

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 233 of 2000

Thursday, this the 4th day of April, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P.K. Sudhakaran,
S/o Kuttappan,
Retired Junior Clerk, Central Institute
of Fisheries, Nautical and Engineering
Training, Kochi,
residing at Manimandiram,
Karuvelippadi, Kochi-5Applicant

[By Advocate Mrs Preethi Ramakrishnan]

Versus

1. Union of India, represented by its
Secretary, Ministry of Agriculture,
New Delhi.
2. The Union Public Service Commission,
represented by its Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road, New Delhi.
3. The Director,
Central Institute of Fisheries, Nautical
and Engineering Training, Kochi.Respondents

[By Advocate Mr. S.K. Balachandran, ACGSC]

The application having been heard on 4-4-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Aggrieved by A5 order dated 15-12-1998 issued by the
3rd respondent imposing the penalty of 20% cut in the pension
for a period of one year on the applicant and A6 letter dated
23-11-1998 issued by the 2nd respondent recommending the



imposition of penalty of 20% cut in the pension of the applicant for a period of one year, the applicant has filed this Original Application seeking the following reliefs:-

- "(a) an order quashing and setting aside Annexures A5 and A6 in so far as it imposes a penalty of 20% cut in the applicant's pension for a period of one year with effect from 1-11-1996;
- (b) an order directing the respondents to disburse the withheld portion of the applicant's pension forthwith;
- (c) an order directing the respondents to pay the applicant interest at penal rates on the amount of gratuity, for the period during which it was withheld from him;
- (d) such other orders and directions as are deemed fit in the facts and circumstances of the case."

2. The applicant retired on superannuation while working as a Junior Clerk from the service of the Central Institute of Fisheries Nautical and Engineering Training (CIFNET for short) on 31-10-1996. While working as Junior Clerk under the 3rd respondent, he had carried out a tenure duty as Cashier during the period April 1998 (learned counsel for the applicant submitted that this should be April 1993) to June 1993. After completion of the tenure, he had been issued with A1 memo dated 25-8-1993 asking for his explanation for the discrepancies which had happened during his tenure as Cashier. By A2 memo dated 7-9-1994 issued by the 3rd respondent, the applicant was directed to make good the shortage of Rs.2630/- on account of wrong payments made by him during his tenure. By A3 memo dated 6-7-1995 issued by the Senior Administrative Officer, CIFNET, the applicant was advised to be careful in future. By A4 memo dated 12-1-1996 he was charged with wilful attempt to cheat the Government for monetary gains by manipulation of records. The applicant denied the charges. A departmental enquiry was held.

While the enquiry was in progress, he retired on superannuation on 31-10-1996. The enquiry was completed after the applicant's retirement and a report was submitted by the enquiry officer on 2-4-1997. The applicant submitted his objection against the findings of the enquiry officer. The disciplinary authority forwarded his comments on the enquiry report to the appropriate authority under Rule 9 of CCS (Pension) Rules. The applicant filed OA No.681/98 before this Tribunal seeking a direction to the respondents to finalise the disciplinary proceedings expeditiously. By order dated 5-6-1998 this Tribunal directed the respondents to finalise the proceedings within a period of three months. By A5 order the 3rd respondent imposed a penalty of 20% cut in the pension for a period of one year on the applicant. The applicant also received a copy of A6 letter dated 23-11-1998 of the 1st respondent recommending the above said punishment. Alleging that A5 and A6 were arbitrary and illegal, the applicant filed this Original Application seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. According to them, even though the applicant made good the loss made by him, the culpability was serious and accordingly disciplinary action was initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 for misappropriation of amounts deposited by the Institute trainees and wilful attempt to cheat the Government for monetary gains by manipulating records. Disciplinary proceedings were conducted according to the rules. The applicant was given all opportunities to defend his case. All aspects were taken into account by the authorities before arriving at the final decision. It is for the Government to consider the findings and take a final



decision in consultation with the Union Public Service Commission under Rule 9 of the CCS (Pension) Rules, 1972. Accordingly the* penalty of reduction of pension by 20% for a period of one year based on orders of the President of India had been imposed on him.

