

15
15
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.671 OF 1996
Cuttack this the 08th day of January, 2001

Haramohan Khuntia

...

Applicant

-VERSUS-

Union of India & Others

...

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

8.1.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

16
16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 671 OF 1996
Cuttack this the 08th day of January/2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

•••

Harmohan Khuntia ...
Retired Superintendent of
Post Offices, At Villate-Tanra
PO: Tulanga, Via-Tiran
District - Jagatsinghpur

•••

By the Advocates

Applicant
Mr. D.P.Dhalasamant

-VERSUS-

1. Union of India represented through
Secretary, Department of Posts,
Ministry of Communications,
Dak Bhawan, New Delhi-110001

By the Advocates

Mr. A.K.Bose
Sr. Standing Counsel
(Central)

•••••

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application, impugning the charge sheet under Annexure-1 and the order dated 19.8.1996 (Annexure-8) of the Disciplinary Authority passed in exercise of the powers conferred under Rule-9 of the CCS(Pension) Rules, 1978, withholding 20% of the monthly pension otherwise admissible to the applicant, the admitted position is that applicant, while serving as Superintendent of Post Offices, Cuttack (S) Division, retired in September, 1990. He was served with memo of charges dated 8.7.1992 under Rule-9 of the C.C.S.(Pension) Rules, 1972 (hereinafter referred to as Rule-9) containing imputations under four

heads. The applicant contested the same and after due inquiry the Inquiring Officer held the charges proved. A copy of the inquiry report was served on him in response to which the applicant submitted representation. After obtaining the advice of the U.P.S.C. the impugned order was passed, which was communicated to the applicant along with a copy of the letter of the U.P.S.C.

2. The grievances of the applicant are as under:

- i) Neither the Inquiring Officer nor the U.P.S.C. nor the Disciplinary Authority met the points of law raised by the applicant in his written statement, written brief and in his representation in response to the report of the Inquiring Officer;
- ii) principles of natural justice have been grossly violated inasmuch as a copy of the report of the U.P.S.C. had not been supplied to him before the impugned order was passed;
- iii) even if the findings are accepted, the same would not make out a case of grave misconduct as mentioned under Rule-9

3. The Department in their counter take the stand that no procedural irregularity or illegality has been committed in awarding the punishment. There is no provision for supplying copy of the report of the U.P.S.C., tendered to the Disciplinary Authority to the applicant before passing the order of punishment. Further the charges proved constitute a grave misconduct.

4. No rejoinder has been filed.

5. By order dated 20.9.1996 interim stay of the impugned order was granted by this Tribunal. This was made absolute in order dated 27.11.1996.

6. We have heard Shri D.P.Dhalasamant, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the Respondents. Also perused the records.

18 18

7. 1. As earlier stated, the applicant has sought two reliefs. The 1st relief is for quashing the charge sheet issued to him in Memo dated 8.7.1992. This prayer is hopelessly barred by limitation, provided under Section 21 of the Administrative Tribunals Act, 1985, as this Original Application was filed on 13.9.1996. Moreover, the applicant participated in the inquiry and as the report of the Inquiring Officer and other reports reveal . . . he had not challenged the initiation of this proceedings under Rule-9 of the Rules. Thus, this prayer is disallowed as devoid of any merit.

8. As regards the other prayer for quashing the impugned order under Annexure-8, the contentions raised on behalf of the applicant are three fold, as noted above. The report of the Inquiring Officer (Annexure-5) is very exhaustive consisting of 30 typed sheets. It is not the case of the applicant that the report is based on no evidence. Relevant evidence has been discussed in detail. Even the advisory report of the U.P.S.C. under Annexure-9 as also the impugned under order Annexure-9 are based on discussion of evidence on record.

Law is well settled that Courts/Tribunals cannot assume the role of the Appellate Authority in reappraising the evidence dealt by the quasi judicial authority like the Disciplinary Authority. The findings recorded by the Disciplinary Authority warrant interference ^{by} ~~of~~ the Court/Tribunal only when the findings are based on no evidence or arbitrary and/or when the principles of natural justice have been ^{so} grossly violated that the delinquent employee had no opportunity to defend himself effectively. These being not in the picture, the findings of the authorities need no interference.

