

CENTRAL ADMINISTRATIVE TRIBUNAL: NEW BOMBAY BENCH: BOMBAY.

O.A.NO. 415 OF 1987

M.H.Shaikh,
 Income Tax Officer, Group-B (Retired),
 'Prem Guru', Flat No.2-B,
 'B' Block, 3rd Floor, Jain Mandir Road,
 Bandra (West), Bombay-400 050.

.. Applicant.

(By Sri M.A.Mahalle, Advocate)

v.

1. Union of India
 through the Secretary,
 Ministry of Finance,
 (Department of Revenue), New Delhi.
2. The Secretary,
 Union Public Service Commission,
 New Delhi.
3. Chief Commissioner of Income Tax
 (Administration) and the
 Commissioner of Income Tax,
 Bombay City-I, Bombay.

.. Respondents.

(By Sri S.R.Atre, Advocate)

CORAM:

Hon'ble Mr.Justice K.S.Puttaswamy,
 Hon'ble Mr.P.S.Chaudhuri,

.. Vice-Chairman(J).
 Member(A).

ORAL JUDGMENT

(Per: Justice Sri K.S.Puttaswamy, VC)

Dated: 30-12-1988.

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act,1985 ('Act').

2. Sri M.H.Shaikh, the applicant before us, ^{was} born on 13-3-1926. With the educational qualification of B.A.(Hons.), ^{he} initially joined service as a Lower Division Clerk on 21-1-1947 in the Income-Tax Department of Government of India. In due course, he made career advancements as an Upper Division Clerk, Inspector and ultimately as Income-Tax Officer (Group-B)('ITO') from 1-4-1970 from which date he continued to function in that capacity till he retired from service on 31-3-1984 on attaining superannuation. With this, the service problems of the applicant should have normally ended. But, alas that did not happen.

3. As late as on 29-3-1984 or just two days before the applicant was due to retire, the Commissioner of Income Tax, Bombay City-I, Bombay and Disciplinary Authority ('DA') in whose jurisdiction he ^{was} then working, initiated disciplinary proceedings against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules,1965

('Rules') in his Memorandum No.F.DP/10(MHS)/84 of that date on the following charges:

"Sri M.H.Shaikh, Income-tax Officer, Group-B, while functioning as Income-tax Officer, Bombay Suburban District (West) Ward, Bombay, during the period 1978 to 1980

- (a) made assessments in several cases in a dishonest and malafide manner and caused wrongful loss of revenue to the Government, and
- (b) displayed gross negligence as well as carelessness in the discharge of his official duties.

Sri M.H.Shaikh, thus contravened Rule 3(1)(i) & (ii) of the Central Civil Services (Conduct Rules,1964".

Along with this charge memo, the DA also furnished to the applicant a statement of allegations as required by the Rules.

4. Before initiating the disciplinary proceedings or thereafter also the DA or Government did not place the applicant under suspension and permitted him to retire from service on 31-3-1984, however granting only provisional pension.

5. In answer to the charge memo, the applicant filed his statement of defence denying the charges levelled against him. On this, the DA appointed one Ms. Jyotsna Diesh who was then functioning as the Commissioner for Departmental Inquiries as the Inquiry Officer ('IO') under the Rules to inquire into the truth or otherwise of the charges and submit her report. On holding a regular inquiry, the IO submitted her report on 26-10-1984 holding the applicant guilty of the charges levelled against him. On this, the DA submitted the records to Government for taking further steps on the same.

6. On an examination of the records, Government concurring with the report of the IO by its Memorandum No.F.C.14011/1/85-AD.VI(A) dated 11-9-1985 (Annexure-A4) proposed to inflict on the applicant the penalty of withholding the entire amount of pension and gratuity payable to him under the Central Civil Services (Pension)Rules,1972 ('Pension Rules'). On receipt of the same, the applicant filed his statement on 15-10-1985 inter alia urging that there was no justification for withholding pension and gratuity payable to him under the Pension Rules. On receipt of the same, Government referred the proceedings to the Union Public Service Commission ('UPSC') for its advice. On 15-4-1986 (Annexure-A7) the UPSC furnished its advice concurring with the IO on certain aspects but dis-

agreeing on certain aspects. On this, Government by its order No.F.C. 14011/1/85-Ad VI(A) (Annexure-A6) has imposed the penalty of withholding of full pension permanently on the applicant. Hence, this application.

7. In justification of the impugned order, the respondents have filed their reply and have produced their records.

8. Sri M.A.Mahalle, learned counsel for the applicant contends that the impugned order withholding pension admissible under the Pension Rules without recording a finding that the applicant was guilty of "grave misconduct or negligence during the period of service" was in contravention of Rule 9 of the Pension Rules, was illegal and unsustainable. In support of his contention Sri Mahalle strongly relies on a Division Bench ruling of this Tribunal in K.M.SHARMA v. UNION OF INDIA [1987(3) (CAT)SLJ 207].

