Even he does not have any power to recover the the amount himself. The co-operative loss is treated as loss of revenue of the Government and a certificate case can be filed for recovery of the amounts. Registrar is not vested with any power whatsoever to look into the misconduct either of the employees of the Societies or its ex-officio office bearers if it happens to be a society formed by Government servants. The Registrar is also vested with the powers of liquidation if the society has become sick and defunct.

8. Thus, the scope of enquiry and the object which the same is undertaken by the Registrar are distinctly different from the enquiry under Rule 14 of the CCS(CCA)Rules,1965. Registrar's enquiry is limited to financial irregularities detected by the audit. The Registrar is required to look into the management of funds of the society contributed by members and subsidies given by the Government and loans advanced by financial institutions. But he is not vested with any powers whatsoever for launching any proceedings in regard to any misconduct indulged ⁱⁿ by the ex-officio members or the employees by the management committee of the society.

9. Enquiry under CCS(CCA)Rules,1965 is instituted to comply with the guarantee attributed to the public servant under Article 311 of the Constitution. Thus, the scope of the enquiry and the object with which the same is undertaken are distinctly different.

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Registrar is not vested with any power under Article 311 of the Constitution nor is he competent to launch disciplinary proceedings against anyone except the employees of whom he is the appointing authority. His judicial function is confined to only surcharge, recovery of loan through certificate or liquidation of the society if it has become sick and non-viable. He is also competent to disqualify any person on the basis of his infamous conduct. He functions more or less like the Chairman of Bar Counsel in case of Advocates or ^{/in case of medical practitioners} the President of IMA ^{/who can disqualify their members from} practising in a Court of Law or for working as a medical practitioner. The Registrar is fully competent to disqualify any member for any particular post or for a specified period or permanently to be elected as a member or an office bearer on the basis of the misdemeanour, but beyond this he has no authority. The rights and liabilities of Government servants and the employees of statutory bodies are governed by statutory rules and ^{instructions} ~~in which rules confer~~ powers upon the authority to issue orders or to make any rules. This is a general rule of law that when a statute gives a power to a certain authority, then that is to be exercised by that authority alone. He can neither delegate such power to anybody else nor he can exercise the statutory powers under the advice of some other person or under guidance of his superior or

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information furnished by somebody else. This has been held by Hon'ble Supreme Court in case of J. N. Mair Vs State of Punjab AIR 1968 Punjab and Haryana 324 and also in Gimms Motor Units Ltd. Vs Minister of Labour 1946 (2) ALER 210. The power of President of India under whom the applicant is functioning can not be delegated to anyone else nor is the President required to work on the basis of the information furnished by Registrar of Co-operative Societies. Registrar of Co-operative Societies cannot exercise the function of the President of India under whom the applicant was working. The legal proposition is well established that in case of any misconduct in employment or while working even as Honorary President in a society formed by Government employees of that department, only the Minister in which of the department would be competent to take cognizance of any misconduct committed by any employee even though in a honorary capacity in the so-called co-operative societies formed by the Government employees. The relationship of master and servant does not cease even when a Government employee becomes an ex-officio member or an office bearer in a co-operative society sponsored and run by the employees of that department. The contract of service even in case of retired employees does not come to an end with the superannuation of the Government servant. It comes to an end only when the post ^{is} abolished. The Government has reserved the right to proceed against Government

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servant for any misconduct detected either during the tenure or even within four years of the retirement of the Government servant and if the misconduct is of a grave nature, they are vested with the right to proceed under Rule 9 of the CCS(Pension) Rules, 1972 for making a cut or for forfeiting the entire pension if they choose to do so. Thus the hands of the Government are not at all fettered and it is they who are competent to proceed a Govt. servant against / for any misconduct and not the Registrar of Co-operative Societies and the Government is not required to wait for the report of Registrar for initiating action when the employees of co-operative society of that department have brought to thier notice of the serious financial irregularities committed by the applicant. The administrative authority in initiating disciplinary proceedings is not bound to wait for the verdict of even a criminal court, leave aside that of Registrar of Co-operative Societies who is not even designated as a court. As has been held in the case of Kusheswar Dubey(supra) there is no rigid or inflexible rule that a disciplinary proceeding cannot be held while the criminal trial is on. It is only when the parties are the same in the criminal ~~case~~ trial and the disciplinary proceeding that the propriety demands that the latter should be stayed. In the instant case, the competent authority by initiating departmental proceeding against the applicant for the misconduct

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alleged against him is not violating any rule of law or any other principle of law if he chooses to ignore the findings of the Registrar of Co-operative Societies and decides to act on the basis of the *prima-facie* case made out before him. It would be in the interest of the applicant to participate in the departmental proceedings initiated against him bearing in mind the fact that the objective and scope of the enquiry made by Registrar are distinctly different from the objective with which the departmental enquiries are held. As already stated, Registrar of Co-operative Societies is not vested with any power of initiating departmental action against the employees whom he has not appointed. In the case of the applicant, the appointing authority is the Government and only Government is competent to initiate disciplinary action on grounds of misconduct under CCS(CCA)Rules. The enquiry under Rule 14 of CCS(CCA) Rule has been initiated against him and charges have been framed and served on him and it is necessary that he should face the departmental enquiry failing which, the Respondents will exercise their right to initiate action even under Section 9 of the CCS(Pension)Rules, 1972. There is no bar to holding disciplinary proceedings simultaneously with the enquiries being made by the Registrar since these two are completely different in their objective and scope. Departmental action does not get vitiated with the only reason that the Registrar of

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Co-operative Societies is busy in holding an enquiry in the financial irregularities of the said Thrift and Credit Society formed by Department of Atomic Energy employees. Since a disciplinary action has been initiated, Respondents are justified in deferring consideration of all payments of gratuity, leave encashment and also in finalising pension. They have granted provisional pension only since the disciplinary action is on. After the applicant participates and is exonerated, he will be entitled to all the pensionary benefits and release of gratuity and leave encashment and if he is punished and he has caused loss to the employees or to the Government, they would take necessary decision either to make deduction to the extent of loss suffered from gratuity or leave encashment or even make a cut in the pension after initiating action under Rule 9 of the CCS(Pension)Rules, 1972 after obtaining ^{the} concurrence of the President.

10. We cannot find fault with the respondents in deferring payment of gratuity, leave encashment and grant of provisional pension till the disciplinary action is completed and final orders are passed by the competent authority. The Government before imposing punishment on the applicant is also required to consult UPSC since he is a Class-I officer of Government of India. Even an action under Rule 9 of CCS(Pension)Rules, 1972 cannot be initiated without obtaining the orders of the President, ^{since the applicant has retired.} Withholding of final grant of pension, gratuity and leave encashment appear to be justified

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11. We are further fortified in our view by the ratio established in case of UOI Vs Upendra Singh (supra). This Tribunal cannot interfere at the interlocutory stage. This application, thus, fails and is dismissed, leaving the parties to bear their own costs. But this does not preclude the applicant from assailing any grievance arising to him after the completion of the disciplinary proceedings against him.

(B. K. Singh)
Member(A)

J. P. Sharma
(J. P. Sharma)
Member(J)

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