9. Shri Dhalasamant, the learned counsel for the applicant strenuously contended that principles of natural justice have been grossly violated inasmuch as the applicant was not furnished with a copy of the report of the U.P.S.C. submitted to the disciplinary authority before passing of the impugned order. His contention is that had a copy of such report been supplied to the applicant, the latter would have ^{had} an opportunity to point out to the disciplinary authority as to how the report ^{have been} was defective and the same ought not to be accepted. On the other hand the contention advanced on the side of the Department is that there is no statutory provision for furnishing of such a copy to the delinquent employee and principles of natural justice are in no way violated, because the report of the U.P.S.C. is advisory in nature. In proceedings under Section 9 of Rule-9, the procedure for conducting the proceedings under Rule - 9 is the same as mentioned in CCS(CCA) Rules, 1965. There is no provision under these rules entitling a delinquent employee for supply of copy of report of the U.P.S.C. to have his say in the matter, before any final order is passed by the Disciplinary Authority. Shri Dhalasamant, the learned counsel could not cite any authority direct on the point. The decision of the Principal Bench in Original Application No.1103/98, as reported under Sl. No.145 at Page-40 of September/2000 Part (Swamy's News) and relied by Shri Dhalasamant in this connection is quite distinguishable. In that case the inquiry report was in favour of the delinquent official. When the Disciplinary Authority communicated his tentative findings disagreeing with the report, the delinquent submitted his representation. Thereafter the Disciplinary Authority referred the matter to U.P.S.C. for advice. The U.P.S.C. advised that the charge

20
20

has not been proved and that the applicant should be exonerated. Still the disciplinary authority sought the advice of the DOP&T and thereafter, passed the impugned order of penalty of reduction to a lower stage in the time-scale for three years. It is in this background the Tribunal held non supply of the report of the DOP&T which was not favourable to the applicant, vitiated the findings of the Disciplinary Authority. In the case before us, we are concerned with non supply of copy of the report of the U.P.S.C. before passing of the final order by the Disciplinary Authority, for which rules do not contain any provision. On the other hand, Rule-32 of the CCS(CCA) Rules, provides supply of a copy of the advice tendered by the UPSC to the delinquent along with copy of the final order of the Disciplinary Authority and in case where such advice has not been accepted, with a brief statement of reasons for such non acceptance. In other words, this Rule-32 makes it clear even if the report of the UPSC is favourable to a delinquent employee, a copy of the same has to be furnished only after final order in the proceeding is passed by the authority making that order, though with a brief statement of reasons, for such non acceptance of the advice of the U.P.S.C. We are, therefore, not inclined to accept the contention of Shri Dhalasamant in this regard.

10. The next contention advanced on behalf of the applicant is that the charges established do not make out a case of gross misconduct to attract penalty under Rule-9 of the Rules. Rule-9 empowers the President for withdrawing the pension in full or part (whether permanently or for a specified period) and/or ordering recovery from pension or gratuity of the full or part

for 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 service, including service rendered on re-employment after retirement.

Hence what is necessary to determine is whether the applicant is guilty of grave misconduct or negligence. It is, therefore, necessary to set out the nature of the charges proved. Charges proved are four in Nos., which relate to applicant's failure to maintain absolute integrity and devotion to duty in a manner unbecoming of a Government servant, contrary to the provisions contained in Rules-3(1)(1)(ii) and (iii) of CCS(Conduct) Rules, 1964.

Facts proved under Charge No.1 are that the applicant had reduced a minimum time gap of 20 days for submission of applications for the post of E.D.B.P.M., Gopalkud B.O. to 15 days, keeping in mind his forthcoming retirement and relinquishing of office on 27.9.1990 in order to finalise the selection/means for his own interest; he exerted unwarranted pressure in a haste on the Dealing Assistant Shri B.C.Sahu on the last date of his laying down the office; he made/incorporated corrections in the checksheet dated 27.9.1990, prepared by the Dealing Assistant, thereby thoroughly changing its context in favour of the candidate Smt.Sashikala Sahoo, whom he selected; he made an undue request to the D.A. to change the checksheet to suit his requirement to select Smt.Sasikala Sahoo; and that he kept this recruitment file in his exclusive custody, even on the night of 27.9.1990, after handing over the charge of the office till fore-noon of 28.9.1990; that he changed the first

22

33

typed office note dated 27.9.1990, the draft letter prepared by the Dealing Assistant through carbon process; and that he manipulated the income certificate submitted by Smt. Sasikala Sahoo in order to make her eligible for the post.