9. Sri S.R.Atre, learned counsel for the respondents, refuting the contention of Sri Mahalle, sought to support the impugned order on more than one ground.

10. We have earlier noticed that the disciplinary proceedings were instituted against the applicant when he was in service and thereafter he was permitted to retire from service on 31-3-1984 on attaining super-annuation however continuing the disciplinary proceedings against him evidently under Rule 9(2)(a) of the Pension Rules. On the continuance of disciplinary proceedings, authorised by Rule 9(2)(a) of the Pension Rules, the applicant cannot and does not make any grievance.

11. The impugned order of Government dated 18-8-1986 made against the applicant reads thus:

"Disciplinary action under Rule 14 of the Central Civil Services (Classification, Control and Appeals) Rules, 1965 for major penalty proceedings was initiated against Shri M.H.Shaikh, Income Tax Officer, Group-B, Bombay (since retired) vide Memorandum F.No.DP/10(MHS)/84 dated 29-3-1984 issued by the Commissioner of Income Tax, Bombay City-I, Bombay. Following was the article of charge framed against him.

Sri M.H.Shaikh, Income Tax Officer, Group-B, while functioning as Income-tax Officer, Bombay Suburban District (West) Ward, Bombay, during the period 1978 to 1980

- (a) made assessments in several cases in a dishonest and mala fide manner and caused wrongful loss of revenue to the Government, and
- (b) displayed gross negligence as well as carelessness in the discharge of his official duties.

Sri M.H.Shaikh, thus contravened Rule 3(1)(i) & (ii) of the Central Civil Services (Conduct) Rules, 1964.

As Shri Shaikh denied the charge framed against him, an oral enquiry was conducted against him. The Inquiry Officer held the charge against Shri Shaikh as proved, while the inquiry was in progress, Sri Shaikh retired from service with effect from 13-3-1984. Thereafter, the disciplinary proceedings were deemed to have continued under Rule 9 of the Central Civil Services (Pension) Rules, 1972. As per rules, Shri M.H.Shaikh was served with a show cause notice dated 11-9-1985 to which he submitted his reply. After examining the reply of Shri Shaikh, the matter was referred to the UPSC for advice in accordance with the prescribed procedure. The findings and advice of the Commission are contained in their letter No.F.3/208/85-SI dated 15-4-1986 (Copy enclosed). The Commission in the light of their findings as contained in their letter quoted above have advised that the ends of justice in the case would be met if the full pension, otherwise normally admissible to Shri M.H.Shaikh, is withheld permanently.

After careful consideration of the matter and having regard to all the facts and circumstances of the case, the President has accepted the findings and advice of the UPSC contained in their aforesaid letter dated 15-4-1986. Accordingly, the President hereby imposes on Shri M.H.Shaikh, Income Tax Officer, Group-B (Retired) Bombay the penalty of withholding of the full pension otherwise normally admissible to him permanently."

In the first three paragraphs, Government has alluded to the disciplinary proceedings, the inquiry held against him and the advice furnished by the UPSC. In the last para, the President/Government accepts the findings and the advice of the UPSC and imposes on the applicant the penalty of withholding full pension admissible to him permanently. In this order, there is no finding to the effect that the misconduct or negligence if any, committed by the applicant was 'grave'.

12. Rule 9 of the Pension Rules which is the only Rule available to exercise the power to withhold pension admissible under the said Rules reads thus:

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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 his 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:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement

or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,
 - (i) shall not be instituted save with the sanction of the President.
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,-

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be instituted -
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made and
 - (ii) in the case of civil proceedings, on the date the plaint is presented in the court."

The construction of this Rule is no longer res integra.

13. In Sharma's case this Tribunal consisting of one of us (Justice Sri K.S.Puttaswamy, Vice-Chairman) more or less on similar facts/situations had occasion to examine the scope and ambit of Rule 9(1) of the Pension Rules which really confers power to withhold pension either in full or in part ^{and} expressed thus:

"This rule empowers Government to withhold, withdraw or reduce pension if it finds that the misconduct committed was a grave misconduct or negligence while the pensioner was in service. The power to withhold or withdraw or reduce pension can be exercised only in cases of grave misconduct or negligence of duty and not in all cases of misconduct. The power to withhold or withdraw or reduce pension, which undoubtedly results in serious consequences to a pensioner can be exercised only in the circumstances enumerated in Rule 9(1) of the Pension Rules and not in all cases. The exercise of power by Government is conditioned by its finding that the misconduct or negligence was a grave one and not otherwise. The order itself must disclose that Government had applied its mind to the nature of misconduct and that misconduct or negligence in duty was a grave one. A fortiori Government must also so record that in its order itself. From this it follows that the order made by Government does not conform with the requirements of Rule 9 of the Pension Rules and is manifestly illegal.

10. But, notwithstanding the above, Sri Verma, taking us through the report of EO, the opinion expressed by the UPSC and other records, urged that the misconduct committed by the applicant was a grave misconduct and a grave negligence of duty on which finding we should uphold the order of Government.

