

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 4TH DAY OF JANUARY, 2001

Original Application No. 329 of 2000

CORAM:

HON. MR. JUSTICE R. R. K. TRIVEDI, V.C.

HON. MR. S. DAYAL, MEMBER (A)

D.M.Dixit aged about 66 years
Son of Late Sri Harihar Dixit,
Resident of Nahar Road Daudpur,
Gorakhpur (Retired D.E., office
of the T.D.M, Varanasi)

... Applicant

(By Adv: Shri B.P. Srivastava)

Versus

Union of India through the Secretary
Ministry of Tele Communication
Department, New Delhi.

... Respondents

(By Adv: Shri R.C. Joshi)

O R D E R (Oral)

(By Hon. Mr. Justice R. R. K. Trivedi, V.C.)

By this application u/s 19 of A.T. Act 1985 the applicant has challenged the order dated 11.1.2000 by which the pension of the applicant has been cut by 50%.

The facts in short giving rise to this controversy are that applicant D.M.Dixit who was serving as Divisional Engineer (Admn) in office of Telecom District Manager Varanasi, ~~he~~ was charged that he passed 28 ~~fake~~ bills towards local purchase of Charcoal, Salt, Sand etc for a total sum of Rs. 1,29,196/- in connivance with some other officers in contravention of the Departmental Rules and Procedures and over stepping of his jurisdiction. ~~Before~~ The applicant retired from service on 30.4.1992, memo of charge dated 9.9.1992 was served on him on 19.10.1994. The inquiry was entrusted to the Vigilance Commission. Enquiry report

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was submitted by Shri Jeet Ram, Commissioner for Departmental Enquiries, Central Vigilance Commission. The report of the Enquiry Officer was given to the applicant. He submitted his representation against the same. The President of India thereafter also had consultations with the Public Service Commission.

Ultimately as mentioned above, ^{in direction} depriving the applicant of 50% of monthly pension, has been passed by the impugned order.

We have heard Shri B.P. Srivastava learned counsel for the applicant and Shri V.B. Mishra, holding brief of Shri R.C. Joshi learned counsel for the respondents.

Learned counsel for the applicant has challenged the order on the following three grounds:

- 1) The incident related to Financial Year 1991-92 while the Presidential Sanction under Rule 9 of the CCS (Pension) Rules 1972 was given with reference to Financial Year 1990-91. Learned counsel has submitted that it clearly shows that the orders were passed without application of the mind. It has also been submitted that the difference of financial year could have serious impact on the conclusion of the inquiry and ⁱⁿ ~~in~~ ascertaining the genuineness of the work done for which the amount was withdrawn under the bills in question.
- ii) The second submission of the learned counsel for the applicant is that applicant made request for supply of the statements of three witnesses namely S/Shri D.B. Prasad, A.K. Girotra and Rajesh Kumar. It has been submitted that it is not disputed that the statements of these witnesses were recorded during preliminary inquiry but the statements were not supplied to the applicant even though he made several requests for the same.

Learned counsel has submitted that this plea was raised in the representation filed against the report of the Enquiry Officer but it has not been considered and the impugned order of punishment has been passed. Learned counsel has placed reliance on the judgements of Hon'ble Supreme Court in 'Kashinath Dixita Vs Union of India and Ors, AIR 1986 SC-2118., State of U.P. Vs Shatrughan Lal and Another, J.T. 1998 Vol(6) SC-55' Kuldeep Singh Vs. Commissioner of Police and Ors ,1999 SCC(L&S) 429. The learned counsel has submitted that the proceedings against the applicant were in gross violation of principles of natural justice and they are liable to be quashed.

iii) The learned counsel for the applicant lastly submitted that the penalty imposed on the applicant imposing cut of 50% in the monthly pension is too harsh which requires ~~the~~ interference by this Tribunal.

