

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

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Original Application No. 1414 of 2002

Date of decision 12-10-2012

D.P. Singh

Applicant(s)

Shri R.P. Dwivedi

Counsel for the applicant(s)

**Versus.**

Union of India and others

Respondents(s)

Ms. Mamta Sharma

counsel for the respondent(s)

**CORAM**

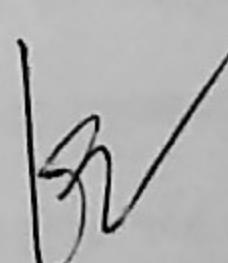
Hon'ble Dr. K.B.S. Rajan

Member(J )

Hon'ble Mr. Shashi Prakash

Member (A )

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?

  
SIGNATURE

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Reserved  
(On 09.10.2012)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 12<sup>th</sup> day of October 2012

Original Application No. 1414 of 2002

Hon'ble Dr. K.B.S. Rajan, Member (J)  
Hon'ble Mr. Shashi Prakash, Member (A)

D.P. Singh, S/o late Virendra Bahadur Singh, R/o Village Paipur Bharkhi,  
Post Baswati Tehsil – Kunda District Pratapgarh.

... Applicant

By Advocate : Shri R.P. Dwivedi

V E R S U S

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.
2. Commissioner, Custom & Central Excise, Central Excise Commissionerate, Meerut – I.
3. Union Public Service Commission, Sangh Lok Sewa Ayog, Dholpur House, Shahjahan Road, New Delhi.

... Respondents

By Advocate : Ms. Mamta Sharma

O R D E R

By Hon'ble Dr. K.B.S. Rajan, JM

This is a case of a septuagenarian who, on account of alleged demand and receive the certain amount as bribe had faced departmental enquiry in addition to facing criminal proceedings for the same set of charges in which in so far as criminal cases concerned he was acquitted while the departmental proceedings culminated into forfeiture of his entire pension and other pensionary benefits permanently vide order dated 01-10-2002. The penalty imposed was after obtaining the UPSC recommendations on the subject, vide communication dated 26-08-2002. The challenge is against the penalty order dated 01-10-2002 and the advice of the UPSC dated 26-08-2002 for quashing and setting aside

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of the said orders and for a release of the pension and pensionary benefits to the applicant. During the pendency of the OA, the applicant having died, his son has been brought on records. However, for the purpose of this case, it is the deceased applicant, who would be addressed as the applicant.

2. Briefly stated, the applicant while serving as Superintendent of the Central excise had been issued with a charge-sheet on 14 of May 1991 which reads as under: -

**"ARTICLE - 1.**

That Shri Virendra Bahadur Singh while posted as Superintendent (Tech) in the office of the Deputy Collector, Central Excise, Ghaziabad during the month of August 1989 failed to maintain absolute integrity and committed misconduct in as much as he demanded Rs. 1500/- on 22.8.89 from Shri S.P. Tyagi Manager Excise of Modi Paints, Modinagar as illegal gratification for getting work of M/s Modi Paints done in the office of Deputy Collector Central Excise, Ghaziabad and he demanded and accepted Rs. 1500/p on 25.8.89 from Shri S.P. Tyagi, Manager (Excise), Modi Paints Modinagar and contravened Rule (1) (i) of the CCS (Conduct) Rules, 1964.

**Charge II**

That Shri Virendra Bahadur Singh while posted as Superintendent, Central Excise, Modinagar during the period from 5.1.88 to 11.8.89 failed to maintain absolute integrity and committed misconduct in as much as he got purchased tickets by Modi Paints from Delhi to Jhansi and also got printed the visiting cards and letter heads in the name of his son Shri D.P. Singh by Modi Paints by was of some consideration and also accepted illegal gratification in case from M/s Modi Paints and thus contravened Rule (1) (i) of the CCS (Conduct) Rules, 1964."

3. Criminal proceedings were initiated separately by the CBI on the alleged demand of bribe on monthly basis against the applicant and it was proposed to lay trap to catch the applicant red-handed. The applicant and his son were laid traps and the CBI apprehended the applicant. The criminal proceedings ended in acquittal of the applicant vide judgment of the Criminal Special Judge, Prevention of Corruption, Ghaziabad dated 20-11-2009. The acquittal, of course, was on the basis of benefit of doubt.

4. In so far as the Departmental proceedings are concerned, regular enquiry took place. The Commissioner for departmental enquiries issued letter dated 10 February 1994 to the applicant intimating him about the regular hearing on 28<sup>th</sup> of February as well as 1<sup>st</sup> of March, 1994. The applicant responded to the same and after the prosecution witnesses were examined, the applicant was asked the following general question by the Inquiry officer:

*"New Delhi  
3/5/94  
General Examination of Sh. V.B. Singh. Co.*

Q. SW-1, Sh. S.P. Tyagi in his statement at Ex.-S-29 has stated that 22/8/89 you demanded an illegal gratification for getting the work of M/s Modi Paints done in the office of the Dy. Collector, Central Excise, Ghaziabad and that you accepted the illegal gratification of Rs. 1500/- on 25/8/89 from him. What you have to say about it.