4. Heard the learned counsel for the parties. Learned counsel for the applicant Mrs Preethi Ramakrishnan took us through the pleadings in the Original Application. She specifically referred to the contents of paragraph 7.3 of A6 order, wherein the specific finding as included in the enquiry report and the decision of the disciplinary authority on each of them had been summarized by the 2nd respondent. She also referred to paragraph 7.4 of A6, wherein the UPSC's findings on the charges were summarized. She submitted that in the face of the UPSC's findings and in the light of Rule 9, the recommendation for imposition of the penalty of 20% cut in the pension under Rule 9 was not permissible and was required to be interfered with by this Tribunal. She also submitted that in A5 there is no indication that the said order had been issued in accordance with the Rule 9 and that it had not been issued in the name of the President. She submitted that even though along with the reply statement the respondents have produced R3(1), the said letter had not been served on the applicant. Learned counsel for respondents Sri S.K.Balachandran took us through the reply statement and submitted that the applicant had been negligent which caused monetary loss to the Government and punishment had been imposed for the said offence and the punishment imposed was well within the provisions of Rule 9 of the CCS (Pension) Rules.



5. We have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and have also perused the documents brought on record.

6. The main issue to be decided in this case is, in the light of the findings of the enquiry officer and the accepted findings of the disciplinary authority and the findings ultimately analysed and found by the UPSC, whether for the said findings a penalty could be imposed under Rule 9 of the CCS (Pension) Rules or not.

7. Rule 9 of the CCS (Pension) Rules, 1972 reads as under:-

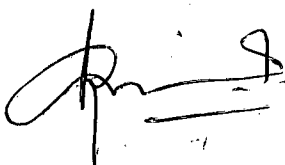
"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of 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 upon re-employment after retirement:

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

x x x x x x x x x x x x"

8. Thus, from the above, we find that what the rule provided is that; (i) the President has the right of withholding a pension or gratuity, or both, either in full or in part; (ii) the President has the right to withdraw a pension in full or in part, both either permanently or for a specified period; and (iii) the President can also order recovery from a pension or gratuity of the whole or part of any pecuniary loss



caused to the Government due to a grave misconduct or negligence during the period of service of an employee or during his reemployment.

9. Now, in this particular case, from A6 letter of the UPSC it is seen that the following have been established in the enquiry and subsequent examination by the disciplinary authority:-

"(i) Transaction relating to Sh.J.G. Babu

In this case, it is found that the Cashier made the refund on his own initiative, without getting refund applications forwarded to him by the proper channels. However, there is no material, instruction or complaint that Shri J.G. Babu, the trainee, did not receive the amount. If the amount was paid up by the CO to Sh. Babu, his bona-fides would not be in doubt. The procedural irregularity of making the refund on his own initiative has been held against him.

(ii) Transaction relating to Sh.T. Chandran

The position in this case too is similar inasmuch as a refund was made (purportedly to Sh.T. Chandran) without any application having been properly processed for the purpose, and entirely upon the CO's own initiative. It transpired that the person who actually received the payment on 14.1.93 was not the original claimant because: (a) Shri T.Chandran, having heard that his dues had been collected by someone else, gave an application in writing on 10.1.94 seeking the amount due to him; (b) his signatures on record do not tally with the signatures of the person who had received the amount on his behalf, claiming to be Shri T.Chandran; and (c) he not only denied in the course of the inquiry that he had earlier received the amount, but also maintained that on 10.1.94 the CO had asked him to submit an ante dated receipt for 14.1.93. However, the IO gave the benefit of doubt to the CO and concluded that the CO had negligently, and without proper verification of identity, made the earlier payment to somebody else, and this might have been avoided had proper procedures been followed. The IO consciously considered the possibility of the CO having taken the payment for his own personal enjoyment, but he consciously gave the benefit of the doubt to the CO on the basis of the evidence and pleadings before him. In short, this transaction too was considered to be one of a procedural error.



(iii) Transaction relating Sh.V.P. Snil Kumar

In this case, the IO was of the view that the charge stood proved. He based this conclusion on the fact that no amount was available to Sh. Sunil Kumar's credit for payment the second time round, and moreover there was no signed acquittance roll which could be produced by the CO. He did not, therefore, accept the CO's plea that the mistake was a bona fide oversight. However, the DA accepted the CO's position in regard to this element of the charge. The DA has, explicitly accepted the CO's position (while commenting upon the CO's representation)."

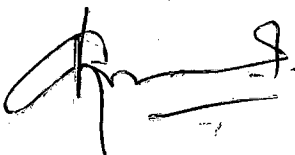
10. The UPSC also found in paragraph 7.4 of their letter A6 as follows:-

"It has been observed that, as the matter stands, the thrust of the charge-sheet that the CO acted with the intention of cheating Govt. has not been established, and what has been found as per the IO and the DA are mere procedural irregularities."

