

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration C.A.No. 1020 of 1987

R.P.Srivastava

Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr. A.B. Gorathi, Memmer (A)

(By Hon.Mr.Justice U.C.Srivastava, V.C.)

This application is against the order dated 4th August 1986 passed by the President of India imposing the penalty of cut of 10% of monthly pension for a period of two years. This punishment has been given to him in respect of the proceedings which started against the applicant prior to his retirement and subsequent to his retirement in view of Rule 9 of the CCS (Pension) Rules, 1972. The applicant who started his service career as Inspector of Central Excise on 3rd March, 1949 and later on promoted as Superintendent of Central Excise. He was retired on 31st ^{October} ~~October~~ ^{Decruber} 1982 after attaining the age of superannuation. The proceedings started against the applicant on the basis of the chargesheet issued to the applicant which contains two charges.

2. Under the orders of the Assistant Collector(Preventive), a preventive party consisting of the applicant as a Superintendent and four Inspectors of Central Excise visited the premises of M/S Gujrat Tobacco Store at Varanasi on 6.6.77. According to the applicant the stock and accounts of the aforesaid licensee on checking were found to be correct. However, a few transport documents under which the tobacco in the licensed premises was received and recorded in the EB-3 register were not readily available with the licensee as his ~~Munis~~ ¹² who handed over the permits was not there. The licensee wanted some time to trace out the same and after a few hours the preventive party made an effort to complete the verification of the remaining permits

Corrected
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with the EB-3 register but as the shop was found closed, therefore, it could not be completed. The applicant was served with a chargesheet on 9th August, 1982 in which it was stated that he demanded and accepted a sum of Rs.100/- as illegal gratification from the proprietor of the firm in presence of other officers and other persons, and he failed to make entries in the licensee's account regarding the result of preventing checks and also failed to book any offence against the party for the discrepancies observed during the course of checks. The applicant denied the charges against him and the explanation of the applicant was that there was no denial by the party to produce the documents except that he wanted time for the same as referred to above as Munim was not present. An Inquiry Officer was appointed and inquiry proceeded. The Inquiry Officer submitted his report on 16th February, 1984 and held that the first charge against the applicant regarding acceptance of Rs.100/- was not proved but held that the second charge was proved. The second charge against the applicant is as follows:-

"The charge against the applicant was that he failed to maintain absolute integrity and devotion to duty and thereby to have acted in a manner unbecoming a Govt. servant and thereby to have contravened the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964 in as much as:-

1. ----- ----- -----

2. That they are alleged to have failed to make any entry in the licensee's account regarding the results of the preventive checks and also to have failed to book any offence case against the party for the discrepancies observed by them during the course of checks.

As it was not a ^{case for} ~~existing~~ ^{registering an} offence and that is why it is not registered. In this petition also stated that at any point of period the department did not book any offence case against the said party. Yet the applicant has been charged of not booking any offence. In view of the provisions of Rule 9 of the CCS(Pension) Rules, 1972 the President of India issued

a show cause notice after considering the findings of the Collector of Central Excise on the Inquiry Officer's report on 12th September, 1985, through which the applicant was required to show cause as to why 20% of the monthly pension otherwise admissible to him be not withheld on permanent basis. The matter was referred to the Union Public Service Commission for consideration, as required under Rule 72 with the reply of the applicant. After having considered the advice of the Commission, the President of India has been pleased to pass an order imposing a penalty of a cut of 10% of monthly pension otherwise admissible to him for a period of two years. The applicant filed a Review application to the President of India which was also rejected on 1.12.87. Thereafter he has approached the Tribunal.

3. On behalf of the applicant it was contended that the main charge against him has failed and the second charge which arose out of the first charge was inter-linked with it and ~~being~~ said to have been proved. It was not such a charge on which the punishment which has been awarded could be so awarded. Further the second charge itself was not proved in as much as it was not the ^{responsibility} guilty of the applicant to book an offence and that too when no offence has been made out and further the rule was applicable only when there was refusal by the party to give the papers. In this connection it has been contended that the reliance of the Department on Rule 41 of Central Excise Rules of 1944 was uncalled for as the same applies only when there is refusal by a party and in this case there was ^{no refusal} result from the party. The findings to which the Commission also agreed was held to be untenable in as much as the entire exercise of making checks by the preventive officer would be meaningless if it was to be considered that the preventive officer could not take any action in case irregularities were found during the check. The commission took the view that the failure of the firm in question to produce transport documents attracted the provisions of rule 41/226 of the Central Excise Rules, 1944 and in view of this the second allegation was proved. But at the same time Commission

observed that the applicant as a member of the preventive party was under the overall supervision of Shri Srivastava, he could not be held responsible for this lapse. Rule 9(i) of the pension rules reads as under:

"The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and or ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

The rule (9) as abstracted above indicates that the orders for recovery from pension is to be made for withholding and withdrawing the pension or part thereof whether permanently or for specified period. The President has a right to withdraw or withhold the pension in part for permanently or specified period and also the President has a right to order for recovery from the pension or part of any pecuniary loss to the Government, if in the departmental and judicial proceedings the pensioner is found guilty of 'grave misconduct' or 'negligence'. Right of pension is a fundamental right and a person can be deprived of the same only in accordance with law which is reasonable. The Govt. can recover, if the question of recovery arises only if a pecuniary loss is ~~caused~~ and in case no pecuniary loss is ~~caused~~ there is no question of recovery. The question of withholding or withdrawal of a pension can be done by way of punishment, this means that a pensioner is to be deprived of the pension which he earned as a result of his service to the Government Department. Although the rule does not state that withholding or withdrawal of the pension can be done only if the Government ~~has~~ a pecuniary loss, but it cannot be totally detached from it, and even otherwise this can be done if the pensioner is found guilty of grave misconduct. If a pensioner is deprived for ~~guilty~~ of grave misconduct, he cannot be deprived of ~~the~~ misconduct ~~unless it~~ is grave in nature. Misconduct coupled with gravity means

a misconduct of a very serious nature which does not admit of any ~~wavier~~ condonation, concession or relaxation. The misconduct said to have been proved against the applicant is only of a minor nature. In case the first charge would have been proved it could have been contended that the grave misconduct has been proved but non registration of the cases consequent of which has also not been stated may be a misconduct but it cannot be a grave misconduct. The same not being grave misconduct, the pension could not be withheld. Withholding of the pension is thus obviously not supportable by law, and an arbitrary exercise of the powers is in violation of the provision of law. As such the application deserves to be allowed and the order dated 4th August, 1986 is quashed. No order as to costs.

and the
misconduct
date 1-10-87
is set aside

for signature
Member (A).

by
Vice-Chairman.

Concert
Date 1/10/92
Dated: 18 ~~February~~
January, 1992, Alld.

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(sph)