Ans. I deny the above.

Q. SW-1 has also stated that the visiting card (Ex. S-24) letter heads (Ex-s-25) and the rail ticket (Ex.S,22) were got arranged by you through him. What are your comments.

Ans. I did not do so. and deny the above.

ROAC

CO

03/5/94

*Sd/-  
Inquiry Officer"*

5. The applicant also submitted a comprehensive letter dated 26<sup>th</sup> of May 1994) vide Annexure 23.

6. The inquiry officer rendered his finding stating that the charge of demand and acceptance of bribe stood proved, while the other charge was not proved. Annexure A-24 refers. The applicant filed his representation against the same, vide Annexure A-26.

7. The respondents have referred the matter to the UPSC which after consideration of the case, recommended penalty of forfeiture of the entire pension and pensionary benefits on permanent measure, vide its advice at Annexure A-2 dated 26-08-2002 and the Respondents have passed the

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impugned order dated 01-10-2002 awarding the penalty of forfeiture of the entire pension and the attendant pensionary benefits. The challenge in the OA is against the aforesaid orders.

8. Respondents have contested the OA. They have, apart from justifying the action of the respondents, also referred to the fact of adverse reports given in the ACR in 1956-57 and charge sheet issued in 1958, awarding of censure in 1961, adverse remarks in the ACR during 1963-64, as well as in 1976 – 77.

9. The applicant filed his rejoinder, reiterating his stand as contained in the OA.

10. At the time of hearing, the counsel for the applicant submitted that in the criminal case, the applicant had been acquitted by the Special Judge. Thus, according to the counsel for the applicant, Article No. I which relates to the allegation of demand and receipt of bribe gets obliterated. Article II stood as not proved. In so far as the inquiry is concerned, the same was not in accordance with the procedure prescribed as the same was conducted in a callous manner.

11. Counsel for the respondents submitted that on the acquittal of the applicant on benefit of doubt in the criminal case, it cannot be said that there shall be no departmental inquiry. As regards conducting of the inquiry, all the procedures had been followed.

12. Arguments were heard and documents perused. In so far as the rule relating to holding of inquiry after the acquittal by criminal court is concerned, the law is settled. The Apex Court has in the case of *Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corp. Ltd.*, (2005) 7 SCC 764,

held as under:-

*"Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside. (emphasis supplied)"*

13. Thus, the first limb of argument of the counsel for the applicant crumbles to the ground.

14. As regards the other argument that the procedure prescribed have not been followed, the counsel submitted that the documents have not been made available to the applicant and there is thus, infraction of the principles of natural justice. True, the applicant retired from service when the inquiry was conducted. However, he could attend the inquiry and the Inquiry Officer examined him generally. In addition the applicant had given a comprehensive reply vide letter dated 26-05-1994 and in addition, gave a like representation on receipt of inquiry report. This would go to show that the applicant was not prejudiced in not having been supplied with some of the documents.

15. In so far as the general question asked by the Inquiry officer, it is to

be seen whether the same is sufficient to hold that the same is in accordance with the Rules.

16. The Apex Court has, in the case of *Moni Shankar vs Union of India (2008) 3 SCC 484* had dealt with this point. The Apex Court has thus, held as under:-

*"20. The enquiry officer had put the following questions to the appellant:*

*"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?"*

*21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed."*

17. The question put forth by the inquiry officer to the applicant in so far as that article which was said to have been proved by the I.O. reads -

*"SW 1 Shri S.P. Tyagi in his statement at Ex S-29 has stated that on 22-08-89 you demanded an illegal gratification for getting the work of M/s Modi Paints done in the office of the Dy. Collector, Central Excise, Ghaziabad and that you accepted the illegal gratification of Rs 1500/- on 25-08-1989 from him. What you have to say about it"*

18. The inquiry report which runs into eleven pages in so far as Article I (demand and acceptance of bribe) is concerned refers to the initial complaint dated 23-08-1989 of SW1, S-3, the pre-trap laying memo, S-8, the recovery memo, S-9 the currency notes recovered, S-30, the statement of independent witness Shri V.S. Gill, S-31, S-32, S-33, statements of other witnesses, has also referred to the aforesaid S-29. However, the said S-29 has not been taken to prove the misconduct. In this regard, that part of the inquiry report reads as under:-

*"However, except the conversation of the complainant there is no other corroborative evidence or record to establish that there was a specific demand of illegal gratification by CO from Shri S.P. Tyagi."*

*Ex-S 3 is the pre-trap laying memo. Prepared in the DGM (Marketing), Modi Paints, Modinagar and it is that Shri C.L. Garg, Dy. Manager, Allahabad Bank of the independent witnesses was asked to sign."*

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complainant and to overhear the conversation and also to watch transaction of bribe. Though SW 1 in his statement at Ex. S-29 has stated that when he met the CO in the front of Central Excise office on 25-08-1989 to give the bribe money, CO enquired from him 'LAAYE HO', this could not be corroborated from Shri Garg as he has already expired. Therefore, here also except the version of the complainant that on 25-08-1989 also CO made a specific demand, therefore, is no evidence to corroborate the version of SW1".

