

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE ^{29th} DAY OF MARCH, 2005
Original Application No. 90 of 1996**

CORAM:

**HON.MR.JUSTICE S.R.SINGH,V.C.
HON.MR.S.C.CHAUBE, MEMBER(A)**

Kamala Prasad Tiwari, Son of
Shri Bhagawati Prasad Tiwari
Resident of village-Balua (Lakesar)
Post-Shahapur Tehsil- Sadar,
District Jaunpur. .. Applicant

(By Adv: Shri K.K. Mishra)

Versus

1. Union of India through the Comptroller
And Auditor general of India,
New Delhi.
2. The Accountant General, Audit-1,
U.P. Allahabad.
3. The Senior Deputy Accountant General
(Admn) office of Accountant General
Audit-1, U.P. Allahabad. .. Respondents

(By Adv: Shri Satish Chaturvedi)

ORDER

JUSTICE S.R.SINGH,V.C.

The applicant retired on superannuation as Senior Auditor from the office of the Accountant General (Audit-1), U.P., Allahabad on 30.6.1995. Vide memo No.Sr.DAG (A)/Cell/Admn/CCS (Pension) Rules/Disc./168 dated 10.10.1995 the applicant was called upon, under clause (b) of Sub-rule (1) of Rule 8 of CCS (Pension) Rules, 1972 to show cause why a part of his pension be not withdrawn by reducing permanently the monthly pension to Rs.375/- payable to him. The charges on which a part of pension was proposed to be withdrawn as above, as mentioned in the said memorandum, are given below:

- (i) that the said Shri K.P.Tiwari, retired Senior Auditor has unauthorisedly conducted the audit of accounts

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of the office of c.M.O., Shahjahanpur from 5.7.95 to 7.7.95 by presenting himself in the fictitious name of Shri S.P. Singh;

- (ii) that the said Shri tiwari iissued intimation of audit to C.M.O., Shahjahanpur vide letter dt. 1.7.95 for audit of his office from 4.7.95 to 7.7.95 under signature of a fake person named Shri S.D.Tripathi, A.A.O;
- (iii) that the said Shri Tiwari conducted audit of accounts of C.M.O.,Shahjahanpur from 5.7.95 to 7.7.95 and issued audit notes in four pages by unauthorisedly using the authority of a Section Officer of the AG's Audit Party; and
- (iv) that during the course of unauthorized audit of accounts of the office of C.M.O., Shahjahanpur, the said Shri Tiwari was accompanied by another unauthorized person in the name of Shri Sanjay Tiwari who, as reported by office of C.M.O., Shahjahanpur, apprehended to be son or brother of the said Shri Tiwari.”

A list of documents by which the charges were proposed to be sustained was forwarded to the applicant alongwith the said Memorandum dated 10.10.1995. The applicant submitted his reply and denied the charges leveled against him. However, the Competent Authority namely Accountant General (Audit) 1, U.P., Allahabad came to the conclusion that the applicant indulged himself into the malpractice and not only defrauded the Government by conducting unauthorisedly the audit of C.M.O., Shahjahanpur from 5.7.1995 to 7.7.1995 by issuing forged intimation of audit to C.M.O., Shahjahanpur, and presenting himself in the fake name of Shri S.P. Singh and using unauthorisedly the authority of Section officer of AG's **audit** party. He was thus found guilty of grave misconduct having

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violated the provision of clause (a) of Sub rule (1) of Rule 8 of CCS (Pension) Rules, 1972 for continuance of his pension. Rule 8 of the CCS(Pension) Rules, 1972 being relevant, is quoted below:

8. Pension subject to future good conduct.

- (1)(a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.
- (b) The Appointing Authority may, by order in writing, Withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Provided that, where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One Thousand nine hundred and thirteen from 1.4.2004- See GID below Rule 49) per mensem

- (2) Where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken In the light of the judgment of the Court relating to such conviction.
- (3) In a case not falling under sub-rule (2), if the authority Referred to in sub-rule (1) considers that the pensioner Is prima facie guilty of grave misconduct, it shall before Passing an order under sub-rule (1),
 - (a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the Appointing Authority such representation as he may wish to make against the proposal; and
 - (b) take into consideration the representation, if any, submitted by the pensioner under Clause (a).
- (4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is Passed.
- (5) An appeal against an order under sub-rule (1), passed By any authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public Service Commission, pass such orders on the appeal as he deems fit.

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EXPLANATION.- In this rule,-

- (a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);
- (b) the expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923), (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

The Appointing Authority ordered to withdraw a part of pension by reducing, permanently, the monthly pension to Rs.375/- w.e.f 1.12.1995. By means of Corrigendum issued on 21.12.1995 the order aforesaid was partially modified as under:-

OFFICE OF THE ACCOUNTANT GENERAL(AUDIT)1,
U.P., ALLAHABAD.