11. What we have expressed earlier is also an answer to this contention of Sri Verma.

12. When Government had not examined and found on the nature of misconduct or negligence, we cannot examine them for the first time as if we are a court of appeal and hold that the misconduct or negligence if any, committed by the applicant as a grave one. We cannot make good the deficiency in the order of Government and reconstruct the order and sustain it as if we are Government. For these reasons, we see no merit in this contention of Sri Verma and we reject the same."

On this enunciation which is binding on us, the authority can withhold pension only if it finds that the quondam Government servant had committed a grave misconduct or negligence while he was in service and not otherwise. In other words, a finding to that effect is a condition precedent for the exercise of power conferred under Rule 9 of the Pension Rules. We have earlier noticed that there is no such finding in the impugned order. On the ratio in Sharma's case, the impugned order is clearly illegal and cannot be upheld.

14. We now pass on to examine the valiant effort made by Sri Atre to distinguish the principles enunciated in Sharma's case.

15. Sri Atre contends that on the very charge levelled, the finding of the IO and the advice of the UPSC thereon, we must necessarily hold that the applicant had committed a grave misconduct or negligence while he was in service and the failure if any of the President to record such a finding does not vitiate the order. In support of his contention Sri Atre strongly relies on a Division Bench ruling of the Karnataka Administrative Tribunal ('KAT') in A.CHIKKANNA v. STATE OF KARNATAKA AND ANOTHER [1988 (7) ATC 791].

16. In Sharma's case we have pointed out that a finding to the effect that the misconduct or negligence was 'grave' should be recorded in the order itself by the President and not by any other authority and in the absence of such a finding, the Tribunal cannot reconstruct the order ^{and} on examining the facts/situations of that case. We are of the view that the deficiency in the order or the finding cannot be made good either on the basis of the charge levelled or the finding recorded by the IO. We are of the view that the enunciation made in Sharma's case is a complete answer to this contention of Sri Atre.

17. In Chikkanna's case the KAT was dealing with a case of Government servant who was dismissed from service while in service under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1965 which are in pari materia with the Rules. In that case, the KAT was not dealing with the case of a Government servant against whom disciplinary proceedings had been instituted when he was in service but had been permitted to retire from service as in the present case and Rule 9 of the Pension Rules. Hence, the ratio in Chikkanna's case and the rulings relied by the KAT on the point do not bear on this question.

18. On the foregoing discussion, we see no merit in this contention of Sri Atre and we reject the same.

19. Sri Atre next contends that the impugned order was one made under Rule 9 of the Pension Rules and the Rules/so read, the failure to record a finding as propounded in Sharma's case, does not vitiate the same and that in any event Rule 9(1) of the Pension Rules had no

application to the power exercised on the applicant.

20. We are of the view that this contention has only to be stated to be rejected. Even this contention in a way ~~has been~~ considered and rejected in Sharma's case, has no merit.

21. We have earlier found that the power to withhold pension had been exercised only under Rule 9 of the Pension Rules and not under any other rule or law. If that is so, the requirement of Rule 9(1) cannot be dispensed with on the grounds urged by Sri Atre or on any other grounds. We see no merit in this contention of Sri Atre and we reject the same.

22. On the view we have taken on this point, we consider it unnecessary to examine all other questions urged before us by both sides. We, therefore, leave them open.

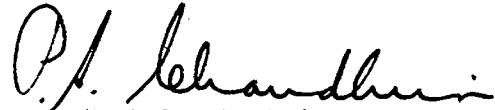
23. Sri Mahalle informs us that on the applicant retiring from service from 31-3-1984 he has been paid provisional pension from 1-4-1984 to 17-8-1986 and that the final pension due to him had not been settled and paid in accordance with the Pension Rules and, therefore, we should direct the respondents to settle the final pension forthwith and direct the payment of pension as admissible to him in future.

24. On what we have expressed earlier, this submission of Sri Mahalle is unanswerable. But, while we must allow this part of the claim, we find no justification to award interest on the arrears due to the applicant. We, therefore, reject the claim of the applicant for interest.

25. In the light of our above discussion, we make the following orders and directions:

- (a) We allow this application and quash Order F.N o.C.14011/1/85-Ad-VI(A) dated 18-8-1986 (Annexure-A6). But, this does not prevent the President from redoing the matter in accordance with law.
- (b) We direct the respondents to determine the final pension admissible to the applicant under the Pension Rules and arrange for payment of amounts that are admissible to him from time to time deducting the amounts already paid without payment of any interest on the arrears, with all such expedition as is possible in the circumstances of the case and in any event not later than 31-3-1989.

26. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



(P.S.CHAUDHURI)
MEMBER(A)



(K.S.PUTTASWAMY)
VICE-CHAIRMAN(J)

Contempt Petition

No. 42189.

fixecl on 31/8/89.

SS4
31/8/89