19. Thus, while asking the mandatory question, circumstances that were appearing against the applicant had not been put forth, and what had been put forth, i.e. S-29 has gone only in favour of the applicant as could be seen above.

20. Thus, there is a serious legal lacuna in the asking of the mandatory question by the inquiry officer as had happened in the case of Moni Shankar (supra) and the same vitiates the entire inquiry.

21. The importance of asking the mandatory inquiry has been highlighted by the Apex Court even in the case of *Ministry of Finance vs S.B. Ramesh (1998) 3 SCC 227* wherein the Apex Court has held as under:-

"13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:

"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he

should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority..."

22. After extracting the above finding as well as certain other findings, the Apex Court ultimately held as under:-

"15. On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it."

23. If the case of the applicant, especially with reference to fulfillment of the mandatory condition (Rule 14(18) of the CCS (CC&A) Rules, is analyzed in the light of the observations of the Apex Court in the aforesaid two judgments, it would go to show that the inquiry officer has failed to address the applicant asking the mandatory question in the manner as is expected. Thus, there is full infraction of the principles of natural justice, which vitiates the entire inquiry proceedings.

24. Yet another legal flaw in this case is that the advice of the UPSC had been made available to the applicant only along with the penalty order. A similar situation arose in another case of *S.N. Narula vs Union of India (2011) 4 SCC 591* and the Tribunal had set aside the penalty order and remanded the matter back to the Disciplinary Authority. This was challenged before the High Court and the High Court interfered with the order of the Tribunal. The applicant therein preferred SLP against the judgment of the High Court and the Apex Court has allowed the petition.

The order of the Apex Court reads as under:-

(39)

1. Leave granted. The appellant was initially appointed as Station Master in the Northern Railways in 1955 and during the relevant time when he was Senior Commercial Manager a charge-sheet was issued to the appellant and disciplinary proceedings were initiated against him, and the enquiry officer filed report holding that Charge 5 was partly proved and Charge 7 proved. As regards other charges he was exonerated. After considering the report of the enquiry officer, the disciplinary authority proposed a punishment suggesting a suitable cut in the pension and the appellant was not heard on this proposal.

2. Thereafter, the proceedings were sent for opinion of the Union Public Service Commission and the Union Public Service Commission gave an opinion to the effect that the appellant's pension shall be reduced to the minimum and he shall not be granted any gratuity. The disciplinary authority accepted the proposal of the Union Public Service Commission and imposed the said punishment.

3. It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary authority.

4. The appellant filed OA No. 1154 of 2002 before the Central Administrative Tribunal, New Delhi and the Tribunal held that there was violation of the principles of natural justice and the following direction was issued:

"We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject."

5. This order was challenged by the Union of India by way of writ petition before the High Court of Delhi and by the impugned judgment the High Court interfered with that order. The writ petition was partly allowed and it was directed that the matter be again considered by the Tribunal. Against that order the appellant has come up in appeal by way of special leave petition.

6. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. <sup>Q. 593</sup> Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority

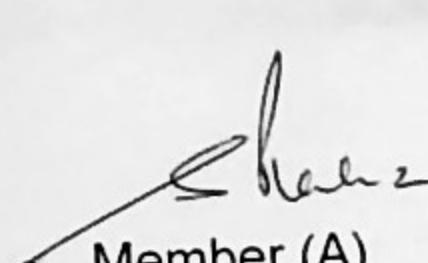
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and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter.

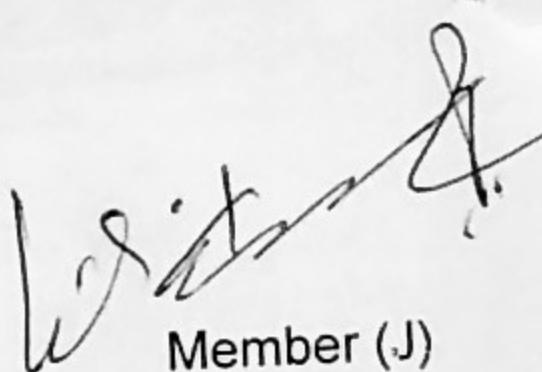
8. The appeal is disposed of."

25. In view of the above, the OA succeeds. Order dated 01-10-2002 impugned herein levying the penalty of forfeiture of pension and other pensionary benefits is quashed and set aside. It is declared that the applicant (now his legal heir) is entitled to draw the pension and other pensionary benefits. Consequential benefits if any, such as family pension, would also accrue to the applicant's legal heir in accordance with and subject to the fulfillment of the conditions contained in the relevant rules. Respondents are directed to work out the arrears of pension and terminal benefits and pay the same to the applicant's son (who is substituted in place of the son) within a period of five months from the date of communication of this order.

No costs.

  
Member (A)

/pc/

  
Member (J)