

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.240 of 1999

Allahabad, this the 3rd day of March, 2008

Hon'ble Mr. Justice Khem Karan, V.C.

Ravi Dutt Singh,
 Son of Late Gokul Singh
 R/o 15/59 Civil Lines, Kanpur.

...Applicant.

(By Advocate: Shri S. Dwivedi)

Versus

1. Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi.
2. The Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi.
3. The Commissioner of Income Tax, Office of Commissioner of Income Tax, Kanpur.

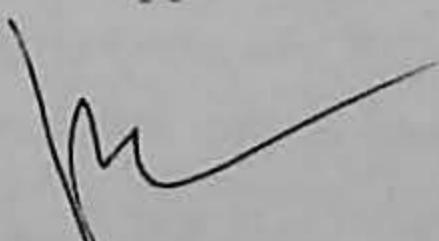
...Respondents.

(By Advocate : Shri A. Mohiley)

O R D E R

The applicant has prayed for the following reliefs :-

- (a) That the order dated 30.11.1990 (Annexure-A-I) and order dated 12.8.1997 (Annexure-A-II) may be declared illegal and the same may be quashed and further respondents to directed to allow the applicant all the consequential benefits with interest at the rate of 18% p.a.
- (b) That the respondents be directed to pay D.A. on the amount of full pension including commuted pension for the period during which he was under punishment with interest at the rate of 18% p.a.
- (c) Any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded to the applicant.



(d) Cost of proceeding be awarded to the applicant.

2. After his retirement on 30.11.1985 as Income Tax Officer, and after grant of pension to him as per rules, the applicant was served with a notice under Rule 8 (3)(a) of Central Civil Services (Pension) Rules, 1972 (in short the Rules, of 1972). Copy of the charge sheet is Annexure-A-3. Charges against him were that he sent so many letters to different authorities from 6.6.1986 to 11.11.1987 leveling baseless uncalled for and malicious allegations against the authorities concerned. It was also stated that on 7.11.1989, he came to the office with a three wheeler auto-rickshaw, carrying the banner a candidate of a political party and a public addressing system, and started abusing Hon'ble Prime Minister and Commissioner of Income Tax. It was said that inspite of the request of the officials not to do so, the applicant continued speaking against the said authorities and left place only when he ~~realised~~ ^{realised} that the authorities were calling the police. The applicant was given time to file reply. Thereafter the authority concerned passed the impugned order dated 30.11.1990, directing for reduction in pension, for a period of 05 years. His appeal to the President of India also remained unsuccessful. (see order dated 12.8.1997 Annexure-2). He is assailing both these orders on the grounds inter-alia that these have been passed without giving him opportunity to submit reply, to lead evidence in defence and to be heard in person.

3. In reply, the respondents have stated that the applicant was given ample opportunity to submit his written reply to the notice but instead of availing the same, he raised various irrelevant and untenable objections, by the letters mentioned in para 13 of the reply. They say ultimately, the applicant filed

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his reply dated 7.11.1990, which was not to the point. They say the authority took into consideration all the relevant facts and circumstances including the contentions raised by the applicant and passed a reasoned order, imposing penalty of reduction in pension for a period of five years.

4. The applicant has filed rejoinder saying that it is not correct to say that he was given reasonable opportunity to file reply. It has also been stated that the allegations made against the applicant were baseless and no finding of grave misconduct could have been arrived also without giving him opportunity to test the veracity of the allegations and to lead his own evidence.

4. I have considered the respective submissions. It would be relevant to reproduce Rule 8 of the Rule 1972. It is as under :-

"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.

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."

5. The first submission of Shri Ansari is that no such proceedings could have been initiated, after expiry of four years of the retirement. I have not been able to understand as to how this argument is being advanced. Rule 8, as reproduced above does not say that action under this rule can be initiated only within four years of the retirement. The argument might have been relevant, in the context of

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rule 9 of the said Rules of 1972. So this argument of Sri Ansari is not accepted.

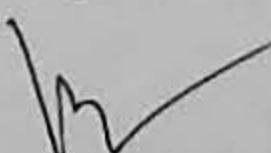
6. This much is not in dispute that the applicant was served with the notice under Rule 8 (3)(a) of the Rules, 1972 and was asked to submit his reply (See para 7 and 8 and Annexure-3 of OA). In para 13 of the reply, those circumstances have been narrated which go to show that the applicant raised irrelevant and baseless matters, instead of submitting reply in time. The authority was, however, generous enough in giving time, more time to him to submit his reply. It cannot be said that the applicant was not given reasonable opportunity to submit his reply to the charges. The authority concerned can give only opportunity and cannot compel to avail of the same. The requirement of Rule 8 (3) (a) is simply to give an opportunity to the pensioner concerned to submit his representation and to take into account that representation while passing final order. Learned counsel for the applicant has submitted that there are several judicial pronouncements such as D.B. Kapoor Vs. Union of India & ors. 1994 SC 314 where it has been held that in the matter relating to the reduction or withholding of pension, the pensioner has to be given reasonable opportunity of hearing in the same manner as is provided in the case of major penalty case. The law cited by learned counsel for the applicant is not in the context of action under Rule 8 of the Rules of 1972. That was the matter under Rule 9 of the said Rules. A bare perusal at the provision contained in Rule 8 and 9 of the Rules, 1972 will make it clear that while the requirement of Rule 8 is simply to serve a notice and give opportunity to the pensioner to submit his representation, whereas requirement under Rule 9 is that where proceedings are initiated after the retirement of the servant concerned for the purposes



of withholding or withdrawing the pension, inquiry shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure, prescribed for dismissal from service. In a case under Rule 8, there is no such requirement, to hold full-fledged formal inquiry, involving exam and cross-examination of prosecution or defence witnesses.

7. So, I am of the view that the order of reduction so passed against the applicant, cannot be interfered on the ground that the procedure of major penalty was not followed by the authority concerned or he was not given opportunity to show cause against the proposed action.

8. Learned counsel for the applicant has also contended that the charges, did not fall within the category of 'grave misconduct' so as to entitle the authority concerned to reduce the pension. He has cited Bhagwat Prasad Vs. Inspector General of Police- AIR 1970 Punjab and Haryana 81. That was a case where a police officer was dismissed, after formal inquiry. The question before Hon'ble Apex Court ^{was} as to what was meant by "gravest acts of misconduct" as used in Rule 16.2 (1) Punjab Police Service Rules, 1934. It ruled that the same were incapable of definition and one has to apply one's mind to the words, in the light of actual deed, situation and circumstances. The Court went on to add, that grammatically speaking "gravest misconduct, was highest degree of misdeed as compared to 'grave' misconduct. The authority concerned has also devoted sufficient space, in the impugned order, to consider whether the conduct so imputed to the applicant, fell within the expression "grave misconduct". After having gone through the relevant portion of that order, and also the nature of imputation, I find myself in agreement with the



authority concerned, on the point that acts and words imputed to the applicant, fell within the expression "grave misconduct".

9. It is not within the domain of this Tribunal and for that matter within the domain of any court or Tribunal exercising of power of judicial review, to re-appreciate the material or evidence, on the basis of which a finding of "grave misconduct" is based. So the arguments of Shri Ansari, that conclusion of facts are not based on proper evaluation of material, cannot be accepted. Rule 8, did not provide for personal hearing or for opportunity to lead evidence, in defence. Appellate order, is well reasoned and there is no room for the argument that the authority did not apply its mind.

10. Thus, the OA being devoid of merits, is dismissed. No order as to costs.

John aw
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Vice-Chairman

RKM/