

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 744 OF 1992

Allahabad, this the 28th day of June, 1999

CORAM : Hon'ble Mr. S. Dayal, Member(A)
Hon'ble Mr. S. K. Agrawal, Member(J)

Sarwan Lal (deceased)
substituted by
Ashok Kumar, S/o. Late Sarwan Lal
R/o. 18/174, Purani Mandi,
Tajganj,
AGRAApplicant

By Sri K. P. Srivastav, Advocate

Versus

1. The Union of India
Through the Secretary,
Ministry of Communication,
New Delhi.
2. The Director General (Posts),
Dak Bhawan,
Parliament Street,
New Delhi.
3. The Director (Vigilance),
Office of Director General (Posts)
Dak Bhawan, Parliament Street,
New Delhi.
4. The Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
5. The Director, Accounts (Postal) U.P. Circle,
Lucknow.

..... Respondents

By Shri N. B. Singh, Advocate

O R D E R

(By Hon'ble Mr. S. K. Agrawal, Member(J))

In this original application the applicant

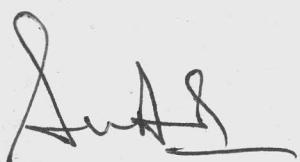
makes a prayer to quash the order dated 7-5-91 and to direct the respondents not to with-hold 20% pension of the applicant with retrospective effect.

2. In brief the facts of the case as stated by the applicant are that while working on the post of Superintendent Postal Store applicant was given 2 separate charge sheets on 29-7-85 thereafter applicant retired on 31-8-85. The enquiry was conducted and report on first charge sheet was submitted on 30-9-88 and second charge sheet was submitted on 31-5-88. It is stated that the matter was referred Union Public Service Commission in both the cases and thereafter a composite order was passed in the name of President of India dated 7-5-91 by which 20% monthly pension payable to the applicant was with-held permanently. It is stated that the enquiry proceedings were initiated by Director General (Posts) which an authority subordinate to the President of India and the order of punishment is signed by respondent No.3 who is not the appointing authority of the applicant and charges against the applicant are not for grave misconduct/negligence. Therefore the applicant is entitled to the relief sought for.

3. Counter was filed. It is stated in the counter that applicant working as Superintendent Post Offices Badayun gave the duty of checking the list of applicants to a person lower in rank who executed application of 34 Scheduled Caste candidates who secured higher marks in order to select his son. The applicant who



was working as Superintendent Post Offices did not followed the financial rules for affecting purchases and in order to enquire into these allegations two separate charge sheets were given to the applicant. The enquiry in these major penalty charge sheets was complete in case of charge sheet No.1 on 30-9-88 and in case of charge sheet No.2 on 31-5-88. The Enquiry Officer in case of charge sheet No.1 held the charges fully proved against the applicant and in case of charge sheet No.2 the enquiry officer held the charges fully proved except that the expenditure relating to printing of monogram on bags cannot be taken as the same as incurred on purchase of stationery items. The matter was referred to U.P.S.C. in both the cases in order to seek advice and U.P.S.C. gave the advice on 27.3.91 and the composite order was passed on 7-5-91 which is said to be the impugned order in this case. It is stated in the counter that charge sheets were issued by Director General (Posts) who is competent authority and since the applicant was superannuated on 31-8-85 these enquiry proceedings were completed under rule 9 (2) (a) of CCS(pension) Rules, 1972 and after taking the full facts into consideration and advice given by the U.P. S.C. the President of India ordered the punishment to the applicant under order dated 7-5-91 which was signed by Director (Vigilance) which is in conformity with O.M.No. F.19(9)-E.v/66 dated 6-6-67.



4. Rejoinder was filed reiterating the facts as stated in the original application.

5. Heard the learned lawyer for the parties and perused the whole record including the departmental

file and written submissions filed by the learned lawyer for the applicant.

6. The first charge sheet was consisting of 4 Articles of charge relates to the period when Sri Sarwan Lal was working as Superintendent Postal Store Depot, Bareilly. The charges were that he purchased stationery items worth Rs.9,120=60p blank paper for printing for Rs.7634=90p, and file covers, boards etc. of the value of Rs.80,035/- and awarded work for printing of monogram on gunny bags involving amount of Rs.3461.20 without following prescribed procedures. In this way he exceeded his power in the matter of purchases of above stores as well as splitting bills into small bills of Rs.500/-, so that he can sanction them within his own power without referring to the higher authority.