The facts proved under charge No.2 are as follows.

Though he had received a list of 18 candidates sponsored by the Employment Exchange on 27.7.1990, in response to his requisition yet to fill up the post of B.P.M., Garikola, ignored the list altogether; while considering the selection to the post from amongst the applicants, who had applied in response to open notification, he selected an undermatric candidate ignoring the claims of other meritorious candidates possessing matriculation qualification; that he made a false commitment to the C.P.M.G., Orissa Circle in his letter dated 10.9.1990 and thereby kept his intention under clouds.

In regard to charge No.3, the proved facts are that in spite of receipt of intimation from Circle Office dated 10.7.1989, that there was no back log vacancies in SC/ST quota in Postman cadre and that the correct vacancies as against the SC/ST quota could be filled up from qualified candidates, with the approval of the Circle Office, the applicant had picked up one Madhabananda Behera, a Scheduled Caste candidate and that too appointed him against a Scheduled Tribe vacancy, contrary to the rules, though rules do not permit such interchange and that he had selected SC candidate securing only 99 marks when other qualified candidates secured marks higher than the S.C. candidate.

Under Charge No.4 he was held guilty, because he had obtained the statistics for revision of allowances in respect of

(23)

27
 certain E.D.B.P.M.s as late as 25.9.1990 on the eve of his relief on 27.9.1990 and forced the concerned D.A. to put up the cases ready before him; that in spite of being pointed out by the D.A. about the ^{implausible} excluded statistics received in this regard, the applicant went ahead with revision of allowances resulting in huge monetary loss to the Government; and that he got the orders issued in regard to the revision of these allowances to E.D. agents beyond office hours on 27.9.1990, although by then he had made over the charge of the office.

The contention of Shri Dhalasamant, the learned counsel for the applicant is that none of these charges comes under the definition of grave misconduct under Rule-8 of the Rules.

Explanation (B) of this Rule-8(5b)describes Grave Misconduct as follows :

"(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) as to prejudicially affect the interests of the general public or the security of the State".

This description of misconduct has been clearly described and dealt by the Apex Court in Union of India vs. B.Dev, reported in AIR 1998 SC 2709. In Para-9, the Apex Court observed that the explanation clearly extends grave misconduct to covered communication of any official secret, ^{and is} does not an exhaustive definition. There can be many kinds of grave misconduct. The explanation does not confine to only a type of misconduct prescribed therein. Further in Para-8 the Apex Court held that it would not be correct to say that a Government

who is charged with not-maintaining devotion to duty or with conduct, unbecoming of a Government servant, can be held guilty of grave misconduct.

The gravity of misconduct would depend upon the nature of conduct.

It is, therefore, clear that the description of grave misconduct under the explanation to Rule-8(5)(b) of the Rules, is an inclusive one, and not exhaustive. Even an employee, who is held guilty for not maintaining devotion to duty or for conduct unbecoming of a Govt. servant can be held guilty of grave misconduct, the gravity of which depends upon the nature of the conduct. Viewed from this angle, we are not inclined to agree with Shri Dhalasamant, the learned counsel for the applicant that the aforesaid misconduct would not amount to grave misconduct. The misconduct proved clearly established cases of misuse of power, showing favouritism, improper selection of candidates in a recruitment, manipulation of official records and so on on the part of the applicant. It is unbecoming of a Govt. servant to stoop to such levels. We have, therefore, no hesitation to hold that the aforesaid misconducts not only tell upon non-maintainence of absolute integrity and devotion to duty by the applicant but also constitute grave misconduct on his part.

11. In the light of our discussion above, we do not see any merit in this Application. We are of the view that the impugned order under Annexure-8 suffers from no legal infirmity or irregularity warranting interference. The Original Application is dismissed, but without any order as to costs.

Interim order of stay which has been made absolute on 27.11.1996 stands vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

6.1.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.Sahoo//