

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 50 of 2006**

Date of order : 18.7.2008

C O R A M

Hon'ble Mr. Shankar Prasad, Member [admn.]

Hon'ble Ms. Sadhna Srivastava, Member[J]

Nagendra Prasad Singh, son of Late Satya Narayan Singh, Finance Department Colony, Road No.3, Maurya Patna, Khajpura, Bailey Road, P.O. - Bihar Veterinary College, Patna - 14, who was employed as Principal Chief Conservator of Forests, Bihar Patna-15.

Applicant

Vrs.

1. Union of India through Secretary, Department of Environment, Forests and Wild Life, Govt. of India, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi - 3.

2. The State of Bihar through the Chief Secretary to Govt. of Bihar, Old Secretariat, Patna - 15.

3. The Commissioner & Secretary, Govt. of Bihar Department of Environment & Forests, Sinchai Bhawan, Patna - 15.

4. The Commissioner, Department of Enquiries, Old Secretariat, Hutments, Patna-15.

5. The Joint Secretary to the Govt. of Bihar, Environment & Forest Department, Sinchai Bhawan, Patna -15.

6. The Under Secretary to th Govt. of Bihar, Environment & Forest Department, Sinchai Bhawan, Patna -15.

Respondents.

Counsel for the applicant : Shri M.P.Dixit

Counsel for the respondents : Shri Shekhar Singh [State of Bihar] &

ORDER

Shankar Prasad, Member [A] : -

By this O.A. the applicant seeks quashing of the charge-sheet dated 21.3.2005.

2. The applicant is an officer of Indian Forest Service. He retired from service on 31.5.2001. The case of the applicant in brief is that he was working as PCCF from 12.2.2001 onwards and as CCF-cum-Chief Wild Life Warden from 19.12.2000 till the date of his retirement. The Charge-sheet dated 21.3.2005 was not served on him as he had gone to Mumbai for treatment of his eye and had thereafter gone to his native place Ekma, District Saran. It was finally served to him on 31.8.2005 that is after the expiry of the four year period mentioned in AIS [DCRB] Rules. It is well settled that pensionary benefits can be recovered only in accordance with the rules. It is further contended that His Excellency the President of India has not consented to the issue of charge-sheet.

Rejoinder is filed. Powers of Chief Wild Life Warden under the Wild Life [Protection Act, 1972 and Provisions of Bihar Financial Rules etc. have been extracted to contend that his action was consistent with rules. Consultation with CVC was not warranted.

3. The State Govt. in their reply have stated that the huge amount

allotted by the applicant was reportedly embezzled. The applicant was asked vide No.2578 dated 8.8.2002 to show cause as to why disciplinary proceedings under Rule 6 of AIS [DCRB] Rules should not be initiated against him. The applicant asked for documents and submitted his preliminary reply on 8.3.2003 and final reply on 26.7.2003. As the applicant is a retired AIS Officer, a proposal was submitted to the Central Govt. and after consultation with CVC communicated that Regular Departmental Enquiry be initiated. It is, thereafter, that the charge-sheet was served, which has been served on the applicant.


4. We have heard the learned counsels.

5. The Apex Court in D.V. Kapoor vs. U.O.I.; AIR 1990 SC 1923 has held -

“6. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of the duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery”

of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs.60/-.

7. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

6. Rule 6 of AIS [DCRB] Rules, 1958 reads as under - 

“Recovery from pension – [1] The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and or ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence during his service, including service rendered on re-employment after retirement :-

[Provided that no such order shall be passed without consulting the Union Public Service Commission.

Provided further that -

[a] such departmental proceedings, if instituted while the pensioner was in service. Whether before his retirement or during his re-employment, shall after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service; &

[b] such departmental proceedings, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;

[i] shall not be instituted save with the sanction of the Central Govt.;

[ii] shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

[iii] shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

[c] such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution."

7. A contention raised by the learned counsel for the applicant is that the charge-sheet was not served within four years the proceedings cannot go on. The position regarding service of notice is disputed. A perusal of sub- clause [a] of Explanation shows that the disciplinary proceeding is

initiated with the issuance of charge-sheet. Service of charge-sheet is not contemplated.

8. The Apex Court in the context of sealed cover proceedings has in the case of Delhi development Authority vs. H.C. Khurana; AIR 1993 SC 1488 has held -

“13. It will be seen that in Jankiraman also, emphasis is on the stage when 'a decision has been taken to initiate the disciplinary proceedings' and it was further said that 'to deny the said benefit [of promotion, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee' . The word 'issued' used in this context in Jankiraman, it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken. A.

14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman [AIR 1991 SC 2010] which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.[4], but the fact of 'issue' of the charge-sheet to the employee is emphasised in para 17 of the decision. Conclusion No.[4] of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner."

9. These principles will apply to this case also. The proceedings have commenced with the issue of charge-sheet. &

10. It is next contended that consent of President have not been obtained. A 7 Judge bench of the Apex Court in **Samsher Singh vs. State of Punjab**; AIR 1974 SC 2192 has held -

“The President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor. AIR 1971 SC 1547, overruled.”

11. The consent of the Central Govt. implies the consent of the President. The Central Govt. has consulted CVC before taking a decision. It is not the case of the applicant that the Central Govt. has acted under the dictates of

h
the CVC consultation is an additional safeguard.

12. The Apex Court in UOI vs. K.K. Dhawan; AIR 1993 SC 1478 has held -

"28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or reckless or in order to confer undue favour on a person is not acting as a judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases :-

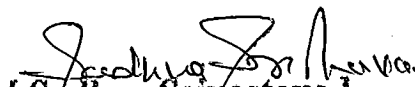
- [i] Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- [ii] if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- [iii] if he has acted in a manner which is unbecoming of a government servant;
- [iv] if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers; *h*

[v] if he had acted in order to unduly favour a party;


[vi] if he had been actuated by corrupt notice however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

13. The manner of exercise of power having regard to the circumstances of the case require investigation of facts. It is well settled that the early stages of enquiry, ^{in the chargesheet} The Tribunal can interfere only if ~~it~~ is issued by incompetent authority is contrary to law or charges are not sustained by evidence enclosed with the charge-sheet. The decision in U.O.I. vs. Upendra Singh; 1994 [3] SCC 357 refers. Such is not the case here.

14. The O.A. is fit to be dismissed and is dismissed. We, however, expect that the enquiry shall be concluded expeditiously and that the applicant shall cooperate. No costs. M.As. also stand disposed of.


[Sadhna Sriyastava]
Member [Judicial]

mps.


[Shankar Prasad]
Member [Admn.]