Shri V.B.Mishra learned counsel for the respondents on the other hand submitted that no prejudice has been caused to the applicant. He has been given **full** opportunity of hearing and the order of punishment does not suffer from any illegality. We have carefully considered the submissions of the learned counsel for the parties. We take up first the submission of the learned counsel for the applicant regarding non supply of the pre recorded statements of the three witnesses as it ~~xxxxx~~ goes to the root of the matter and may render the entire proceedings illegal. In order to substantiate his submissions learned counsel for the applicant placed before us the order sheet dated 4.2.1998 of Departmental Inquiry conducted by Central Vigilance Commission. It appears that the applicant demanded the copies of the pre recorded statements of all witnesses. However, the statements of three witnesses mentioned at Sl.No.8,9 & 10 were not supplied. The relevant paragraph

from the order sheet is being reproduced below:-

" Of the eleven prosecution witnesses, pre-recorded statements of all witnesses, ~~except~~ at Sl.No.8,9 & 10, have been shown to the CO and photocopies thereof have also been handed over to him. PO informed that he has not been informed about the statements of the 3 witnesses. PO also informed that permitted defence documents at Sl.No.226 of CO's letter dated 28.1.96 have also been provided to CO vide certificate given on 4.12.97. CO has also confirmed this position in his letter dated 28.1.98 referred to above."

In the list of witnesses (which was Annexure 4 to the Memorandum of charges) have been filed which shows that at Sl.No.8, ^{names of} 9 & 10, ~~witnesses of~~ Shri D.B.Prasad, Sri A.K.Girotra and Shri Rajesh Kumar were mentioned. From the order sheet it is clear that the copies of the statements of these witnesses were not supplied to the applicant. The copy of the inquiry report has been filed ^{as} ~~as~~ Annexure 14(b) to the application, ^{and} a perusal of which shows that statement of Shri A.K.Girotra has been relied on ^{for} coming to conclusion ^{and} he has been mentioned as S.W.5. Thus, from the material on record it is established that Sri A.K.Girotra was examined but ~~previously~~ ^{pre-recorded} his statement was not supplied to the applicant. In his representation against the enquiry report in para 4 applicant specifically raised this plea that statements of the aforesaid witnesses have not been supplied. He also cited judgements of Patna High court and Hon'ble Supreme Court but from the impugned order it appears that the plea has not been considered and it has been rejected by a ^{short} ~~certain~~ order. The relevant portion of the impugned order is being reproduced below

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"The representation of Shri D.M.Dixit has been examined by the President who observed that the charged officer mainly questioned the procedural aspect of the inquiry proceedings and failed to come forward with any cogent plea on evidence against the findings of the Inquiring Authority, and accepted the findings of the Inquiring Authority and tentatively decided imposition of penalty of substantial cut in the pension of the charged officer and referred the case to the UPSC for tendering their advice as to the quantum of penalty to be imposed upon Shri D.M.Dixit by way of imposing a cut in the pension.".....

From the perusal of the aforesaid it is clear that the plea of the applicant has not been taken seriously and it has been merely saying that it is a procedural plea.

Hon'ble Supreme Court in paragraph 32 of the judgement stated the legal position in the following words:-

"Apart from the above Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation,

is proposed to be brought on record in the departmental proceedings, the law as laid down by this court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness."

For the aforesaid, the Hon'ble Supreme Court relied on its previous judgements AIR 1963 SC 375 State of Mysore Vs Shivabasappa Shivappa Makapur and AIR 1964 SC 708 Kesoram Cotton Mills Ltd Vs. Gangadhar and (1969) 3 SCC 775 State of U.P. Vs. Om Prakash Gupta.

In State of U.P. Vs. Shatrughan Lal & Anr JT 1998(6) SC 55. In paragraph 10 Hon'ble Supreme Court held as under:-

"It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondents, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice

to the respondent in defending himself."

Thus from the material on record it is fully established that the proceedings against the applicant were carried out in gross violation of the principles of natural justice and the impugned order passed in such proceedings cannot be sustained.

The another question relating to it whether this matter may be sent back to respondents for fresh inquiry or this matter may be closed. Hon'ble Supreme Court in case of 'Kashinath Dikshita Vs. Union of India & Ors' AIR 1986 Supreme Court 2118 has held that as the case was very old and the proceedings were held in gross violation of principles of natural justice the Government was not permitted to hold a fresh inquiry against the appellant in that case. In the present case also we have noticed that though the case related to 1991-92 the charge was framed with reference to the Financial Year 1990-91, we cannot exactly find out the prejudice caused to the applicant on account of this mistake. However, the Enquiry Officer in his report has very ^{clearly} ~~contend~~ accepted this mistake in the inquiry. Sufficient time has already elapsed, applicant retired on 30.4.1992. After such a long time we do not find any justification to keep this matter open for fresh inquiry. In the circumstances, ~~we~~ we are not leaving liberty to the respondents to hold a fresh inquiry against the applicant for the charges in question.

For the reasons stated above, this application is allowed. The impugned order dated 11.1.2000 is quashed.

There will be no order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated 4.1.2001

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