7. In the second case Sri Sarwan Lal was charge-sheeted for his mis-conduct in regard to manipulation in securing selection of his son against the post of Postal Assistant by getting excluded 34 applicants all belonging to Scheduled Caste community with higher marks than the charged officers son and also removal of service from some of the applications. It is also alleged that the duty of checking officer was given to an officer lower in rank than higher selection grade while conducting recruitment of the above examination. These irregularities were alleged to have been committed by the applicant while he was functioning as Superintendent Post Offices Badayun.

Sarwan

8. Rule 9 of CCS(pension) Rules 1972 reads as under :-

"9. Right of President to withhold or withdraw Pension

(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any department 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 :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced before (the amount of rupees sixty per mensem).

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in (Rule 69) shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule -

- (a) departmental proceedings shall be deemed to be instituted on the date on which the

statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.

(6) Final order under Rule 9 will be issued in the name of President -

It has been clarified in consultation with the Ministry of Home Affairs and the Law Ministry that the function of the Disciplinary Authority is only to reach a finding on the charges and to submit a report recording its findings and take a final decision under Article 351-A, C.S.R.'s (Rule 9). In case Government decide to take action under Article 351-A, C.S. Rs., in the light of the findings of the Disciplinary Authority, the Government will consult the Union Public Service Commission. If as a result of such consideration in consultation with the Commission, it is decided to pass an order, necessary order will be issued in the name of the President.

2. The procedure outlined in the preceding paragraph will also apply to a case where the President functions as the Disciplinary Authority."

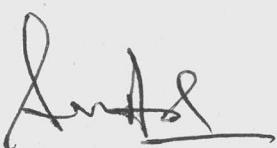
9. Learned lawyer for the applicant during the course of his arguements has submitted that the impugned order dated 7-5-91 is illegal as well as passed without jurisdiction by an authority who is not a competent

authority to pass the same. But we are not inclined to accept the contention of the learned lawyer for the applicant as Rule 9 of CCS(Pension) Rules 1972 has made it very clear that the final order under Rule 9 of CCS(Pension) Rules 1972 is issued in the name of President. Therefore in view of the provision given under Rule 9 of CCS(Pension) Rules 1972 the impugned order cannot be said to have been issued by an authority not competent to issue the same.

10. Learned lawyer for the applicant has also argued that the enquiry against the applicant was initiated by Director General (Post) who is not competent authority to initiate the departmental enquiry against the applicant. No order/circular has been referred by the learned lawyer for the applicant so as to show that Director General (Post) is not a competent authority to initiate departmental enquiry against the applicant. Whereas in the counter the respondents have made it very clear that Director General (Post) was competent to initiate enquiry against the applicant.

11. Learned lawyer for the applicant has also argued that no grave misconduct or negligence is proved against the applicant, therefore, withholding of pension of the applicant under Rule 9 of CCS(Pension) Rules, 1972 is not sustainable in law. In support of his contention he has referred -

1. Ranadhir Chakraborty Vs. U.O.I. & Others
O.A.No.204 of 1991 decided on 19-10-95.
by Guwahati Bench.
2. State of M.P. & Others Vs. Dr.Yashwant
Trimbak (1996) 33 ATC 208.



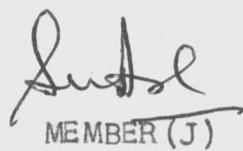
12. We have given thoughtful consideration to the contentions of learned lawyer for applicant and also heard the learned lawyer for the respondents, and perused the legal citations referred by the learned lawyer for the applicant. The enquiry officer held the charges proved against the applicant and thereafter the necessary advice of U.P.S.C. was also sought and the matter was referred to President of India for giving final orders and the final order dated 7-5-91 was issued in the name of the President, which is neither arbitrary, nor illegal and the legal citations as referred by the learned lawyer for the applicant do not help the applicant in any way.

13. Learned lawyer for the applicant has also argued that the respondents never submitted any report to the President as required under Rule 9 (2) (a) of CCS(Pension) Rules, 1972. Learned lawyer for respondents was directed to confirm the same and on 6-4-99 the learned lawyer for respondents produced the record of the case and confirms that the Presidential orders on the ground on which reference was made to the President is contained in the papers which are being submitted ~~by me~~ today. The order dated 7.5.91 makes it abundantly clear that President has considered the advice of Commission alongwith all the relevant records and found that Articles of charge are fully proved against Sri Sarwan Lal, keeping in view the gravity of charge the President has accepted the advice of the Commission that the end of justice would be met if the 20% of the monthly pension otherwise admissible to Sri Sarwan Lal is withheld permanently.


contd.../10p

14. On the basis of foregoing discussions we are of the considered opinion that applicant has no case for interference by this Tribunal as this original application is devoid of any merit.

15. We, therefore, dismiss this original application with no order as to costs.


Sudhakar
MEMBER (J)


Rayal
MEMBER (A)

/satya/