11. The article of charge against the applicant as seen from A4 dated 12-1-1996 is as follows:-

"That the said Shri P.K. Sudhakaran, Jr. Clerk while looking after the duties of Cashier in the Office of CIFNET (Central Institute of Fisheries Nautical and Engineering Training) Cochin had misappropriated the amounts deposited by the trainees. It is found that an amount equal to Rs.500/- and Rs.1130/- was said to have been paid to S/Shri Joseph G. Babu and T. Chandran respectively without any authority and clearance from the sections concerned. Similarly an amount of Rs.1000/- (Rupees one thousand only) was said to have been paid to Shri V.P. Sunil Kumar twice as per the records. Thus the said Shri P.K. Sudhakaran had made certain wilful attempt, to cheat the Government for monetary gains by manipulating the records. Said Shri P.K. Sudhakaran has thus failed to maintain absolute integrity and as such he has violated the proviso (i) of sub rule (i) of Rule 3 of the CCS (Conduct) Rules 1964."

12. From the above, we find that the main and only charge against the applicant was that he failed to maintain absolute integrity and as such he violated the proviso (i) of sub rule (i) of Rule 3 of the CCS (Conduct) Rules, 1964. We find from



the findings of the UPSC, when they stated that the main charge of cheating the Government had not been established, that it could not be stated that the charged employee lacks integrity. The UPSC has only found that the applicant had committed only procedural irregularities. The procedural irregularity is not the same as lack of integrity. According to the learned counsel for respondents, the applicant had been negligent and for negligence the punishment of 20% cut in the pension has been imposed on the applicant. But, as we find that in the article of charge there was no allegation of negligence against the applicant, a charge which is not specified in the charge-sheet cannot be found to have been established.

13. We asked the learned counsel for respondents as to what is the definition of 'grave misconduct' referred to in Rule 9. He referred to the Government of India's decisions No.(1) and submitted that 'grave misconduct' includes corrupt practices. In this case, no corrupt practice has been alleged against the applicant and even the charge of cheating, by the respondents' own findings has not been proved.

14. Generally in disciplinary matters in judicial review, only the procedure for taking the decision is scrutinised and not the decision itself, unless it is found that it is a case of no evidence or perverse i.e. no reasonable person on the basis of the evidences available would come to the conclusion arrived at. In our view, this is a case of no evidence. When the applicant has been charged with cheating and the cheating charge is not proved, it has to be taken that it is a case of no evidence. Under such circumstances, we are unable to sustain paragraph 8 of A6, which reads as under:-

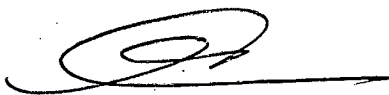


"In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice would be met in this case if the penalty of 20% cut in pension is imposed on Sh.P.K. Sudhakaran, Retd. Jr. Clerk, for a period of one year. They advise accordingly."

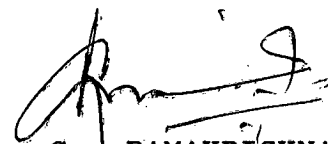
15. As we are unable to sustain paragraph 8 of A6, A5 which is a consequential order is also liable to be set aside. We do so accordingly. The Presidential decision on the basis of paragraph 8 of A6 has also to be quashed, even though specifically not challenged in this Original Application. We do so.

16. Accordingly, the Original Application stands allowed with no order as to costs.

Thursday, this the 4th day of April, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of memo No.PF 39/Adm dt.25.8.93 issued by Senior Administrative Officer, CIFNET.
2. A-2 : True copy of Memo No.5-2/94/Adm. dt.7.9.94 issued by the 3rd respondent.
3. A-3 : True copy of memo No.5-2-94 Admn dated 6.7.95 issued by Sr. Administrative Officer, CIFNET.
4. A-4 : True copy of Memo No.5-2/94 Adm dt.12.1.96 issued by the 3rd respondent.
5. A-5 : True copy of order 5-2/94-Adm dt.15.12.98 issued by the 3rd respondent.
6. A-6 : True copy of letter No.F3/272/97-S1, dt.23.11.98 issued by the 2nd respondent.

Respondents' Annexure:

1. R-3(1): True copy of the order No.3-35/97-Fy (Adm) dt.1.12.98 issued by the 1st respondent.