No.Sr.DAG(A)/Cell/Admn/CCS(Pension) Dt. 21st Dec., 1995

CORRIGENDUM

In partial modification of the orders of Appointing Authority
In case of Shri K.P. Tiwari, Retired Senior Auditor under Provisions of
clause (a) of sub-rule (1) of rule 8 of CCS (Pension) Rules, 1972, issued vide
No.Sr.DAG(A)/cell/Admn./CCS(Pension) Rules/Disc.Group/215 dt. 7th
Dec., 1995 reducing permanently monthly pension payable to Shri K.P.
Tiwari to Rs. 375/- per month with effect from 1st December, 1995, the
monthly pension payable to Shri K.P. Tiwari shall be reduced from Rs.
752/- per month (after commutation of 1/3rd of gross pension) to rs. 375/-
per month. The relief on monthly pension payable to Shri K.P. Tiwari shall
be paid on Rs. 751/- per month (permanently reduced monthly pension of
Rs. 375/- + 1/3rd of gross pension, i.e. Rs.376/- per month already
commuted).

Sd/-

The Original Application was initially allowed vide order dated 23.11.01 on the ground that it was passed without obtaining Presidential sanction. The Department preferred a writ petition challenging the aforesaid

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order and the High Court held, vide judgment and order dated 19.11.04, that since the conduct in respect of which a part of pension was withdrawn did not relate to the service period, Rule 9 (1) of the CCS (Pension) Rules, 1972 would not apply and instead Rule 8 of the aforesaid Rules would govern and accordingly after quashing the order dated 23.11.01 as well as the review order dated 28.5.02 the High Court directed the Tribunal to proceed with the matter afresh in accordance with law.

Concededly the applicant had instituted an appeal to the President against the order under challenge but without waiting for the decision of the appeal he instituted the original application. During the pendency of the original application the appeal preferred by the applicant came to be dismissed vide order dated July 1st, 1999 which reads as under:-

ORDER

Subject: Appeal preferred by Sh.K.P. Tiwari against the order of appointing authority of reduction in pension.

WHEREAS the Sr.Dy. Accountant General (Admn) and Appointing Authority vide his office order No.Sr.DAG(A)/cell/Admn/CCS (Pension) Rules/Disc. Group/215 dated 7.12.1995 imposed the major penalty of reducing the pension permanently to Rs. 375/- in respect of Sh. K.P. Tiwari, Ex. Sr. Auditor.

AND WHEREAS Sh.K.P. Tiwari preferred an appeal to the President against the said order:

AND WHEREAS the President after careful consideration of the appeal of the officer alongwith the relevant records of the case and in consultation with the UPSC holds that the charges leveled against Sh.K.P. Tiwari, Ex. Sr. Auditor, are conclusively proved for the reasons indicated in paras 3.1. to 3.7 & 4 of the advice of the Commission contained in their letter No.3/206/97-SI dated 7.10.1998 (copy enclosed) which has been accepted and the penalty imposed is not considered excessive.



NOW THEREFORE, the President hereby orders that the appeal of Sh.K.P. Tiwari be rejected and the major penalty of reduction in pension permanently imposed by the Appoint5ing Authority on him be confirmed.

BY ORDER AND IN THE NAME OF PRESIDENT

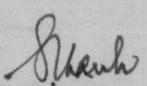
Sd/
Under Secretary

A copy of the Uttar Pradesh Public Service Commission's letter No.3/206/97-SI dated 7.10.1998 was endorsed to the applicant along with the said order. The same has been filed as (Annexure SCA-1) to the supplementary counter affidavit.

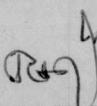
We have had heard counsel for the parties and perused the pleadings as well as the impugned orders. The learned counsel for the applicant has failed to point out any procedural impropriety or illegality in the decision making process. The Disciplinary Authority in its order dated 7.12.1995 has clearly found the charges made against the applicant as established. The plea of alibi taken by the applicant has not been believed being inconsistent with a medical certificate after Dr. Balwant Singh on which reliance has been placed by the applicant himself. According to the medical certificate issued by Dr. Balwant Singh, the applicant was under his treatment of ~~for~~ ^{of} AMOBIASIS from 5.7.1995 to 15.7.1995, Whereas, his representation showed as if he was admitted in some hospital or nursing home and was discharged from there on 15.7.1995. The applicant, according to the finding recorded by the Disciplinary Authority had managed the medical certificate of his illness with the intention of avoiding withdrawal of a part of pension by reducing permanently, the monthly pension to Rs. 375/- payable to the applicant. The charge of conducting unauthorisedly the audit of C.M.O

Shahjahanpur from 5.7.1995 to 7.7.1995 by presenting himself in the fictitious name of Shri S.P. Singh has been found established. The Disciplinary authority has also held that the writings of four pages of audit notes issued in the name of Shri S.P. Singh during the course of audit of accounts of CMO, Shahjahanpur resembled with the writings of Shri S.P. Singh Officer of the office of the Accountant General (Audit)1, U.P., Allahabad. The request of the applicant for obtaining opinion of handwriting expert was rightly not acceded to. The Disciplinary authority has given cogent reasons for not acceding to the request for the opinion of handwriting expert. It cannot be gainsaid that the conduct attributed to the applicant is tantamount to grave misconduct. In the circumstances, we find no ground made out for interference.

The original application fails and is dismissed without any order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: March 29, 2005.

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